PARKER, J.—The complaint laid against the accused was that he had exercised his profession for more than two months in the official year 1884-85 without paying the tax in respect thereof, and was therefore liable to conviction under s. 62, Act III of 1871.

The first-class Magistrate (Mr. Clarke) dismissed the charge on the ground that the prosecution was not instituted till more than five months after the last payment on account of the tax became payable and was therefore barred under s. 169, Act III of 1871.

It was held in High Court Proceedings of 11th August 1882, No. 1568, that the offence imputed in a similar case was not that the accused made default in payment of the tax on a certain day, but that, having received the prescribed notice, he had exercised his profession for two months in the official year without having paid the tax.

The Court held that the offence was a continuing offence and that it was immaterial at what part of the year it was first completed, and that a complaint was within time if laid within three months after the close of the official year; or when the accused had before the end of the official year ceased to exercise his profession within three months from the time at which he so ceased to exercise it.

According to this ruling the complaint, having been made on 26th March 1885, was in time.

The order of the Magistrate is set aside, and he is directed to restore the complaint to his file and dispose of it in due course of law.

APPELLATE CIVIL.

Before Mr. Justice Hutchins and Mr. Justice Parker.

1885.
August 31.
September 4.

RÁGAVA (PLAINTIFF), APPELLANT,

and

RÁJAGOPÁL AND ANOTHER (DEFENDANTS), RESPONDENTS.*

Jurisdiction—Cause of action—Suit to set aside order of Revenue Court directing ejectment—Res judicata.

A Revenue Court having ordered a tenant to be ejected under s. 10 of the Rent Recovery Act on the ground that he had refused to accept a pattá as directed by

* Second Appeal 194 of 1885.

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the Court, the tenant brought a suit in the Civil Court to set aside the order of the Revenue Court:

Held, that the suit would not lie.

THIS was an appeal from the decree of J. H. Nelson, District Judge of Chingleput, confirming the decree of N. Narasimháyyar, District Múnsif of Tiruvellúr, in suit 754 of 1884.

The plaintiff, Parasei Strinivása Rágaváchári, brought the suit against the defendants Rájagopaláchári and another to set aside a decree made by a Revenue Court under the Rent Recovery Act, directing him to be ejected from his holding, and to restrain the defendants from executing that decree.

The plaintiff alleged that he was a mirási raiyat of his village, of which the defendants were the izárádárs.

The defendants having brought a suit against plaintiff to compel him to accept a pattá on the 12th August 1882, the Revenue Court, having amended the pattá, directed the plaintiff to accept it.

The defendants then brought a summary suit under the Rent Recovery Act to eject plaintiff, alleging that he refused to accept a pattá tendered ten days subsequent to the order of the Revenue Court.

The Revenue Court found that defendants had tendered and the plaintiff had refused to accept a pattá as directed by the order of 12th August 1882.

The plaintiff alleged that this finding was based on false evidence.

It was contended by the plaintiff that the decision of the Revenue Court being summary, he was entitled to have it set aside by a regular suit.

The Múnsif held that the decision of the Revenue Court, not having been appealed against, had become final, and that the suit was not maintainable.

On appeal the District Judge held that the Múnsif had no jurisdiction, no appeal against the order of the Revenue Court being provided by the Rent Recovery Act.

Plaintiff appealed on the grounds, *inter alia*, that the decision of the Revenue Court was no bar to this suit, and that there was nothing in the Rent Recovery Act to prevent a Civil Court setting aside an order obtained by fraud.

*Sadagopáchárya*r for appellant.

Srirangáchâryar for respondents.

The Court (Hutchins and Parker, JJ.) delivered the following judgments :—

HUTCHINS, J.—In this case the appellant admits all the facts necessary to give the Revenue Court jurisdiction to determine whether he had made the default contemplated by s. 10 of the Act and was liable to be ejected. He admits respondent had sued him to enforce his acceptance of a pattá; that the terms of the pattá had been judicially settled and a decree passed requiring him to accept it; that ten days had elapsed from the date of the Collector's judgment, and that the amended pattá had not been accepted. Then, the section provides, the Collector, on application made to him by the plaintiff, and on proof of such default on the part of the defendant, shall pass an order for ejecting the defendant. Such an application was certainly made and proof was taken from both sides as to whether there had or had not been a wilful default. Thereupon the Collector came to the conclusion that the tender of the amended pattá on the 18th August was very clearly proved, and he ordered the appellant's ejectment. The object of the present suit is simply to induce the Civil Courts to go *de novo* into the evidence on this very same point and to revise the judicial finding of the Collector that the appellant had made wilful default and had not been in any way imposed on or deceived. I am clearly of opinion that such a suit will not lie, and that this second appeal should be dismissed with costs.

PARKER, J.—The suit is to set aside an order of the Assistant Collector directing that plaintiff be ejected from his holding for refusal to accept a pattá as amended by the Collector. The plaintiff alleged that the amended pattá had never been tendered him, that he had asked for one, and that defendant had neglected to give it. The Assistant Collector held that the refusal was that of the plaintiff and ordered his ejectment.

Both the Courts below have held that the suit is not maintainable.

It is clear that, if the suit be maintainable, the Civil Courts would really hear and determine certain issues of fact which have already been heard and determined by a Court of competent jurisdiction, whose decision the Legislature did not see fit to make subject to appeal.

It may be that a suit would lie to set aside an order of eject-

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ment obtained against a wrong person, or to set aside an order irregularly obtained by abuse of legal process though under colour of the law. This, however, is not the case now before us. The suit here brought is to set aside a decision upon the ground that a Court of competent jurisdiction has come to a wrong conclusion, both sides having had full opportunity to plead and be heard, and the Legislature not having seen fit to allow an appeal.

I must hold that such a suit is not maintainable and dismiss this second appeal with costs.

APPELLATE CRIMINAL.

Before Mr. Justice Muttusámi Ayyar and Mr. Justice Hutchins.

1885. August 27.

QUEEN-EMPRESS

against

LAKSHMANA AND OTHERS.*

Criminal Procedure Code, s. 269—Jury wrongly treated as assessors by Judge—Unanimous opinion of jury treated as assessors accepted as formal verdict.

L and N were tried by a Sessions Court on charges of dacoity and murder. The jury returned a verdict of guilty on both charges. The Judge, contrary to the provisions of s. 269 of the Code of Criminal Procedure, treated the jury as assessors in respect of the charge of murder, and, convicting L and N of dacoity, acquitted them of murder:

Held, that the irregular procedure of the Judge could not deprive the verdict of the jury of its proper legal effect.

THIS was a case submitted to the High Court, under s. 307 of the Code of Criminal Procedure, by W. F. Grahame, Sessions Judge of Cuddapah.

The case was stated by the Sessions Judge as follows :—

" The prisoners were charged with dacoity, murder in committing dacoity, and murder. The jury have acquitted prisoners Nos. 2 and 3 and convicted Nos. 1 and 4. I overlooked the provisions of s. 269, para. 2, and took the verdict of the jury on the first head of charge, while I looked on them as assessors on the second and third heads. Therefore, as regards the dacoity I resolved to submit the matter to the High Court, but acquitted all prisoners on the charges of murder in dacoity and murder, omitting to notice that, as all charges ought to have been tried by jury under s. 269,

* Criminal Appeal 294 of 1885.