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revenue subsequently assessed. Whether the Legislature has used language sufficient to effectuate this intention, and whether this particular under-tenure falls within the operation of the Act, it is no part of our duty on the present occasion to decide. I will only observe that our decision—proceeding as it does upon the present circumstances of the case, *i.e.*, while Government revenue has not been assessed—does not anticipate the assessment of revenue, and does not decide whether or not such assessment will have the effect of making the defendant 'justly liable' for any other or higher rent. With reference to the provisions of the Regulation, and apart from the question of Government revenue, I have myself no doubt that the alluvial increment ought to be assessed with rent on the same principle as rent is, by the contract of the parties, payable upon the original, or *usli*, under-tenure.

Decree modified.

Before Mr. Justice Pontifex and Mr. Justice Field.

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May 25.

SREE RAM CHOWDHRY (PETITIONER) *v.* DENOBUNDHOO CHOWDHRY (OPPOSITE PARTY).*

Appeal—Award—Order refusing to file Award—Civil Procedure Code (Act X of 1877), ss. 525, 588.

Matters in dispute were referred to arbitration without the intervention of the Court. An award was made, and upon an application under s. 525 of the Civil Procedure Code to file the award, one of the parties showed cause why the award should not be filed, and the Subordinate Judge held the objection to be good.

Held, that no appeal lay.

Baboo *Rashbehary Ghose* for the petitioner.

Baboo *Saroda Churn Mitter* for the opposite party.

The facts of this case sufficiently appear from the judgments of the Court (PONTIFEX and FIELD, JJ.), which were as follows :—

PONTIFEX, J.—The parties before us referred certain matters

* Appeal from Original Order, No. 11 of 1881, against the order of Baboo Menu Lall Chatterjee, Subordinate Judge of Moorshedabad, dated the 30th of August 1880.

in difference between them to arbitration without the intervention of the Court.

The arbitrator having made his award, one of the parties applied, under s. 525 of the Code, that the award should be filed in Court.

Notice having been given under the section to the other party to the reference, he came in and showed cause, within the objections mentioned in ss. 520 and 521, or some of them, why the award should not be filed.

The Subordinate Judge has made a full enquiry into such objections, and in an elaborate judgment has decided that all the objections but one are untenable; but considering that one of such objections was fatal to the validity of the award, he refused permission to file it.

Against his order of refusal the applicant, under s. 525, has appealed to us, and has been met with the preliminary objection that there is no appeal, because the order is not a decree, nor is it an order appealable under s. 588.

Now it was held by a Full Bench of this Court under Act VIII of 1859, that such an order under s. 327 of that Act was not appealable: *Baboo Chintamun Singh* v. *Roopa Kooer* (1); see also *Vyankatesh Ramchandra Jogekar* v. *Balajira bin Anandrav* (2).

Section 327 of the old Code corresponded to s. 525 of the present Code. Each of these sections directed that the application under it should "be numbered and registered as a suit." But at the date of the decision referred to, the section of the old Code differed from the section in the present Code, by "directing that the application should be written on the stamp paper required for petitions."

This difference does not seem to me material, nor has it been insisted on in argument. The words which are relied on as giving an appeal are the same in both sections,—namely, that "the application is to be numbered and registered as a suit."

But, notwithstanding these words, the Full Bench, in the case referred to, held, that there was no appeal; and there being nothing in the definition in the present Code of that which is

(1) 6 W. R., Mis. Rul., 83. (2) 1 Bom. H. C. Rep., 184.

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to be considered a decree, which would affect or prevent the application of the decision in that case as an authority in the present case, we are bound by it to hold that the preliminary objection must prevail.

The words to be numbered and registered as a suit would, in fact, seem to have been used merely for administrative purposes.

The same words used in s. 331 were not considered by the Legislature to attach by themselves all the incidents of a regular suit to the proceeding there directed. For that purpose other words were used in that section, as follows:—"The Court shall proceed to investigate the claim in the same manner and with the like power as if a suit for the property had been instituted, and every order made in such investigation is declared to have the same force as a decree, and shall be subject to the same conditions as to appeal or otherwise."

In the case of *Sashti Charan Chatterjee* v. *Tarak Chandra Chatterjee* (1), a Full Bench decided, that where, in a case under s. 327 of the old Code, the lower Court had ordered an award to be filed, an appeal would lie from such order; and it would be open to the appellant to show that the paper which had been filed was not legally an award. But having regard to the last words of that section corresponding with s. 526 of the present Code, I confess I have my doubts as to the soundness of that decision. For s. 325 of the old Code and 522 of the new Code seem to me equally intended to prevent an appeal in the analogous cases, where the Court has given judgment according to the award,—namely, in cases under s. 506 of the present Code, where, during the pendency of a suit, a matter in difference in the suit is referred to arbitration; or under s. 523, where the parties have agreed to a reference out of Court, and upon application before award, an order has been granted for the agreement to be filed in Court.

It is true that, in cases under s. 525, the parties cannot obtain the advantages of the provisions contained in ss. 518 and 520, and therefore an appeal might be more necessary under s. 525 than under s. 522.

But in my opinion this goes to show that it was not intended

(1) 8 B. L. R., 315.

that an award should be filed under s. 525, if either of the parties to the reference showed cause against it by affidavit or verified petition within the provisions of s. 520 or 521. In such cases, of which the case before us is an example, I think it would be the duty of the Court, without inquiring into the validity of the cause so shown, to refuse the application to file the award and to leave the applicant to his remedy by suit, having regard to the fact that the Court has no power to deal with the award under s. 518, or to take action by remitting the award under s. 520.

This was the procedure pointed out by Mr. Justice Paul in the case of *Sashti Charan Chatterjee* v. *Tarak Chandra Chatterjee* (1). It is not the course which has been followed by the lower Court in the present case: but as the lower Court refused to file the award, no injury or inconvenience results, because, notwithstanding such order, any of the parties to the reference may proceed to enforce the award by regular suit: *Vyankatesh Ramchandra Jogekar* v. *Balajira bin Anandrav* (2). But if the lower Court had ordered the award to be filed, grave inconvenience and possible injustice might have resulted. In the present case we are bound, in my opinion, both by authority and on principle, to hold, that the preliminary objections must prevail; and we must, therefore, dismiss the appeal.

Before leaving the subject I wish to express my opinion with respect to s. 522.

It is of course clearly right that the decision of the tribunal chosen by the parties should be final, provided it is not open to any of the objections referred to in ss. 518, 520, and 521; but I fail to see the expediency of refusing the parties an appeal from the decision of the lower Court on the objections taken under ss. 520 and 521. Questions raised under those sections are generally of very considerable delicacy and difficulty; and there seems to me no reason why the decision of the original Court, perhaps the lowest Court of all, should be final with respect to them. The finality of the Court's decision on these questions is altogether a different matter from the finality of the award if unobjectionable under ss. 520 and 521;

(1) 8 B. L. R., 315. (2) 1 Bom. H. C. Rep., 184.

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and I fail to see any reason why a judgment on an award under chap. xxxvii of the Code should be treated differently from a judgment in a suit to enforce an award. Why the one should be final as to the matters referred to in ss. 520 and 521, while the other should be open to appeal on the same matters.

The consequence of this difference must necessarily be, that parties will be slow to avail themselves of the other advantages which they might derive by proceeding under chap. xxxvii.

FIELD, J.—This is an appeal against an order rejecting an application for filing an award, such application having been made under s. 525 of the Code of Civil Procedure, Act X of 1877. A preliminary objection has been taken that no such appeal will lie, and in support of this objection, the Full Bench decision in the case of *Chintamun Singh* v. *Uma Kunwar* (1) has been relied upon. The judgment in that case is very brief, and is as follows:—"It appears to the Court that an order rejecting an application to file an award under s. 327 of Act VIII of 1859 is not a decree; therefore it is not appealable as a decree. It is simply an order rejecting an application to file an award. Then is it one of the orders in respect of which an appeal is provided by the Act? We can find no right given to appeal against an order refusing to file an award. We do find a right of appeal given in certain other cases and against certain orders, such as an order rejecting a plaint, but no appeal is given with regard to orders rejecting an award." Sections 525 and 526 of the present Code correspond with s. 227 of Act VIII of 1859. Now, it is clear that the Full Bench decision proceeded upon two grounds,—(i) that the order rejecting an application to file an award was not a decree; (ii) that it was not an order against which an appeal was given by the then Code of Civil Procedure. It appears to me that, unless we can find words in the present Code of Civil Procedure, the effect of which is that an order must now be regarded as a decree, or that such an order has been made an appealable order by the new Code, no such appeal will lie. The question then is, has the Legislature used any language in the present Code which shows an intention to alter the law as settled

(1) B. L. R., Sup. Vol., 505.

by the Full Bench decision by making the order in question either a decree or an appealable order?

Now, that it is not an appealable order, follows at once from the fact that it is not mentioned amongst the orders made appealable by s. 588 as amended by Act XII of 1879.

Then is it a decree, regard being had to the new definition of decree contained in the amending Act XII of 1879? That definition is as follows:—"Decree means the formal expression of an adjudication upon any right claimed, or defence set up, in a Civil Court, when such adjudication, so far as regards the Court expressing it, decides the suit or appeal." Is an application under s. 525 a 'suit' within the meaning of this definition? The Civil Procedure Code passed in 1877 and the Limitation Act passed in the same year draw a clear distinction between 'suits' and 'applications,' and this very application under s. 525 is to be found in the second schedule of the Limitation Act (see art. 176) which deals with applications. This would seem to show that this particular application is not to be regarded as a suit. But we must further consider the following words of s. 525:—"The application shall be in writing, and shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants." Have these words the effect of converting the application into a suit for all intents and purposes, or do they merely mean that, for the purposes of entry in the register of civil suits prescribed by the Code of Civil Procedure, and of classification of the business of the Courts, and for these purposes only, the application is to be regarded as a suit? It appears to me that the latter is the true meaning of the words. In support of this view, I may refer to s. 331 of the Code, which provides that the claim made by a person other than the judgment-debtor to be in possession of attached property on his own account, or on account of some person other than the judgment-debtor, is to be "numbered and registered as a suit between the decree-holder as plaintiff and the claimant as defendant." That these words alone do not convert such a claim or application into a suit for all intents and purposes, appears clear from the words, which follow in the same section—namely, that "the Court shall proceed to investigate the claim

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in the same manner and with the like power as if a suit for the property had been instituted by the decree-holder against the claimant under the provisions of chap. v, and shall pass such order as it thinks fit for executing or staying execution of the decree. Every such order shall have the same force as a decree, &c." Now it is clear that these words, which I have just quoted, would have been unnecessary if the effect of the words "shall be numbered and registered as a suit" were to convert the application into a suit for all intents and purposes. I think, therefore, that an application under s. 525 is not a suit within the definition of 'decree' so as to make the order passed upon such application a decree. A further argument may be found upon an examination of ss. 520 to 526 of the present Code. Under s .525 there is (i) an arbitration without the intervention of the Court, and an award made thereupon; (ii) an application to the Court that such award be filed; (iii) a notice to the parties to the arbitration other than the applicant to show cause why the award should not be filed; and then (iv) under s. 526, there is the hearing at which the other parties may, if they desire, show cause. Now what are the questions to be dealt with at this hearing? Although, under s. 525, the grounds upon which cause may be shown are not limited or specified, it is clear from s. 526 that the only ground upon which cause can be shown is some one of the grounds mentioned, or referred to, in s. 520 or 521. What the Court then has to deal with on the day of hearing is, whether any of the grounds mentioned in s. 520 or 521 are satisfactorily shown. It may here be observed that, in s. 327 of the old Code, there was nothing to limit specifically the grounds upon which cause might be shown. The language of that section was general—"if no sufficient cause be shown against the award." The new Code has substituted for these general words the more precise words—"if no ground such as is mentioned, or referred to, in s. 520 or 521 be shown against the award," which limit and define the cause to be shown. Then, when the Court has dealt with the ground or grounds mentioned, or referred to, in s. 520 or 521, is there any appeal against its decision? The Full Bench case, as already pointed out, decided that there was no appeal under the old

section (327). The only difference between the language of that section and the language of the present sections (525, 526) is in the limitation (as above pointed out) of the grounds upon which cause may be shown. From this change of language it appears to me that there is no intention to be gathered of changing the law as settled by the Full Bench case.

Sections 520 and 521 contain the grounds upon which an objection may be made to an award made by an arbitrator appointed by the Court in a pending suit at the desire of the parties. It is to be borne in mind that there is in this country no compulsory reference to arbitration, and there is no essential distinction between an arbitrator appointed by the Court at the desire of the parties under s. 506 or under s. 523, and an arbitrator appointed by the parties themselves without the intervention of the Court, except in this, that the arbitrator appointed by the Court is under the direction of the Court in the discharge of his functions. Is there an appeal against an order of the Court refusing to remit an award for reconsideration under s. 520, or refusing to set aside an award under s. 521, that is, in the case of an award made by an arbitrator appointed by the Court? Clearly there is no appeal against either of such orders as interlocutory orders, for no such appeal is given by the amended s. 588. Then, with reference to the case of *Mothooranath Tewaree* v. *Brindabun Tewaree* (1), is there an appeal against either of such orders by way of appeal against the final decree? The case just quoted is an authority that, under the old Code, there was such an appeal; but under the new Code this appeal appears to have been taken away, for s. 522 enacts that the Court is to give judgment according to the award when it has decided neither to remit the award for consideration, nor to set it aside; that upon the judgment so given a decree is to follow; and then come these words:—"No appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award." These words differ from the words of s. 325 of the old Code for which they have been substituted, *viz.*,—"In every

(1) 14 W. R., 327.

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case in which judgment shall be given according to the award, the judgment shall be final." The words "according to the award" excluded from finality matters not falling within their purview. The negative words of s. 522 of the present Code appear to me to go further, for they take away an appeal in every case except the particular cases in which it is expressly allowed. The result of the change of language seems to be, that if the Court, having refused to remit the award for reconsideration, or having refused to set aside the award, gives judgment according to the award, and a decree follows upon this judgment, the person against whom such decree is passed cannot go to the Appellate Court and ask that Court to say, that the original Court either ought to have remitted the award for reconsideration or ought to have set it aside. It may be argued that, as an appeal is thus taken away in the case of the person who has unsuccessfully contended that an award ought to have been remitted, or ought to have been set aside, it is only reasonable to suppose that it was the intention of the Legislature to allow no appeal to the person against whom such contention has proved successful. If this be so, it follows that, in the case of an award made by an arbitrator appointed by the Court, there is no appeal upon any matter mentioned, or referred to, in ss. 520 and 521, whether the Court decides for or against an application to remit or set aside an award: and in this event it may seem reasonable to suppose that the Legislature did not intend to give an appeal in the case of an award made by an arbitrator not appointed by the Court, when it has refused an appeal in the case of an arbitrator appointed by the Court. But it is not necessary, for the purpose of the point now before us, to adopt this part of the argument as to there being no appeal when an application to remit or set aside an award made by an arbitrator appointed by the Court has been granted. There is no express alteration in the provisions of the Code on this point. The only alteration in the language of the old section made by s. 522 of the new Code has been pointed out, and from this alteration there is no intention to be gathered of giving an appeal and altering the law as settled by the Full Bench decision in *Chintamun*

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Singh v. *Uma Kunwar* (1). In considering the difference between the old and the new law, I have not overlooked the omission of the following words in s. 327 of the old Code, *viz.*, "shall be written on the stamp-paper required for petitions to the Court, where a stamp is required for petitions by any law for the time being in force." These words were concerned with the stamp revenue, and were repealed by the Court Fees Act, VII of 1870, and have no connection with the present subject. The conclusion then at which I arrive is, that the law as settled by the Full Bench case has not been altered by the present Code of Civil Procedure, and that the preliminary objection must prevail. At the same time I am bound to say that this is a conclusion to which I come most reluctantly, because it appears to me that, although it is very desirable to uphold awards when properly made, the matter contained in ss. 520 and 521 is matter upon which it would be just and reasonable to allow either party, when defeated, to resort to an Appellate Court.

Appeal dismissed.

ORIGINAL CIVIL.

Before Mr. Justice Cunningham.

SHAHEBZADEE SHAHUNSHAH BEGUM v. FERGUSSON.

1881
July 21, 28, *&* *Aug.* 1.

Public Officer—Official Trustee—Notice of Suit—Tortious Acts—Civil Procedure Code (Act X of 1877), ss. 2, 424—Official Trustee's Act (XVII of 1864).

The Official Trustee is a 'public officer' within the definition given in s. 2 of the Civil Procedure Code.

The cases in which a public officer is entitled to notice of suit under s. 424 of the Code, are those in which he is sued for damages for some wrong inadvertently committed by him in the discharge of his official duties, and the object of giving notice is, that if a public body or officer entrusted with powers happens to commit an inadvertence, irregularity, or wrong, before any one has

(1) B. L. R., Sup. Vol., 505.