

execution of a decree. Clause (d) owes its origin, no doubt, to a principle similar to that which dictated the insertion of cl. (g) in the same section.

The appeal must therefore prevail. The decree of the lower Court will be set aside and the objection raised by the appellant must be allowed with the costs in both the Courts.

Appeal decreed.

Before Sir John Edge Kt., Chief Justice and Mr. Justice Aikman.

GAURI DATT (DECREE-HOLDER) v. PARSOTAM DAS (JUDGMENT-DEBTOR).*

Act IX of 1887, s. 25—Revision—Letters Patent, s. 10—Appeal.

No appeal will lie under s. 10 of the Letters Patent from an order of a single Judge of the High Court in revision under s. 25 of Act No. IX of 1887. *Muhammad Naim-ullah Khan v. Ihsan-ullah Khan* (1) referred to.

In this case the appellant, Gauri Datt had obtained a decree in a Court of Small Causes against the respondent and one Shankar Lal on the 11th of February 1887. He applied for execution of this decree on the 7th of January 1888, after which no further steps to execute the decree were taken until the application to which this appeal relates was made on the 13th of April 1891. It was then contended before the Judge of the Small Cause Court that this application for execution was not barred by limitation, because one of the two judgment-debtors having become insolvent, had, during the course of the proceedings in insolvency, made a deposition upon the 14th of April 1888, in which he acknowledged Gauri Datt's decree. The Court, however, disallowed this plea, holding that the acknowledgment of one judgment debtor only was not sufficient, and dismissed the application for execution as time barred.

The decree-holder applied to the High Court under s. 25 of Act No. IX of 1887 for revision of this order, but his application was dismissed by Straight, J., on the 8th of February 1892.

The decree-holder then appealed under s. 10 of the Letters Patent from the order of Straight J., above mentioned.

* Appeal No. 18 of 1892, under s. 10 of the Letters Patent.

(1) I. L. R. 14, All. 226, at p. 232.

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PARSOTAM
DAS.Kunwar *Parmanand*, for the appellant.Babu *Jogindro Nath Chaudhri*, for the respondent.

EDGE, C. J.—This appeal has been brought from an order of Mr. Justice Straight, dismissing an application for revision made to this Court under s. 25 of Act No. IX of 1887. The primary question to consider is whether an appeal lies in this case under s. 10 of the Letters Patent. What I said in my judgment in *Muhammad Naim-ullah Khan v. Ihsan-ullah Khan* (1), in reference to s. 622 of the Code of Civil Procedure, I adhere to, and I think what I there said is equally applicable to an attempt to appeal against an order passed in revision under s. 25, Act No. IX of 1887. In my opinion this appeal does not lie. It should be dismissed with costs.

AIKMAN, J.—I entirely concur with the learned Chief Justice in thinking no appeal lies in this case. Section 25 of the Provincial Small Cause Courts Act, No. IX of 1887, gives the High Court discretionary power to call for the record of a case decided by a Court of Small Causes and pass such order in respect thereto as it thinks fit. In the present case Mr. Justice Straight declined to exercise his discretionary powers. In my opinion there is nothing in s. 10 of the Letters Patent to support the contention that an appeal lies from such an order. I entirely agree with the observations made by the learned Chief Justice in the case of *Muhammad Naim-ullah Khan v. Ihsan-ullah Khan* (1). These observations, though they had special reference to applications under s. 622 of the Code of Civil Procedure, apply with equal force to applications under s. 25 of the Provincial Small Cause Courts Act. Although not directly in point, the observations of Peacock, C. J., in the case of *Mussamat Raghu Bibi v. Noorjahan Begam and others* (2), support the view I have taken. I have no hesitation in holding that the order of the Judge declining to exercise the discretionary power given to this Court by s. 25 is not a judgment, within the meaning of s. 10 of the Letters Patent, from which an appeal lies. I concur in thinking that this appeal should be dismissed with costs.

Appeal dismissed.