1894.

QUEEN-EMPRESS v. PAHUJI.

Confirmation Case No. 22 of 1893, the reason, as we have ascertained on consulting our brother Candy, for admitting the statement was that the Court of Session had not dealt with the plea of guilty as if it were such, but had allowed the prisoner so pleading to remain on trial so that he could cross-examine. The opinion of the assessors was also taken about his guilt. These circumstances do not exist in the present case. After considering *Winsor's case*(1) and other English cases there referred to, as also *Reg.* v. *Gardner*(2), *Venkatasámi* v. *The Queen*(3), we are of opinion that the Court below ought not to have treated Pahuji as being jointly tried with Mánik. The confessions made by Pahuji we must, therefore, hold are not admissible against Mánik.

We have to say what value should be placed on the confessions of Mánik; and to discharge this duty in the light of whatever evidence is obtainable, we direct that the evidence of the Second Class Magistrate be taken about the alleged tutoring, and also that of the prisoner Pahuji as to the circumstances in which the murder was committed. No objection is taken to this course by the pleader who appears for Mánik. Pahuji as a witness may be cross-examined by Mánik or his pleader.

We direct the Sessions Judge to take this evidence and certify it to this Court within one month.

(1) L. R., 1 Q. B., 289, 390. (2) 9 Cox's C. C., 332.
(3) I. L. R., 7 Mad., 102.

APPELLATE CIVIL.

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

1894. *February* 7.

BA'I AMBA' AND MANGLI (ORIGINAL PLAINTIFFS), APPELLANTS, *v.* PRA'NJIVANDA'S DULLABHRA'M AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Stamp—Suits' Valuation Act (VII of 1887), Sec. 8—Suit to take accounts—Court-fee stamp—Jurisdiction—Amount of claim as fixed by plaintiff—Relief incidental to the principal relief—Appeal.

According to section 8 of the Suits' Valuation Act (VII of 1887), in suits for taking an account the Court-fee stamp and jurisdiction are both determined by the amount of claim as fixed by the plaintiff.

* Appeal No. 143 of 1891.

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BÁI AMBÁ v. PRÁNJIVANDÁS DULLABHRÁM.

In a suit for taking account the plaint having contained several items which were all incidental to the chief item of relief, the plaint was held to be substantially one to have the minor plaintiffs' estate administered, that is, to have accounts taken and the accounting party ordered to pay what (if any) should be found due from him on the balance of such account. The plaintiffs having put the valuation of the suit at Rs. 130 in the plaint,

Held that the High Court had no jurisdiction to hear the appeal against an order rejecting the plaint. The appeal lay to the District Court. The appeal was, therefore, returned for presentation in the proper Court,

APPEAL from the decision of Khán Bahádur M. N. Nanavati, First Class Subordinate Judge of Surat.

The plaintiffs, who were minors, sued by their next friend Lálbhai Shambhulál to compel the first defendant to produce and prove in Court the authority under which he obtained possession of and was managing the property of the plaintiffs' deceased father Narbherám Tápidás; to be declared wards of Court; to have the property managed by the Court if the defendant did not produce and prove any will of their deceased father, and to have accounts taken since his death. In the plaint the claim was valued at Rs. 130, but the property left by the deceased was stated to be worth Rs. 30,000.

The plaintiffs alleged that their father Narbherám died in May, 1886; that they being his daughters were his heiresses; that the first defendant being related to them took the property left by their father into his possession for their benefit; that he alleged that the deceased had made a will appointing him and three others as executors, but that he had not allowed the plaintiffs to see it.

The first defendant and the other defendants who were subsequently added objected *(inter alia)* that the plaint was not properly stamped, and that the Court had no jurisdiction to entertain the suit in the form in which it was brought.

The Subordinate Judge found that the plaint was not adequately stamped, his opinion being that the prayer for an account was quite independent and not incidental to the other reliefs claimed, and, therefore, it ought to have been valued and paid for. He also held that the property in suit being valued at Rs. 30,000, for the purpose of giving jurisdiction to the Court of

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the First Class Subordinate Judge, the plaint ought to bear a Court-fee stamp on that amount and not on Rs. 130 only, the valuation for the purposes of jurisdiction being the same as the valuation for the purposes of Court fees under section 8 of the Suits' Valuation Act (VII of 1887). He, therefore, granted one month's time to the plaintiffs to pay the requisite stamp, and the plaintiffs having failed to do so, rejected ths plaint.

The plaintiffs appealed.

Jardine (with *Kalabhai Lallubhai*) for the appellants (plaintiffs) :—The Judge thought that the reliefs we claimed were not alternative, but separate. He was of opinion that we ought to have fixed a certain value to the claim for an account. We contend that we have valued the whole claim at Rs. 130 and have paid a Court-fee stamp of ten rupees, which covers that amount. It was not necessary for us to pay a Court-fee stamp on Rs. 30,000, the value of the property, because we do not seek to recover the property. We merely wished to have an account taken for the benefit of the minors and nothing more. An account is merely ancillary for the purposes of an administration suit.

[CANDY, J., referred to *Bhagvantrái Munshi* v. *Mehta Bajuráo*(1).]

We rely on *Manohar Ganesh* v. *Bawa Rámcharandás*(2), *Govandás* v. *Dayábhai* (3), *Sidha Sardársingji* v. *Ganpatsing*(4). Originally we paid a Court-fee stamp of rupees ten for the whole claim, and subsequently, when the Subordinate Judge asked for additional stamp, we paid in rupees ten more.

Anderson (with *Motilál M. Munshi*) for the respondents) (defendants) :—The Subordinate Judge granted to the plaintiffs one month's time to frame the plaint in any way they chose. They failed to do so, and the only course which the Judge could take was to reject the plaint. The plaintiffs themselves valued the suit at Rs. 30,000, and, therefore, the Judge required them to pay the Court fees on that amount having regard to sec-

(1) I. L. R., 18 Bom., 40. (2) I. L. R., 2 Bom., 219.

(3) I. L. R., 9 Bom., 22.

(4) P. J., 1892, p. 144, *sub. nom.*; I. L. R., 17 Bom., 56.

tion 8 of the Suits' Valuation Act (VII of 1887)—*Gulábsingji* v. *Lakshmansingji*[1]. The plaint contains the following words:—"We state for the jurisdiction of the Court that the value of the property is Rs. 30,000." The argument of the plaintiffs in the lower Court was that the present suit being for the administration of the property, the claim for account was merely ancillary, and, therefore, it did not require any Court fee. That is not so. The plaint having been valued at Rs. 130, an appeal would not lie direct to the High Court. The plaintiffs ought to have appealed to the District Court. If the plaintiffs had paid the Court fees on Rs. 30,000, then they could have appealed to this Court—*Boidya Náth Adya* v. *Makhan Lál Adya*[2].

SARGENT, C.J.:—The plaint, although made up of several items, so to speak, is substantially one to have the estate of the minors administered by the Court, *i. e.*, to have the accounts taken, and the accounting party ordered to pay what (if any) should be found due from him on the balance of such account. The other items of relief sought are all incidental to the above application.

The decisions in *Manohar Ganesh* v. *Bawa Rámcharandás*[3], *Govandás* v. *Dayábhai*[4] and *Sidha Sardársingji* v. *Ganpatsing*[5] show that in suits for taking account the Court-fee stamp and jurisdiction are both determined by the amount of claim as fixed by the plaintiff. This conclusion has now express effect given to it by section 8, Act VII of 1887, as pointed out by Telang, J., in *Sidha Sardársingji* v. *Ganpatsing*.

In the 14th paragraph of the plaint the plaintiff has put that valuation at Rs. 130. But that being so, this Court will have no jurisdiction to hear the appeal, which ought to be to the District Court. We must, therefore, return the appeal for presentation in the proper Court. Parties to pay their own costs.

Order accordingly.

(1) P. J., 1893, p. 25; I. L. R., 18 Bom., 100.
(2) I. L. R., 17 Calc., 680.
(3) I. L. R., 2 Bom., 219.
(4) I. L. R., 9 Bom., 22.
(5) P. J., 1892, p. 144, *sub. nom.*; I. L. R., 17 Bom., 56.