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section 23 of Act XIV of 1869. When it was so transferred, the Joint Subordinate Judge was competent to try the suit.

Máhádev V. Bhat for the respondent:—Reading section 23 with section 12 of Act XIV of 1869, it is clear that the First Class Subordinate Judge had no power to transfer the case to the Joint Subordinate Judge of the Second Class. Refers to *Balaji v. Nána*⁽¹⁾.

JARDINE, J.:—The requirements of section 4 of the Dekkhan Agriculturists' Relief Act were complied with by this suit having been filed in the Court of the Subordinate Judge of the First Class. That Judge was competent under section 23 of Act XIV of 1869 to make over the suit to the Subordinate Judge of the Second Class who had been deputed to his Court to assist him in the disposal of suits on his file. Having regard to the language of the Code of Civil Procedure (XIV of 1882), section 48, section 15 *et seq.*, where the institution of suits is regulated, and to other sections of the Dekkhan Agriculturists' Relief Act (XVII of 1879), such as sections 3, 6 and 11, where the words "heard," "heard and determined" and "tried" are used, we cannot treat the word "instituted" in section 4 as meaning "heard and determined." We, therefore, reverse the order of the Assistant Judge and remand the appeal to the District Court for disposal on the other issues. Costs to be costs in the cause.

Decree reversed.

(1) P. J. for 1881, p. 196.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ranade.

MA'HA'DEV BALVANT AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS,
v. LAKSHMAN BALVANT (ORIGINAL DEFENDANT), RESPONDENT.*

Limitation Act (XV of 1877), Sch II, Arts. 170, 178—Pauper—Application for leave to appeal in formá pauperis—Practice—Procedure.

Plaintiffs filed a suit for partition, which was dismissed on 9th December, 1890. On 17th March, 1891, plaintiffs presented an appeal to the High Court on a Court fee stamp of Rs. 10.

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On 18th January, 1892, the High Court held that the memorandum of appeal was insufficiently stamped, being chargeable with an *ad valorem* stamp on the value of the plaintiffs' share.

On 16th February, 1892, plaintiffs applied for leave to appeal in *forma pauperis*. This application was granted *ex parte*.

At the hearing of the appeal, however, the respondent contended that the pauper appeal was time-barred.

Held, that the application for leave to appeal in *forma pauperis* having been presented beyond the thirty days allowed by article 170 of the Limitation Act (XV of 1877), was barred by limitation. The pauper appeal could not, therefore, be proceeded with. Article 178 of the Limitation Act had no application to the present case.

APPEAL from the decision of Ráo Bahádur Chunilál Máneklál, First Class Subordinate Judge, in Suit No. 382 of 1889.

The plaintiffs sued to recover their two-thirds share by partition of certain ancestral property in the possession of the defendant.

The suit was filed in the Court of the First Class Subordinate Judge at Poona, who rejected the plaintiffs' claim on the 9th December, 1890.

Thereupon plaintiffs appealed to the High Court. The memorandum of appeal was filed on 17th March, 1891, on a Court fee stamp of Rs. 10.

On 18th January, 1892, Sargent, C. J., held, on a reference by the taxing officer, that the memorandum of appeal was chargeable with an *ad valorem* stamp on the value of the plaintiff's share⁽¹⁾. The appeal was, therefore, returned as insufficiently stamped.

On 16th February, 1892, *i.e.*, within thirty days allowed by section 8, chapter V of the High Court Rules to pay the proper stamps, the appellants applied for leave to appeal in *forma pauperis*. This application was granted on the 5th October, 1892.

The appeal came on for hearing before a Division Bench (Jardine and Ránade, JJ.).

Dáji A'báji Khare (for the respondent):—The application on the 16th February, 1892, for leave to appeal as a pauper was not made

(1) P. J. for 1892, p. 13.

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within thirty days from the date of the decree appealed against, as required by article 170 of the Limitation Act (XV of 1877). The application was filed more than a year after the date of decree. This delay cannot be excused under article 170.

Shivrám V. Bhandárkar (for the appellant):—The appeal was filed in time on a Rs. 10 stamp. The question of stamp was not settled till 18th January, 1892. We then applied for leave to sue as a pauper. The application was no doubt beyond thirty days from the date of the decree. But the case is governed by article 178, and not 170, of the Limitation Act (XV of 1877). At any rate, as we acted in good faith, we should be allowed to pay the proper stamps even now.

JARDINE, J.:—After two hearings on the merits it has been pointed out by Mr. D. Khare for the respondent that the application for leave to appeal as a pauper was filed on a date beyond the thirty days allowed by article 170 of the Limitation Act. The appeal petition first presented was returned on the ground that it was insufficiently stamped, the Chief Justice so deciding on the 18th January, 1892, on a reference from the taxing officer. Within the thirty days allowed by our rule, chapter 5, section 8, the appellant saying he could not pay the proper stamps asked leave to appeal in *formá pauperis*. Mr. Shivrám contends not that the thirty days allowed by article 170 ought, under the circumstances, to be computed from 18th January, 1892, but that he has three years' limitation under the general article 178. The result would, in our opinion, be to extend the period allowed by article 170 for the benefit of an appellant who first puts on insufficient stamps and then applies to appeal in *formá pauperis*. We cannot read such an alteration into article 170. The Court had ordered the original appeal to be returned, but it was retained as the appeal petition, when two Judges of this Court, not having noticed the point of limitation, allowed the petition for leave to appeal in *formá pauperis* to be filed. After referring to *Lakshmi v. Ananta*⁽¹⁾ and *Párbati v. Bholá*⁽²⁾ the utmost indulgence we can allow is to give fourteen days' time to the appellant to supply the proper stamps,³ which ought to have been affixed, *viz.*, Rs. 623-8-0.

(1) I. L. R., 2 Mad., 230.

(2) I. L. R., 12 All., 79.