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that a plaint if not properly stamped within limitation is not a good plaint to prevent the law of limitation from applying to the suit. We may refer to the following decisions of this Court on the points which we have just been discussing—*viz.*, *Balkaran Rai v. Gobind Nath Tiwari* (1); *Jainti Prasad v. Bachu Singh* (2); *Naraini Kuar v. Makhan Lal* (3). On this ground alone we would dismiss this appeal. When the stamps in this case were paid into Court, any suit by Abbasi Begam for dower was already time-barred. The Subordinate Judge had no power under section 5 of the Indian Limitation Act, 1877, to extend the period of limitation beyond the 25th of October 1892; consequently his order of the 6th of February was ineffectual.

[The judgment then went on to consider the appeal upon the merits, but the remaining portion is not material for the purposes of this report.—Ed.]

Before Mr. Justice Know.

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January 24.

TULSI PRASAD (OBJECTOR) v MATRU MAL AND ANOTHER (APPLICANTS).  
*Act No. XIX of 1873 (N.-W. P. Land Revenue Act), sections 111, 112, 113, 114, 214, 219—Decision of question of title by a Court of Revenue—Ex-parte decision—Appeal—Objection filed after time limited by Court but before action taken under section 113.*

*Held* that the provisions of sections 214 and 219 of Act No. XIX of 1873 do not apply to an *ex parte* decision of a question of title by a Court of Revenue acting under section 113 of the said Act.

*Held* also that a Court of Revenue acting under section 113 of Act No. XIX of 1873 was not precluded from dealing with an objection brought before it merely by reason of such objection not having been filed within the time limited by the Court for filing objections, the Court not having up to that time taken any action under section 113 of the said Act. *Muhammad Abdul Karim v. Muhammad Shadi Khan* (4) distinguished.

The respondents Matru Mal and Behari Lal applied on the 14th of September 1891, under section 108 of the North-Western Provinces Land Revenue Act 1873, for perfect partition of their joint share in Kasba Purdilnagar. On this application the Assistant Collector fixed the 1st of December for filing objections under section

\* Second Appeal No. 113 of 1895 from a decree of L. G. Evans, Esq., District Judge of Aligarh, dated the 13th December 1894, confirming an order of W. Tudball, Esq., Assistant Collector of Aligarh, dated the 23rd November 1892.

(1) I. L. R., 12 All., 129.

(3) I. L. R., 17 All., 526.

(2) I. L. R. 15 All., 65.

(4) I. L. R., 9 All., 429.

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111 of the said Act. Objections were filed by Tulsi Prasad and another on the 2nd December 1891, the objections being mainly to the effect that the share of the applicants if partitioned ought to be made liable for a proportionate part of a certain *malikana* allowance alleged to be payable from the whole mahál. At the hearing, which took place on the 23rd of November 1892, the objectors were not present and the matter was dealt with *ex parte*. The Assistant Collector granted the prayer for partition, disallowed the objections and decided that the applicants' share should not be made liable to payment of malikana.

Against this order in respect of the payment of malikana the objector Tulsi Prasad, appealed to the District Judge. The District Judge found that the decision of the Assistant Collector was a decision of a purely executive nature, and dismissed the appeal on the ground that no appeal lay to him. From this dismissal Tulsi Prasad appealed to the High Court.

Pandit *Sundar Lal*, for the appellant.

Babu *Jogindro Nath Chaudhri*, for the respondents.

KNOX, J.—This is a second appeal from an order passed by the District Judge of Aligarh, confirming an order passed by an Assistant Collector of Aligarh. The Assistant Collector had before him certain partition proceedings. In the course of these proceedings the appellant raised a claim to the effect that the land which was being partitioned should be made subject to the payment of certain *malikana* and not be released from the payment of that *malikana*. The Collector decided that he was entitled to make any record which seemed to him just and proper under the circumstances and decided that the share of the respondent should not be burdened with any portion of the *malikana* in question. The District Judge held that this order of the Assistant Collector was an order not of a judicial character but of an executive character, and therefore not open to an appeal to the District Judge.

In appeal before me it is urged that the order was one from which an appeal lay to the lower appellate Court. In reply the learned vakil who holds the brief of the counsel for the respondents did not

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merely contend that the order was an order of an executive nature, but he further attempted to sustain the order on two other grounds. The first of these grounds was that the order in question was an order passed *ex parte*, and that by section 214 read with section 219 no appeal lay. Sections 214 and 219 are sections which govern proceedings of a judicial nature in Revenue Courts. We have, however, held in this Court that when a Revenue Court proceeds to determine questions of title under section 113 of the North-Western Provinces Land Revenue Act of 1873, it is in effect, and must be deemed to be for that purpose, a Court of civil judicature. Section 113 expressly lays down, and is followed by section 114 in laying down, that to all such proceedings the procedure laid down in the Code of Civil Procedure for trial of original suits and regarding the right of appeal applies. This contention therefore fails.

It was next urged that the objection of the appellant in these partition proceedings was not an objection contemplated by section 113 of the North-Western Provinces Land Revenue Act, inasmuch as it was not filed in the Revenue Court on or before the day specified for the filing of such objection, namely the 1st of December. It was filed on the 2nd of December, before the Revenue Court took action under section 113, and I was referred to a case, *Muhammad Abdul Karim v. Muhammad Shadi Khan*, (1) in support of this contention. In that case, however, the objections dealt with were objections filed after action had been taken by the Court under section 113. I cannot believe that that case was intended to include objections which were filed before the Court took action under section 113, and specially objections which were dealt with by the Court acting under section 113.

This contention therefore also fails. As regards the merits I have no doubt whatever that the question whether land to be partitioned is subject to the payment of *malikana* is a question of title. I therefore decree this appeal, set aside the order of the Court below and remand the case under section 562 of the Code of Civil

Procedure with directions to the lower appellate Court to readmit the case upon its file of pending appeals and dispose of the case upon its merits. Costs to abide the result.

*Appeal remanded.*

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## REVISIONAL CRIMINAL.

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January 27.

*Before Mr. Justice Aikman.*

IN THE MATTER OF THE PETITION OF BANARSI DAS

*Criminal Procedure Code, section 195—Sanction to prosecute—Sanction granted by Court without application being made by the person to whom it is granted.*

A sanction to prosecute under section 195 of the Code of Criminal Procedure presupposes an application for sanction, and where no such application is made a Court ought not to take upon itself to grant sanction, but should take action in the manner provided by section 476 of the Code. *Empress of India v. Gobardhan Das* (1) referred to.

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

Mr. C. Ross Alston and Babu Jogindro Nath Chaudhri for the applicant.

Munshi Madho Prasad for the opposite party.

The Government Pleader (Munshi Ram Prasad) for the Crown.

AIKMAN, J.—This is an application for the revision of an order of the Sessions Judge of Gorakhpur. From the record submitted it appears that one Lalla was sent up by the Police for trial on a charge of attempt to commit housebreaking by night. He was convicted by Mr. Lemaistre, Deputy Magistrate, and sentenced to six months' rigorous imprisonment. On appeal he was acquitted by the Sessions Judge. The following are the concluding words of the Sessions Judge's appellate judgment:—"The appeal is allowed and the conviction and sentence of Lalla are quashed. He will be immediately released, and is at liberty to prosecute Banarsi Das under sections 211, 193, Penal Code, or other sections applicable, for getting up and falsely testifying in this case." This order was passed on the 27th of April 1895. On the 23rd of October following Lalla filed a complaint against Banarsi Das the applicant, for offences punishable under sections