

as under s. 380 of the Penal Code. The second objection urged by Mr. Hill has force, and I accordingly quash the conviction and sentence upon Sita Ram Rai under s. 411 of the Penal Code. The sentence passed by the Sessions Judge for the offence of abetment will stand against him as for the substantive offence under s. 380.

1880

EMPRESS
INDIA
v.
SITA RAM
RAI.

APPELLATE CIVIL.

1880

August 11

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

AHSAN KHAN (JUDGMENT-DEBTOR) v. GANGA RAM (DECREE-HOLDER) AND
MUZZAFFAR ALI KHAN (AUCTION-PURCHASER) *

Application to set aside sale in execution of decree—Absence of judgment-debtor from British India—Limitation—Act XV of 1877 (Limitation Act), s. 13, sch. ii. No. 166—Act X of 1877 (Civil Procedure Code), s. 311.

The provisions of s. 13 of Act XV of 1877 are not applicable to proceedings in the execution of a decree.

THE judgment-debtor in this case was a soldier in Her Majesty's Indian Army, and at the time that certain immoveable property belonging to him was sold in the execution of the decree, that is to say, on the 20th November, 1879, was on foreign service with his regiment. On the 13th March, 1880, the judgment-debtor applied to the Court executing the decree, under s. 311 of Act X of 1877, to set aside the sale on the ground, amongst others, of irregularity in its publication by reason of which the property had been sold for an inadequate price. The Court rejected the application on the ground that, with reference to Act XV of 1877, sch. ii, No. 166, it was barred by limitation, holding that the provisions of s. 13 of that Act did not apply to proceedings in the execution of a decree. It also rejected the application on its merits.

The judgment-debtor appealed to the High Court.

Babu *Beni Prasad*, for the appellaut.

Pandit *Ajudhia Nath*, for the respondent.

* First Appeal, No. 86 of 1880, from an order of Maulvi Amir-ul-lah Khan, Munsif of Sháhjahánpur, dated the 19th March, 1880.

1880

The Court (STUART, C. J. and STRAIGHT, J.) delivered the following

HUSAIN KHAN
v.
LINGA RAM.

JUDGMENT.—It does not appear to us that s. 13 of Act XV of 1877 applies to proceedings in execution, and we therefore do not think that time was saved to the appellant during his absence at Kabul. The other grounds are not pressed. The appeal is dismissed with costs.

Appeal dismissed.

1880
August 17.

Before Mr. Justice Oldfield and Mr Justice Straight.

UDAI RAM AND ANOTHER (DEFENDANTS) v. GHULAM HUSAIN (PLAINTIFF).*

Lambardár and Co-sharer—Profits.

The lambardár of one patti of a mahál, who was a shareholder of both pattis of the mahál, sued the lambardár of the other patti and a shareholder of such patti for profits divisible among the shareholders of the mahál generally, deducting the share of such profits belonging to the defendants. *Held* that, as the suit was one for settlement of accounts between the body of shareholders in which it was necessary that all of them should be properly represented, and as the plaintiff was suing without their authority, the suit was not maintainable.

A VILLAGE called Bedohri consisted of two pattis, one of $6\frac{1}{2}$ biswas, the other of $13\frac{1}{2}$ biswas. The plaintiff in this suit was the lambardár of the former patti, and Udai Ram, one of the defendants in this suit, was the lambardár of the latter patti. The plaintiff in this suit was a co-sharer of both pattis. Udai Ram and his co-defendant held lands in both pattis and a part of the common lands of the village as “*khud-kasht*” at certain rates of rent. They sub-let such lands from the beginning of 1283 fasli at enhanced rates of rent. The plaintiff brought the present suit against them in the Court of an Assistant Collector of the first class, claiming, as the profits of the co-sharers of the village, Rs. 1,102-10-4 the difference, after deducting the share of the defendants, between the rent payable by them for such lands for the years 1283 and 1284 fasli, and the rent payable to them by their sub-tenants for such lands for those years. He alleged that

* Second Appeal, No. 485 of 1880, from a decree of H. M. Chase, Esq., Judge of Saháranpur, dated the 11th March, 1880, reversing a decree of T. Harkness, Esq., Assistant Collector of the first class, dated the 1st December, 1879.