rights to file the suit in ejectment in the City Civil Court and that Court had jurisdiction to entertain the suit and to pass the decree that it did.

The result, therefore, is that we allow this appeal, set aside the judgment and decree of the High Court and restore the decree passed by the City Civil Court. The appellant will be entitled to costs throughout in all Courts.

Appeal allowed.

Agent for the appellant: *P. G. Gokhale.*

Agent for the respondent: *S. P. Varma.*

NEMI CHAND AND ANOTHER

v.

THE EDWARD MILLS CO. LTD. AND ANOTHER

[MEHR CHAND MAHAJAN, DAS, VIVIAN BOSE and GHULAM HASAN JJ.]

Court-Fees Act (VII of 1870), s. 12—Civil Procedure Code, 1908, s. 2(ii), O. VII, r. 11—Decision as to court-fee—Finality—Scope of s. 12—Dismissal for non-payment of court-fee—Power of appellate Court to consider whether decision about court-fee was right—Declaratory suit with prayer for consequential relief—Appeal giving up prayer for consequential relief—Maintainability—Court-fee.

In a plaint the following reliefs were asked for, *viz.*, (i) that it be declared that the appointment of defendant No. 2 as chairman of the board of directors of a company is illegal, invalid and *ultra vires* and that he has no right to act as chairman, managing director etc., and (ii) that a receiver be appointed to take charge of the management of the company. The plaint bore a court-fee stamp of Rs. 10 only but, on the objection of the defendants, *ad valorem* fee was paid on Rs. 51,000 which was the valuation of the suit. The suit was dismissed and the plaintiff preferred an appeal giving up the second relief and paying a court-fee of Rs. 10 only. The appellate Court ordered payment of *ad valorem* court-fee and on non-compliance rejected the memorandum of appeal. On further appeal:

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Held, (i) that it was open to the appellant to give up the second relief in appeal and, as the subject-matter of the appeal was of a purely declaratory nature, the memorandum of appeal was properly stamped;

(ii) that the first relief was of a purely declaratory nature and did not involve any consequential relief;

(iii) that s. 12 of the Court-Fees Act did not preclude the Court from considering the correctness of the order of the lower appellate court rejecting the appeal on the ground that the memorandum of appeal was not properly stamped.

The finality imposed by s. 12 of the Court-Fees Act on decisions relating to court-fee attaches only to decisions concerning valuation simpliciter; it does not attach to decisions relating to the category under which a suit or appeal falls for purposes of court-fees.

Section 12 of the Court-Fees Act when it says that such a decision shall be final between the parties only makes the decision of the court on a question of court-fee non-appealable and places it on the same footing as other interlocutory non-appealable orders under the Code and does no more than that. If a decision under s. 12 is reached by assuming jurisdiction which the court does not possess or without observing the formalities which are prescribed for reaching such a decision, the order obviously would be revisable by the High Court in the exercise of revisional powers. Similarly, when a party thinking that a decision under s. 12 is palpably wrong takes the risk of his plaint being rejected or suit dismissed and then appeals from the order rejecting the plaint or from the decree dismissing the suit but not from the decision on the question of court-fee, then it is open to him to challenge the interlocutory order even on the question of court-fee in the suit or appeal. The word "finality" construed in the limited sense in which it is often used in statutes means that no appeal lies from an order of this character as such and it means no more than that.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 105 of 1950. Appeal from the Judgment and Order dated March 22, 1945, of the Court of the Judicial Commissioner, Ajmer-Merwara, Ajmer (Davies J. C.) in Civil First Appeal No. 16 of 1944, arising out of the Judgment and Decree dated March 13, 1944, of the Court of the Judge, Small Causes, Ajmer, and Additional District Judge, Ajmer, in Civil Suit No. 28 of 1942.

S. S. Deedwania for the appellant.

M. C. Setalvad, Attorney-General for India, (*J. N. Sharma*, with him) for the respondents.

1952. November 10. The Judgment of the Court was delivered by

MAHAJAN J.—This is an appeal by special leave granted by the Privy Council and limited to the question of court-fee, *viz.*; whether on the memorandum of appeal presented to the High Court court-fee was payable under section 7 (iv) (c) or article 17 of Schedule II of the Court-Fees Act.

The question whether the memorandum of appeal was properly stamped arose in the following circumstances: Edward Mills Co. Ltd. is a joint stock company situate in Beawar, Ajmer-Merwara. In accordance with the provisions of the articles of the company one Seth Gadh Mal Lodha and Rai Sahib Moti Lal (respondent No. 2) were its chairman and managing director respectively since 1916. Seth Gadh Mal Lodha represented his family firm of Kanwal Nain Hamir Singh, while Rai Sahib Moti Lal represented the joint family firm of Champa Lal Ram Swaroop. On 1st July, 1938, Rai Sahib Moti Lal and his firm were adjudged insolvents by the Bombay High Court. The result was that respondent No. 2 had to vacate the office of managing director and the members of his firm also became ineligible for it. By a resolution of the board of directors passed on 18th July, 1938, Gadh Mal Lodha was appointed to take the place of Rai Sahib Moti Lal as managing director. Gadh Mal Lodha died on 11th January, 1942, and the board of directors then appointed Seth Sobhagmal Lodha to act as chairman as well as managing director till the appointment was made by the company. An extraordinary meeting of the company was called for the 8th February, 1945, for the election of the chairman. At this meeting conflict arose between the two groups represented by Sobhagmal Lodha and Moti Lal. The chairman therefore dissolved the meeting but the supporters of Moti Lal continued to hold it and passed a resolution appointing him as the sole agent and chairman for a period of twenty years on a remuneration equal to ten per cent. of the profits of the company. It is this

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resolution of the 8th February, 1942, which has led to the present dispute.

Seth Sobhagmal in the situation that arose approached the District Judge of Ajmer with the prayer that a general meeting of the company may be held under the supervision of the court. This request was allowed on 11th February, 1942, and the court ordered that the meeting be held on 12th February, 1942, under the chairmanship of Seth Sobhagmal. Respondent No. 2 being aggrieved by this order, filed an application in revision in the Court of the Judicial Commissioner impugning the order. The learned Judicial Commissioner allowed the revision and directed that the resolution of the 8th February, 1942, should be acted upon.

Having failed to get redress in the summary proceedings, the appellant then filed the suit out of which this appeal arises for quashing the resolution of the 8th February, 1942. In the plaint he asked for the following reliefs:—

1. That it be declared that the appointment of defendant No. 2 is illegal, invalid and *ultra vires* and that he has no right to act as chairman, managing director etc. of defendant No. 1;

2. Thata receiver be appointed to take charge of the management of the company, until a properly qualified chairman, managing director etc. are duly appointed as required by the memorandum and articles of the company.

The plaint bore a court-fee stamp of Rs. 10 only, but on the objection of the respondents that court-fee was payable on relief No. 2 the appellants paid *ad valorem* fee on Rs. 51,000 which was the valuation of the suit for purposes of jurisdiction.

The Additional District Judge dismissed the suit on the preliminary ground that it was not maintainable as it related to the internal management of the company and that the appellants had no right to bring it without impleading the directors who were necessary parties to it.

Aggrieved by this decision of the trial Judge, the appellants preferred an appeal to the Court of the Judicial Commissioner, Ajmer-Merwara, at Ajmer. The memorandum of appeal was stamped with a court-fee stamp of Rs. 10 and it was expressly stated therein that relief No. 2 of the plaint was given up. An objection was raised regarding the amount of court-fee paid on the memorandum of appeal. The Judicial Commissioner ordered that proper court-fees be paid thereon in a month. In this order no reasons were given for this decision. The additional fee demanded was not paid, and the Judicial Commissioner dismissed the appeal with costs on 22nd March, 1945. An application was made for leave to appeal to the Privy Council against this order but it was refused. In the order refusing leave it was said as follows:—

"On appeal to this court, the memorandum was again stamped with a ten rupee stamp only and the respondents therefore objected. It having been conceded by plaintiffs earlier that the relief for the receivership was consequential to the relief for the declaration, the appellants were directed to pay the same stamp as had been paid in the trial Court. They objected stating that they had expunged from their memorandum of appeal the request that the court should appoint a receiver and that they were not, therefore, liable to pay the same amount. On this a notice was issued and counsel were heard.

It being clearly set out in section 42 of the Specific Relief Act that no court shall grant a declaration only where the plaintiff being able to seek further relief than a mere declaration of title omits to do so, the appellants were directed to pay as earlier ordered the same amount as had ultimately been paid on the plaint. They had earlier sought a consequential relief and the court was, therefore, entirely unable to hold that the plaintiffs were unable to seek a further relief, they having sought the relief in the lower court and it having been refused to them. The amount of the stamp was not paid and the appeal was therefore dismissed with costs."

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The reasons for demanding additional court-fee, though not mentioned in the original order, are stated in this order.

The question for determination in this appeal is whether the order of the Judicial Commissioner demanding additional court-fee can be sustained in law. A memorandum of appeal, as provided in article 1 of Schedule I of the Court-Fees Act, has to be stamped according to the value of the subject-matter in dispute in appeal; in other words, the relief claimed in the memorandum of appeal determines the value of the appeal for purposes of court-fee. The only relief claimed in the memorandum of appeal was the first one mentioned in the plaint. This relief being purely of a declaratory character, the memorandum of appeal was properly stamped under article 17 of Schedule II.

It is always open to the appellant in an appeal to give up a portion of his claim and to restrict it. It is further open to him, unless the relief is of such a nature that it cannot be split up, to relinquish a part of the claim and to bring it within the amount of court-fee already paid: *Brahmanandam* v. *Secretary of State for India*(1); *Ram Prasad* v. *Bhiman*(2); *Karam Chand* v. *Jullundur Bank Ltd*(3); *Neelachalam* v. *Narasingha Das*(4); *Sah Ramchand* v. *Pannalal*(5); *Chuni Lal* v. *Sheo Charanlal Lalman*(6). The plaintiffs in express terms relinquished the second relief they had claimed in the plaint, in their memorandum of appeal. For the purpose of deciding whether the memorandum of appeal was properly stamped according to the subject-matter of the appeal, it was not open to the Judicial Commissioner to canvass the question whether the suit with the second prayer eliminated from it fell within the mischief of the proviso to section 42 of the Specific Relief Act. That was a question which related to the merits of the appeal and did not concern its proper institution. On this ground, therefore, the Judicial Commissioner had no jurisdiction to demand

(1) (1930) I.L.R. 53 Mad. 48.
(2) (1905) I.L.R. 27 All. 151.
(3) A.I.R. 1927 Lah. 543.
(4) A.I.R. 1931 Mad 716.
(5) A.I.R. 1929 All. 308.
(6) (1925) I.L.R. 47 All. 756.

additional fee from the plaintiffs and the appeal could not be dismissed for failure to meet it. We are thus of the opinion that the order demanding additional court-fee on the memorandum of appeal as it stood, that is, minus the second prayer, was erroneous and we hold that the memorandum of appeal was properly stamped, as the subject-matter of the appeal was purely of a declaratory character.

Mr. Setalvad for the respondents contended that the first relief claimed in the plaint, and which was the subject-matter of the appeal included within it consequential relief and was not purely declaratory in nature and, therefore the Judicial Commissioner was right in demanding additional court-fee on the value of the consequential relief. It was said that the words that respondent No. 2 "had no right to act as chairman and managing director" amounted to a claim for consequential relief. We are unable to agree. The claim contained in the first relief of the plaint is to the effect that it be declared that defendant No. 2 has no right to act as chairman and managing director because of his appointment being illegal, invalid, and *ultra vires*. The declaration claimed is in negative form that defendant No. 2 has no right to act as chairman and managing director. No claim for a consequential relief can be read within this prayer. The words "that defendant 2 has no right to act as chairman....." are mere repetition and reiteration of what is contained in the opening sentence of the paragraph. This contention of Mr. Setalvad, therefore, cannot be sustained.

It was next contended that in view of the provisions of section 12 of the Court-Fees Act it should be held that the decision of the Judicial Commissioner was final, and could not be challenged in appeal. Section 12 of the Court-Fees Act enacts as follows:

"Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this chapter on a plaint or memorandum

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of appeal shall be decided by the court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit."

The provisions of this section have to be read and construed keeping in view the provisions of the Code of Civil Procedure. Order VII, Rule 11, Civil Procedure Code, provides as follows:—

"The plaint shall be rejected—

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;.....

(d) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so."

An order rejecting a plaint is a decree as defined in section 2, sub-section (ii), and is appealable as such. There is an apparent conflict between the provisions of the Code of Civil Procedure and the provisions of section 12 which make the order relating to valuation final and efforts to reconcile the provisions of the Court-Fees Act and the Code have resulted in some divergence of judicial opinion on the construction of the section. In a number of decisions the Calcutta High Court took the view that the finality declared by section 12 of the Court-Fees Act had been taken away by the relevant provisions of the Code, as the order rejecting a plaint was appealable as a decree, no matter whether the dispute related to the category under which the same falls for purposes of court-fee or only to valuation pure and simple under a particular category: Vide *In re Omrao Mirza* v. *Mary Jones*(1) and *Tara Prasanna Chongdar* v. *Nrisingha Moorari Pal*(2). This extreme view has not been maintained in later decisions and it has been held that the finality declared by section 12 is limited only to the question

(1) (1883) 12 C.L.R. 148. (2) (1924) I.L.R. 51 Cal. 216.

of valuation pure and simple and does not relate to the category under which a certain suit falls: *Jariman Khatun* v. *Secretary of State for India in Council*(1). The Allahabad High Court in its earlier decisions took the extreme view: Vide *Muhammad Sadik* v. *Muhammad Jan*(2). Later on that court veered round to the view that the finality declared by section 12 only related to matters of appraisement. The High Court of Lahore has placed a similar construction on the meaning of the expression "valuation" in section 12 and has held that the finality attaches only to a decision which concerns valuation simpliciter and no finality attaches when a court decides a question whether a case falls within one or other category of the cases mentioned in the different sections and schedule of the Court-Fees Act: Vide *Mahna Singh* v. *Bahadur Singh*(3); *Mst. Parmeshri* v. *Panna Lal*(4). This view has consistently been held in that court. The Madras High Court took the same view in *Lakshmi Amma* v. *Janamajayam Nambiar*(5); *Annamalai Chetty* v. *Cloete*(6); and *Narasimhalu Chetty* v. *Ramayya Naidu*(7). Mr. Setalvad drew our attention to the recent Full Bench decision of that court in *Madana Mohana Naiko* v. *Krupasindhu Naiko*(8). That case, however, concerned the second part of section 12 and was not concerned directly with the construction to be placed on the first part of the section. It, however, contains certain observations indicating that in the opinion of the judges there was no ground for this restricted construction of the word "valuation" in section 12 and that the finality declared by section 12 attached not only to valuation pure and simple but also attached to decisions relating to category under which a suit or appeal falls for purposes of court-fee. These obiter observations, however, cannot be said to overrule the earlier Full Bench decision of that court in *Lakshmi Amma* v. *Janamajayam Nambiar*(5). In a

(1) I.L.R. [1940] 2 Cal. 166.
(2) (1889) I.L.R. 11 All. 91, F.B.
(3) 1919 Punjab Record 16.
(4) A.I.R. 1931 Lah. 378,
(5) (1894) 4 M.L.J. 183, F.B.
(6) (1882) I.L.R. 4 Mad. 204.
(7) A.I.R. 1942 Mad. 502.
(8) A.I.R. 1937 Mad. 81.

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later decision in *Narasimhalu Chetty* v. *Ramayya Naidu*(1), the decision of the Full Bench was explained as not in any way overruling the decision in *Lakshmi Amma* v. *Janamajayam Nambiar*(2). All recent decisions of the Bombay High Court have taken the same view: Vide *Dada* v. *Nagesh*(3); *Krishnaji Hari Dhandhere* v. *Gopal Narain Dhandhere*(4). Mr. Setalvad drew our attention to an earlier decision of the Bombay High Court in *Vithal Krishna* v. *Balakrishna Janardan*(5). In that case the court undoubtedly held that no appeal lay and the finality declared by section 12 was comprehensive enough to include all questions whether relating to category or valuation pure and simple. It was, however, held that the High Court could correct an erroneous decision in the exercise of its revisional powers. Thus the finality declared by section 12 was destroyed by the exercise of powers of appeal under the guise of exercising revisional jurisdiction. In Patna and Oudh the same view has been taken as in Lahore. Vide *Chandramoni Koer* v. *Basdeo Narain Singh* (6); *Gumani* v. *Banwari*(7). It thus appears that the consensus of judicial opinion is against the construction suggested by Mr. Setalvad. We think that the construction given to the language in section 12 in these decisions is right, and our reasons for saying so are these:

The difference in the phraseology employed in sections 5 and 12 of the Court-Fees Act indicates that the scope of section 12 is narrower than that of section 5. Section 5 which declares decisions on questions of court-fee whenever they arise in the chartered High Courts as final makes a decision as to the *necessity* of paying a fee or the amount thereof final. Whereas section 12 makes a decision on every question relating to *valuation* for the purpose of determining the amount of any fee payable under chapter 3 on a plaint or memorandum of appeal final. Had section 12 been drafted somewhat as follows:

(1) A.I.R. 1942 Mad. 502.
(2) (1894) 4 M.L.J. 183 F.B.
(3) (1899) I.L.R. 23 Bom. 486.
(4) A.I.R. 1936 Bom. 166.
(5) (1886) I.L.R. 10 Bom. 610, F.B.
(6) (1921) 4 P.L.J. 57.
(7) (1920) 54 I.C. 733.

"If any dispute arises as to the amount of any fee chargeable under this chapter on a plaint or memorandum of appeal, it shall be decided by the court in which such plaint or memorandum is filed and such decision shall be final as between the parties",

then the construction contended for by Mr. Setalvad might have been upheld. When the two sections in the same Act relating to the same subject-matter have been drafted in different language, it is not unreasonable to infer that they were enacted with a different intention and that in one case the intention was to give finality to all decisions of the taxing officer or the taxing judge, as the case may be, while in the other case it was only intended to give finality to questions of fact that are decided by a court but not to questions of law. Whether a case falls under one particular section of the Act or another is a pure question of law and does not directly determine the valuation of the suit for purposes of court-fee. The question of determination of valuation or appraisement only arises after it is settled in what class or category it falls.

It has been argued in some decisions that it is absolutely necessary to decide the category in which a case falls before assessing its value and therefore the determination of the question of category is necessarily involved in the determination of the valuation of the suit for purposes of court-fee. This argument, though plausible, does not seem sound. The actual assessment of the value depends either on arithmetical calculations or upon a valuation by an expert and on the evidence led in the case, while the decision of the question of category is one of law and may well be said to be an independent question antecedent but not relating to valuation. The expression "valuation" interpreted in its ordinary meaning of "appraisement", cannot be said to necessarily include within its ambit the question of category which is a matter of law. The construction placed on this section by a long course of decisions is one which

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reconciles the provisions of the Court-Fees Act with that of the Code of Civil Procedure and does not make those provisions nugatory and is therefore more acceptable than the other constructions which would make the provisions of either one or the other of these statutes nugatory. Perhaps it may be possible to reconcile the provisions of the two statutes by holding that the finality declared by section 12 of the Court-Fees Act means that the parties cannot impugn such a decision by preferring an appeal but that it does not confer on such decisions a complete immunity from examination in a higher court. In other words section 12 when it says that such a decision shall be final between the parties only makes the decision of the court on a question of court-fee non-appealable and places it on the same footing as other interlocutory non-appealable orders under the Code and it does no more than that. If a decision under section 12 is reached by assuming jurisdiction which the court does not possess or without observing the formalities which are prescribed for reaching such a decision, the order obviously would be revisable by the High Court in the exercise of revisional powers. Similarly, when a party thinking that a decision under section 12 is palpably wrong takes the risk of his plaint being rejected or suit dismissed and then appeals from the order rejecting the plaint or from the decree dismissing the suit but not from the decision on the question of court-fee, then it is open to him to challenge the interlocutory order even on the question of court-fee made in the suit or appeal. The word "finality" construed in the limited sense in which it is often used in statutes means that no appeal lies from an order of this character as such and it means no more than that.

Conceding for the sake of argument but not admitting that Mr. Setalvad is right in his contention that section 12 is comprehensive enough to include within its ambit all questions relating to court-fee whether they involve a decision as to question of category or as to valuation simpliciter, in the present

case the Judicial Commissioner decided none of these questions and his decision cannot be said to be one falling within the ambit of section 12. All that the Judicial Commissioner decided was that as the suit could not be maintained without asking for relief No. 2, the same fee was payable on the memorandum of appeal as on the plaint. In substance the court decided an issue regarding the maintainability of the appeal without first deciding whether the appeal had been properly instituted in that court. No finality can attach to such a decision by the provisions of section 12, as in reality it decides no question within the ambit of section 12 of the Court-Fees Act.

For the reasons given above the second objection raised by Mr. Setalvad that no appeal lies from the order of the Judicial Commissioner by special leave is without force and is overruled.

The result is that the appeal is allowed, the decision of the Judicial Commissioner dismissing the appeal is set aside and the case remanded to him for decision in accordance with law on the basis that the memorandum of appeal presented to him was properly stamped. The appellants' costs of this appeal will be costs in the appeal in the Court of the Judicial Commissioner.

Appeal allowed.

Agent for the appellant: *Rajinder Narain.*

Agent for the respondents: *S P. Varma.*