

Criminal Procedure provides that all trials before a Court of Sessions shall be either by jury or with the aid of assessors. In only one instance is a Court of Sessions authorized to record evidence in the absence of jury or assessors and that is when additional evidence is called for by the Appellate Court (*Vide* s. 428, Code of Criminal Procedure). But in the present case the evidence to prove the statement made by the deceased was recorded before a tribunal which had no authority to record it. It was in fact evidence recorded *coram non iudice*. We consider this a material irregularity which is not covered by the provisions of s. 537 of the Code of Criminal Procedure. We are therefore obliged to set aside the conviction and sentence, and to direct that the accused, Ram Lal, be tried *de novo*, and we direct that the new trial be had before the Sessions Judge of Farakhabad.

1893

QUEEN-
EMPRESS
v.
RAM LAL.

REVISIONAL CIVIL.

1893

February 3.

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

LACHMAN SINGH (PLAINTIFF) v. GHASI AND OTHERS (DEFENDANTS).*

Act XII of 1881, ss. 93 (g), 205—Act XIX of 1873, s. 146—“Proprietor”—“Co-sharer”—Civil and Revenue Courts, jurisdiction of.

Where a lambardar brought a suit for arrears of land revenue payable by the proprietors against several defendants of whom some were co-sharers and others mortgagees in possession. *Held* that such suit was one of the nature contemplated by s. 93 (g) of the North-Western Provinces Rent Act, 1881, and was cognizable by a Court of Revenue as against all the defendants.

In this case the plaintiff, a lambardar, sued the defendants (some thirteen in number) in the Court of the Assistant Collector of Bulandshahr for recovery of arrears of revenue. In the plaint the defendants were described collectively as “co-sharers,” but it appeared that of the thirteen only three were co-sharers and the remainder were mortgagees in possession. The Assistant Collector, holding that the term “co-sharer” could not include a mortgagee,

* Miscellaneous No. 27 of 1892. A reference under s. 205 of Act XII of 1881 (N.-W. P. Rent Act) by H. P. Funnelt, Esq., Collector of Bulandshahr, dated the 29th July 1892.

1893

LACHMAN
SINGH
v.
GHASI.

dismissed the suit on the ground that it was not cognizable by a Court of Revenue.

The plaintiff appealed to the Collector, who referred the question to the High Court under s. 205 of Act No. XII of 1881, by his order of the 25th of January 1892, which is given below—

“In this case the lambardar has sued the shareholders of a joint *khata* for arrears of Government revenue. In the *khata* there are some of the shares mortgaged to mortgagees and some of them still held by the co-sharers of the mahal. The Lower Court has dismissed the lambardar's claim relying on the decision of the Full Bench ruling of the High Court in *Bhawani Gir v. Dalbardan Gir* (1). That decision was based on the law as it stood before the passing of Act VIII of 1879, by which Act XIX of 1873 was amended. Now by that amending Act “proprietor” includes mortgagee in s. 147, Act XIX of 1873, and therefore a mortgagee is thereby rendered specially liable for the revenue of the mahal. The lambardar accordingly sues for it only; he sues the co-sharers under the Rent Act instead of the “proprietors,” as the latter word does not occur in Act XII of 1881. The question therefore arises as to whether under the amended law of Revenue (Act XIX of 1873), and s. 93 (g) Act XII of 1881, a lambardar can sue the mortgagee of a co-sharer for arrears of revenue in a Revenue Court or no: in other words, since the word “proprietor” covers a mortgagee in liability for the Government revenue, does the substitution for the word “proprietor” of the word “co-sharer” in s. 93 (g), Act XII of 1881, preclude the lambardar from suing for arrears of revenue in the Revenue Courts.

The record in the case will therefore be forwarded to the District Judge of Meerut under s. 205 of the Rent Act for the decision of the Hon'ble the High Court on the above point.”

On this reference the following opinion was pronounced:—

EDGE, C. J., and AIKMAN, J.—This is a reference under s. 205 of Act No. XII of 1881. The suit was brought in the Revenue Court

(1) I. L. R., 3 All., 144.

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.

RAGHU NATH SAHAI (DEFENDANT) v. THE OFFICIAL LIQUIDATOR
OF THE HIMALAYA BANK, L^Y. (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 Lal*, 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 B. Greeven, Esq., Subordinate Judge of Dehra Dún, dated the 14th June 1892.