between Doorga Narain and Banimadhub, and he had no right to impart that into a suit between Doorga Narain and the tenants; and it is argued that the plaintiff would have a right, under s. 622 of the Code of Civil Procedure, to ask this Court to set aside the judgment of the Judge on the ground of irregularity. Now, even if we were to permit the appellant in these appeals to rely upon the provisions of s. 622 without putting him to the expense of making a separate application in order to get the benefit of that section, we do not think, these are cases in which we would be justified in interfering under s. 622. It appears to us, that s. 102 of Beng. Act VIII of 1869 was enacted really to protect parties in the position of ryot-defendants, to prevent their being dragged up to the High Court in cases where the decree or demand was under Rs. 100. In such cases the decree was intended to have the same effect as that of a Small Cause Court; and we think it would be very hard in these cases, merely because the Judge has decided between the parties on the ground of the former decision between Doorga Narain and Banimadhub, to put the ryots to the very great expense of being dragged into this Court. We think, therefore, that even under s. 622 we should not be inclined to interfere in these cases. The preliminary objection must prevail, and the appeals Nos. 1670, 1675, and 1684 will be dismissed with costs, and others without costs, as the respondents in those cases have not appeared.

Appeal dismissed.

ORIGINAL CIVIL.

Before Mr. Justice Wilson.

ROBARTS *v.* HARRISON.

1881
June 6.

Arbitration—Filing of Award—Time within which Award should be filed—Civil Procedure Code (Act X of 1877), s. 516—Limitation Act (XV of 1877), sched. ii, art. 176.

The act of an arbitrator, in handing in an award to the proper officer of the Court, for the purpose of the award being filed, cannot be considered as an "application" within the meaning of the Limitation Act.

1881

ROBARTS v. HARRISON.

BY an order dated the 5th February 1880, certain matters in dispute in this suit were referred to arbitration, one of the terms of the order being, that the award should be filed on or before the 5th October 1880. In accordance with this order the arbitrators made and published their award on the 29th September 1880, intimating to the attorneys of both parties that they were ready to file the award on payment of their fees. This was objected to, and subsequently the arbitrators filed their award with consent of both parties on the 29th April 1881.

The plaintiff then applied for and obtained a rule *nisi*, calling upon the defendant to show cause why the award should not be taken off the file, on the ground that it had not been filed within the time mentioned in the order of the 5th February 1880; and that, further, under art. 176 of sched. ii of Act XV of 1877, the award was filed too late.

Mr. *Branson* (with him Mr. *Allen*) showed cause against the rule.—The award was made within time, and there is nothing in the Civil Procedure Code as to the time within which such award must be filed, although ss. 516 and 521 both make mention as to the time in which the award is to be made. Article 176, sched. ii of Act XV of 1877 has no reference to s. 516 of the Code, as, under s. 516, no "application" to file the award is necessary: the mention of s. 516 in art. 176 is probably a mistake for s. 523, otherwise there is no limitation for s. 523. The application contemplated in art. 176 is an application to the Court; this is clear from a consideration of all the articles in the 3rd division of sched. ii of the Limitation Act. The applications there referred to are applications to the Court. No such application is necessary in filing an award; it is presented and filed as a matter of course. There is no provision for taking an award off the file when once it has been filed. It may be set aside under s. 521, but this must be within ten days from the time in which the award has been submitted, according to art. 158 of sched. ii of Act XV of 1877. There is no authority in the Civil Procedure Code for such an application as the present. Neither is there any clause in the Limitation Act which touches the case.

Mr. *Jackson* in support of the rule.—Article 176 of the Limitation Act applies to s. 516. The act of filing an award is an application in itself. The Court must consent before an award can be filed, and an application is necessary before such consent can be given.

The judgment of the Court was as follows:—

WILSON, J.—This was an application by the plaintiff to take off the file an award filed by the arbitrators who made it, on the ground that, under the Limitation Act, it was filed too late.

The reference was in a suit. The award was made and published in due time, on the 29th September 1880. It was filed by the arbitrators on the 29th April 1881. The plaintiff contends, that the filing was out of time under art. 176 of the second schedule of the Limitation Act (XV of 1877), which prescribes a period of six months from the making of the award for an "application under the Code of Civil Procedure, s. 516 or 525, that an award be filed in Court."

In order to see whether this contention is correct, it is necessary to examine the sections of the Code relating to arbitrations. There are three kinds of arbitration dealt with in chap. xxxvii —references of matters in difference in suits already pending; references not in suits, but in which the submission is filed under s. 523, and which thereupon become suits; and thirdly, references not in suits, and in which the submission has not been filed, but in which the award may be filed under s. 525.

The first two kinds of reference may, for the present purpose, be regarded as identical. In each, by the time the award has to be dealt with, the Court has already control of the proceedings, and the rules as to the award are in each case the same. By s. 516 the arbitrators must sign their award and cause it to be filed in Court. This causing the award to be filed, it must be observed, is the act of the arbitrators. The only duty of the Court or its officers is to receive the award when tendered, and, I suppose, to make the proper endorsement or entry, and deposit the document in its proper place. The judicial functions of the Court are to be exercised afterwards, or at any rate in different matters altogether. The Court may, on certain grounds,

1881

ROBARTS' v. HARRISON.

modify the award (s. 518), or remit it (s. 520), or set it aside altogether (s. 521), or may make a decree according to the award (s. 522).

In cases where, before the award, there has been no proceeding in Court, the procedure is entirely different. Before the award can be filed, there must (s. 525) be an application in writing, against which the other parties must have an opportunity of showing cause. And the Court has, or may have, to determine important questions (s. 526), as for instance, whether the arbitrator has or has not exceeded his authority.

These, briefly stated, are the provisions of the Code bearing upon the present question. It remains to consider the meaning of the words "applications under s. 516 or s. 525" as used in art. 176 in the schedule of the Limitation Act. So far as s. 525 is concerned, there is no difficulty. No award can be filed under that section without a written application which the Court deals with judicially. But it is a very different thing to say that the filing of an award by an arbitrator under s. 516 is an application.

The Limitation Act is a disabling Act, and no Court, I think, is justified in straining its language beyond its natural meaning in order to take away from any one the rights which but for it he would possess. There is little in the general framing of the Act to throw light upon particular provisions. But there is something.

The preamble deals only with "applications to Courts," and I think the Act is limited accordingly. It is also legitimate, I think, to consider the character of the series of applications enumerated in order to ascertain what an application means: see *Re Ishan Chunder Roy* (1). Now, in the case of all the other applications mentioned in the schedule, the application is one which the Court has to deal with judicially by making an order in accordance with the application or dismissing it. I think I should have to do great violence to the ordinary meaning of words, and to disregard all the indications afforded by the Act itself, if I were to hold that the act of an arbitrator, in handing

(1) 8 C. L. R., 52.

an award to the proper officer to be filed, was an application within the meaning of the Limitation Act.

1881

ROBARTS v. HARRISON.

It was argued, that the effect of holding as I do would be to make the article in question wholly inoperative. It may be so. It may be, on the other hand, as was also suggested, that the article might be held to apply to an application to the Court by any of the parties to compel an arbitrator to file his award. These are questions which do not arise on the present application. I can only take the words of the Statute as they stand, and see whether they apply to the case before me. I think they do not.

This application is dismissed with costs.

Application dismissed.

Attorneys for the plaintiff: Messrs. *Remfrey* and *Remfrey*.

Attorneys for the defendant: Messrs. *Sanderson and Co.*

APPELLATE CIVIL.

Before Mr. Justice Mitter and Mr. Justice Maclean.

RAMDHANI SAHAI (AUCTION-PURCHASER) *v.* RAJRANI KOOER (JUDGMENT-DEBTOR).*

1881 *April* 22.

Auction-sale—Defaulting Purchaser, Liability of—Civil Procedure Code (Act X of 1877), ss. 293, 297, 306, 308, 309.

The provisions of s. 293, Act X of 1877 (Civil Procedure Code) for making a defaulting purchaser at a sale liable for any deficiency on a resale, extend to all sales, whether of moveable or immoveable property, and also to resales held under ss. 297, 306, and 308.

THE facts in this case were, that, in execution of a decree for Rs. 73 (with costs and interest), held by Ram Sahai Lall in a

Appeal from Appellate Order, No. 2 of 1881, against the order of H. W. Gordon, Esq., Judge of Tirhoot, dated the 6th November 1880, affirming the order of Baboo Mohendro Nath Ghose, Officiating Munsif of Hajipore, dated the 25th May 1880.