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 RAMA'BA'I
 wife of
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 GANESH
 DESAI.

ents and available for her maintenance. If the plaintiff's husband and the respondents are separate, and the former has taken his share of the property, the appellant has no claim upon the respondents; but if they are undivided, and the husband's share is available in the hands of the respondents, and the proceeds thereof are not accounted for by them, then the appellant is entitled to receive maintenance from those proceeds to an extent not exceeding one-third of the amount.

Decree reversed and the case remanded.

[APPELLATE CIVIL JURISDICTION.]

Sept. 4.

Special Appeal No. 330 of 1871.

RA'YASANGJI SHIVSANGJI *Appellant.*
 GULA'M RASUL and others *Respondents.*

Jurisdiction—Appeal—Bombay Civil Courts Act (XIV. of 1869) Sec. 26.

Where a suit, wherein the subject matter exceeded Rs. 5,000, was instituted in the Court of a Principal Sadr Amin, but decided by a Subordinate Judge 1st Class appointed under the Bombay Civil Courts Act XIV. of 1869 :—

It was held that an appeal lay direct to the High Court under Sec. 26 of the Act.

THIS was a special appeal from the decision of F. D. MELVILL, Judge of the District of Ahmadabad, confirming the decree of the Subordinate Judge First Class of that city.

The facts, in so far as they are material, are as follows :—

A suit, the subject matter in which involved a sum exceeding Rs. 5,000 in value, was instituted, on the 10th of March 1868, in the Court of the Principal Sadr Amin of Ahmadabad. While the suit was pending, the Bombay Civil Courts Act (XIV of 1869) came into operation on the 19th of March 1869, and the Court of the Subordinate Judge First Class succeeded the Court of the Principal Sadr

Amin. In July of the same year, the Subordinate Judge pronounced his decision in favor of the defendants. The plaintiff filed an appeal in the Court of the District Judge who disposed of it on the merits by confirming the decree of the Court below.

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The special appeal was heard by MELVILL and KEMBALL, JJ.

Macpherson (with him *Nánábhái Haridás*) for the appellant.

Anstey (with him *Dhirajlál Mathurádás*, Government Pleader) for the respondents.

The judgment of the Court was delivered by

MELVILL, J.:—This is an appeal in a suit, the subject matter of which involved a sum larger than Rs. 5,000. It was instituted, on the 10th of March 1868, in the Court of the Principal Sadr Amin of Ahmadabad, and was pending on the 19th of March 1869, the day on which the Bombay Civil Courts Act came into operation. It was decided by the Court of the Subordinate Judge which succeeded the Court of the Principal Sadr Amin. In the case of *Girdharlál Har-govandás v. Amritlál Khusálchand* (S.A. No. 240 of 1871) decided by this Court on the 6th of September 1871, a case which is on all fours with the present, we held that as the original suit, involving a sum over Rs. 5,000, had been decided by a First Class Subordinate Judge after the Civil Court's Act came into operation, the District Judge had no jurisdiction to try the appeal. We proceeded upon the clear wording of Section 26 of that Act which says: "In all suits decided by a Subordinate Judge of the First Class in the exercise of his ordinary and special original jurisdiction, of which the amount or value of the subject matter exceeds five thousand rupees, the appeal from his decision shall be direct to the High Court." Upon these words we thought that there could be no doubt that the appeal lay to this Court.

It has been to-day contended that because this suit was instituted or commenced before the Bombay Courts Act

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came into operation, Section 26 does not apply, and the case of *Ratanchand Shrichand v. Hanmantrav Shivabakas*, 6 Bom. H. C. Rep. A. C. J. 166 has been relied upon. That case is distinguishable from the present. There the first decision was passed before the Civil Courts Act came into operation. It was a decision not of a Subordinate Judge, but of a Principal Sadr Amin, and it was, therefore, clear that Sec. 26 could not be held to apply. We had next to consider whether the right of appeal had been taken away altogether, inasmuch as the Regulation which gave the right of appeal had been repealed. We came to the conclusion that, as no express provision had been made in the Bombay Courts Act with respect to appeals in suits decided before its passing, the mere repeal of the Regulation was not sufficient to take away the right of appeal. In support of this conclusion we cited Section 6 of the General Clauses Act I. of 1868. In the course of his judgment COUCH, C. J., said: "It follows, in the judgment of the Court, that in all suits commenced before the passing of the Bombay Courts Act, the procedure must (*unless another mode of procedure is expressly substituted by that Act*) be the same as it would have been, "if that Act had not been passed." The words in italics are those which distinguish that case from the one now before us. In that case there had been merely a repeal of the law regulating the mode of procedure. In the present case there has been something more, viz. an express substitution of a new mode of procedure.

We shall, therefore, annul the decree of the District Court for want of jurisdiction. As, however, the District Court ought to have discovered the error, and returned the appeal for presentation in this Court, we shall allow the appellant to file a regular appeal in this Court on the same stamp.

Order accordingly.