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documentary evidence, which should not have been admitted as the documents had not been proved. For these reasons I set aside the Sub-Magistrate's order and direct the present Sub-Magistrate to make further inquiry into the complaint." The case was heard by a Sub-Magistrate who held it to be a false case and dismissed it under section 203 of the Code of Criminal Procedure.

The accused preferred this criminal revision petition to the High Court against the order of the Sessions Judge.

T. Rangachariar for the accused.

The Public Prosecutor (Mr. *E. B. Powell*) for the Crown.

JUDGMENT.—This Court has, in its order in the case of *Venkatesalu Naidu v. Durvasa Rangayyan*(1) pointed out to the learned Sessions Judge that his reading of section 202, Criminal Procedure Code, is incorrect. The Magistrate had jurisdiction to act under section 202 and his failure to record his reasons was at most an irregularity, and unless it, in fact, occasioned a failure of justice it could be no ground for setting aside his order. The Sessions Judge does not suggest that the order was wrong on the merits and we see no reason to hold that it was so.

We set aside the order of the Sessions Judge, dated 5th September 1901.

APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, Mr. Justice Davies and
Mr. Justice Moore.*

NARAYANASAMI REDDI (DEFENDANT), APPELLANT,

v.

OSURU REDDI (PLAINTIFF), RESPONDENT.*

Letters Patent, Art. 15—"Judgment"—Revision petition against decree in small cause suit—Difference of opinion—Appeal—Civil Procedure Code—Act XIV of 1882, s. 575—Contract Act—Act IX of 1872, s. 72—Right to recover money had and received to plaintiff's use unaffected by section 72.

The plaintiff in a small cause suit having obtained a decree, the defendant filed a civil revision petition in the High Court. At the hearing by a Bench, one

(1) Criminal Revision Case No. 263 of 1901, (unreported).

* Appeals Nos. 1 and 2 of 1900, under section 15 of the Letters Patent, against the judgment of Mr. Justice Boddam, in Civil Revision Petitions Nos. 59 and 60 of 1899 preferred under section 25 of the Provincial Small Cause Courts Act, to revise the decrees of A. Kuppusami Ayyangar, District Munsif of Sholinghur, in Small Cause Suits Nos. 689 and 690 of 1898.

learned Judge expressed the opinion that the case should be remanded for disposal according to law after further evidence had been taken, whilst the other held that the case was not one with which the High Court should interfere. The defendant then preferred an appeal under article 15 of the Letters Patent when a preliminary objection was taken to the hearing of the appeal, on the ground that there had been no judgment within the meaning of the article :

Held, that the adjudication by the Bench was a judgment within the meaning of article 15 of the Letters Patent.

Held also, that the case was governed by section 575 of the Code of Civil Procedure, and not by article 36 of the Letters Patent.

Defendant had sought to exercise, as against plaintiff, the special powers conferred upon landholders by section 38 of the Rent Recovery Act. In fact, the relations between defendant and plaintiff were not such as entitled defendant to exercise those powers. Plaintiff, in order to avert the injury which he would have sustained if his interest in the land had been sold, paid the amount demanded by the defendant, and now sued to recover from the defendant the sum so paid :

Held, that plaintiff was entitled to recover the money paid by him as money had and received by defendant to the use of the plaintiff.

Section 72 of the Contract Act in no way affects the principle of law that where a defendant has received money which in justice and equity belongs to a plaintiff, under circumstances which render a receipt of it a receipt by the defendant to the use of the plaintiff, the plaintiff is entitled to recover.

Jugdeo Narain Singh v. Raja Singh, (I.L.R., 15 Calc., 656), approved.

APPEAL, under article 15 of the Letters Patent, from the judgment passed in a civil revision petition. The petition was to revise the decree of a District Munsif in a small cause suit. Petitioner had been defendant in a suit brought against him by respondent, wherein respondent (plaintiff) sought to recover a sum of money which, he contended, petitioner (defendant) had illegally collected as rent from him. The Munsif held that petitioner (defendant) was not a landlord under the Rent Recovery Act, that the payment by respondent (plaintiff) to him had been made under protest ; and that respondent (plaintiff) was entitled to the refund which he claimed.

The defendant in the suit then filed a revision petition. The case first came on for hearing before SUBRAHMANYA AYYAR and BODDAM, JJ., when the former learned Judge was of opinion that the decree should be set aside and the suit remanded for disposal according to law, after further evidence had been taken ; and the latter, that the case was not one in which the High Court should interfere by way of revision, as the defence set up by the petitioner (defendant) in the High Court had not been raised in the Court of

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First Instance. As a result of this difference of opinion the decree of the Munsif stood.

Defendant now preferred this appeal, under article 15 of the Letters Patent.

T. Rangachariar, for respondents, took the preliminary objection that no appeal lay, as there was no judgment within the meaning of article 15 of the Letters Patent. He referred to *Sriramulu v. Ramasam*(1) and *Poona City Municipality v. Ramji*(2).

The objection was overruled.

V. C. Desikachariar, for appellants, contended that the case was governed by article 36 of the Letters Patent and not by sections 575 and 647 of the Code of Civil Procedure, and that the opinion of Mr. Justice Subrahmania Ayyar should prevail. He cited *Husaini Begam v. The Collector of Muzaffarnagar*(3); *Appaji Bhirrar v. Shirdal Khubchand*(4); *Sri Gridhariji Mahuraj Tickait v. Purushotum Gossemi*(5); and *Kunhummi v. Srivalabhan*(6). He argued that as the money had been voluntarily paid, though under protest, it need not be refunded. He referred to sections 15 and 72 of the Indian Contract Act.

T. Rangachariar, for respondent, was stopped.

JUDGMENT.—This suit was tried by the District Munsif as a small cause suit and judgment was given for the plaintiff. On an application to this Court to reverse the District Munsif's decree, Subrahmania Ayyar, J., was of opinion that the decree should be set aside and the suit remanded for disposal according to law after further evidence had been taken. Boddam, J., was of opinion that the case was not one in which this Court ought to interfere by way of revision upon the ground that the defence set up by the defendant in this Court had not been raised in the Court of First Instance and that the petition ought to be dismissed.

The defendant appealed under article 15 of the Letters Patent. A preliminary objection was taken by the plaintiff to the hearing of the appeal that there had been no judgment within the meaning of article 15. We are of opinion that the adjudication by Sub-

(1) I.L.R., 22 Mad., 109.

(2) I.L.R., 21 Bom., 250.

(3) I.L.R., 11 All., 176 at p. 178.

(4) I.L.R., 3 Bom., 204.

(5) I.L.R., 10 Calc., 814.

(6) Letters Patent Appeal No. 8 of 1899, (unreported).

rahmania Ayyar and Boddam, JJ., is a judgment within the meaning of the article and we overrule the preliminary objection.

The first point taken on behalf of the appellant (the defendant) was that the case was governed by article 36 of the Letters Patent and not by sections 575 and 647 of the Code of Civil Procedure, and that the opinion of the senior Judge, that the decree of the Munsif ought to be set aside, should prevail. In our judgment the case is governed by section 575 of the Code of Civil Procedure. In the case relied on by the appellant (*Husaini Begam v. The Collector of Muzaffarnagar*(1)) the Allahabad Court held that the Letters Patent and not the Code applied upon the ground that there had been no hearing of the appeal within the meaning of section 575 inasmuch as the point upon which the Judges had differed in opinion was a point taken by way of preliminary objection that the appeal was time barred. In the case before us there was a hearing of the petition by a bench of two Judges who differed in opinion as to the way in which the petition should be disposed of. The fact that Boddam, J., was of opinion that this Court ought not to interfere by way of revision for the reason that the case put forward by the petitioner had not been set up in the Court of First Instance is no ground for saying that there has been no hearing of the petition.

As regards the merits, the defendant sought to exercise certain special powers conferred upon landholders by section 38 of the Rent Recovery Act. To prevent these powers being put into force and his interest in the land sold, the plaintiff paid the defendant's claim. On the hearing of the revision petition it was not contended that the defendant was a landholder within the meaning of sections 3 and 38 of the Rent Recovery Act, or that he was by law entitled to exercise the special powers conferred by section 38. In these circumstances it seems to us clear that the defendant having no legal right to sell the plaintiff's interest in the land, and the plaintiff having paid the money in order to escape the injury which he would have sustained if his interest in the land had been sold, the plaintiff is entitled to recover the money paid by him as money had and received by the defendant to the use of the plaintiff. It is not necessary to consider whether the course adopted by the defendant amounts to coercion within

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(1) I.L.R., 11 All., 176 at p. 178.

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the meaning of section 15 of the Indian Contract Act. Section 72 of the Indian Contract Act has no application to this case. The section merely says that a person to whom money has been paid under coercion must re-pay it. The section in no way affects the principle of law that, where the defendant has received money which in justice and equity belongs to the plaintiff under circumstances which render a receipt of it a receipt by the defendant to the use of the plaintiff, the plaintiff is entitled to recover. This was the view taken by the Calcutta High Court in *Jugdeo Narain Singh v. Raja Singh*(1) and with this view we agree. Subrahmanya Ayyar, J., was of opinion that this money in justice and equity belonged to the defendant if it should appear on evidence being taken that the defendant was the party to whom the rent payable in respect of the land in the plaintiff's holding ought to have been paid. We do not agree with this view. The money was not paid as rent, but as a means of preventing the unlawful sale of the plaintiff's interest in the land.

The fact that the plaintiff may have been under an obligation to the defendant and that defendant may have been legally entitled to enforce that obligation seems to us to be immaterial. The method by which he sought to enforce the supposed obligation was illegal. He purported to exercise certain special rights created by a special act, whereas he did not in law possess these rights.

We think the judgment of the District Munsif was right and the appeal ought to be dismissed with costs.

(1) I.L.R., 15 Cal., 656.