sale. It is admitted that the order could not be made under s. 278 of the Civil Procedure Code, as there was no attachment. Nor could it be made under s. 287, which does not contemplate such an application at all.

[100] *N. G. Chandavarkar*, for the opponent, showed cause:—Technically no doubt s. 278 does not apply, because the property was not attached; but although not attached, yet as it was directed to be sold in execution of a decree, it should be regarded as practically attached for the purpose of a sale, and that being so the claimant's application should be dealt with. If property to which claims are made, is put up for sale, the purchaser runs the risk of buying what may turn out to be property which does not belong to the judgment-debtor, and which ought not to be sold. This inconvenience ought to be prevented by the Court.

ORDER.

SARGENT, C. J.—We agree with the opinion expressed by the Calcutta High Court in *Deefholts* v. *Peters* (1) that proceedings by way of claim as provided by s. 278 of the Civil Procedure Code are not applicable to a case of *this* kind. As to s. 287, it has no application to a case of this nature. The Subordinate Judge has acted, therefore, without jurisdiction. The rule must be made absolute, and the Subordinate Judge's order discharged. Costs of this application to be paid by the opponent.

Rule made absolute.

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18 B. 100.

APPELLATE CIVIL.

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

GULABSINGJI AND OTHERS (*Original Plaintiffs*), *Appellants* v. LAKSHMANSINGJI (*Original Defendant*), *Respondent.** [18th January, 1893.]

Court-fees Act, VII of 1870, *s.* 7, *cl.* 4 (*c*)—*Act VII of* 1887, *s.* 8—*Stamp—Consequential relief—Valuation of suit—Injunction—Talukdari Act, Bombay Act VI of* 1888, *s.* 11—*Jurisdiction.*

Where plaintiff sued for a declaration that they were entitled to share in certain talukdari estates and for an injunction to restrain defendant from cutting and removing timber from certain forests, or, if the injunction was not granted, for an order to defendant to keep a correct account of the timber removed, the First Class Subordinate Judge rejected the claim for want of jurisdiction.

Held, that the suit was one for a declaration and consequential relief under s. 7, *cl.* 4 (*c*) of the Court-Fees Act, and that as the claim was valued at [101] Rs. 230 only, the appeal lay under Act VII of 1887, s. 8, to the District Court.

An injunction is in the nature of consequential relief.

[F., 6 C.L.J. 427=11 C.W.N. 705 (707); R., 20 B. 265 (267); 20 B. 736 (741); 5 Bom. L.R. 195 (196); 6 O.C. 255 (258).]

APPEAL from the decision of Rao Bahadur Lalshankar Umiashankar, First Class Subordinate Judge of Ahmedabad.

Plaintiffs sued for a declaration of their shares in certain talukdari estates, and for a temporary injunction to restrain defendant from cutting

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* Appeal No. 138 of 1892.

(1) 14 C. 631.

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and removing timber from certain forests, or, in the alternative, for a direction to defendant to keep correct and proper accounts of timber removed from those forests.

Defendant contended (*inter alia*) that the Court had no jurisdiction to try the suit.

The First Class Subordinate Judge held that as plaintiff's object in bringing the suit was to get division by actual partition, they must apply, in the first instance, to the Talukdari Settlement Officer under s. 11 of Bombay Act VI of 1888, and dismissed the suit.

From this decree plaintiffs preferred an appeal to the High Court.

Inverarity (with *Ganpat Sadashiv Rao*), for respondent (defendant).—There is a preliminary objection to this appeal. I contend that the appeal lies not to this Court, but to the District Court. The plaintiffs sue for a declaratory decree and consequential relief. The suit falls within s. 7, cl. 4, sub-ss. (*c*) and (*d*) of the Court-fees Act, VII of 1870. Under this section the plaintiff is, no doubt, at liberty to put his own valuation upon the reliefs sought. But the valuation will determine the jurisdiction of the Court. Under s. 8 of Act VII of 1887, in a suit like the present, the valuation for purposes of Court-fees and the valuation for purposes of jurisdiction are the same. The plaintiffs value their claim at Rs. 230. This valuation should be taken for purposes of jurisdiction as well as Court-fees. The appeal, therefore, lies to the District Court.

He referred to *Bhagvantrai* v. *Mehta Bajurao* (1).

[102] *Jardine* (with *Gokuldas K. Parekh*), for appellants (plaintiffs).—The objection that no appeal lies to the High Court, practically amounts to saying that the First Class Subordinate Judge's Court had no jurisdiction to try the original suit, and the objection about jurisdiction having not been raised in the original Court, it is not open to the respondent to say in this Court that no appeal lies.

This is not a case, under sub-cl. (*c*), cl. 4, s. 7 of Act VII of 1870, of a suit to obtain a declaratory decree where consequential relief is prayed. A prayer for partition which necessarily follows from the declaration would be consequential relief, but not a prayer for injunction; if a declaration is made in plaintiff's favour, his right to injunction would not follow as a matter of course. In a suit for a declaration the Court-fees duty is fixed, and not *ad valorem*. The suit would not have been held bad if the prayer for injunction had been omitted. If the prayer in the plaint had been limited to a mere declaration of title, there would have been no objection to this appeal. By adding the further prayer for injunction, this Court would not become deprived of its jurisdiction.

JUDGMENT.

SARGENT, C. J.—This is a regular appeal from the First Class Subordinate Judge of Ahmedabad; and a preliminary objection has been taken that the appeal does not lie to this Court, the value of the suit for the purpose of determining the jurisdiction of this Court to hear the appeal being, it is contended, only Rs. 230, *viz.*, the sum at which the plaintiffs have valued the relief sought in their plaint.

In *Khushalchand* v. *Nagindas* (2) in a suit for account and a decree for the balance to be found due where the plaintiff had valued the relief at Rs. 510, it was held that the appeal lay to the District Court, and not to the High Court. This decision was come to independently of the effect

(1) 18 B. 40. (2) 12 B. 675.

of s. 8 of Act VII of 1887. In *Bhagvantrai* v. *Mehta Bajurao* (1) the High Court, in a similar suit, followed *Khushalchand* v. *Nagindas* (2), pointing out at the same time that the law so laid down had already been embodied in s. 8 of Act VII of 1887, when that decision [103] was passed. The question is whether that section is applicable to the present suit.

It was contended for the respondent that it is a suit for "a declaratory decree where consequential relief is prayed" as contemplated by s. 7, cl. 4, sub-cl. (*c*) of Act VII of 1870. It was urged for the appellants that an injunction is not such "consequential" relief as is intended by that expression in sub-cl. (*c*). "An injunction" is undoubtedly in the nature of consequential relief, and the following sub-cl. (*d*) shows that the Legislature considered it was a form of relief which might be valued in a suit which asked for it. Moreover, in the present case the relief sought is not merely an injunction, but, in the alternative, for an account of the timber which defendant might cut before the actual partition. We think, therefore, that the above rule applies to the present suit, and that the relief having been valued at only Rs. 230, the appeal lay to the District Court, and we must, therefore, return the appeal for presentation in that Court. Appellants to pay the costs incurred in this Court.

Appeal returned for presentation to proper Court.

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18 B. 103.

APPELLATE CIVIL.

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

BABA KAKAJI SHET SHIMPI (*Original Plaintiff*), *Appellant v.* NASSARUDDIN VALAD AMINUDDIN KAZI AND ANOTHER (*Original Defendants*), *Respondents.** [19th January, 1893.]

Kazi, office of—Hereditary office—Watan—Watandars Act (*Bombay Act III of* 1874), s. 9†—*Mortgage.*

The office of Kazi is not an hereditary office, unless perhaps by special custom of the locality. Where such a custom is not established, property attached to the [104] office is not watan property, and the Collector has no power to make an order with respect to it under s. 9 of the Watandars Act (Bombay Act III of

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* Second Appeal, No. 910 of 1891.

† Section 9 of the Watandars Act (Bombay Act III of 1874)—

9. *Clause* 1.—Whenever any watan or any part thereof, or any of the profits thereof, whether assigned as remuneration of an officiator or not, has or have, before the date of this Act coming into force, passed otherwise than by virtue of, or in execution of a decree or order of any British Court and without the consent of the Collector and transfer of ownership in the revenue records, into the ownership or beneficial possession of any person not a watandar of the same watan, the Collector may, after recording his reasons in writing, declare such alienation to be null and void, and order that such watan or any part thereof, or any of the profits thereof, shall from the date of such order belong to the watandar previously entitled thereto, and may recover and pay to such watandar any profits thereof accordingly.

Clause 2.—If such part of a watan be land, it shall be lawful for the Collector, instead of transferring the possession of the land, to demand and recover the full rent ordinarily paid by tenants of land of similar description in the same locality, and the amount so recovered shall be considered as the profits. The decision of the Collector shall be final.

(1) 18 B. 40. (2) 12 B. 675.