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prescribed for the suit has thus in effect been shortened. The words "period of limitation prescribed for a suit" in s. 2 do not refer only to the entries in column 2 of the schedules of the period of limitation, but to those entries taken in connection with the entries in column 3 of the time when the period begins to run, since the two together prescribe the period of limitation for a suit; no period of limitation can be ascertained and applied to a particular suit except by considering both entries. The same words "period of limitation prescribed for a suit" occur in s. 4, and the way they are used shows that they are to be understood in the above sense. That section provides that a suit "instituted after the period of limitation prescribed therefor by the second schedule" shall be dismissed, and obviously it is only by taking into consideration the period and the time when it begins to run that the period of limitation prescribed for the suit can be ascertained, so as to allow of a determination whether the suit has been instituted after the period of limitation prescribed. The obvious intention of the Legislature was to give relief in cases where the alteration of the law has in point of fact deprived a person of the full time for instituting a suit which the old law had allowed him. The appeal will be decreed with costs, and the plaintiff's claim be decreed in full against the person and property of the defendants.

Appeal allowed.

CIVIL JURISDICTION.

1881
January 4.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Straight.

SARNAM TEWARI AND ANOTHER (DEFENDANTS) v. SAKINA BIBI (PLAINTIFF).*

Powers of Revision of the High Court under s. 622 of Act X of 1877 (Civil Procedure Code).

S instituted a suit against *T* in the Court of an Assistant Collector of the first class, who dismissed the suit. On appeal by *S* the District Court gave her a decree. On second appeal by *T* the High Court held that, as the suit was one of the nature cognizable in a Court of Small Causes, a second appeal would not lie in the case, and dismissed it. *T* thereupon applied to the High Court to set

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* Application, No. 81B of 1880, for revision under s. 622 of Act X of 1877 of the decrees of J. W. Power, Esq., Judge of Ghazipur, and of C. Rustomjee, Esq., Assistant Collector of the first class, dated the 10th December, 1879, and 30th September, 1879, respectively.

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aside, under the provisions of s. 622 of Act X of 1877, the proceedings of both the lower Courts on the ground that both those Courts had exercised a jurisdiction not vested in them by law. *Held* that the High Court was competent to entertain such application and to quash the proceedings of both the lower Courts, under the provisions of s. 622 of Act X of 1877, and the proceedings of both those Courts should be quashed.

Observations by STUART, C. J., on the powers of revision of the High Court under s. 622 of Act X of 1877.

THIS was an application to the High Court for the exercise of its powers of revision under s. 622 of Act X of 1877. A suit had been instituted against the petitioners in the Court of an Assistant Collector of the first class by one Sakina Begam, such suit purporting to be one under s. 93 (*a*) of Act XVIII of 1873. The Assistant Collector dismissed the suit. On appeal by the plaintiff the District Court gave her a decree. On appeal to the High Court by the defendants, the High Court held, on the 15th June, 1880, that no second appeal in the case would lie, as the suit was of the nature cognizable in a Court of Small Causes (1). The present application was thereupon made by the defendants, in which they prayed that, as the suit was not cognizable in the Revenue Courts, but one cognizable in the Court of Small Causes, the entire proceedings in the case, that is to say, the proceedings before the Assistant Collector and before the District Court, might be set aside, as having been had without jurisdiction.

Lala *Lalta Prasad*, for the defendants, petitioners.

The *Junior Government Pleader* (Babu *Dwarka Nath Banarji*), for the plaintiff.

The following judgments were delivered by the High Court:—

STUART, C. J.—This is an application to us by the defendants-appellants under s. 622, Act X of 1877, by which it is prayed that, as the entire proceedings from the institution of the suit to the hearing of the appeal by the Judge were without jurisdiction, they should be quashed and declared null and void. And such appears to me to be the necessary result of our judgment of the 15th June, 1880. By that judgment we held that the Revenue Court had no jurisdiction in the case as it was one exlusively cognizable by the

(1) See *Sarnam Tewari* v. *Sakina Bibi*, ante p. 37.

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Small Cause Court, from whose judgment a second appeal is prohibited by s. 586 of the Procedure Code, Act X of 1877, and the second appeal which has been filed in this Court and which was submitted to us could not be entertained. There was, therefore, no suit and no appeal; nor any valid proceeding before us of which we could take notice, the whole record in fact having disappeared by the necessary operation of the self-destructive procedure which had been adopted. Under these cirumstances we might, in my opinion, make the order asked for without reference to s. 622, and simply by our general powers of control under the High Court Act and our Charter. Having regard, however, to the scope and probably intended application of s. 622, I do not consider that we should feel precluded from making this order under its terms, for, in my judgment, it is our sound judicial policy to make the remedy allowed by s. 622 as wide as possible, and in such a case as the present the order now asked for is, in my opinion, clearly within the spirit and principle, and presumably the intention, of the section, and it would therefore be to defeat its purpose if we refused to apply it. It was argued at the hearing on behalf of the defendants-appellants that we are not driven to set aside the whole proceedings, but that we might, notwithstanding their futility, entertain the case as in second appeal, and in support of this contention the opinions of several of the Judges of this Court delivered in *Maulvi Muhammad* v. *Syed Husain* (1) were referred to, and there can be no doubt that in certain cases the remedy by second appeal is allowable under s. 622 if the High Court considers that proceeding necessary for the ends of justice. I myself also was of that opinion, but I at the same time held that s. 622 gives us still larger powers of revision in civil cases than we have in second appeals, where we are limited to questions of law arising out of the judgment appealed against. For I considered that under s. 622 we may make any order, whether in regard to fact or law, we may think proper for the purposes of the justice of the case, and I added that the power given to the High Court under s. 622 in civil cases very much resembles, if it is not the same as, the jurisdiction given to the High Court in criminal cases under s. 297 of the Criminal Procedure Code, by which the High Court

(1) I. L. R., 3 All., 203.

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is empowered to pass such judgment, sentence, or order as it thinks fit, the corresponding words in s. 622 being precisely similar. I am quite clear that we have all this power under s. 622, although of course the analogy only holds as to cases under s. 622 "in which no appeal lies to the High Court," in other respects analogy and correspondence seem complete.

It might no doubt be argued that, inasmuch as s. 622 only applies where there is no appeal to the High Court, the object was to confer on the High Court a discretionary power to afford the same kind of remedy by way of appeal as would have been available if the case did not fall under s. 622 by being appealable. But the words appear to me to be too wide to be so limited, for we may make any order, not any order we might make in second appeal, nor even in first appeal, but any order we "think fit", and the chapter of which s. 622 is part is headed "Of reference to and *revision* by the High Court," and the word "*revision*" is not necessarily limited to matters of form or even to mere questions of law, but includes a general power of control as to everything relating to the suit.

In the present case such a partial proceeding as that by second appeal would be utterly inappropriate if not irrelevant to what has been done. The proceeding by second appeal assumes the existence of a valid record and judgment within jurisdiction, but here there is no such thing, no judgment which we can look at, no "record," no "case," and the Court which assumed to decide it not only had no jurisdiction, but no jurisdiction whatever for any such class of cases. We are not, however, confined by s. 622 to any such partial proceeding, but we may, if we "think fit," make any order we please, and direct any thing to be done which we consider called for under the circumstances. Here the whole proceedings before the Assistant Collector and the Judge have disappeared, and there is nothing whatever left on which to base the consideration of the case by the Court in second appeal.

I would, therefore, apply s. 622, Act X of 1877, in the case by granting this application and quashing the whole proceedings below both in the Assistant Collector's Court and in the Judge's

Court *ab initio*, and allowing the plaintiff to present her plaint in the Small Cause Court, the applicant to have the cost of this application.

STRAIGHT, J.—I concur in substance with the observations of the learned Chief Justice and in his view that we should exercise the powers given to this Court by s. 622 of Act X of 1877 as amended by Act XII of 1879. The opposing party, Sakina Bibi, as zamindar of mauza Bishanpur Piprahi, brought a suit against the applicants defendants in the Revenue Court, to recover the value of half the produce of a grove of mango trees, upon the basis of a contract contained in the *wajib-ul-arz* of 1863. The claim purported to be instituted under clause (*a*), s. 93 of the Rent Act. It was dismissed by the Assistant Collector for failure of proof, but the Judge on appeal decreed it, and thereupon the defendants, applicants before us, preferred an appeal to this Court, which was heard before the learned Chief Justice and myself. We were of opinion that an objection taken by the then plaintiff-respondent to our jurisdiction to hear the appeal was a fatal one, and that the suit being in the nature of a Small Cause Court case was prohibited from second appeal. We therefore had no alternative but to dismiss the appeal then before us, with the necessary consequence that the judgment of the lower appellate Court remained in force, although we were clearly of opinion that it had no power to take cognizance of the plaintiff's suit. The record, however, of the proceedings before the Assistant Collector and subsequently in the lower appellate Court remained in existence, and upon application formally and properly made under s. 622, this Court, having been moved to do so, by order of Mr. Justice Pearson of the 3rd September, 1880, thought proper to call for such record, pertaining as it did to a case in which no second appeal lay, and the plaintiff had notice to show cause why the entire proceedings by her against the defendants-appellants, having been instituted in an original Court and carried to an appeal Court, both without jurisdiction, should not be quashed.

It is admitted on both sides that the plaintiff's claim should have been brought in the Small Cause Court, and that the appeal should have been dismissed by the Judge on the ground that he had no jurisdiction to entertain it. We therefore have before us a

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record in which two Courts have "exercised a jurisdiction not vested in them by law," and I cannot but think that this is just one of those cases in which s. 622 was intended to give us power to put matters right. It would be absurd for us, when our attention has been directed to them, to allow proceedings to continue upon a formal record as having force or effect, when from the commencement to the end they have been carried on in Courts having no jurisdiction. Equally as the Assistant Collector had no power to dismiss the plaintiff's claim, so was it incompetent for the Judge to decree her appeal and give her the relief she asked. It seems to me that s. 622 enables us to entertain and act upon the present application, though I am scarcely as yet prepared to go the length contended for by Mr. Banarji on behalf of the opposite party, that "pass such order in the case as the High Court thinks fit" permits us to exercise an absolute discretion as to the merits of a case, and so in the present instance, if we think substantial justice has been done, allows of our refusing to interfere. I do not consider it possible for us to adopt any such course. The decree which the plaintiff obtained from the lower appellate Court is not worth the paper it is written upon, and no declaration or action of ours could give it vitality or effect. The order therefore will be as proposed by the Chief Justice that the whole of the proceedings in the Revenue and lower appellate Court should be quashed, and we direct that the plaint be returned to Sakina Bibi, the opposing party to this application, for presentation to the Small Cause Court. The appellant must have the costs of this application.

Application allowed.

1881
January 5.

APPELLATE CIVIL.

Before Mr. Justice Pearson and Mr. Justice Straight.

NABIRA RAI AND ANOTHER (DEFENDANTS) *v.* ACHAMPAT RAI (PLAINTIFF).*

Occupancy-tenancy—"Immoveable property"—Mortgage—Registration—Act I of 1868 *(General Clauses Act), s.* 2 (5.)—*Act III. of* 1877 *(Registration Act), ss.* 17, 49.

The obligee of a bond dated the 29th October, 1869, sued to recover the amount due thereunder from the property hypothecated therein. By the terms of the

* Second Appeal, No. 734 of 1880, from a decree of Maulvi Abdul Majid Khan, Subordinate Judge of Ghazipur, dated the 4th May, 1880, modifying a decree of Munshi Kulwant Prasad, Munsif of Rasra, ated the 20th February, 1880.