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to answer it. He referred to a ruling of the Madras High Court dated 22nd November, 1879.

There was no appearance.

Per Curiam.—As the Magistrate who tried the case, which was one "instituted upon complaint," acquitted "the accused under section 245" of the Criminal Procedure Code (Act X of 1882), and was of opinion that the complaint was "vexatious," his order, directing the complainant to pay compensation to the accused, was legal. The ruling of the Madras High Court, relied on by the District Magistrate, has been overruled by that Court (see *Number* v. *Ambu*(1)). It was, moreover, a ruling under section 209 of the Code of 1872, not under section 250 of the present Code, which authorizes the payment of compensation in cases where the accused has been acquitted under section 245 after the whole of the evidence in the case has been recorded.

(1) I. L. R., 5 Mad., 381.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

1885. September 7.

SHA'MRA'V PA'NDOJI AND OTHERS, (ORIGINAL PLAINTIFFS), APPLICANTS, v. NILOJI RA'MA'JI AND OTHERS, (OPPONENTS).*

Jurisdiction—Second Class Subordinate Judge—Subject-matter of suit under Rs. 5,000 *and within jurisdiction—Amount of decree with accumulations of interest exceeding Rs.* 5,000*—Application for execution—Second appeal—Extraordinary jurisdiction of High Court—Civil Procedure Code (XIV of* 1882), *Sec.* 622.

The plaintiffs obtained a decree in the Court of a Second Class Subordinate Judge for a sum less than Rs. 5,000, which with accumulations of interest subsequently exceeded Rs. 5,000. The plaintiffs applied in execution to recover the total amount. The application was rejected by the Subordinate Judge on the ground that the Court had no jurisdiction under section 24 of Act XIV of 1869. On appeal, the District Judge made an order confirming the decision of the Subordinate Judge. The plaintiffs filed a second appeal in the High Court.

Held, that no second appeal lay to the High Court from such an order; but, as the Subordinate Judge was wrong in refusing to exercise his jurisdiction, the High Court would give relief under the extraordinary jurisdiction conferred by section 622 of the Civil Procedure Code (XIV of 1882). The subject-matter of the

* Extraordinary Application, No. 154 of 1885.

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suit was within the jurisdiction of the Subordinate Judge, and his jurisdiction continued, whatever might be the result of the suit, in all such matters in the suit as were within his cognizance, amongst which were matters in execution in the suit. The mere circumstance that the amount actually due by process of accumulation exceeded Rs. 5,000 could not oust him from the jurisdiction he hitherto had over the suit.

THIS was originally presented as an appeal from the order of C. B. Izon, Judge of Ratnágiri, but was subsequently converted into an application for the exercise of the High Court's extraordinary jurisdiction under section 622 of the Code of Civil Procedure (Act XIV of 1882).

The applicants obtained a decree in the Court of the Second Class Subordinate Judge of Rájápur for a sum less than Rs. 5,000. The interest having accumulated, the total amount exceeded Rs. 5,000, and the applicants applied to the Court to recover more than Rs. 5,000 under their decree. The Subordinate Judge and the District Judge both held that the Court of first instance had no jurisdiction to entertain the application under section 24 of Act XIV of 1869, which, they held, should be made to the Subordinate Judge of the First Class.

The applicants appealed to the High Court.

Pándurang Balibhadra for the appellants.

There was no appearance for the respondents.

The Registrar pointed out that no appeal lay in such a case under section 588 of the Civil Procedure Code (Act XIV of 1882).

Pándurang Balibhadra.—If no appeal lies, I ask the Court to exercise its extraordinary jurisdiction. The word suit includes matters in execution. The jurisdiction of a Subordinate Judge of the Second Class is not ousted simply because the addition of interest or mesne profits to the amount of the decree takes it over Rs. 5,000.

SARGENT, C. J.—This is an appeal from an order of the District Judge, confirming an order of the Subordinate Judge of the Second Class at Rájápur, by which he refused to entertain an application for execution, on the ground that the subject-matter exceeded 5,000 rupees. An objection has been taken, and we think rightly, that no appeal lies from such an order. It is not

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one of the orders mentioned in section 588 of the Code of Civil Procedure (Act XIV of 1882), and it cannot be said to determine a question mentioned or referred to in section 244, so as to bring it within the definition of a decree.

We think, however, that the Subordinate Judge of the Second Class of Rájápur was wrong in refusing to exercise jurisdiction, and that relief should, therefore, be given under section 622 of the Code of Civil Procedure (XIV of 1882). The subject-matter of the suit, which was the sum due on the mortgage sought to be redeemed, was within the jurisdiction of the Second Class Subordinate Judge; and his jurisdiction would continue, whatever might be the result of the suit, in all such matters in the suit as, by the Code of Civil Procedure, are brought within his cognizance, amongst which are matters in execution in that suit—see *Lakshman Bhátkar* v. *Bábáji Bhátkar* [1]; and the mere circumstance that the amount actually due under the decree, by process of accumulation, now exceeds 5,000 rupees cannot, in our opinion, oust him from the jurisdiction he has hitherto had over the suit.

We must, therefore, discharge the orders of the District Judge and the Subordinate Judge of the Second Class, and direct the latter to dispose of the application in question. No order as to costs.

(1) I. L. R., 8 Bom., 31.

ORIGINAL CIVIL.

Before Mr. Justice Scott.

1886 *February* 8.

NUSUR MAHOMED, PLAINTIFF, *v.* KAZBAI AND OTHERS, DEFENDANTS.*

Practice—Issue of summons—Summons transmitted to local Court for service—Return of local Court when sufficient evidence of service—Form of return to be made by Civil Court.

Where the service of summons has been effected on a defendant by affixing a copy of the summons on the door of his dwelling-house the Court must decide whether the summons has been duly served by such affixing or not, and, if it

* Suit No. 414 of 1883.