[318] The question is one of reasonableness. In re *Soorendro Nath Chowdhry* (I. L. R. 5 Cal., 106); *Childerston* v. *Barrett* (11 East., 438); *Pitt* v. *Coomes*, (5 B. A., 1078) *Perse* v. *Perse* (5 H. L., 671).

Mr. *Grant* referred to Section 642 of the Civil Procedure Code and to *Teil's* case (14 B L. R, App., 13).

Kernan, J.—I believe the attendence of the defendant is *bonâ fide* on account of the Suit 116 of of 1878. I believe he came down in consequence of information, which was correct, that this suit would be struck out if he did not attend. I see no evidence that he had any object in coming here except to attend this suit. Then this suit came on on the 27th of October and was adjourned on his application, I believe, and by the advice of his solicitor, and I have no reason to believe that he had any indirect object in getting the adjournment, but that the application for adjournment was made *bonâ fide* with a view to proceeding in this suit. After that, on the 10th of November, he was arrested. He states that he has no business here and no house, and that he has been merely waiting here on account of this Suit 116 of 1878 and for no other purposes, and that he has been doing so on the advice of his Solicitor; he states he will be ready to go on and have the case heard if the Judge dispenses with the production of his books. Having seen the defendant examined I believe his statement. Under these circumstances I think the defendant is within the principle of privilege as a suitor and I discharge him. No costs.

Solicitors for the Debtor: *Branson* and *Branson.*

Solicitors for the Creditor: *Grant* and *Laing.*

[319] APPELLATE CIVIL.

The 11th November and 5th December, 1881.

PRESENT:

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND
MR. JUSTICE MUTTUSAMI AYYAR.

Micharaya Guruvu.....(Plaintiff), Appellant

and

Sadasiva Parama Guruvu.....(Defendant), Respondent.*

Civil Procedure Code, Section 526, 522—Finality of decree.

The power to file an award includes the power to inquire if there was a submission to arbitration, and this question is concluded by the decree which is final under Sections 526 and 522 of the Code of Civil Procedure.

THIS suit was brought under Section 525 of the Code of Civil Procedure to file an award made on 29th August 1879, by which the defendant was directed to pay plaintiff Rs. 695-2-0.

The defendant pleaded that no award had been made, and that the agreement to submit to arbitration was forged.

The Munsif finding that the award was genuine, decreed for the plaintiff according to the terms of the award.

The defendant appealed to the District Court.

* C. M. S. A. No. 391 of 1881 against the decree of J. R. Daniel, District Judge of Ganjam, reversing the decree of A. Rama Rau Puntulu, District Munsif of Aska, dated 2nd February 1881.

Objection was taken that no appeal lay against the order of the Munsif to file the award and overruled by the District Judge who held that the procedure laid down in Sections 525, 526 and 522 presupposed a genuine award, and that, when it was found that the award was false and that there was no reference to arbitration, the provision of Section 525 did not apply.

The District Judge found that the award was fictitious and dismissed the suit.

The plaintiff appealed to the High Court.

Rangachariar for Appellant.

Ramachandra Rau Sahib for Respondant.

The Court (TURNER, C. J., and MUTTUSAMI AYYAR, J.) delivered the ollowing

[320] Judgment:—The question raised for decision in this case is whether the District Court is competent to entertain an appeal and to reverse the finding of the Court of First Instance that the deed of submission is genuine. This is a question of procedure. Under Sections 525 and 526, Code of Civil Procedure, the Court of First Instance had power to file the award and to pass a decree in accordance with the award, and the decree is final under Sections 526 and 522. The power to file the award includes the power to inquire if there was a submission to arbitration, and the question of fact whether the submission was made, like any other question of fact essential to the validity of the award, is concluded by the decree, and is not open to appeal or revision. The only remedy available to the respondent is an application for revision, and as the question we have decided has apparently been now raised for the first time, the Court of First Instance may consider that the delay in preferring an application for review is sufficiently accounted for.

This appeal must be decreed, the decree of the District Court reversed, and that of the District Munsif restored; but, inasmuch as the Judge has recorded reasons which justify doubt as to the genuine character of the document alleged to be the submission, we shall direct each party to bear his own costs.

NOTES.

[APPEAL—AGAINST DECREE IN TERMS OF AWARD:—

There has been some conflict of decisions with regard to the question whether an appeal lay against the decree passed in terms of a private award filed in Court, when the objection to it is the denial of the *factum* of submission.

In (1894) 18 Mad., 423, F. B., this point was decided in favour of there being an appeal.

See (1889) 16 Cal., 482; (1905) 2 C. L. J., 153=10 C. W. N., 601, where MOOKERJEE, J. expresses some doubt on the point on the ground that it was not governed by the decision of the Privy Council in 29 I. A.

See also, (1896) 20 Bom., 596; (1896) 20 Mad., 89; (1898) 22 Mad., 172.]