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by a lambardar against certain persons who undoubtedly were co-sharers, and also against certain mortgagees in possession for arrears of revenue payable by the proprietors, as the word "proprietor" is defined in s. 146 of Act No. XIX of 1873, through the lambardar. It is a suit contemplated by s. 93, cl. (*g*) and the jurisdiction of the Revenue Court is not in our opinion limited by the word "co-sharer" in that clause. This suit was one cognizable by the Court of Revenue against all the defendants.

This is our answer to the reference. The Appellate Court will proceed to decide the appeal according to law.

Before Mr. Justice Burkitt.

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February 3.

RAGHU NATH SAHAI (DEFENDANT) v. THE OFFICIAL LIQUIDATOR OF THE HIMALAYA BANK, LD. (PLAINTIFF)*

Act, IX of 1887, *s.* 25—*Civil Procedure Code, s.* 622—*Revision—Limitation—Wrong decision of a point of limitation no ground for revision.*

An application under s. 25 of Act IX of 1887 to set aside a decree ought not to be entertained except in cases in which a similar application under s. 622 of the Code of Civil Procedure would be allowed.

Such an application will not lie where the sole ground is whether the first Court was or was not right in its decision on a question of limitation.

Amir Hassan Khan v. Sheo Baksh Singh (1) referred to.

THE facts of this case sufficiently appear from the judgment of Burkitt, J.

Pandit *Moti Lál*, for applicant.

Mr. *J. E. Howard*, for the opposite party.

BURKITT, J.—This is an application under s. 25 of the Provincial Small Cause Courts Act asking this Court to set aside a decree passed by the Subordinate Judge of Dehra in the exercise of his powers as Small Cause Court Judge. The allegation made by appellant is that the suit was for certain reasons time-barred at the

* Application No. 44 of 1892 for revision of an order under s. 622, Civil Procedure Code, passed by R. Greeven, Esq., Subordinate Judge of Dehra Dún, dated the 14th June 1892.

(1) I. L. R. 11, Calc. 6.

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date of its institution. That question was fully considered by the Court below and decided against the applicant-defendant. The present application is practically an appeal against that decision. It was decided by a Full Bench of this Court in the case of *Muhammad Bakar* v. *Bahal Singh* (1) that s. 25 of the Provincial Small Cause Courts Act does not give a right of appeal in all Small Cause Court cases either on law or on fact, and that the powers conferred on this Court by that section are purely discretionary and not to be exercised unless it appeared that some substantial injustice had resulted from the decree of the Court of Small Causes. In the present case I am not inclined on a consideration of the facts to use that discretion in favor of the applicant. Whether the Small Cause Court Judge was right or wrong in the view he took of the question of limitation (as to which I say nothing) there can be no doubt that applicant did owe the money to recover which the suit was brought.

In my opinion an application under s. 25 of the Small Cause Courts Act to set aside a decree (which by law is final) ought not to be entertained except in cases where a similar application under s. 622 of the Code of Civil Procedure would be allowed, and in my opinion an application under s. 622 founded only on a question of limitation could not be entertained. In the case of *Amir Hasan Khan* v. *Sheo Bakhsh Singh* (2) their Lordships of the Privy Council held that a question of *res judicata* was a question which the Court hearing the suit in which it arose had perfect jurisdiction to decide, and even if that Court decided that question wrongly it did not thereby exercise its jurisdiction illegally or with material irregularity. I confess I can see no difference between a question of *res judicata* and a question of limitation. It was contended that because s. 4 of the Limitation Act directs that a suit barred by limitation shall be dismissed, therefore in this case the Court below, if it were wrong in its decision on the limitation question, disobeyed a positive prohibition of the law and therefore acted with material irregularity. But surely the prohibition contained in s. 13

(1) I. L. R. 13 All. 277. (2) I. L. R. 11 Calc. 6.

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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.

1893. February 7.

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.