The order having been *ultra vires*, the subsequent proceedings are also *ultra vires* and must be treated as non-existent—*Rameshur Singh* v. *Sheodin Singh*(1)).

We must set aside the decree of the Subordinate Judge and the second decree of the District Munsif and remand the original appeal No. 72 of 1892 to the file of the District Court of Tanjore to be disposed of according to law.

The costs hitherto incurred will abide the event.

APPELLATE CIVIL—FULL BENCH.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, Mr. Justice Parker and Mr. Justice Subramania Ayyar.

HUSANANNA (DEFENDANT), APPELLANT,

v.

LINGANNA (PLAINTIFF), RESPONDENT.*

1894. March 30, May 2. 1895. March, 11, May 1, 2.

Civil Procedure Code—Act XIV of 1882, *ss.* 525, 526—*Arbitration without intervention of Court—Application for decree in terms of award—Denial of submission to arbitration and genuineness of award.*

An appeal lies against a decree passed upon an award under Civil Procedure Code, sections 525, 526, when the cause shown against the filing of the award has denied the submission to arbitration and the genuineness of the award.

SECOND APPEAL against the decree of M. R. Weld, District Judge of Kurnool, in appeal suit No. 39 of 1892, affirming the decree of V. Ranga Rau, District Munsif of Nandyal, in original suit No. 117 of 1890.

Suit under Civil Procedure Code, section 525, that an award to be filed in Court. The other party to the alleged arbitration, said to have resulted in the award, was joined as defendant and alleged as cause against the filing of the award, that there had been no reference to the arbitration and that the award was not genuine.

The District Munsif held that there had been an arbitration, which resulted in the award, and passed a decree as prayed.

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(1) I.L.R., 12 All., 510. * Second Appeal No. 1754 of 1893.

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The District Judge passed a decree upholding this decision on the ground that no appeal lay.

The defendant preferred this second appeal.

Runga Rau for appellant.

Respondent was not represented.

This second appeal came on for hearing before COLLINS, C.J., and PARKER, J., who referred the matter to the Full Bench as follows:—

ORDER OF REFERENCE TO THE FULL BENCH.—The plaintiff applied, under section 525 of the Civil Procedure Code, that an award made without the intervention of the Court might be filed and a decree given in accordance with the terms thereof. The defendant denied the reference to arbitration and the genuineness of the award. The District Munsif found both these points in plaintiff's favour and gave him a decree. On appeal the District Judge considered the Munsif's finding was wrong, but held that he was concluded by the decision in *Micharaya Guruvu* v. *Sadasiva Parama Guruvu*(1) and that there was no appeal. Hence this second appeal.

For the defendant (appellant) it was contended that the decision in *Micharaya Guruvu* v. *Sadasiva Parama Guruvu*(1) had not been followed in more recent cases, (see *Suppu* v. *Govindacharyar*(2) and *Venkayya* v. *Venkatappayya*(3)) and it was urged that the view of the Calcutta High Court was also in favour of an appeal (*Sashti Charan Chatterjee* v. *Tarak Chandra Chatterjee*(4), and *Surjan Raot* v. *Bhikari Raot*(5)). The argument was that though an appeal would be barred if the enquiry had been as to objections under sections 520 and 521 of the Civil Procedure Code, it was otherwise when the enquiry was as to the very existence of the award and the fact of the agreement of arbitration.

There is a conflict of authority as to the course to be taken should the defendant appear and deny the reference to arbitration and the genuineness of the award. In Calcutta it was held by a Full Bench (*Sashti Charan Chatterjee* v. *Tarak Chandra Chatterjee*(4)) that no judgment ought to be given when the award or the consent to arbitration is disputed, that the special jurisdiction

(1) I.L.R., 4 Mad., 319.
(2) I.L.R., 11 Mad., 85.
(3) I.L.R., 15 Mad., 348.
(4) 8 B.L.R., 315.
(5) I.L.R., 21 Calc., 213.

was then ousted and that an appeal would lie if a decree and judgment had been erroneously passed upon the award. Similar views were expressed in *Ichamoyee Chowdhranee* v. *Prosunno Nath Chowdhri*(1), *Bijadhur Bhugut* v. *Monohur Bhugut*(2) and *Hurronath Chowdhry* v. *Nistarini Chowdrani*(3), some Judges going so far as to hold that the special procedure under section 525 was also ousted, if the objections raised fell under sections 520 and 521. These cases were again considered by a Full Bench of the Calcutta High Court in *Surjan Raot* v. *Bhikari Raot*(4) when it was unanimously held that when the objections to the award fell within section 521 of the Civil Procedure Code, the Court was not bound to hold its hand and reject the application, but should enquire into the validity of the award and determine whether it should be filed or not. Three of the Judges composing the Full Bench intimated an opinion that where the objection taken was that the matters in dispute had never been referred to arbitration, the Court had no jurisdiction under section 525. But this point did not really arise on the reference.

In Bombay, a similar view has been taken (see *Samal Nathu* v *Jaishankar Dalsukram*(5). It was there held that the procedure under sections 525 and 526 of the Civil Procedure Code only related to cases in which the reference and the award are accepted facts. The Judges considered that if the objection was obviously unfounded it should be regarded as no cause against the filing, but if it appeared a substantial objection the applicant should be referred to a regular suit upon the award. But in *Vishnu Bhau Joshi* v. *Ravji Bhau Joshi*(6), it was held that there was no appeal against the decree passed upon an award.

We have not been referred to any case in which this particular point has been decided in Allahabad.

In *Micharaya Guruvu* v. *Sadasiva Parama Guruvu*(7) that point was not raised. In that case, the District Munsif found that the award was genuine and decreed for plaintiff accordingly and the High Court held that the District Court could not entertain an appeal. This was an application filed under section 525 of the Civil Procedure Code.

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(1) I.L.R., 9 Calc., 557.
(2) I.L.R., 10 Calc., 11.
(3) I.L.R., 10 Calc., 74.
(4) I.L.R., 21 Calc., 213.
(5) I.L.R., 9 Bom., 254.
(6) I.L.R., 3 Bom., 18.
(7) I.L.R., 4 Mad., 319.

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In *Suppu* v. *Govindacharyar*(1) which was a case in which the reference to arbitration had been made by the Court, it was held that section 522 presupposed the existence of an award as the basis of a decree and could not apply to a case in which there had been no award in law or in fact. The appeal was therefore allowed. The case of *Gopi Reddi* v. *Mahanandi Reddi*(2) is not in point. It was merely held that the procedure of section 525 could not apply when the award itself could not be produced. In *Venkayya* v. *Venkatappayya*(3) the reference to arbitration was made in the course of a suit. Objections alleging misconduct of the arbitrators and the invalidity of the award were overruled by the District Munsif who passed a decree in accordance with the award. The High Court held that the District Judge had power to hear an appeal on the ground that the award was not legal. This case also as well as *Suppu* v. *Govindacharyar*(1) seems in conflict with *Micharaya Guruvu* v. *Sadasiva Parama Guruvu*(4).

In Madras, the objection that a Court is ousted of its jurisdiction under section 525 when the existence of the award is denied, does not seem to have been taken. In all the cases cited, like the present, the Court of First Instance has proceeded to enquire and determine the fact,—and the sole question is whether there is an appeal.

We find it impossible to reconcile the decision in *Michardya Guruvu* v. *Sadasiva Parama Guruvu*(4) with *Suppu* v. *Govindacharyar*(1) and *Venkayya* v. *Venkatappayya*(3), and though it is in accord with *Vishnu Bhau Joshi* v. *Ravji Bhau Joshi*(5), it is in conflict with the course of decisions in the Calcutta High Court.

We, therefore, refer for the determination of a Full Bench the following question:—"Is there an appeal against a decree passed "upon an award under sections 525 and 526 of the Civil Proce-"dure Code when the cause shown has denied the submission to "arbitration and the genuineness of the award?"

This second appeal came on for hearing before the Full Bench.

Runga Rau for appellant.

Pattabhirama Ayyar for respondent.

The Court delivered the following judgments:—

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(1) I.L.R., 11 Mad., 85.
(2) I.L.R., 12 Mad., 331.
(3) I.L.R., 15 Mad., 348.
(4) I.L.R., 4 Mad., 319.
(5) I.L.R., 3 Bom., 18.

SUBRAMANIA AYYAR, J.—I am of opinion that there is an appeal against a decree passed upon an award under section 526 of the Civil Procedure Code, when the cause sought to be shown against the filing of the award has denied the submission to arbitration and the genuineness of the award.

The main objections taken to this view are two:—The first is that what is called a decree on an award, filed under section 526, is not in reality one according to the definition of the term as contained in section 2 of the Civil Procedure Code, for the adjudication under section 526 is not an adjudication in a suit or appeal as required by the first part of the definition. The second objection is that, even if such an adjudication be held to be a decree in the proper sense of the term an appeal from it is prohibited by the last clause of section 522, even in such a case as the present.

Now as to the first contention, no doubt the proceedings under sections 525 and 526 begin with an application and not with a plaint. But the former section directs that the application so presented shall be numbered and registered as a suit between the applicant as plaintiff and the other parties as defendants and the latter (section 526) lays down that if the Court orders the award to be filed, such award shall take effect as an award made under the provisions of chapter XXXVII of the Code; the meaning, of course, being that the award shall take effect in the same way as an award made under a reference to arbitration through the Court, after a suit had commenced, upon which award judgment and decree follow as provided by section 522. It is thus quite clear that though a proceeding, taken under sections 525 and 526, does not in its inception commence in the way in which a suit is begun, yet in its subsequent stages, it is treated by the law as a suit, especially in the requirement that as soon as an award is ordered to be filed, it must be followed by judgment and decree. That such is the proper construction of the clause "and such award shall "then take effect as an award made under the provisions of this "chapter" in section 526, there can be no doubt.

This view is moreover supported by the uniform practice of the Courts from the time of the enactment of section 327 of Act VIII of 1859 (corresponding to sections 525 and 526 of the present Code). In *Sashti Charan Chatterjee* v. *Tarak Chandra Chatterjee*(1) decided twenty-two years ago, Norman, J., referring

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

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to the point I am considering, observed (at page 325) :—"It seems "to me that the only order which a Judge is empowered to make "under section 327 is simply an order that the award shall be "filed. When the award is filed it is to be enforced under the "provisions of chapter VI, Act VIII of 1859. Now the mode of "enforcement of an award is by passing judgment and making "a decree in accordance with the award." And Paul, J., in the same case, said (at pages 330-31) :—"It appears to me that an "order directing the filing of an award is not a decree in its ordinary "signification; and being in its nature a proceeding ancillary to "the passing of judgment and decree it is an order made in the "course of a suit (commenced by an application,) and relating "thereto prior to decree. . . . It is clear that unless an order "directing an award to be filed is followed up by judgment and "decree no execution can issue."

The same opinion has been emphatically expressed again in Calcutta in the very recent case of *Surjan Raot* v. *Bhikari Raot*(1). There Petheram, C.J., rejected the view put forward by the Judges who decided *Sree Ram Chowdhry* v. *Denobundhoo Chowdhry*(2), to the effect that when the application to file an award is registered as a suit, that has not the effect of converting the application into a suit for all purposes, but merely means that for the purposes of the entry in the register of civil suits and for those purposes only the application is regarded as a suit. The Chief Justice argued against this view as follows :—"If the application to file the award "is not converted into a suit for all purposes, it is not converted "into one at all for any but an administrative one as defined by "Field, J., and it must follow that the award cannot be enforced "under the provisions of those sections as there is no suit pending "in which a decree can be made, and filing the award has no effect "whatever, as even after it is filed, it can only be enforced by a "regular suit to be commenced by a plaint in the ordinary way, "which could be done as well before it is filed as it could after-"wards; and this is to hold that these two sections 525 and 526 "have no practical effect whatever. I understand that from the "passing of the Act down to the present time proceedings under "these sections have been treated as suits in this way and that "when the award has been filed, judgment and decree have in all

(1) I.L.R., 21 Calc., 213, 221. (2) I.L.R., 7 Calc., 490.

"cases followed upon such finding without any question and I "think it would be impossible to hold now that all such decrees "have been waste paper because they were not made in any suit."

The force of this reasoning cannot but be admitted, and it must be taken as perfectly well established that an adjudication which follows the filing of an award under section 526 is in almost every essential particular a decree with nearly all the incidents attaching to one passed in an ordinary suit. One of these incidents is that under section 540 an appeal lies "unless when "otherwise expressly provided by the Code or by any other law for "the time being in force." The question therefore is whether when a decree is passed under section 526 in a case where the submission and the genuineness of the award are denied, an appeal from such decree, is prohibited by any other provision of the Code or by any other law.

And this leads me to the consideration of the next contention raised, viz., that the last clause of section 522 bars such an appeal. That this contention is untenable will be manifest if the scope of the clause in question is clearly kept in view. The words of the clause are "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." It will here be seen that the prohibition against an appeal contained in the said clause is not unqualified, but is subject to certain conditions, some of them being expressly specified in the clause itself, while others are necessarily implied by the very language of it. Among the conditions so implied, the most important are (i) there must have been a matter referred to arbitration and (ii) there must have been an award on the matter referred. These conditions, as observed by the Full Bench of the Allahabad High Court in *Amrit Ram* v. *Dasrat Ram*(1) must exist as the foundation of the jurisdiction of a Court to order, under sections 525 and 526, the award to be filed. Consequently in the absence of either condition, there can be no valid adjudication under section 526 and a decree passed in such a proceeding and purporting to rest on a supposed award must, in reason, be liable to be impeached, unless there is a specific provision of the law to the contrary, on the ground that there was no submission or there was no award, and the Court had therefore no jurisdiction to pass the decree. But no such provision being

(1) I.L.R., 17 All., 21, 25, 26, 28.

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found in section 522 or elsewhere, it follows that the remedy open to a party against whom a decree has, in the circumstances supposed above, been given under section 526, is the ordinary one of an appeal against it under section 540. This view is now conceded by the High Courts of Calcutta, Bombay and Allahabad. See *Sashti Charan Chatterjee* v. *Tarak Chandra Chatterjee*(1), *Nandram Daluram* v. *Nemchand Jadavchand*(2), and *Amrit Ram* v. *Dasrat Ram*(3).

The principle on which these cases proceed seems to be that the finality contemplated by section 522 is confined to a determination by the Court of certain specific matters, such as are enumerated in sections 520 and 521, which do not include denial of submission or the genuineness of the award or other like circumstances. That there is an undoubted distinction between an adjudication on these latter questions and an adjudication upon the other matters, referred to above, cannot be denied. The distinction is that whereas a decision as to the truth of the submission or the genuineness of the award is a determination which goes to the very root of the jurisdiction of the Court to proceed under sections 525 and 526, the orders of the Court passed under sections 520 and 521 are merely more or less ancillary to the enforcement of an award given under a reference made through the intervention of a Court about the *factum* of which reference or award there can generally be little ground for dispute. This distinction was lost sight of in *Micharaya Guruvu* v. *Sadasiva Parama Guruvu*(4) which was, in my opinion, consequently wrongly decided. The error into which the learned Judges fell is in their holding that a Court, proceeding under section 526, is empowered to adjudicate with conclusive effect not only on the ancillary matters above referred to, but also upon the question whether there is a submission or not, when there is no warrant for such a conclusion in the language of any of the provisions of chapter XXXVII. Nor is there anything in principle to support the conclusion. Now an ordinary suit lies to enforce an award made without the intervention of a Court of Justice, the special procedure provided in section 526 not being imperative, *Palaniappa Chetti* v. *Rayappa Chetti*(5). Suppose such a suit is brought. If, in it, the Court upholds the award and passes a

(1) 8 B.L.R., 315.
(2) I.L.R., 17 Bom., 357.
(3) I.L.R., 17 All., 21, 25, 26, 28.
(4) I.L.R., 4 Mad., 319.
(5) 4 M.H.C.R., 119.

decree, it is certainly open to a party impeaching the award to raise, in any appeal preferred against the decree, the objection that there was no submission or award. Why then should a party against whom a decree is passed in similar circumstances in a special suit commenced by a petition, under section 526, be precluded from raising such objections in an appeal against that decree in the absence of an express prohibition in law against the adoption of such a course? I think, therefore, that the last clause of section 522 was not intended to, and does not prevent, an appeal in a case like the present.

It was next argued on behalf of the respondent before us that it was not competent to the District Munsif to try the questions of the denial of submission and the genuineness of the award, that as soon as such objections were raised the District Munsif was bound to reject the application without proceeding further, that consequently the decree passed by him was void *ab initio* and that the remedy for the appellant was not by an appeal to the District Judge, but by an application for revision to this Court.

Upon the question which is assumed as the first step in the above argument, viz., whether the District Munsif was competent to try the truth of the cause here sought to be shown, it is unnecessary to pronounce any opinion now. Because, even granting for argument's sake that that assumption is well founded, it is clear that the proper and appropriate remedy against the Munsif's decree said to be void, is by an appeal to the District Judge under section 540 of the Code. For, under that section (except when otherwise expressly provided for, which is not the case here as has been already shown), an appeal lies against every decree whether such decree was passed in a suit over which the Court passing the decree had jurisdiction or not. The respondent's contention under consideration involves the reading into the definition of a decree in section 2 of the Code of a proviso which is not there. That part of the definition, with which we are for the present concerned, runs thus:—"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." To sustain the respondent's argument it would be necessary to add after the word 'appeal' words to the following effect "provided the Court so "adjudicating has jurisdiction to entertain the suit or appeal."

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There is absolutely no justification for importing any such proviso. Therefore in the face of the clear language of the definition coupled with section 540, it would be exceedingly unreasonable and unjust to hold that a party against whom a decree has been passed by a Court without jurisdiction is, in consequence of that want of jurisdiction, prevented from resorting to his remedy by an appeal, which in the case of decrees pronounced by a Court having jurisdiction, he can claim as a matter of right; and is solely dependent upon the exercise by this Court, in its discretion, of the extraordinary powers vested in it in respect of matters coming up before it on revision to get rid of such decree.

I agree, therefore, in answering the question referred in the affirmative.

PARKER, J.—The question referred to the Full Bench is "Is "there an appeal against a decree passed upon an award under "sections 525 and 526, Code of Civil Procedure, when the cause "shown has denied the submission to arbitration and the genuine-"ness of the award?"

Sections 525 and 526 provide an optional method of enforcing an award when any matter has been referred to arbitration without the intervention of a Court of Justice. It is a procedure which is only applicable when the reference and the award are accepted facts, *Samal Nathu* v. *Jaishankar Dalsukram*(1), and it does not detract from the right to bring a regular suit to enforce the terms of an award, *Palaniappa Chetti* v. *Rayappa Chetti*(2) and *Kota Seetamma* v. *Kollipurla Soobbiah*(3).

Section 525 provides that the application shall be numbered and registered as a suit and notice shall be given to the other parties to the arbitration to show cause why the award should not be filed, and section 526 further provides that if no ground such as is mentioned or referred to in section 520 or section 521 be shown against the award, the Court shall order it to be filed. These provisions clearly indicate that the reference and the award itself must be undisputed facts, since it would be absurd to suppose the legislature intended to limit the objections which could be raised to those referred to in sections 520 and 521 if there was any dispute as to the *factum* of the award. It must be remembered that,

(1) I.L.R., 9 Bom., 264. (2) 4 M.H.C.R., 119.
(3) 8 M.H.C.R., 81.

though there is no appeal against an order refusing to file an award (*Sree Ram Chowdhry* v. *Denobundhoo Chowdhry*(1)), such refusal does not operate as *res judicata* or bar a suit to enforce the award. I am inclined, therefore, to agree in the view of the Calcutta and Bombay High Courts that if the award and the consent to arbitration is substantially disputed the special jurisdiction created by sections 525 and 526, Code of Civil Procedure, is ousted and that the applicant should be referred to a regular suit upon the award.

In the case under reference there was such a substantial dispute, and the District Munsif disposed of the case without jurisdiction. An appeal will therefore lie.

See *Sashti Charan Chatterjee* v. *Tarak Chandra Chatterjee*(2), *Surjan Raot* v. *Bhikari Raot*(3), *Amrit Ram* v. *Dasrat Ram*(4), *Suppu* v. *Govindacharyar*(5) and *Secretary of State for India* v. *Vydia Pillai*(6). I would answer the question referred to the Full Bench in the affirmative.

COLLINS, C.J.—I have had the advantage of reading the judgments of PARKER and SUBRAMANIA AYYAR, JJ., and I agree with the conclusion arrived at.

This second appeal came on again for final disposal, and the Court (COLLINS, C.J., and PARKER, J.) delivered the following judgment :—

JUDGMENT.—The Full Bench having held that an appeal lay to the District Judge, the decree must be reversed and the appeal remanded to be heard on the merits. The costs incurred in the High Court will be borne by the plaintiff and the costs in the Courts below will abide and follow the result.

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(1) I.L.R., 7 Calc., 490.
(2) 8 B.L.R., 315.
(3) I.L.R., 21 Calc., 213.
(4) I.L.R., 17 All., 21.
(5) I.L.R., 11 Mad., 85.
(6) I.L.R., 17 Mad., 193.