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and *The Queen* v. *Gibbon* (1). But although these cases do not, I think, directly establish that a servant of the Corporation is disqualified to act as a Justice of the Peace, the principle seems to me to apply with greater force to a Justice who is a servant, than to a Justice who is a member, of the Corporation. On this ground also, therefore, the proceedings must be set aside.

Conviction quashed.

Attorney for the petitioner: Mr. *E. J. Fink.*

Attorney for the opposite party: *The Government Solicitor.*

APPELLATE CIVIL.

Before Mr. Justice Pontifex and Mr. Justice Field.

1881 *May* 10.

DOORGA NARAIN SEN (PLAINTIFF) *v.* RAM LALL CHUTAR (DEFENDANT).*

Appeal—Rent Suit under Rs. 100—*Title—Beng. Act VIII of* 1869, *s.* 102—*Civil Procedure Code* (*Act X of* 1877), *s.* 622.

A and *B*, both of whom set up a claim to certain land, brought separate rent suits against the tenants. In none of these suits did the amount claimed exceed Rs. 100. Subsequently to the institution of the rent suits, *A* sued *B* to establish his title to the land in dispute. The District Judge, before whom the rent suits came on appeal, allowed them to stand over until the decision in the suit between *A* and *B*. That suit was decided in favour of *B*, and the Judge then decided the rent suits instituted by *B* in his favour, and dismissed the suits instituted by *A*.

Held, that no second appeal would lie in the rent suits, as no question of title between parties having conflicting claims was decided in them.

Held also, that there was no such irregularity on the part of the District Judge in the course which he pursued, of making his decision in the rent

* Appeal from Appellate Decrees, Nos. 1667 to 1685 of 1880, against the decree of J. P. Grant, Esq., Judge of Hooghly, dated the 25th June 1880, reversing the decree of Baboo Prosunno Coomar Ghose, Second Munsif of that District, dated the 25th June 1878.

(1) L. R., 6 Q. B. Div., 168.

uits d epend upon the decision in the suit to establish title, as would justify the Court in interfering under s. 622 of the Civil Procedure Code.

Section 102 of Beng. Act VIII of 1869 was enacted in order to protect parties in the position of ryot-defendants, and to prevent their being dragged up to the High Court in cases where the decree or demand is under Rs. 100. In such cases the decree is intended to have the same effect as that of a Small Cause Court.

Baboo *Hem Chunder Bonnerjee* and Baboo *Umakali Mookerjee* for the appellant.

Baboo *Aubinash Chunder Banerjee* for the respondent.

The facts of this case fully appear from the judgment of the Court (PONTIFEX and FIELD, JJ.), which was delivered by

PONTIFEX, J.—A preliminary objection was taken to the hearing of these appeals, on the ground that, under s. 102 of Beng. Act VIII of 1869, no second appeal would lie in these cases. We think that this objection must prevail. The facts of the case are—that two persons, the plaintiff Doorga Narain and one Banimadhub, were contesting with one another as to who was rightfully entitled to the property in which the defendants had tenures, and both of them brought rent suits against the tenants. These rent suits came first before the Subordinate Judge, and afterwards before the District Judge. Subsequently to the institution of those rent suits, Doorga Narain brought a suit against Banimadhub to establish his title, and whilst that suit was pending, the District Judge allowed the rent cases to stand over, thinking he might decide them in accordance with the decision which might be arrived at in the title suit. He decided the suit between Doorga Narain and Banimadhub in Banimadhub's favour, and immediately after the rent suits were called on, and the learned Judge decided those instituted by Banimadhub in favour of Banimadhub, and dismissed the suits of the plaintiff Doorga Narain. He says:—"It has been found in the case as to title that Banimadhub has all along been entitled to the rents, and the decreeing of the present appeals will give them to him. It has been argued that if the ultimate decision as to title in a possible special appeal should be in favour of Doorga Narain, the present

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decision will complicate any suit for mesne profits that Doorga Narain might bring against Banimadhub. But I do not think, that a Court is justified, when giving present judgment, in considering such remote contingencies, which may never in fact come into being." We think, nevertheless, that if the learned Judge had been applied to, to appoint a receiver in the suit between Doorga Narain and Banimadhub, on the supposition that possibly an appeal might be preferred against his decision in that suit, he would have done so, and so secured the rents payable by the tenants. But the learned Judge was never applied to, to secure the rents, and consequently the decrees dismissing Doorga Narain's rent suits were made. Now it is admitted that the suits are for less amounts than Rs. 100, but it is argued that these are suits in which a question relating to title to land as between parties having conflicting claims thereto, has been determined by the judgment. The plaintiff urges that such a question has been decided in these cases, but in fact it was not in these suits that any question of title as between parties having conflicting claims was determined. That question was determined in the previous title suit between Doorga Narain and Banimadhub. No such question was determined in this suit. We think, therefore, that these cases fall within the provisions of s. 102, and that no second appeal would lie. It has been decided in the cases of *Shaikh Dilbur* v. *Issur Chunder Roy* (1), *Donzelli* v. *Tehan Nodaf* (2), and *Kashee Ram Doss* v. *Maharanee Sham Mohinee* (3), that where *A* sues *B* for rent of land, and *B* pleads that the rent of the land is payable to *C* and not to *A*, and where *C* is not made a party to the suit in which a decree is passed against *B*, no question relating to title to land as between parties having conflicting claims thereto is determined by the judgment in such suit. Therefore, there is authority to show that the preliminary objection taken in these cases is valid, and must prevail.

It has then been argued on behalf of the plaintiff that, if that is the case, then there is really no judgment of the Court below in these rent cases, because the judgment of the learned Judge depends entirely upon his judgment in the other suit

(1) 21 W. R., 36. (2) 23 W. R., 227. (3) 2 C. L. R., 558.

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.