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to a proportionate distribution of the moneys realized by the sale of the property of X, Y and Z, so far as those moneys represent the share of his own judgment-debtors X and Y in that property. The principal defendant replies that he is not so entitled, because he does not bring himself within the provisions of section 295, inasmuch as the decrees are not against the *same* judgment-debtor. The question we have to decide is whether the plaintiff is entitled as he claims." The whole question turns upon whether, under such circumstances, the case falls within section 295 of the Code. I was a member of the Court which referred the case, and for the reasons which I gave in my judgment, which it is unnecessary to repeat, and also for those which are very clearly stated by my colleague, Mr. Justice Banerjee, I consider that the question ought to be answered, as we then answered it, in the affirmative.

PRINSEP, J. I am also of opinion that this is a case which may properly come under section 295 of the Code of Civil Procedure, in which the claims of two rival judgment-creditors may be adjusted and satisfied.

SALE, J. I also agree in thinking that the case falls under section 295 of the Code of Civil Procedure, and may be dealt with under that section.

STEVENS, J. I am also of the same opinion.

GEIDT, J. I am also of the same opinion.

[588] MACLEAN, C. J. The result is that the decree of the lower Court is set aside and this appeal allowed with costs in all Courts, including the costs of this reference.

Appeal allowed.

30 C. 588 (=7 C. W. N. 547).

CIVIL RULE.

HALADHAR MAITI *v.* CHOYTONNA MAITI.* [13th April, 1903.]

Jurisdiction—High Court, power of, to review orders passed without jurisdiction in the Presidency Small Cause Court—Bench consisting of the Chief Justice and another Judge—Charter Act (24 & 25 Vict. C. 104) ss. 14, 15—Registrar, Presidency Small Cause Court, jurisdiction of—Ex-parte decree for default—Civil Procedure Code (Act XIV of 1882) s. 622—Rules 63, 70, 92, 94 (framed by the High Court) under s. 9 of the Presidency Small Cause Courts Act (I of 1895).

By virtue of the power conferred under s. 14 of the Charter Act (24 and 25 Vict., c. 104), the Chief Justice by constituting a Division Court consisting of himself and any other Judge of the High Court, can deal with applications against an order made by the Presidency Small Cause Court.

Shamsher Mundul v. *Ganendra Narain Mitter* (1) explained.

The Registrar of the Presidency Small Cause Court has no jurisdiction to entertain an application for new trial to set aside an *ex-parte* decree made by him for default.

[Ref. 37 C. 714 ; 39 M. 527 ; Foll. 1914 M. W. N. 368=26 M. L. J. 467=23 I. C. 572 ; 18 M. L. T. 254=1915 M. W. N. 907=30 I. C. 488 ; 18 M. L. T. 164=29 M. L. J. 353=1915 M. W. N. 728=30 I. C. 353.]

RULE granted to the defendants, Choytonna Maiti and another, under s. 622 of the Code of Civil Procedure, and s. 15 of the Letters Patent.

* Civil Rule No. 914 of 1903, against the order of F. K. Dobbin, Registrar, Presidency Small Cause Court, Calcutta, dated March 24, 1903.

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The plaintiff Haladhar Maiti brought a suit in the Presidency Small Cause Court for recovery of a certain sum of money as price of goods sold to the defendants, Choytonna Maiti and another.

[589] The defendants not having entered appearance, the Registrar of the said Court recorded a decree for default under rule 60 of the rules framed by the High Court under s. 9 of the Presidency Small Cause Courts Act. Subsequently the defendants made an application to the Registrar, praying for a new trial, which was also dismissed for default. They then filed further grounds for a new trial, and the application was restored; but after several adjournments the Registrar rejected the said application with costs. Thereupon the defendants moved the High Court to set aside the orders of the Registrar rejecting their application for a new trial as illegal and passed without jurisdiction, and obtained this Rule.

Babu *Hara Kumar Mitter*, in shewing cause, took a preliminary objection to the hearing of this Rule on the ground that a Division Bench of this Court had no power to set aside an order passed by the Calcutta Small Cause Court, unless rules had been framed under s. 13 of the Charter Act. S. 14 of the Charter Act only empowers the Chief Justice to determine which Judge or Judges shall constitute a Division Court, but unless rules have been previously framed for the purpose of dealing with orders passed by the Presidency Small Cause Court, the Division Court has no power to hear such application, and consequently the Chief Justice could not constitute a Division Court for that purpose. S. 14 of the Charter Act must be read as limited by s. 13, otherwise the two sections would be inconsistent: see the case of *Queen* v. *Nyn Singh* (1). S. 36 of the Letters Patent of 1865 refers to s. 13 of the Charter Act, and also lays down the same rule. In the rules framed by the High Court under the Charter Act, Division Courts are constituted for hearing cases from provincial districts, but Calcutta is not included in them; and it was held in the case of *Shamsher Mundul* v. *Ganendra Narain Mitter* (2) that the Bench presiding over the Presidency Group has no jurisdiction over the Calcutta Small Cause Court.

Babu *Jogesh Chunder Dey* for the petitioners. Under s. 15 of the Letters Patent, as also under s. 622 of the Civil Procedure Code, the High Court has ample power to hear such applications against orders of the Registrar of the Calcutta Small Cause Court. **[590]** This Bench may be taken as constituted under s. 14 of the Charter Act.

The question in this case is, whether the Registrar of the Calcutta Small Cause Court has power to set aside a decree by default in a suit for liquidated demands. I submit he has not: see rules 60, 61, and 63 of the rules framed by the High Court. The Registrar might have original jurisdiction, but after a decree the application must be made to the *Court* and not to the *Registrar*. Rules 76 to 82 make distinctions between the Court and the Registrar.

Babu *Hara Kumar Mitter* in reply. As the Registrar has power to pass an *ex-parte* decree, he has power to deal with an application for setting it aside. He is also invested with *quasi*-judicial powers in respect of liquidated demands exceeding Rs. 20. S. 36 of the Presidency Small Cause Courts Act extends to such a case like this. In Rule 63 also the Court includes the Registrar as regards setting aside *ex-parte* decrees, and the word "Court" is not always confined to a "Judge."

(1) (1870) 2 N. W. P. H. C. R. 177. (2) (1902) I. L. R. 29 Cal. 498.

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If, however, the Registrar be not a Court, the petitioners have no *locus standi*, as they can only apply to the High Court to set aside an order of the "Court." If the order of the Registrar be not taken as an order of the Court, but that of an officer of the Court, the High Court cannot interfere with it in revision; the petitioner may have his remedy by a regular suit.

MACLEAN, C. J. We are invited by the present petitioners, who are defendants in a Small Cause Court suit for the recovery of a certain sum of money,—a liquidated claim,—to interfere under section 622 of the Code of Civil Procedure, and to hold that certain orders made by the Registrar in the suit were made by him without jurisdiction.

The facts as to which there is no dispute are these: On the 3rd of February 1902, the plaintiff brought an action in the Court of Small Causes of Calcutta for the recovery of a sum of Rs. 450, alleged to be due for money advanced. The defendants, who alleged that no notice of the proceedings were served upon them, entered no appearance, and on the 27th of February 1902 the Registrar made a decree for default with costs.

[591] The present petitioners, as they say—and this apparently is not contradicted—acquired knowledge for the first time of this *ex-parte* decree some time in the month of May following, and they then made an application on the 21st of June, asking for a new trial. That came on, on the 7th of July, and apparently the petitioners, who were present in the Court-room, did not hear the application called on, and it was accordingly dismissed by the Registrar. On the same day they filed further grounds for a new trial, and on the 21st of July the application for a new trial was restored, and after several adjournments, the Registrar, on the 17th of February 1903, rejected the application with costs.

The petitioners, though from their action they would seem to have thought that the Registrar had jurisdiction to deal with these applications, now contend that the orders of the 7th of July 1902 and of the 17th of February 1903 were passed without any jurisdiction on his part. Hence the present application under section 622 of the Code of Civil Procedure.

A preliminary objection has been taken that the Bench as now constituted has no jurisdiction to deal with this application.

I am unable to accede to that view. It is clear, having regard to section 6 of the Presidency Small Cause Court Act (XV of 1882), that the Presidency Small Cause Court is deemed to be under the superintendence of, and subordinate to, the High Court, and there cannot, I think, be any reasonable doubt that this Court has jurisdiction to review, under section 622 of the Code, orders which are said to have been made without jurisdiction in the Presidency Small Cause Court. This has been done again and again without objection. But it is contended by the opposite party that, inasmuch as no rules have been made under section 13 of the Charter Act, assigning to any Judges or to any Division Bench such a case as the present, this Bench has no jurisdiction to deal with it, and that it can only be heard by the Chief Justice and all the Judges of the High Court sitting together. This contention at the present day is rather startling. We are referred to the case of *Shamsher Mundul* v. *Ganendra Narain Mitter* (1), where it was held that the Bench taking

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cases of the Presidency Group has no jurisdiction [592] over the Court of Small Causes at Calcutta, and it has no power to set aside the decree of the same Court. It is worthy of notice that in that case the Judges said that they had not been asked to exercise their extraordinary jurisdiction under section 15 of the Charter. It may well be that the decision in that case is not open to question, but it does not affect the present case. The application here is made not to the Bench taking the cases of the Presidency Group as such, but to the Chief Justice, who has power under section 14 of the Charter Act to determine what Judges in each case shall sit alone and what Judges shall constitute the various Division Benches, and to say what Judge or Judges shall hear a particular case. It is by reason of this power, so vested in the Chief Justice, that applications of this nature, that is, in connection with orders made by the Presidency Small Cause Court, have invariably been made to the Chief justice, who can appoint, and who does then and there appoint himself and the Judge who may be sitting with him, to be the Bench to hear the application. It has been the universal practice, I believe, ever since the High Court was established, for the Chief Justice to say what particular case shall be tried by any particular Judge or Judges, and, until this moment, that position has never been challenged. In this present case I, as Chief Justice, have constituted this Bench, consisting of the learned Judge who is sitting with me and myself, to hear this application, and I do not think there is anything which prevents me from doing that.

The preliminary objection must be overruled.

On the merits, I have no doubt that the Registrar had no jurisdiction to entertain the application in question after the *ex-parte* decree had been made by him. The Court, as opposed to the Registrar, was under the rules the proper and the only authority which could deal with an application to set aside the *ex-parte* decree. It is clear, looking at rules 63, 70, 92 and 94 that the Registrar had no jurisdiction to deal with the application to set it aside under rule 63. The Court and the Court alone as opposed to the Registrar, who is invested with only a limited judicial power, can deal with such applications. A marked distinction is drawn in the rules between the power of [593] the Court and the power of the Registrar. Section 36 does not help the opposite party; that section applies to decrees and orders made by the Registrar under section 14, which is the only previous section which gives him jurisdiction to act judicially.

On these grounds the Rule must be made absolute as to the order of the Registrar of the 7th July 1902 and the 17th February 1903 with costs.

MITRA J. I concur.

Rule absolute.

30 C. 593 (=7 C. W. N. 390.)

CRIMINAL REVISION.

A. M. DUNNE *v.* KUMAR CHANDRA KISORE.*

[15th December, 1902.]

Receiver—Party—Jurisdiction—Proceedings under s. 145 of the Code of Criminal Procedure (Act V of 1898)—Possession of Receiver.

* Criminal Revision No. 877 of 1902 against the order of Rakhal Das Chatterjee, Subdivisional Officer of Gaibandha, dated July 8, 1902.