

payable in September, 1876, and it must be observed that the decree-holder was by his application seeking to enforce his full rights under the forfeiture provided for by the decree and compromise of July, 1874. Having once resorted to this alternative and applied to execute the decree for the maximum sum, I do not think it was competent for him in any subsequent application to revert to an enforcement of the instalments. In this view of the matter I am of opinion that the petition of the 28th August, 1879, by which the decree-holder prayed leave to take out the Rs. 502 deposited in Court by the judgment-debtor, in liquidation of instalments, was not a step in aid of execution of the decree in the shape in which the decree-holder had sought to execute it by his application of the 7th May, 1877. As the application, in respect of which this appeal has been preferred, was not made until the 8th September, 1881, limitation, in my opinion, barred it, and on this ground I hold that the appeal fails, and must be dismissed with costs. In regard to the cross-objections, I am of the same opinion as my brother Oldfield.

Appeal dismissed.

CIVIL REVISIONAL.

Before Mr. Justice Oldfield and Mr. Justice Brodhurst.

CHATTAR SINGH, GUARDIAN OF GANGA SAHAJ, MINOR (DEFENDANT)
v. DEKHRAJ SINGH (PLAINTIFF.) *

Arbitration—Setting aside award for misconduct of arbitrator—High Court's powers of revision—Civil Procedure Code, ss. 521, 622.

An order under s. 521 of the Civil Procedure Code, setting aside an award, made on a reference to arbitration in the course of a suit, under Chapter XXXVII of the Code, on the ground of the arbitrator's misconduct, is not subject to revision by the High Court in the exercise of the powers conferred on it by s. 622 of the Code.

THIS was an application by the defendant in this suit for revision under s. 622 of the Civil Procedure Code of an order under s. 521 of that Code, setting aside an award, made on a reference to arbitration, under Chapter XXXVII. of the Code, of the matters in dispute in the suit, on the ground of the arbitrator's miscon-

* Application No. 129 of 1882, for revision under s. 622 of the Civil Procedure Code of an order of Mavlvi Sami-ul-Jah Khan, Subordinate Judge of Aligarh, dated the 24th April, 1882.

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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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