of an officiator by the whole body of registered representative *vatandars* to whom the Collector issues his notice— an election unfettered by any promises made beforehand by any of the sharers —but also because a suit in respect of any injury caused by exclusion from office or service is expressly barred by the second paragraph of cl. (*a*) of s. 4 of Act X of 1876.

With reference to the doubt suggested in the judgment in *Vasudev Vithal Samant* v. *Ramchandra Gopal Samant* (1), we are of opinion, having regard to the wording of the several clauses of s. 4, that the bar therein provided is not limited to suits against Government. The section is fully in force in the Sholapur District, where the present suit has arisen, being unaffected, as regards that district, by Act XVI of 1877. We find, therefore, [617] that the Courts below had no jurisdiction to hear the present case.

We reverse the decisions of both Courts, and reject the claim, with costs throughout.

Decree reversed and rule made absolute.

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APPELLATE CIVIL.

Before Mr. Justice Birdwood and Mr. Justice Parsons.

VENKUBAI, WIDOW OF VENKAJI ANAJI POTDAR (*Original Plaintiff*), *Applicant v.* LAKSHMAN VENKOBA KHOT (*Original Defendant*), *Opponent.** [28th November, 1887.]

Limitation—High Court's revisional powers—Civil Procedure Code (XIV of 1882), s. 622—Material irregularity.

On the 29th November, 1886, this suit was filed on a bond dated 29th November, 1881, payable in two years.

The Subordinate Judge dismissed it as time-barred, being of opinion that the cause of action had accrued on the 28th November, 1883.

Against this decision the plaintiff applied to the High Court under s. 622 of the Code of Civil Procedure (Act XIV of 1882).

Held, reversing the decision of the Subordinate Judge, that the suit was not barred by time, the cause of action having accrued on the 29th November, 1883, —that is, the day of the month corresponding with the day on which the bond was dated.

Held, further, that the decision of the Subordinate Judge being palpably wrong and illegal, the High Court had jurisdiction to exercise its revisional powers under s. 622 of the Code of Civil Procedure (Act XIV of 1882).

The Privy Council ruling in *Amir Hassan Khan* v. *Sheo Baksh Singh* (2) explained.

Where a Court, with a full and correct apprehension of the questions which it is necessary for it to decide in any case, errs, in law or in fact in its decision of any such questions with which it has jurisdiction to deal, its errors can only be corrected in due course of appeal; and where no appeal is permissible there is no remedy under s. 622 of the Code or under the provisions of s. 15 of Statute 24 & 25 Vic., c. 104, whatever remedy there may be, in the Bombay Presidency, under cl. 2 of s. 5 of Reg. II of 1827. But it is otherwise in any case where the Court, having a mistaken and wrong apprehension of the questions at issue, proceeds to determine an issue which does not really arise in the case, and bases its

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* Application under Extraordinary Jurisdiction, No. 65 of 1887.

(3) 6 B. 129. (2) 11 C. 6.

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decision of the case on its determination of that issue. If it does so, it acts with material irregularity in the exercise of its jurisdiction.

[Cons., 2 L.B.R. 333 (335); D., 20 A. 299 (301).]

[618] THIS was an application under s. 622 of the Code of Civil Procedure (Act of XIV of 1882).

The plaintiff sued on behalf of her minor sons to recover Rs. 275 on a bond dated the 29th November, 1881, payable in two years. The suit was filed on the 29th November, 1886.

The Subordinate Judge dismissed the suit as time-barred. He was of opinion, that the cause of action had accrued on the 28th November, 1883, and not on the 29th November, 1883, as stated in the plaint.

Against this decision the plaintiff applied to the High Court under s. 622 of the Code of Civil Procedure (Act XIV of 1882).

The Court (West and Birdwood, JJ.) granted a rule *nisi* calling upon the defendant to show cause why the decree of the lower Court should not be reversed, on the ground that the Subordinate Judge had erred in computing the period of limitation.

Vasudev Gopal Bhandarkar showed clause:—This is not a case in which this Court will interfere under s. 622 of the Code of Civil Procedure. The lower Court has not declined to exercise a jurisdiction vested in it by law. The Privy Council case of *Amir Hassan Khan* v. *Sheo Baksh Singh* (1) shows that this Court should not interfere even though the lower Court arrives at a wrong decision, provided it has jurisdiction over the suit.

Ghanasham Nilkanth, contra:—This is a case in which the Court declined to exercise jurisdiction. The case falls within the principle of of the ruling in *Amritrav Krishna* v. *Balkrishna Ganesh*(2). The cause of action arose during the minority of the plaintiff. The lower Court is palpably wrong in computing the period of limitation.

JUDGMENT.

BIRDWOOD, J.—The plaintiff sued on a bond dated the 29th November, 1881, and payable in two years. The Subordinate Judge has held that the suit, which was brought on the 29th November, 1886, is barred by time, the right to sue having, in his opinion, accrued on the 28th November, 1883. The plaintiff [619] has, however correctly stated in the plaint that the cause of action arose on the 29th November, 1883, for the period of two years specified in the bond must be held to have terminated on the day of the month corresponding with the day on which the bond was dated.

In a recent case—(Application No. 46 of 1877, decided on the 2nd August last)—the same Subordinate Judge held that where a bond dated the 14th June, 1883, was payable in six months, the right to sue accrued on the 13th December, 1883, and that a suit brought on the 14th December, 1886, was barred by time. He relied on the ruling in *Waman Dhondev* v. *Mahadu Balu*(3); but this Court held that his decision was palpably wrong, according to the judgment in that case, and reversed his decision in the exercise of its extraordinary jurisdiction. In a previous similar case—(Application No. 26 of 1887, decided on the 21st March last)—this Court, however, declined to interfere with the

(1) 11 C. 6. (2) 11 B. 488. (3) Printed Judgments for 1885, 251.

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decision of the same Subordinate Judge, and expressed the opinion that the case was one in which he might properly admit a review of judgment on the ground of oversight in his interpretation of the judgment relied on by him.

There can be no question, then, that, in the present case, the Subordinate Judge wrongly decided that the claim was barred by time.

We think further that we can correct his error in the exercise of our extraordinary jurisdiction, and that we are not precluded from so doing by the decision of the Privy Council in *Amir Hassan Khan* v. *Sheo Baksh Singh* (1). In that case it was held that where a Court had perfect jurisdiction to decide a question before it and decided it, then, even if it decided wrongly, it did not exercise its jurisdiction illegally or with material irregularity within the meaning of s. 622 of the Code of Civil Procedure. There can be no question that where a Court, with a full and correct apprehension of the questions which it is necessary for it to decide in any case, errs, in law or in fact, in its decision of any such questions, with which it has jurisdiction to deal, its error can **[620]** only be corrected in due course of appeal—*Tejram* v. *Harsukh* (2); and where no appeal is permissible, there would be no remedy under s. 622 of the Code or under the provisions of s. 15 of the Stat. 24 & 25 Vic., c. 104, whatever remedy there might be, in this Presidency, under cl. 2 of s. 5 of Reg. II of 1827. But it would be otherwise in any case where the Court, having a mistaken and wrong apprehension of the questions at issue, proceeded to determine an issue which did not really arise in the case, and based its decision of the case on its determination of that issue. If, for instance, it took a view of the facts contended for by neither of the parties, and which was palpably wrong, then, whether its application of the law to those assumed facts were right or wrong, it would not be an application of the law to the facts of the case before it, and would be outside the case altogether. In the present case, the Subordinate Judge's decision on the question of limitation would be perfectly right and within his jurisdiction if the facts of the case were as he supposed them to be. It is a wrong and illegal decision, not as a bare determination of a question under the Limitation Act, but because the Subordinate Judge has mis-stated or misunderstood the obvious facts of the case and has so been led to decide an issue which he ought never to have raised. His decision of it has nothing to do with the case actually before him. And by basing his decision of the case on his decision of that issue, he has, we think, acted with material irregularity in the exercise of his jurisdiction, even if he has not failed to exercise a jurisdiction vested in him.

We, therefore, make absolute, with costs, the rule granted in this case, and direct the Subordinate Judge to try the case on its merits.

Rule absolute.

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(1) 11 C. 6. (2) 1 A. 101.