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KAHIM-UN-  
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v.  
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passed on the sale of the debt. We are consequently of opinion that the right and interest of the mortgagee under that bond vested in the plaintiff on the sale at auction under the decree.

We dismiss the appeal with costs.

*Appeal dismissed.*

## APPELLATE CRIMINAL.

*Before Mr. Justice Tyrrell and Mr. Justice Aikman.*

QUEEN-EMPRESS v. RAM LAL.

*Criminal Procedure Code, ss. 268, 428, 537—Material irregularity—  
Assessors, statement of deceased person not proved in their presence.*

Where in a trial for murder held with assessors the Court relied on a statement made by the deceased, and the evidence necessary to prove such statement was not recorded until after the close of the trial and the discharge of the assessors. *Held* that this amounted to a material irregularity which was not covered by s. 537 of the Code of Criminal Procedure.

THE facts of this case sufficiently appear from the judgment of the Court.

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

The appellant was not represented.

TYRRELL and AIKMAN, JJ. In this case one Ram Lal was convicted by the Additional Sessions Judge of Farakhabad of murdering a man named Baldeo by shooting him in the back, and was sentenced to transportation for life.

Against this conviction and sentence he appeals.

For the prosecution five witnesses were called who are alleged to have been present when Baldeo was shot. These witnesses were discredited by the Additional Sessions Judge for reasons the validity of which, in view of the order we think it necessary to pass, we will not now discuss. The Additional Sessions Judge based his judgment mainly on a statement made by the deceased. Evidence to prove that statement was not recorded by the Additional Sessions Judge until after the assessors had been discharged. We consider this an error which vitiates the trial. Section 268 of the Code of

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.

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## 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. Funnett, Esq., Collector of Bulandshahr, dated the 29th July 1892.