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case is seldom so completely on all fours with another that it can be an absolute authority either way for granting or refusing a declaratory decree. The discretion of the Court must in each case be exercised with reference to the particular aspect of the facts in the case before it. Here, it appears to us that, although plaintiff would not be entitled to any decree declaratory of his reversionary right to the property on the widow's death, he may be entitled to what he asks for; that is a decree to declare as between him and the adopted son the invalidity of the adoption.

The determination of the question of the validity of the adoption depends upon the credit attaching to the evidence as to the authority having been given by the husband, and if plaintiff lay by; appearing to acquiesce in the adoption until the widow's death, such conduct of plaintiff would naturally affect the weight to be given to the arguments impugning the credibility of the evidence, and tend to prejudice plaintiff. He is therefore entitled to have this question tried and determined in this suit, and we shall reverse the decree and remand the suit for trial *de-novo*.

*Suit remanded.*

### Appellate Jurisdiction. (a)

*Civil Miscellaneous Special Appeal No. 335 of 1873.*

MUTHUSAMI PILLAI..... *Appellant.*

MUTHU CHIDAMBARA CHETTI ..... *Respondent.*

According to Section 13 of Act III of 1873 (the Madras Civil Court Act) it is the money value of the Original Suit that fixes the Jurisdiction throughout the subsequent litigation in its several stages.

*Held*, therefore, where the amount of the Original Suit was more than Rupees 5,000, and an appeal was preferred to the District Court, but the amount in dispute in the appeal did not exceed Rupees 5,000, that the District Court had no jurisdiction to hear the appeal.

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**T**HIS was an appeal against the order of F. M. Kindersley, the District Judge of South Tanjore, dated the 29th September 1873 passed on Civil Petition No. 711 of 1873, reversing the order of the Sub-Court of South Tanjore dated 2nd August 1873.

(a) Present : Morgan, C. J., Innes and Kindersley, JJ.

The case was brought up to the High Court on a Special Appeal from an order of the District Judge of South Tanjore, made on an appeal from the Subordinate Court of Tanjore, refusing to allow interest on money due under a decree. The objection was taken in the District Court that that Court had no jurisdiction to hear the appeal, under Section 13, Act III of 1873, it being one from an order in a suit the subject-matter of which was more than Rupees 5,000 in value, although the amount in dispute in appeal was less than Rupees 5,000. The following is taken from the judgment of the District Judge. "The question is, what is the meaning of the word "suit" in this section? Is the term "suit" confined exclusively to the original action brought in the Lower Court? I think not." In this view the Judge decided that he had jurisdiction.

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The appellant preferred the present appeal on the ground that the District Judge had no jurisdiction.

*R. Balaji Rau*, for the appellant.

*Bausheyam Iyengar*, for the Honorable *V. Sanjiva Rau*, for the respondent.

The Court delivered the following

JUDGMENT:—In this case as "the amount or value of the *subject-matter of the suit*" exceeded 5,000 Rupees, the District Court had no jurisdiction to hear the appeal. The words of the section are clear. It is the money value of the Original Suit that fixes the jurisdiction throughout the subsequent litigation in its several stages.

The Judge, on the ground that the matter in dispute in the appeal before him was less than 5,000 Rupees, determined that he had jurisdiction under the words of Section 13, Act III of 1873. ("The Madras Civil Courts Act" (a) which we have above quoted.) The word "suit"

(a) The section is as follows:—

"Regular or Special Appeals, or Appeals under Madras Reg. XI of 1832, Section 9, shall, when such appeals are allowed by law, lie from the decrees and orders of a District Court to the High Court. Appeals from the decrees and orders of Subordinate Judges and District Munsifs shall, when such appeals are allowed by law, lie to the District Court, except when the amount or value of the subject-matter of the suit exceeds Rupees five thousand, in which case the appeal shall lie to the High Court." \* \* \*

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he would construe, he says, as meaning in such a case as this "suit on appeal" that is in effect the clause would be read as if the words were "the amount or value of the subject-matter in dispute in the appeal" and various anomalies are suggested as likely to arise from a different construction. It would not be difficult on the other hand to suggest inconveniences from the reading adopted by the Lower Court. But it is sufficient for us to say that the language of the Legislature is clear and that the intention was to make the value of the suit, and not of the matter in dispute in the appeal, the criterion by which to determine Appellate Jurisdiction.

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### Appellate Jurisdiction.(a)

*Referred Case No. 25 of 1874.*

*BHEEMANGOWDA against EERANAH.*

Payment endorsed on a bond by direction of the obligor who cannot write and signed with his mark is an acknowledgment in writing within the meaning of Section 20 of Act IX of 1871 (the Indian Limitation Act.)

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 of 1874.

**T**HIS was a case referred for the opinion of the High Court by P. Teroomal Row, District Munsif of Bellary, in Suit No. 76 of 1874.

The Judgment of the Court states the facts.

No Counsel were instructed.

PER CURIAM :—In this case the District Munsif asks whether a payment endorsed on a bond by direction of the obligor, who cannot write, and signed with his mark, is an acknowledgment in writing within the meaning of Section XX of Act IX of 1871(b).

The High Court are clearly of opinion that it is.

(a) Present : Morgan, C. J. and Holloway, J.

(b) The portion of the section which applies in this case is as follows :—“ No promise or acknowledgment in respect of a debt or legacy shall take the case out of the operation of this Act, unless such promise or acknowledgment is contained in some writing signed, before the expiration of the prescribed period, by the party to be charged therewith or by his agent specially authorised in this behalf.”

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