thirty days from the date of executing any process for enforcing the judgment (see Act XV of 1877, sch. II, art. 164). Section 108 is one of the sections comprised in chap. VII of the Code of Civil Procedure, the whole of which is in terms extended to the Court of Small Causes by s. 23 of the Presidency Small Cause Courts Act, 1882, which provides that the procedure prescribed thereby shall be followed, except where such procedure is inconsistent with the procedure prescribed by any specific provisions of this Act. It is argued that the procedure prescribed in s. 108 is inconsistent with the procedure prescribed in s. 37 of the Act. We cannot assent to this argument. Section 37 deals with new trials and revisions of decrees and orders. The procedure under which *ex parte* decrees may be set aside is in no way inconsistent with a procedure under which a decree or order may be reviewed or a new trial ordered. Both exist under the Code of Civil Procedure, and there is no reason why both should not exist under the Small Cause Courts Act. In fact the intention that both should exist seems beyond doubt. Section 108 contains a procedure by which *ex parte* decrees alone can be set aside, and its extension to the Court of Small Causes would be quite meaningless if they could also be set aside under some specific provision contained in the Act itself. The period of limitation allowed by s. 37 is so short that that circumstance by itself militates strongly against the supposition that the section applies to *ex parte* decrees.

We make the rule absolute. We send back the application to be disposed of under the provisions of s. 108 of the Code of Civil Procedure on its merits. We order the costs of this rule to be costs in the application before the Small Cause Court.

Rule made absolute.

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[510] APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Telang.

PITAMBERDAS (*Original Plaintiff*), *Applicant v.* JAMBUSAR TOWN MUNICIPALITY (*Original Defendant*), *Opponent.**

[6th September, 1892.]

Estoppel—Tax—Payment of a tax for one year without protest—Payment of the tax in a subsequent year under protest—Suit to recover money so paid—Cause of action.

The plaintiff paid a house tax, at the rate of Rs. 6, for the year 1890 without any protest. When the tax was sought to be levied from the plaintiff at the same rate for the year 1891, he objected to the levy as illegal and excessive, and paid the tax under protest. He then sued to recover what he alleged was an excess charge of Rs. 5 in respect of the tax for 1891. His claim was rejected on the ground that he was estopped from recovering the alleged excess by reason of his having paid the tax for 1890 without protest.

Held, that the suit was not barred. The levy of a tax in each year gives a new and distinct cause of action, and the payment of the tax without protest for one year does not bar a suit to recover a sum paid in a subsequent pear under protest on account of a tax which was not legally chargeable for that year.

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

This action was instituted by the plaintiff against the Town Municipality of Jambusar to recover Rs. 5, which he alleged to be an

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excess charge in respect of the house tax levied from him for the year 1891.

The plaintiff alleged that his house had been overvalued for the purpose of the tax; that though he was liable to pay the tax at the rate of Re. 1 only, a tax of Rs. 6 per year had been levied from him for the years 1890 and 1891.

The Subordinate Judge held that as the plaintiff had paid the tax at the rate of Rs. 6 without any protest for the year 1890, he was estopped from recovering the alleged excess charge for the year 1891. He also held that the suit was barred by limitation. He, therefore, rejected the plaintiff's claim.

Against this decision the plaintiff applied to the High Court under its revisional jurisdiction.

[511] *Nagindas Tulsidas*, for the applicant.

There was no appearance for the opponent.

JUDGMENT.

PARSONS, J.—The decision of the Subordinate Judge with Small Cause Court powers on the first issue is not according to law. Plaintiff paid the house tax at the rate of Rs. 6 for the year 1890 and also for the year 1891. He sued for the recovery of what he alleged was an excess charge of Rs. 5 in respect of the tax for the year 1891 only. The Subordinate Judge held that the fact of his not having issued a notice, or presented an application against the charge of Rs. 6 for the year 1890, barred—that is, estopped—him from bringing the present suit. But this is not so. The levy of the tax in each year would give a new and distinct cause of action, and the payment of the tax without protest for one year would not bar a suit to recover a sum paid in a subsequent year under protest on account of a tax which was not legally chargeable for that year on the plaintiff.

With reference to the finding on the 4th issue (that the suit is time-barred), we would observe that if the valuation of the plaintiff's house was made annually, a fresh cause of action in respect of over-valuation would also arise annually even if the valuation remained the same; and the fact that no objection had been made to the valuation for the year 1890 would not render this suit, which is based on an alleged over-valuation for 1891, time-barred. It would be in time, provided that it is brought within the period allowed by s. 48 of the Municipal Act of 1884 counting from the date of the act complained of, that is, the overvaluation made in 1891.

We make the rule absolute, and return the case for trial on the merits. Costs of this application to be costs in the cause.

Rule made absolute and case remanded.