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to hear appeals from the Assistant Judge's Court where the value of the subject-matter is less than Rs. 5,000 is the District Court and not the High Court. We are, therefore, of opinion that the preliminary objection is good that the appeal to the High Court is not maintainable. One set of costs.

*Appeal dismissed.*

G. B. R.

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APPELLATE CIVIL.

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*Before Mr. Justice Heaton and Mr. Justice Shah.*

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*December 2.*

RAMCHANDRA ANANDRAO KULKARNI (ORIGINAL DEFENDANT No. 2),  
APPELLANT, v. PANDU WALAD DAGDU TELI AND OTHERS (ORIGINAL  
PLAINTIFF AND DEFENDANT No. 1), RESPONDENTS.\*

*Special appeal—Civil Judge at Vinchur—Appeal to High Court—Regulation IV of 1827, section 99†—Regulation XIII of 1830, section 5‡—Civil Procedure Code (Act V of 1908), sections 4 and 100.*

A special appeal, on the grounds mentioned in section 100 of the Civil Procedure Code (Act V of 1908), lies to the High Court, from the decision of the Civil Judge at Vinchur:

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\* First Appeal No. 296 of 1912.

† The material portion of the section runs as follows :—

99. *First.*—If in a suit or appeal not ordinarily appealable to the Sudder Dewanee Adawlut, a decree is passed in any Zilla Court, which appears on the face of it to be contrary to or unwarranted by the Regulations, which appears to be inconsistent with the general usage of the country, or with the Hindu or Mahomedan law, in questions depending on such law, or if the decree involves some point of general interest or importance not before decided by the Sudder Dewanee Adawlut, or if strong probable grounds of grievance exist, from whatever cause, it shall be competent to the Sudder Dewanee Adawlut to admit a special appeal in the case.

‡ The section runs as follows :—

5. A special appeal is open in all cases to the Sudder Dewanee Adawlut under the rules provided in Chapter XXII, Regulation IV, 1827, for the admission of special appeals.

APPEAL from the decision of Ganpatrao Madhavrao Vinchurkar, Civil Judge at Vinchur.

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Suit for declaration.

The plaintiff filed a suit to obtain a declaration that certain lands were liable to be attached and sold in execution of his decree against the defendants. The suit was instituted in the Court of the Civil Judge at Vinchur who granted the declaration.

The defendants appealed to the High Court. The appeal was registered as a first appeal.

*S. S. Patkar*, Government Pleader, for the appellant.

*R. R. Desai*, for the respondents.

At the hearing a preliminary objection was raised that no appeal lay.

SHAH, J.:—This is an appeal by defendant No. 2 against the decree passed by the Court of the Civil Judge at Vinchur in suit No. 85 of 1912. A preliminary objection is raised by the plaintiffs that no appeal lies from the decree of the lower Court, and that if a special appeal lies it can lie only on the grounds mentioned in clause 99 of Regulation IV of 1827. The appeal is registered as a first appeal.

The lower Court in this case exercises its powers under Regulation XIII of 1830. It has been ascertained by this Court in the unreported case of *Bhika v. Fakirchand*<sup>(1)</sup> that the Jagirdar of Vinchur is enumerated in the list furnished by Government, and the fact has not been disputed before us. It is clear, therefore, that under the first clause of section 3 of Regulation XIII of 1830 his decision is final, and that no first appeal in the ordinary sense lies to this Court. It is equally clear that under section 5 of the same Regulation a special appeal is open in all such cases to this Court. In two unreported cases (*Bhika v. Fakirchand*<sup>(1)</sup> and

<sup>(1)</sup> F. A. No. 4 of 1908, Unreported.

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*Mahadu v. Keshav*<sup>(1)</sup>) it has been held that a special appeal lies to this Court.

It was argued on behalf of the plaintiffs-respondents that as the Regulation IV of 1827, which contained the provisions relating to special appeals, had been repealed, and as there was no provision in the present Code of Civil Procedure relating to special appeals, the right of appeal provided in clause 5 of Regulation III of 1830 was practically non-existent. This contention appears to me to be wholly untenable. In the first place the right of appeal expressly conferred by a statute cannot be negatived in this manner. Indeed, if necessary, the scope of the special appeal provided by Regulation XIII of 1830 may have to be determined by a reference to the provisions of the repealed Regulation IV of 1827. But a reference to the statutes relating to Civil Procedure from time to time shows that though the expression 'special' appeal does not occur in the present Code; broadly speaking the provisions relating to second appeals correspond to the provisions relating to special appeals in Regulation IV of 1827. It is, therefore, not accurate to say that there is no provision in the present Code relating to special appeals as contemplated by Regulation XIII of 1830.

It was next urged that even though a special appeal might lie to this Court, it could be entertained only on the grounds mentioned in clause 99 of Regulation IV of 1827. In neither of the two unreported cases mentioned to us in the argument is the nature of the special appeal distinctly specified. It may be that the point was not raised in those cases or that it was assumed that a special appeal was substantially the same as a second appeal. The point has been raised and argued before us. It is necessary to determine the nature

<sup>(1)</sup> F. A. No. 9 of 1908, Unreported.

of the special appeal contemplated by Regulation XIII of 1830 before we can decide the present appeal. We have come to the conclusion that a special appeal under Regulation XIII of 1830 is synonymous with a second appeal under the Code of Civil Procedure, and should be heard and determined in the same manner as a second appeal is heard and determined. In other words the special appeal lies to this Court only on the grounds mentioned in section 100 of the Code of Civil Procedure. It is not necessary to refer in detail to the relevant sections of different Acts. It is enough to say that a careful perusal of section 99 of Regulation IV of 1827, sections 372 and 384 of Act VIII of 1859, the repealing Act XII of 1873 (so far as it repeals in section 5 of Regulation XIII of 1830 the words "under the rules provided in Chapter XXII, Regulation IV of 1827, for the admission of special appeals"), sections 7 and 584 of Act X of 1877, sections 7 and 584 of Act XIV of 1882 and sections 4 and 100 of Act V of 1908, will show that 'special appeal' contemplated by the Regulation corresponds to 'second appeal' under the Code of Civil Procedure. Barring slight alterations it is clear that the limitations of a special appeal coincide with the limitations of a second appeal. I am inclined to think that after Act VIII of 1859, special appeals under Regulation XIII of 1830 were to be heard according to the provisions of section 372 of the Act, and not of section 99 of Regulation IV of 1827, as apparently there was nothing inconsistent in the rules relating to special appeals in the Act with the specific provisions of Regulation XIII of 1830. It is not necessary, however, to come to a definite conclusion on this point. It is quite clear that after the repealing Act XII of 1873 there was nothing inconsistent in the Act of 1859 or in any of the subsequent statutes with any provisions of Regulation XIII of 1830, which could stand in the way of hear-

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ing and determining special appeals under the Regulation in the same manner as special appeals under Act VIII of 1859 or as second appeals under Acts X of 1877, XIV of 1882 and V of 1908. A mere change in phraseology cannot make any difference in the result. Special appeals are practically the same as second appeals. I may add that I have not overlooked the change in the wording of section 4 of the present Code as compared with section 7 of Act XIV of 1882. But I am clear that it is only another way of expressing the same thing; the result is the same. I, therefore, overrule the preliminary objection, and hold that a special appeal lies to this Court, and that it lies only on the grounds mentioned in section 100 of Act V of 1908.

On the merits the appellant has no case. There is no error of law. The decision of the lower Court is based upon an appreciation of evidence, with which we cannot interfere in this special appeal. I, therefore, confirm the decree of the lower Court with costs.

HEATON, J. :—My consideration of this matter has led me to the same conclusion for substantially the same reasons.

*Decree confirmed.*

R. R.

## ORIGINAL CIVIL.

*Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.*

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August 11.

THE BARODA SPINNING AND WEAVING COMPANY, LIMITED, APPELLANTS AND PLAINTIFFS, v. THE SATYANARAYEN MARINE AND FIRE INSURANCE COMPANY, LIMITED, RESPONDENTS AND DEFENDANTS.\*

*Contract Act (IX of 1872), section 28—Limitation Act (IX of 1908), section 3—Insurance—Agreement in restraint of legal proceedings—Modification of the law of limitation by agreement of the parties—Rights and remedies, distinction between—Conditional release or forfeiture not invalid.*

The S. Insurance Co. granted a policy of insurance against fire to the B. Co., on certain property of the latter, the policy containing a clause to the effect that if

\* Appeal No. 75 of 1912 : Suit No. 673 of 1911.