1877.

IN THE MATTER OF THE PETITION OF RATANSI KALIA'NJI AND SIX OTHERS.

with the previous proceedings in execution. The fact, therefore, that it must be dealt with under the new law, has no influence on them as regards the law to which they are subject. If, on the other hand, it is to be regarded as integral with the previous applications and orders, forming with them a single and essentially connected series, then it must necessarily be part of a "proceeding commenced" before the new Act came into force, and not governed, therefore, by its provisions. In neither case can it bring within those provisions orders deriving their validity and effect from another law.

[APPELLATE CIVIL.]

Before Sir M. R. Westropp, Knt., Chief Justice, and Mr. Justice Melvill.

MANOHAR GANESH (ORIGINAL PLAINTIFF), APPELLANT *v.* BA'WA' RA'MCHARANDA'S AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.* August 22.

Court fees—Act VII. of 1870*—Declaratory decree—Consequential relief—Valuation of suit—Jurisdiction—Appeal.*

Held, following *Nárávan Madhavráv* v. *Collector of Thánd* (I. L. R. 2 Bom. 145), that the decision of the Court of first instance rejecting a plaint for insufficiency of the valuation and stamp for the purposes of the Court Fees' Act (VII. of 1870), not being to the detriment of the revenue, is final, and no appeal lies from it.

A suit praying merely for a declaration that the plaintiff is entitled to require the defendants to account to him, and to permit him to inspect their books, is simply a suit for a declaratory decree without consequential relief, and falls within art. 17, cl. iii. of sched. II. of Act VII. of 1870.

A suit praying for such a declaration as the above, and also for a positive order in the nature of a mandatory injunction for the production of the defendants' books and property in their hands, or a suit praying for such declaration as the above, and also for a positive decree for an account to be taken by the Court, and for the production of the books and property, would range under sec. 7, cl. IV., art. (c) of Act VII. of 1870, as being a suit "to obtain a declaratory decree or order where consequential relief is prayed," and also within art. (*d*) of the same section, as being a suit "to obtain an injunction," and a suit of the third species described above would fall under art. (*f*) of the same clause, as being a suit "for accounts."

* Regular Appeal No. 31 of 1876.

1877.

MANOHAR GANESH v. BA'WA RA'M-CHARANDA'S.

Quære whether, in the case of a suit for a declaration of the right of the plaintiff to an account and to inspection of the defendants' books and for a mandatory injunction for the production of those books, or of a suit for such declaration and for a positive decree for the taking of an account by the Court and the production of the defendants' books, the plaint would, by virtue of sec. 17 of Act VII. of 1870, require separate stamps under articles (*d*) and (*f*) of cl. iv., sec. 7, or be sufficiently covered by the stamp under art. (*c*) of the same clause, and whether, assuming the declaration and the account each to require a stamp, the prayer for an injunction or order for the production of books is not merely ancillary to, and not a distinct subject from, the taking of an account.

Quære whether the provision in sec. 7, cl. iv. of Act VII. of 1870, that the amount of the fee payable in suits falling within that clause shall be computed "according to the amount at which the relief sought is valued in the plaint," is so inconsistent with that portion of sec. 31 of Act VIII. of 1859, which permits the Court receiving the plaint to revise the valuation of the claim, as to render that portion of sec. 31 of Act VIII. of 1859 inoperative in suits within sec. 7, cl. iv. of Act VII. of 1870, notwithstanding the concluding passage in that clause.

Quære whether the concluding passage in cl. iv., sec. 7 of Act VII. of 1870 is too express to admit of a limitation of the power of the Judge, and leaves him the right to revise the valuation placed on suits under cl. iv. by the plaintiff. But, assuming this to be so, it would, generally, not be advisable that the Judge should enhance the valuation on the reception of the plaint.

The fee payable under sec. 7, cl. iv. of Act VII. of 1870 is according to the amount at which the relief sought is valued in the plaint, and not the value of the subject-matter of the claim.'

Quære whether the First Class Subordinate Judge has jurisdiction to try a suit for an account where the plaint states that the property, in the hands of the defendants in respect of which the account is prayed, exceeds Rs. 5,000, but values the claim at Rs. 100.

THIS was an appeal from the decree of the First Class Subordinate Judge of Ahmedabad at Kaira, rejecting the plaint with costs on the ground of the insufficiency of the stamp.

The plaint, which bore a stamp of Rs. 10, valued the claim at Rs. 100, and in substance stated that the defendants, in the capacity of treasurers, received the various offerings, to the extent of several lakhs of rupees, made at the temple of Shri Ranchod Raigi, at Dákor, by the devotees who resorted thither; that the plaintiff, as the hereditary manager and patron of the temple, was entitled to an account, from the defendants, of the offerings made to the idol and received by them, and to inspect their books of account; and that the defendants in August 1872 refused to account to the plaintiff or allow him inspection of the books, and

thereupon the cause of action arose. In the commencement of the plaint the plaintiff said: "I sue to take an account (from the defendants) of all the property, whether moveable or immoveable, that has been dedicated or may be dedicated to the idol of Shri Ranchodji Maharaj, which is installed in the Savasthan of Dákor." After stating the facts above mentioned, the relation in which the plaintiff stood to the temple, his right to the account and inspection, and the refusal of the defendants, the plaint proceeded:—"Therefore I have preferred this claim on a stamp of Rs. 10 as provided in the Court Fees' Act, for taking an account of the aforesaid property as follows:—That I may be shown all the property, whether moveable or immoveable, that may have been dedicated from the beginning up to the present day to the aforesaid deity, and that a detailed account may be given to me, from the books kept in respect of the treasury, from the defendants, that an order may be passed declaring that I am entitled in future to inspect and examine the same, and to take such steps as may be necessary with respect to any act of misapplication or misappropriation of such property which I may discover to have been committed during the management of the defendants, and that the costs may be awarded from the defendants."

The defendants, who are called *Shavaks*, by their written statement denied *(inter alia)* their liability to account, in respect of the property mentioned in the plaint, to the plaintiff or anybody else; alleged that they were owners of the property, and had, as against the plaintiff, upwards of thirty years' adverse possession. In the tenth paragraph they said:—"The plaintiff's claim is twofold in nature, namely, for taking the accounts and for a declaration of his right. The same is not made on sufficiently stamped paper. Again, the plaintiff's case as to the management in this suit is of such a nature that the claim should have been preferred on stamped paper of a value proportionate to the property; but as the plaintiff, who has made this claim, valuing the same at Rs. 100, has not mentioned in his plaint the reason of his bringing this suit within the jurisdiction of this Court (First Class Subordinate Judge), the same is beyond the jurisdiction of this Court."

1877.

MANOHAR GANESH v. BA'WA' RA'M-CHARANDA'S.

The First Class Subordinate Judge, after referring to and commenting on the cases of *Ram Doollal Singh* v. *Gopal Kristo Singh* (1) and *Luchmeeput Singh* v. *Nund Coomar*, (2) held that the plaint, in praying for a disclosure of all the property and for a detailed account, in fact asked for consequential relief, and, therefore, did not fall under the provisions of art. 17, cl. iii., of sched. II. of Act VII. of 1870. He then proceeded to hold that the plaintiff had not the power of placing any valuation he might deem proper on a claim falling under cl. iv. of sec. 7 of Act VII. of 1870, but ought to value the relief sought so as to represent the pecuniary gain which would accrue to him by the granting of the prayer of his plaint, or the pecuniary loss to which he would be subjected by its being withheld, citing *Ajuas Kooer* v. *Mussamat Luteefa*.(3) The First Class Subordinate Judge, accordingly, on the plaintiff refusing to pay additional stamp duty, rejected the plaint under sec. 31 of Act VIII. of 1859, and, lastly, held that, if the claim had been rightly valued at Rs. 100 and sufficiently stamped with a Rs. 10 stamp, then he had no jurisdiction, the property being situate at Dákor, within the jurisdiction of the Second Class Subordinate Judge of Amreth, and the value of the subject-matter of the suit, if taken to be Rs. 100 only, not bringing the case within the special jurisdiction of the First Class Subordinate Judge, under the provisions of section 25 of Act XIV. of 1869.

Against this decision the plaintiff appealed to the High Court on the grounds that the Lower Court ought to have held that the plaint was properly valued and stamped, and that the Lower Court ought to have held that the suit was one for a declaratory decree only. The grounds of appeal concluded with a declaration by the appellant, that the value of the subject-matter, relating to which the appellant sought to have his right of taking an account declared, was worth more than Rs. 5,000.

K. T. Telang (*Shántárám Náráyán* with him), for the appellant, cited *Nanhoon Singh* v. *Tofanee Singh*,(4) *Jeebraj Singh* v. *Inderjeet Mahtoon*,(5) *Collector of Sylhet* v. *Kali Kumar*,(6) *Mohun Lall*

(1) 16 Calc. W. R. 156 Civ. Rul.
(2) 22 Calc. W. R. 388 Civ. Rul.
(3) 18 Calc. W. R. 21 Civ. Rul.
(4) 12 Beng. L. R. 113.
(5) 12 Beng. L. R. 115.
(6) 7 Beng. L. R. 663.

1877.

MANOHAR GANESH v. BA'WA' RA'M-CHARANDA'S.

Sookul v. *Bebee Doss*,[1] *Rámábái* v. *Trimbak*,[2] *Dallabh* v. *Hope*,[3] and *Nánábhái* v. *Náthábhái*.[4]

Nánábhái Haridás, Government Pleader, for the respondents, relied on *Náráyán Mádhavrávv.* *Collector of Thána*,[5] as showing that the High Court could not entertain the appeal.

WESTROPP, C. J. :—It appears that in the Lower Court the plaintiff's pleader contended that this suit falls, in respect of the Court fees properly payable upon the plaint, within article 17, cl. iii. of schedule II. of the Court Fees' Act (VII. of 1870), as being a suit "to obtain a declaratory decree where no consequential relief is prayed," and, therefore, only requiring a stamp of 10 rupees. Such a stamp is more than sufficient for a suit of the value of Rs. 100. The First Class Subordinate Judge, however, decided that the plaint did not come within that article, but rather within section 7, cl. 4, pl. c. of the same Act, inasmuch as he was of opinion that the plaintiff not only sought a declaration of his right to take an account of the property and to inspect the *Shavaks*' (defendants') books, but also consequential relief, namely, production of the property dedicated to the idol, and that an account should be actually furnished to him from the books kept in the *bhándár* (treasury). He also held that the plaintiff was not, under the last-mentioned enactment, at liberty to put an arbitrary value on his claim, but should estimate the relief sought at its actual pecuniary value to himself or to the Hindu devotees of Shri Ranchod Raiji whom he may represent. This, he said, the plaintiff had not done in valuing his suit at Rs. 100, it appearing on the face of the plaint itself that he asserted the offerings to be worth several lakhs of rupees. The First Class Subordinate Judge further held that, if the plaintiff (who refused to stamp his plaint more highly) were right in valuing his claim at Rs. 100, he (the First Class Subordinate Judge) had not jurisdiction to entertain the suit, inasmuch as Dákor, where the property to which the suit related is situated, is within the local jurisdiction of the Second Class Subordinate Judge of Amreth, and the claim, being as-

(1) 7 Moore, I. A. 428. (2) 9 Bom. H. C. Rep. 283.
(3) 8 Bom. H. C. Rep. 213 A. C. J. (4) 9 Bom. H. C. Rep. 89, 91.
(5) I. L. R. 2 Bom. 145.

1877.

MANOHAR GANESH v. BA'WA' RA'M-CHARANDA'S.

sumed to be under Rs. 5,000 in value, should have been brought in the Court of the latter in obedience to section 6 of the Civil Procedure Code (VIII. of 1859).

The plaint was accordingly rejected with costs.

The plaintiff has appealed to this Court against that decree, alleging that the plaint was properly valued and stamped, and ought not to have been rejected, seeking, as he contends, a declaratory decree merely. In his Memorandum of Appeal he "declares" that "the value of the subject-matter, relating to which he seeks to have his right to taking an account declared in this suit, is worth over Rs. 5,000."

The defendants allege by their counsel here that the decree of the First Class Subordinate Judge is final, and, therefore, that the present appeal will not lie. His decision must, we think, be regarded as resting on the ground that the plaint has not, for the purposes of the Court Fees' Act (VII. of 1870), been properly valued and stamped. Viewing his decision in that light, we are of opinion that it was final, and that it is not the proper subject of appeal. So recently as the 14th instant it has been reluctantly held here, in *Náráyán Mádhavráv Náik* v. *The Collector of Thána* [1] that, unless the question of the amount of Court fees properly chargeable on a plaint be wrongly decided, by the Court of First Instance, to the detriment of the revenue, the decision of that Court is final, and, consequently, where that Court has wrongly decided to the detriment of the subject only, but to the advantage of the revenue, there is no appeal—*See* Court Fees' Act (VII. of 1870), section 12, cl. 1 and 2. Perhaps the less said as to the equity of such an enactment, the better. A copy of the judgment of this Court in that case shall be forwarded to the Court below. The reasons which constrained this Court so to decide, are fully given there, and need not be repeated here. We must hold that, as the decision of the First Class Subordinate Judge proceeded on the insufficiency of the valuation and stamp for the purposes of the Court Fees' Act, and was not "to the detriment of the revenue," the present appeal does not lie.

(1) I. L. R. 2 Bom. Bom. 145.

Assuming, however, that the appeal would lie, we think that the mode in which the plaintiff has framed his plaint, is so ambiguous that it would be difficult to say, first, whether it is to be regarded as merely praying a declaration that the plaintiff is entitled to require the defendants to account to him, and to permit him to inspect their books, in which case it would be simply a suit for a declaratory decree without seeking consequential relief, and so within article 17, cl. iii. of schedule II. of the Court Fees' Act (VII. of 1870), and it would be the first instance, that we have met, in which the plaintiff sought merely for a declaration of liability on the part of the defendants to account to him without asking for the account itself; or, secondly, whether it is to be deemed to pray not only for such a declaration, but also for a positive order in the nature of a mandatory injunction for the production of the defendants' books and the offerings—which order would be consequential relief; or, thirdly, whether it is to be regarded as praying the declaration as above, and a positive decree for an account to be taken by the Court, and for the production of the books and offerings—which decree for account and production would be consequential relief.[1] A circumstance unfavourable to the supposition that the plaint is to be viewed as praying an account to be taken by the Court, is that, if this were intended, we might expect the plaint to pray an order for payment of any balance which, on the taking of the account by the Court, might be found due from the defendants to the temple, or a refund, or restoration of any moneys or property which might be missing or unaccounted for, but there is not any such prayer in the plaint.

If the plaint is to be deemed to be either of the 2nd or 3rd species above mentioned, it would range under section 7, cl. iv., article (*c*), as being a suit "to obtain a declaratory decree or order where consequential relief is prayed," and also within article (*d*) of the same clause, being a suit "to obtain an injunction;" and, if the plaint be of the 3rd species, it, being a suit "for accounts," would fall under article (*f*) of the same clause.

[1] *Note.*—In *Bái Máhkor* v. *Bulákhi Cháku* (I. L. R. 1 Bom. 538) it was held that in a suit to obtain a decree declaratory of the plaintiff's title to the rights of a deceased person, whether it asked merely for the declaration, or added a prayer for possession, "the inheritance is the object in dispute."

1877.

MANOHAR GANESH v. BA'WA' RA'M-CHARANDA'S.

Assuming the plaint to be of the 2nd or 3rd species above mentioned, a nice question would arise upon the 17th section of the Court Fees' Act, viz.: Would the plaint require separate stamps under articles (*d*) and (*f*), clause iv., section 7, in respect of the prayer for an injunction for production of books and for an account as "distinct subjects," or, inasmuch as these are "consequential relief," would they be sufficiently covered by the stamp under article (*c*) of the same clause—the suit being one "to obtain a declaratory decree or order, *where consequential relief is prayed*," as contemplated by that article—and whether, if the declaration sought require a stamp, and the account sought another stamp, the prayer for an injunction or order for production of books is not merely ancillary to the taking of the account, and, therefore, not a distinct subject.

The learned Judge, in speaking of section 7, cl. iv. of the Act, says that it is clear that the plaintiff cannot, under that clause, "set any arbitrary valuation upon the relief sought." It is not incumbent upon us now to decide, and we do not purpose to express any opinion upon that point. Whenever it presents itself under such circumstances as to call for a decision, it will be necessary to consider whether the provision that the amount of fee payable in suits falling within that clause shall be computed "according to the amount at which the relief sought is valued in the plaint" is so inconsistent with that portion of section 31 of the Civil Procedure Code (Act VIII. of 1859) which permits the Court receiving the plaint to revise the valuation of the claim, as to render that portion of section 31 inoperative in suits within section 7, cl. iv. of the Court Fees' Act, notwithstanding the concluding passage in that clause which enacts that, "in all such suits, the plaintiff shall state the amount at which he values the relief sought, and the provisions of the Code of Civil Procedure, section 31, shall apply as if for the word 'claim,' the words 'relief sought' were substituted." It is observable in all of the ten clauses in section 7, with the single exception of clause iv., the Legislature has prescribed an *ad valorem* system or some guide whereby the valuation for the purposes of the Act may be ascertained. But the nature of the suits comprised in the six articles of that clause, which in some instances renders it impossible, (*ex.*

gr. article (*a*)), and in others, either impossible or generally extremely difficult to lay down an even approximately fair *ad valorem* scale as a means of fixing the Court fee in such suits, would appear fully to account for the Legislature leaving it to the plaintiff to name the valuation, as it *primâ facie* appears to do in enacting that the amount of fee shall be computed "according to the amount at which the relief sought is valued in the plaint." In the case of suits to recover title-deeds, or for an injunction, or for an easement, all of which would come within clause iv., it would generally be impossible to name any except a fancy value. In a suit to enforce a right to a share in joint family property, it is very difficult, and especially so for a parcener other than the family manager, who usually is a defendant, to know with any accuracy what the value of the share may be. All charges on the family property must be ascertained before an approximation can be made to the value of the property which will be divisible amongst the parceners. So, too, in a suit for an account, in many cases the party suing for the account would be quite unable to state what the balance due to him may be. In the present case the plaintiff, from whom the defendants have withheld their books, would not, in all probability, be able to make any trustworthy estimate of the deficiency, if any, in their accounts, and it would be highly unreasonable to require him to pay down a large sum as Court fee on the contingency that the deficiency or balance due to the temple is large. If the plaintiff be at a difficulty in estimating that deficiency, the making good of which must be the object of this suit, (if we are to regard it as a suit for an account to be taken by the Court,) the learned Judge would find much greater difficulty in conjecturing what that deficiency may be. It is quite possible that the bulk of the dedicated property is forthcoming, or that its expenditure may be satisfactorily accounted for. If that be so, and the residue to be made good to the temple is small, it would be absurd and unjust to estimate the Court fee by the whole amount of the offerings. Although clause iv. of section 7 does say that the fee shall be "according to the amount at which the relief sought is valued in the plaint," which plaint is prepared by the plaintiff, or his pleader, and the fixing of the valuation is thus apparently left to them, and,

1877.

MANOHAR GANESH v. BA'WA' RA'MCHARANDA'S.

as we have seen, with strong reasons why it should be so left; although also there seems to be, if not absolute repugnancy, at least some incongruity in treating the Judge as at liberty by section 31 of the Civil Procedure Code to pronounce the relief sought to be "improperly valued;" and, lastly, although a field for the application of that section would still remain to the Judge in his power to reject the plaint, if not stamped in accordance with the valuation therein stated, it may be that, nevertheless, the concluding passage in clause iv., section 7 of the Court Fees' Act is too express to admit of a limitation of the power of the Judge to that duty, and leaves him the right to revise the valuation placed on suits under clause iv. by the plaintiff. Assuming, without deciding, that to be so, we are of opinion that, generally, it would not be desirable that the Judge should enhance the valuation on the reception of the plaint. In most cases he could only make a conjecture as to the value of the relief sought, and would be quite as likely to be wrong as to be right. In suits for an account the revenue never could unfairly suffer by the refusal of the Judge to enhance the valuation on the reception of the plaint; for section 11 of the Court Fees' Act sufficiently protects the revenue, by preventing the execution of the decree in such (as well as certain other) suits where "the amount decreed" "is in excess of the amount at which the plaintiff valued the relief sought," until the difference, between the fee actually paid and the fee which would have been payable if the true valuation had been placed on the plaint, has been paid to the proper officer.

The learned Judge has dealt with the question of jurisdiction hypothetically only. He says: "*But if it were held that the plaintiff has valued his claim correctly at Rs.* 100, then it would follow that this Court has no jurisdiction to entertain this suit. Under the provisions of section 7, cl. iv. of the Court Fees' Act, quoted above, the value of the relief sought is to represent the value of *the subject-matter* of the claim in such cases." We do not, however, find any such provision in that clause. The fee payable is, as already stated, to be "according to the amount at which the relief sought is valued in the plaint," and the first item in clause iv. shows that the valuation could scarcely have been intended to represent the value of the subject-matter of the claim, inasmuch as that

item (article (*a*)) relates to suits "for moveable property where the subject-matter has no market value." The Judge continues thus: "The property to which this suit relates, is situated at Dákor, within the jurisdiction of the 2nd Class Subordinate Judge of Amreth, and if the value of the plaintiff's claim with respect to such property, or, in other words, if the value of the subject-matter of this suit is only Rs. 100, then the plaintiff must go to the Court at Amreth; for the case then does not fall within my special jurisdiction under the provisions of section 25 of the Bombay Civil Courts' Act" (XIV. of 1869). That section provides that "a Subordinate Judge of the First Class, in addition to his ordinary jurisdiction, shall exercise a special jurisdiction in respect of such suits and proceedings of a civil nature wherein the subject-matter exceeds Rs. 5,000 in amount or value as may arise within the local jurisdiction of the Courts in the district presided over by Subordinate Judges of the Second Class." Whether or not the First Class Subordinate Judge had jurisdiction, is a question which we do not purpose now to determine. He has decided that the plaint is, for the purposes of the Court Fees' Act, insufficiently stamped; and against that decision the appeal will not lie. That decision being final, the question of jurisdiction does not arise. It is well, however, to remember that a distinction has been taken in the Courts of India and in H. M.'s Privy Council between the valuation of a suit for the purposes of Court fees, and the valuation of a suit for the purposes of jurisdiction: *Jeebraj Singh* v. *Inderjeet Mahtoon*; [1] *Nanhoon Singh* v. *Tofanee Singh*; [2] *The Collector of Sylhet* v. *Kali Kumar Dutt*; [3] *Mohunlal Sookul* v. *Beebee Doss*; [4] *Baboo Lekraj Roy* v. *Kanhya Singh*; [5] and *Ajuas Kooer* v. *Mussamat Latifa*, [6] the head-note of which last case is not in accord with the judgment.[7]

The decision as to the inadequacy of the Court fees being final, we refrain from deciding the question of jurisdiction, and dismiss the appeal with costs.

Appeal dismissed.

(1) 12 Beng. L. R., p. 115, note. (2) *Ibid.* p. 113.
(3) 7 Beng. L. R. 663. (4) 7 Moo. Ind. App. 428.
(5) L. R. 1 Ind. Ap. 317. (6) 18 Calc. W. R. 21, 22, Civ. Rul.

(7) *Note.*—On this point see also *Bái Máhkor* v. *Bulákhi Cháku* (I. L. R. 1 Bom. 538), and *Kálu* v. *Vishrám* (I. L. R. 1 Bom. 543).