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tered documents take effect henceforth as against unregistered documents of which under the Act the registration is optional, subject of course to the explanation in the section. Whereas s. 50 of Act VIII of 1871 gives a preference to registered documents of the kind mentioned in clauses (a) and (b) of s. 18 over the unregistered document, subject again to the explanation added to the section, so that by Act VIII of 1871 it is only the duly registered documents (though their registration is only optional) which take effect against the unregistered documents. As the documents referred to in this suit were both executed after the 1st July, 1871, and before Act III of 1877 came into force, the former Act would seem to apply. We agree with the lower appellate Court that no collusion or fraud between the defendants having been established, and the decree having been passed in favour of the first mortgagee, there was nothing to prevent the sale of the property in execution of that decree. If plaintiffs chose to satisfy the decree for their own purposes, they do not thereby seem to have any legal claim upon defendant, the decree-holder, for a refund of the money so paid by them. We affirm the decree of the lower appellate Court, and dismiss the appeal with costs.

*Appeal dismissed.*

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## FULL BENCH.

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1879  
March 25.

*Before Mr. Justice Pearson, Mr. Justice Turner, Mr. Justice Spankie, and  
Mr. Justice Oldfield.*

SHIMBHU NARAIN SINGH (PLAINTIFF) v. BACHCHA AND ANOTHER  
(DEFENDANTS).\*

*Act XVIII of 1873 (N.-W. P. Rent Act), s. 95—Determination under cl. (n) of  
Title—Res judicata.*

S applied to the Revenue Court, under cl. (n) of s. 95 of Act XVIII of 1873, for the recovery of the occupancy of certain land, alleging that the occupancy of such land had devolved upon her by inheritance, and that the landholder had wrongfully dispossessed her. The landholder set up as a defence to this application that S was not entitled to the occupancy of the land by inheritance, but that she was a trespasser. The Revenue Court determined that S was entitled to the occupancy of the land by inheritance, and granted her application. The landholder then sued S in the Civil Court for the possession of the land.

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\* Appeal under ch. 10, Letters Patent, No. 4 of 1877.

*Held, per* PEARSON, J. and TURNER, J., that the question of S's title to the occupancy of the land was, with reference to the decision of the Revenue Court, *res judicata* and could not again be raised in the Civil Court.

*Per* SPANKIE, J., and OLDFIELD, J., *contra*.

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 SHYAM  
 NARAIN  
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THE facts of this case were as follows : One Bakas Kuari, the recorded occupancy-tenant of certain land, his daughter Sukhia, his grandson Manraj, and his son-in-law Khedu, lived as a joint Hindu family. On the death of Bakas Kuari, Manraj's name was recorded as the tenant of the land, and on the death of Manraj Khedu's name was so recorded. On the death of Khedu the landholder disputed Sukhia's right to the holding, and dispossessed her. She applied to the Revenue Court, under cl. (u), s. 95 of Act XVIII of 1873, to be restored to possession, on the ground that the holding had devolved upon her by inheritance from Khedu, her husband, and that she had been wrongfully dispossessed. The Revenue Court of first instance allowed the application on the ground on which it was made, and its order was affirmed on appeal. The present suit was brought in the Civil Court by the landholder against Sukhia for the possession of the holding, on the ground that the defendant was not entitled to succeed to the same by inheritance, not being the wife of Khedu. The Court of first instance held that the defendant was entitled to succeed to the holding as Khedu's widow, and dismissed the plaintiff's suit. On appeal by the plaintiff the lower appellate Court refused to enter into the merits of the case, holding that the question of the defendant's title to the holding was, with reference to the decision of the Revenue Court, *res judicata*.

The plaintiff preferred an appeal to the High Court, contending that the Revenue Court had not determined the question of the defendant's title, and that, if it had determined that question, the question was not *res judicata*. The Judges composing the Division Court (TURNER, J., and SPANKIE, J.), before which the appeal came for hearing, differed in opinion on the point whether the question of the defendant's title to the land was *res judicata*. The judgments of the Division Court were as follows :

TURNER, J.—The respondent, complaining that she had been illegally ousted from an occupancy holding that had devolved on

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HIMBHU  
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her by inheritance, applied to the Revenue Court, under s. 95 of Act XVIII of 1873, to be restored to possession. Her application was granted. It was competent to the zamindar on the hearing of the application to contend that the respondent was a trespasser and had no title. The question was raised and decided rightly or wrongly. The zamindar now sues to be maintained in possession of the holding. The respondent pleaded the order she has obtained from the Revenue Court; that order in my judgment is a conclusive answer to the suit. The Legislature having been pleased to declare that no Civil Court shall take cognizance of any dispute or matter on which an application might be made of the nature mentioned in s. 95, we are unable to review the order passed on such an application in a civil suit; as between the landlord and tenant it is final.

The appeal therefore fails, and the decree of the lower appellate Court must be affirmed with costs.

SPANKIE, J.—Assuming that the original defendant, now represented by Bachcha and Jhingari Kuari, made an application to the Revenue Court, under cl. (n), s. 95 of Act XVIII of 1873, for the recovery of the occupancy of the land from which she had been wrongfully dispossessed, I cannot hold that the order of the Revenue Court on that application would be a bar to the determination of the plaintiff's claim in this suit. I apprehend that "wrongfully dispossessed" means "wrongfully dispossessed" because the landholder had not proceeded in accordance with the provisions of the Rent Act. If that were the case, the Collector could restore her to possession. But he was not at liberty on that application to determine finally whether or not the plaintiff here, as the landholder, had the right to recover the cultivatory possession of the land, on the ground that the occupancy right had lapsed on failure of heirs to the late occupier. The landholder, who denies that defendant was his tenant, was unable to obtain relief from the Revenue Court either under s. 93 or s. 95. In my opinion therefore this was a suit of which the Civil Court not only could take cognizance (and this the lower Courts admit), but that the determination of the issues involved in the case was not barred by the order of the Revenue Court on the application of the original

defendant. The lower appellate Court should have tried the appeal on the merits.

The plaintiff appealed to the Full Bench, under cl. 10 of the Letters Patent, from the judgment of Turner, J.

The *Senior Government Pleader* (Lala Juala Prasad) and Munshi *Hanuman Prasad*, for the appellant.

Lala *Lalta Prasad*, for the respondents.

The following judgments were delivered by the Full Bench :

PEARSON, J.—I am not very well able to reconcile the first and last grounds of the appeal. In the first it is contended that no question of title by right of succession was directly at issue. In the last it is admitted that the point for determination was whether the last tenant had left an heir who could legally claim a right of possession of the land. The real question raised, tried, and decided in the application made by Musammat Sukhia in the Revenue Court, under cl. (n), s. 95 of Act XVIII of 1873, was whether she was Khedu Kuari's widow and heir. Such she claimed to be, and because as such she was entitled to retain his holding, she alleged her dispossession by Raja Shimbhu Narain Singh to have been wrongful. Her claim rested on no other ground, and if the Revenue Court was not competent to determine the question whether she had or had not a right to the holding by inheritance from her husband, it could not have disposed of her application. But an application such as she made can only, under the provisions of s. 95 of Act XVIII of 1873, be entertained by Courts of Revenue, and no other Courts can take cognizance of any dispute or matter on which such an application might be made. The decision is *res judicata* and is not open to re-adjudication in the present suit. The provisions of s. 95 seem to be opposed to and to preclude the view that, when questions of right are determined on applications made thereunder, the decisions of the Revenue Courts are not final and may be challenged in the Civil Courts.

I would therefore affirm the decision of the Division Bench, and dismiss the appeal with costs.

SPANKIE, J.—Since the hearing of this case, I desire to add that I retain the opinion which I expressed when the case was

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before the Division Bench. It appears to me that the Full Bench decision of the Presidency High Court in *Guru Das Roy v. Ram Narain Mitter* (1) is very much in point. The same principle must apply to this case.

OLDFIELD, J.—The plaintiff sues in the suit before us to eject the defendant from the land in suit as a trespasser. The defendant alleges she is the widow of a former tenant, and has a right to succeed to the tenancy as his heir, and it appears she has already made an application in the Revenue Court to recover possession of the holding. She then alleged that the plaintiff had permitted her to take possession and recognised her tenancy and had subsequently dispossessed her. In that matter her right of succession as heir, and the fact that she had been recognised as a tenant and so succeeded to the holding, were disputed. The Assistant Collector before whom the case came inquired into and decided that she had a right of succession, and that she had taken possession of the holding on the death of her husband, and that plaintiff had given a lease of the holding to others, but he did not decide whether plaintiff had ever recognised her tenancy, and on this finding he allowed her application for recovery of possession. The question before us is whether the suit now brought is cognizable by a Civil Court, and whether the decision of the Revenue Court is final.

I cannot see how the matter in dispute in this suit can be otherwise than cognizable by the Civil Court, for it is certainly not a matter on which an application could be made by the plaintiff in the Revenue Court under s. 95 of Act XVIII of 1873. This is no recognised tenancy, but the question at issue is whether defendant is a tenant or trespasser, whether she has a right or not to succeed as heir to the former tenant. This is a question peculiarly within the province of a Civil Court to determine. Nor can I consider that a decision of a Revenue Court which may have been passed on such a point in the course of deciding an application preferred under s. 95, clause (n), Act XVIII of 1873, will be binding as a final decision of a competent Court. I concur with Mr. Justice Spankie in the view he takes. The jurisdiction of the Revenue Court in the matter of an application

(1) 7 W. R., 186.

under clause (n), s. 95 of Act XVIII of 1873, is I think confined to the determination of the immediate matter of the application, the dispossession otherwise than by law of the tenant,—see *Khugowlee Singh v. Hossein Bux Khan* (1). It seems to me that it was not intended to give the Revenue Court when disposing of such applications a jurisdiction to decide finally questions of title or succession under Hindu law. The Act seems to recognise a distinction between suits and applications, for the former are alone provided by the Act with a regular procedure under chapter vi. In the former also the decisions on questions of title would come before the Civil Court by way of appeal, whereas there is no appeal to a Civil Court in the latter. These are considerations which may make one hesitate in holding that it was intended that decisions should be final on matters outside the immediate object of the application and otherwise peculiarly cognizable by Civil Courts.

The appeal should be tried by the lower appellate Court on the merits.

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*Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Spankie, and Mr. Justice Oldfield.*

1879  
March 21

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IN THE MATTER OF THE PETITION OF GUR DAYAL.

*Act X of 1872 (Code of Criminal Procedure), s. 468—Sanction to prosecute—Relative positions of a Magistrate of the First Class, the Magistrate of the District, and the Court of Session.*

*Held (OLDFIELD, J., dissenting) that, for the purposes of s. 468 of Act X of 1872, a Magistrate of the First Class is subordinate to the Magistrate of the District, and consequently application for sanction to prosecute a person for intentionally giving false evidence before the former may, where such sanction is refused by the former, be made to the latter, and not to the Court of Session, which has not power to give such sanction.*

THIS was an application to the High Court for the exercise of its power of revision under s. 297 of Act X of 1872. One Gur Dayal was tried at Allahabad by Mr. E. White, a Magistrate of the First Class, on a charge of dishonestly receiving stolen property, an offence punishable under s. 411 of the Indian Penal Code, and on the 8th August, 1878, was acquitted by the Magistrate. Gur Dayal

(1) 7 B. L. R., at p. 679.