

of the Code of Civil Procedure directing a Court not to try any suit or issue which is barred by *res judicata* is couched in just as strong and emphatic language as the direction in s. 4 of the Limitation Act. I am unable to understand then why in the one case a wrong decision of a question of "*res judicata*" should not be considered good ground for an application under s. 622, while in the other case a wrong decision of a limitation question should be held to be sufficient for such an application. The prohibition against the hearing of a suit in each case rests on the same foundation, namely, on the Statute law, and is equally emphatic in each case. As therefore it has been clearly laid down by their Lordships of the Privy Council that a question of *res judicata* is not one on which an application under s. 622 can be made, I hold that the same rule applies to a question of limitation. Such a question cannot in my opinion be raised under s. 622 of the Code of Civil Procedure, and therefore *a fortiori* I decline to take it up under s. 25 of the Small Cause Courts Act.

I dismiss this application with costs.

Application rejected.

Before Mr. Justice Knox.

QUEEN-EMPRESS v. RAM LAL AND OTHERS.

Act III of 1877, s. 73—Criminal Procedure Code, s. 195—Registrar—"Court."

A Registrar acting under s. 73 of the Indian Registration Act, 1877, is not a Court within the meaning of s. 195 of the Code of Criminal Procedure. *Atchayya v. Gangayya* (1) dissented from.

The facts of this case sufficiently appear from the judgment of Knox, J.

The Public Prosecutor (Mr. *A. Strachey*) for the Crown.

Mr. A. H. S. Reid, for the opposite parties.

KNOX, J.—Ram Lal and three other persons stand committed to the Sessions Court of Meerut to take their trial upon a charge framed under s. 467 of the Indian Penal Code. The learned Judge

(1) I. L. R. 15 Mad. 138.

1898

RAGHU NATH
SAHAI
v.
THE OFFICIAL
LIQUIDATOR
OF THE HIMA-
LAYA BANK,
LD.

1898.

February 7.

1893

QUEEN-
EMRESS
v.
DAM LAL.

of Meerut has through the Public Prosecutor presented a petition to this Court asking that the case may be transferred for trial to some other Sessions Court. The ground given for the transfer is that he in his capacity as District Registrar has already had before him the bond which forms the subject-matter of this trial. On that occasion he came to the conclusion that the bond was a forged one and that the four persons now on trial were persons concerned with its preparation.

Notice was accordingly issued to the four accused to show cause why the trial should not be transferred for hearing to another District Court. In answer to this notice they set up a plea that the order of commitment is illegal, on the ground that no sanction has been given and that under s. 195 of the Code of Criminal Procedure sanction is necessary before any proceedings can be taken against them under s. 467 of the Indian Penal Code.

Mr. *Reid*, who appeared on their behalf, based this plea upon a Full Bench ruling of the Madras High Court. (*Atchayya v. Ganga-yya*) (1).

In that case the question now raised before me was before the Madras Court and a Full Bench of that Court did undoubtedly decide that a Registrar acting under ss. 72 to 75 of the Indian Registration Act was a Court for the purposes of s. 195 of the Code of Criminal Procedure. The language used in the judgments of the several Judges shows that they came to this conclusion with some hesitation.

The main ground upon which they were led to this conclusion appears to have been the consideration that in acting under ss. 72 to 75 of the Indian Registration Act a Registrar exercises more than mere administrative functions; that he has to consider the weight and credibility of evidence adduced before him and to form his own conclusions. They in fact imported the definition of "Court" given in s. 3 of the Indian Evidence Act into, and by it interpreted the word "Court" as it exists in, s. 195 of the Code of Criminal Procedure.

(1) I. L. R. 15 Mad. 138.

With every respect to the conclusion arrived at by the learned Judges, I find myself unable to adopt the view they took of the law. I do not find myself at liberty to import into the Code definitions which are provided for the purposes of some other Act of the Legislature. The Code contains a section which is devoted to the defining of words which might have an ambiguous meaning, and in that section there is a particular clause which empowers me to adopt and to import into the Code the definition of words which have been expressly defined in the Indian Penal Code, but does not empower me to import definitions from any other Act, such, for instance, as the Indian Evidence Act, which was in existence at the time when the Code of Criminal Procedure found its place in its present form on the Statute Book. The word "Court" must be taken in its ordinary sense, and the word would not in ordinary language be one used of the office of a Registrar. Throughout the Indian Registration Act the Registrar is described as an officer and his place of business as an office. When it is necessary to invest him with the powers and privileges of a Court the language used is language which clearly implies that he is not a Court. Section 75 of Act III of 1877 makes use of the expression "as if he were a Civil Court." In s. 483 of the Code of Criminal Procedure he is to be deemed to be a Civil Court "for special purposes." I accordingly, as on a previous occasion in this Court, hold that he is not a Court within the meaning of the word as used in s. 195 of the Code.

I accordingly direct that the trial in this case be transferred to the Court of Sessions at Sahāranpur, this being a Court which I am informed will be more convenient for the parties and the witnesses than the Court at Aligarh.

Before Mr. Justice Knox.

MAHBUBAN (APPLICANT) *v.* FAKIR BAKHSI (OPPOSITE PARTY).

Criminal Procedure Code, ss. 488, 490—Order for maintenance of wife—Application by wife to enforce order—Plea that applicant had been divorced—Duty of Court to which application for enforcement is made.

Where a person in whose favour an order under s. 488 of the Code of Criminal Procedure has been made takes that order before a Magistrate, and the Magistrate

1893

 QUEEN-
EMPERESS
v.
RAM LAL.

1893.

February 17.