as shown by illus. (*k*), and that illustration shows that the mere fabrication of a false certificate of character raises the presumption of fraud. It was held by [517] Le Blanc, J., so long as a century ago, that by fraud is meant an intention to deceive; whether it be from any expectation of advantage to the party himself, or from the ill-will towards the other, is immaterial: see *Haycraft* v. *Creasy* (1).

"With regard to the operation of s. 471, illus. (*k*) to s. 464 is equally applicable to the one section as the other. To induce the Collector to enter into the contract to employ this man as a *karkun* under the belief induced by the forged certificate that he was not more than 25 years of age, brings the case under 471.

"The case falls most strictly within the definition of using a forged document.

"We, therefore, reverse the order of acquittal passed by the Assistant Sessions Judge, and direct the re-trial of the accused.

24th June 1886, [F., L.B.R. (1893—1900), 266; R., 13 B. 506; 28 M. 90=1 Weir 538 (*a*); 4 L.B.R. 315 (318)].

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13 B. 517.

APPELLATE CIVIL.

Before Mr. Justice Nanabhai Haridas and Mr. Justice Parsons.

BALVANTRAO AND OTHERS (*Original Plaintiffs*), *Appellants v.* BHIMASHANKAR AND OTHERS (*Original Defendants*), *Respondents.**
[5th March, 1889.]

Valuation—Subordinate Judge's power to make—Court Fees Act (VII of 1870) *s. 7 cl. iv, (f)—Civil Procedure Code, (Act XIV of* 1882), *s.* 54 *cls. (a) and (b)—Practice—Procedure.*

The plaintiffs brought a suit for an account and approximately valued their claim at Rs. 16-15-0. The Subordinate Judge was of opinion that the claim was for recovery of money, and should have been valued at Rs. 1,000. He therefore called on the plaintiffs to make up the stamp to that required on this valuation; and the plaintiffs refusing, he dismissed their suit under s. 54 (*b*) of the Civil Procedure Code (Act XIV of 1882).

Held, that, in any case, the Subordinate Judge was wrong. If the suit was really one for an account, the plaintiffs were entitled to value the relief they sought approximately, as they had done; if it were not one for an account, but for recovery of money, still the Subordinate Judge had no power himself to value the relief sought, but should have called on the defendant to value the relief he sought, and then if he had thought such relief was undervalued, he could have applied s. 54 (*a*) of the Code of Civil Procedure (Act XIV of 1882), and rejected the suit.

SECOND appeal from a decision of W. H. Crowe, District Judge of Poona.

This was a suit brought by the plaintiffs for an account of the profits village of an *inam* managed by the defendants from the [518] year 1824 to 1884. They valued the claim at Rs. 16-15-0, and paid the Court fees on that valuation. The Subordinate Judge of Poona was of opinion that the suit was really one for money had and received, and that the claim would amount to Rs. 1,000. He, therefore, called upon the plaintiffs to make good the stamp duty, as if the claim were for Rs. 1,000, within a certain time. The plaintiffs having declined to do so, the Subordinate Judge dismissed the suit under s. 54 (*b*) of the Civil Procedure Code (Act XIV of 1882).

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* Second Appeal, No. 42 of 1887.

(1) 2 East, 92 (108).

1889 MARCH 5.

APPELLATE CIVIL.

13 B. 517.

The plaintiffs appealed to the District Judge, who rejected the appeal with the following remarks:—

"This suit has been rejected under the provisions of s. 54 of the Civil Procedure Code, on the ground that the Court fees were insufficient, and have not been supplied within the period fixed by the Court. By s. 12, cl. (i), of the Court Fees Act (VII of 1870), such decision is final. The present appeal, therefore, will not lie."

From this decision the plaintiffs preferred a second appeal to the High Court.

Mahadev Bhaskar Chowbal, for the appellants.—The Full Bench case of *Vithal Krishna* v. *Balakrishna Janardan* (1) has decided that the High Court can interfere where the lower Court has committed an error in valuation. The suit here was for an account, and as such was properly stamped. The Subordinate Judge could not insist upon making a valuation for the plaintiff. The plaintiff was entitled to make his own valuation, and he made one that he was allowed by the law to make (s. 7, cl. iv (*f*) of Act VII of 1870 and s. 50 of the Civil Procedure Code).

Telang (*Mahadev Chimnaji Apte*, with him), for respondents.—This suit is in its nature not a suit for an account, but for a definite sum of money. To constitute a suit for an account there must be some subsisting account between the parties. There is no such account here. A mere prayer in a plaint for an account does not make the suit one for an account. The lower Court was right in dismissing the suit on plaintiff's refusal to make up the stamp duty.

JUDGMENT.

[519] The judgment of the Court was delivered by

PARSONS, J.—The Subordinate Judge says: "The plaintiffs bring this suit as one for accounts, while the suit is really of the nature described by the appeal Court in appeal 199 of 1885 (that is, a suit for money had and received), and the stamp ought to be made good as if the claim were for Rs. 1,000. The plaintiffs were allowed time till to-day to make good the stamp accordingly, but their pleader to-day refuses to make it good," and the Subordinate Judge, for that reason, dismissed the suit. We are of opinion that he has thus committed a double error,—first in applying s. 54 (*b*) of the Civil Procedure Code to this case, and secondly, in himself valuing the relief sought by the plaintiffs. The suit as brought was one for an account, and the plaintiffs in their plaint valued the relief they sought approximately, as they were entitled to do, both under s. 50 of the Civil Procedure Code, and s. 7, cl. iv (*f*), of the Court Fees Act: see *Govandas Kasandas* v. *Dayabhai Savaichand* (2). If the Subordinate Judge found that the suit was not one for an account, but for the recovery of money, he should have called on the plaintiffs to value the relief they sought precisely, as he could have done under s. 50, cl. 2 of the Code of Civil Procedure, in which case s. 7, cl. i of the Court Fees Act would regulate the amount of fee. He could then have applied s. 54 (*a*) of the Code of Civil Procedure if he considered that the relief sought was undervalued. He, however, had no power whatever to make the valuation himself in the first instance, and, estimating it at Rs. 1,000, to call on the plaintiffs to stamp up to that amount. The plaintiffs might not wish to claim the whole amount due to them, or they might

(1) 10 B. 610.

(2) 9 B. 22.

abandon some part of their claim. It does not follow that, because from the statements in the plaint Rs. 1,000 appeared due, that amount was the actual amount claimed on which the fee was to be computed. It is clear that s. 54 (*b*) applies to cases where the relief is properly valued, but the plaint is written upon paper insufficiently stamped. Such is not the case here. The relief admittedly was properly valued, and the plaint sufficiently stamped, if the suit was one for an account. The plaint might be also sufficiently [520] stamped if the suit was one for money had and received, provided that the plaintiffs did not claim more than what the fees on the plaint covered. It is impossible, however, to determine whether the plaint is sufficiently or insufficiently stamped, unless and until the plaintiffs are called on to value the relief they seek, and they do value it. We must, therefore, reverse the decrees of the lower Courts, and remand the case for retrial by the Subordinate Judge. He should determine judicially whether the suit is one for an account. If it is, then the relief sought will be properly valued, and the stamp sufficient. If it is not, then the Subordinate Judge should call, on the plaintiffs to value precisely the relief they seek, that is the amount of money claimed, and he should proceed thereafter according to law. Costs to abide the result.

Decrees reversed, and case remanded.

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13 B. 520 (P.C.)=16 I.A. 156=5 Sar. P.C.J. 400=13 Ind. Jur. 251.

PRIVY COUNCIL.

PRESENT:

Lord Hobhouse, Lord Macnaghten and Sir R. Couch.

[*On appeal from the High Court at Bombay* (1).]

IN THE MATTER OF CANDAS NARRONDAS.
NAVIVAHU AND OTHERS (*Objectors*) AND C. A. TURNER, OFFICIAL ASSIGNEE (*Petitioner*). [6th and 12th April, 1889.]

Limitation to execution of judgment of Court for the relief of insolvent debtors entered up in the High Court under s. 86 *of* 11 *and* 12 *Vic., cap.* 21—*Indian Limitation Act, XV of* 1877, *sch. II, art.* 180—*Starting point of limitation— Jurisdiction, "ordinary" and "extraordinary."*

The Indian Limitation Act XV of 1877, sch. II, art. 180, applies to a judgment of a Court for the relief of insolvent debtors entered up in the High Court, in accordance with s. 86 of the Stat. 11 and 12 Vic., cap. 21. Although a Court held under the latter statute determines the substance of the questions relating to the insolvent's estate, the proceedings in execution and the judgment are the High Court's. The judgment is entered up in the ordinary course of the duty cast upon the High Court by the law, not by way of special or extraordinary action, but in the exercise of its ordinary original civil jurisdiction. The latter expression in the charter of 28th December, 1865, being opposed to the "extraordinary" jurisdiction, which the High Court may assume at its discretion, upon special occasions and by special orders, includes all such [521] jurisdiction as is exercised by the High Court in the ordinary course of law without any step taken to assume it.

When an order has been made, under s. 86 of the Stat. 11 and 12 Vic. cap. 21, that execution be taken out, a present right accrues to the Official Assignee to

(1) Reported at 11 B. 138.