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duct. The grounds on which revision of this order was sought impugned the propriety of the decision of the Court of first instance that the arbitrator had been guilty of misconduct.

The *Junior Government Pleader* (Babu Dwarka Nath Banarji), Babu Aprokash Chandar Mukarji, and Pandits Ajudhia Nath and Bishambhar Nath, for the defendant.

Messrs. Hill and Ross, and Babu Jogindro Nath Chaudhri, for the plaintiff.

The High Court (OLDFIELD and BRODHURST, JJ.) delivered the following judgment :

OLDFIELD, J.—We are of opinion that we have no power of revision under s. 622. The contention that the proceeding for arbitration is a decided case in which no appeal lies within the meaning of the section, and therefore open to revision under s. 622, is not tenable. The proceeding is of an interlocutory character only, made in the course of a suit ; it is part of a case which is still undecided, and in which an appeal lies from the final decree. It was not the intention to allow of revision of interlocutory proceedings, in the course of a suit, which do not determine it. The order, which is the subject of this application, will be open to revision by appeal from the final decree in the suit, and even if s. 622 allowed of it, it would be highly inexpedient for us to interfere at this stage of the case. We dismiss the application with costs.

*Application dismissed.*

## APPELLATE CIVIL.

*Before Mr. Justice Straight and Mr. Justice Tyrrell.*

MUHAMMAD BAKHSH AND OTHERS (DEFENDANTS) v. MUHAMMAD ALI AND ANOTHER (PLAINTIFFS.)\*

*Suit to set aside a decree obtained by fraud—Act XV of 1877 (Limitation Act), ss. 10, 18, sch. ii, No. 95—Suit against express trustee.*

Certain of the grantees of lands, granted for the maintenance of the grantees and the support of a mosque and other religious purposes, sued for the removal of the superintendent of the property from his office. The parties to

\* Second Appeal No. 556 of 1882, from a decree of R. J. Leeds, Esq., Judge of Gorakhpur, dated the 30th January, 1882, reversing a decree of Hakim Rahat Ali, Subordinate Judge of Gorakhpur, dated the 17th June, 1881.

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this suit entered into a compromise, which made certain arrangements for the management of the property, and a decree was made in accordance with the compromise. The grantees who were not parties to this suit then sued the grantees who were to set aside the compromise and decree on the ground of fraud.

*Held* that the suit fell within the terms of No. 95, sch. ii of the Limitation Act, 1877, and there was nothing about it which made the exemption of s. 10 of that Act applicable to it.

THE parties to this suit were the grantees of certain villages, which had been granted to them rent-free for their maintenance and for the support of a mosque and other religious purposes. The defendant Jawahir Ali was the superintendent of the property. The other defendants brought a suit against him to have him removed from the post of superintendent. The parties to that suit entered into a compromise, dated the 1st March, 1875, which made certain arrangements for the management of the property, upon which a decree was given the same day. The plaintiffs brought the present suit against Jawahir Ali and the other defendants to have this compromise and decree set aside, alleging that it had been entered into fraudulently, and without their knowledge, with the object of diverting the income of the property from the purposes for which it had been granted; and that they had become aware of the compromise and decree on the 18th January, 1878. The Court of first instance held that the suit was barred by limitation under No. 95, sch. ii of the Limitation Act, 1877, finding that the plaintiffs had become aware of the compromise and decree at the time the compromise was entered into. On appeal by the plaintiffs the lower appellate Court held that the suit was not barred by limitation, the provisions of s. 10 of the Limitation Act being applicable to it; and it gave the plaintiffs a decree. It observed as follows:—"I am not satisfied that there is sufficient proof of any fraud on the part of the defendants which would entitle the plaintiffs to the relief contemplated by art. 95, sch. ii of Act XV of 1877; but then I am clearly of opinion that the three years limitation prescribed by that article is not applicable to this suit, and that the object of the plaintiffs being the enforcement of a trust, the provisions of s. 10 of the Act must be followed. On the question of limitation, therefore, I hold that the suit is not barred." The defendants appealed to the High Court, contending, *inter alia*, that the suit was barred by limitation under No. 95, sch. ii of the Limitation Act.

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Mr. Conlan and the *Senior Government Pleader* (Lala Juala Prasad), for the appellants.

Pandits *Ajudhia Nath* and *Bishambhar Nath*, for the respondents.

The High Court (STRAIGHT and TYRRELL, J.J.) delivered the following judgment:—

STRAIGHT, J.—For the purpose of determining this appeal, it appears to us sufficient to consider the second plea taken by the appellants, namely, that the suit is barred by limitation. Upon looking into the plaint we find that the relief sought is the cancellation of the compromise and decree of the 1st March, 1875, and the ground upon which it is prayed is that of fraud. The suit therefore naturally falls within the terms of art. 95 of Act XV of 1877. It was held by the Judge, and argued before us on behalf of the respondents, that the claim of the plaintiffs is of the nature comprehended in s. 10, but this contention cannot be seriously entertained for a moment. The plaintiffs are in no sense seeking to follow specific trust property in the hands of the defendants and to recover it from them, and their suit has nothing about it which would make the exemption of s. 10 applicable. Such being the case it is only necessary to see which, if any, of the articles in the second schedule applies, and, as we have remarked, art. 95 exactly meets the circumstances. It was urged for the respondents, that in taking this view we are unreasonably limiting the period within which persons, against whom fraud has been practised, can bring suits. The argument is to our minds a fallacious one; and in taking the view we do, we are only giving effect to the very sound and reasonable principle recognized by the Limitation Law, that so long as a person, upon whom fraud has been practised, remains in ignorance of such fraud, no time shall run against him, but that when he has acquired knowledge of such fraud he shall, within three years from the date of obtaining such knowledge, come into Court for his relief. It was suggested by the respondents' pleader that the Judge has recorded no finding as to whether the statement of the plaintiffs, that they first became aware of the decree and compromise of the 1st March, 1875, on the 18th January, 1878, is true or not. He certainly does not

express any definite opinion upon this point, but in face of the statement made in his judgment, that no sufficient proof of any fraud on the part of the defendants had been given to entitle the plaintiffs to the relief contemplated in art. 95 of Act XV. of 1877, it would only involve the parties in unnecessary expense and delay to remand an issue as to the date when the alleged fraud first became known to the plaintiffs. We must therefore decree the appeal with costs.

*Appeal allowed.*

*Before Mr. Justice Oldfield and Mr. Justice Brodhurst.*

MUZAFFAR HUSAIN (DEFENDANT) v. ALI HUSAIN (PLAINTIFF)\*

*Sale in execution of decree of Revenue Court - Sale-certificate - Delivery of possession - Title of purchaser - Act XVIII. of 1873 (N.-W. P. Rent Act), s. 76 - Act XII. of 1881 (N.-W. P. Rent Act), s. 172 - Act XV. of 1877 (Limitation Act), sch. ii, Nos. 144, 178.*

Property sold in execution of a decree of a Revenue Court vests in the purchaser on completion of the sale and payment of the full price. In order to perfect his title it is not necessary that he should obtain a sale-certificate or should be put into possession by the Collector.

*Held*, therefore, that a suit by a purchaser at a sale in execution of a decree of a Revenue Court for possession of the property was maintainable, although his sale-certificate might be an invalid document, and the Collector had not put him into possession.

The plaintiff Ali Husain purchased at an auction-sale, held in execution of a decree for rent of a Revenue Court, the house which was the subject of this suit on the 15th September, 1877. He applied on the 6th May, 1881, for a sale-certificate, and obtained it, by order of the Assistant Collector, from the Amin who held the sale, on the 30th July, and it was registered. He then, on the 11th August, applied to have delivery of possession of the property, and on the 30th November obtained an order, for possession to be given, from the Assistant Collector. On appeal by the defendant to the Collector that officer set aside the order of the 30th November, on the ground that the Assistant Collector had no power, under s. 172, Act XII. of 1881, to give possession, and that the plaintiff's application of the 11th August was made beyond the time allowed by No. 178, sch. ii. of the Limitation

\* First Appeal No. 94 of 1882, from an order of Maulvi Muhammad Nazeem-ud-din Khan, Subordinate Judge of Shahjahanpur, dated the 8th June, 1882.

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