

1888

JAN. 9.

APPEL-
LATE
CIVIL.

12 B. 675.

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[675] APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

KHUSHALCHAND MULCHAND AND OTHERS (*Original Plaintiffs*),
Appellants v. NAGINDAS MOTICHAND AND ANOTHER (Original
*Defendants), Respondents.** [9th January, 1888.]

Valuation of suit for purposes of jurisdiction—Suit for account and for balance that may be found due—Appeal—Act XIV of 1869, ss. 8 and 26.

The plaintiffs sued for an account of all the business done by the defendants as their commission agents from 1854 to 1867, and prayed that whatever was found due might be awarded with interest.

The plaintiffs valued the relief sought approximately at Rs. 510 and this was the only valuation stated in the plaint. The suit was filed in the Court of a First Class Subordinate Judge, who rejected the plaintiff's claim. Against this decision the plaintiffs preferred an appeal to the High Court.

Held, that as the approximate amount of the claim was stated in the plaint to be Rs. 510, that must be taken to be the value of the subject-matter of the suit for purposes of jurisdiction. The appeal, therefore, lay under ss. 8 and 26 of Act XIV of 1869, not to the High Court, but to the District Court. Under s. 50 of the Code of Civil Procedure (Act XIV of 1882) if a plaintiff seeks the recovery of money, the plaint must state the precise amount so far as the case admits, while in a suit for the amount which will be found due on taking unsettled accounts, the plaint need only state approximately the amount sued for. As in the former instance the precise amount, so in the latter the approximate amount stated in the plaint must be taken to be the amount or value of the subject-matter of the suit for purposes of jurisdiction.

[R., 18 B. 40 (42); 18 B. 100 (102); D., 20 B. 265 (267).]

APPEAL from the decision of Rav Bahadur Motilal Lalbhai, First Class Subordinate Judge of Ahmedabad, in suit No. 22 of 1882.

The plaint stated that a firm for selling cloth was opened at Jalgaon, in the name of Jechand Rupchand, by the plaintiffs' father Khushal Mulchand and one Rupchand Dagdusa; that in 1857 Khushal became the sole owner of the firm, and continued the business in the name of Jechand Khushal; that the defendants acted as commission agents at Ahmedabad for purchasing goods for the firm from 1854 to 1867, on the understanding that they were to state in the invoices the price actually paid by them for the goods purchased for the plaintiffs' firm, and receive two *per cent.* commission on the same, giving credit for all deductions to [676] be received from the sellers of goods, according to the usage of trade, on account of *vataav, mudat, &c.*; that notwithstanding this understanding the defendants had fraudulently given the plaintiffs credit for less than the deductions received from the sellers of goods, and charged them with more than the price paid for them; that this fraud came to their knowledge in 1879. The plaintiffs, therefore, prayed that an account should be taken of all the business done by the defendants as their commission agents from 1854 to 1867, and that whatever was found due should be awarded to them with interest at nine *per cent. per annum.*

The plaintiffs at first valued the relief sought at Rs. 130, but afterwards raised the valuation to Rs. 510, to prevent the suit from being treated as one cognizable by a Court of Small Causes.

* Appeal No. 24 of 1885.

The suit was filed in the Court of the First Class Subordinate Judge of Ahmedabad, who rejected the plaintiffs' claim with costs.

Against this decision the plaintiffs appealed to the High Court.

At the hearing a preliminary objection was taken to the jurisdiction of this Court to entertain the appeal.

Manekshah Jehangirshah, for the appellants.—This is a suit for account, and under the Court-fees' Act (VII of 1870) the plaintiff is at liberty to value his claim as he likes. But the valuation for purposes of court-fees does not determine the question of jurisdiction—*Manohar Ganesh v. Bawa Ramcharandas* (1).

In this case we estimate the probable value of our claim at Rs. 7,000. The appeal, therefore, lies to this Court.

Rav Saheb Vasudev Jagannath Kirtikar, for the respondents, was not called on.

JUDGMENT.

BIRDWOOD, J.—In this suit the plaintiffs prayed that accounts might be taken of all business done by the defendants on their behalf from 1854-55 to 1866-67, and that whatever was found due, might be decreed with interest.

[677]. The Subordinate Judge dismissed the suit, and the plaintiffs have appealed to this Court; and the question is whether this Court has jurisdiction to hear the appeal. The plaintiffs first valued the relief sought by them at Rs. 130. They afterwards raised this valuation to Rs. 510, to prevent the suit from being treated as one cognizable by a Court of Small Causes. Under Act VII of 1870, s. 7, cl. iv (f), a plaintiff can, in a suit for accounts, value the relief he seeks at any amount he chooses; and he pays court-fees only on such amount: see *Govandas Kasandas v. Dayabhai Savaichand* (2). It is argued, however, that such a valuation is a valuation only for the purposes of court-fees and not a valuation for the purposes of jurisdiction. Of course, valuations for both these purposes are not necessarily identical (*Manohar Ganesh v. Bawa Ramcharandas* (1)); and where they differ, both valuations can be stated in the plaint. In the present case, however, the plaint contains but one valuation. Under s. 50 of the Code of Civil Procedure (XIV of 1882), if a plaintiff seeks the recovery of money, the plaint must state the precise amount so far as the case admits, while in a suit for the amount which will be found due on taking unsettled accounts, the plaint need only state approximately the amount sued for. We think that as in the former instance the precise amount, so in the latter the approximate amount stated in the plaint must be taken to be the amount or value of the subject-matter of the suit for purposes of jurisdiction. As in the present case, the approximate amount of the claim, as stated in the plaint, is Rs. 510, we must take that to be the value of the subject-matter of the suit; and the appeal lies, under ss. 8 and 26 of Act XIV of 1869, not to the High Court, but to the District Court. We, therefore, return the memorandum of appeal with its accompaniments to the appellant, in order that he may, if so advised, present it to a proper Court. We make no order as to costs.

Memorandum of appeal returned for presentation to the proper Court.

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