

1884 review, and if they thought their decree really did injustice, no  
 GANGAPER- doubt they would have done so. Their Lordships do not feel  
 SEAD SAHU justified in disturbing the judgment of the High Court under  
 v. such circumstances.  
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The result is, that this appeal must be dismissed with costs, and their Lordships will humbly advise Her Majesty to that effect.

*Appeal dismissed.*

Solicitor for the appellant: Mr. T. L. Wilson.

Solicitors for the respondent: Messrs. Barrow & Rogers.

RANI BHAGOTI (DEFENDANT) v. RANI CHANDAN (PLAINTIFF.)

[On appeal from the Court of the Judicial Commissioner of the Central Provinces.]

P. O.\*  
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February 7.

*Arbitration—Defence of submission to arbitration and award upon the matter in suit before suit brought.*

An award upon a question referred to arbitrators, on whose part no misconduct or mistake appears, concludes the parties who have submitted to the reference from afterwards contesting in a suit the question so referred and disposed of by the award.

Two widows of a deceased Hindu referred generally to arbitrators the question of their rights, respectively, in the estate of their deceased husband, including the matter whether there was, or was not, any cause disentitling the widow, who afterwards brought this suit for her share in the estate against the other who had obtained possession of the whole.

The arbitrators declared her to be disentitled to any portion of the estate, and awarded her maintenance only.

*Held*, that, in the absence of mistake, or misconduct, on the part of the arbitrators, the award was binding on the parties.

APPEAL from a decree (22nd November 1880) of the Judicial Commissioner of the Central Provinces, reversing a decree (8th May 1880) of the Additional Commissioner, Jabalpur and Nerbudda Divisions, and remanding an appeal to him for hearing on the merits.

The principal question in the suit out of which this appeal arose related to the title of one of two widows of Rao Dhiraj Singh, taluqdar of Bilehra in the Narsinghpur district, who died.

\* *Present*: LORD BLACKBURN, SIR B. PEACOCK, SIR R. COLLIER, SIR R. COUCH, and SIR A. HOBHOUSE.

on the 10th December 1878, to a half share of the estate of her late husband. This she claimed from the other widow who had obtained possession of the whole estate of the deceased. Whether this claim had been disposed of in a manner binding on the parties by an award of arbitrators appointed to decide between them, was the principal question on this appeal.

The deceased Rao left no issue, and on his death change of names in the Collectorate books, *dakhil kharij*, took place in favour of the widow who was defendant in the suit, and appellant in this appeal. This was the admission of the revenue authorities of her right to the possession of all the estate of the deceased; and in 1879 an application by the other widow, the present respondent, for *dakhil kharij* in her name as to half the estate, was rejected.

After recourse to arbitration, Rani Chandan brought this suit in the Court of the Deputy Commissioner of Narsinghpur, claiming, as one of the two widows who survived Rao Dhiraj Singh, possession of a half share of twenty-four villages and other property belonging to his estate, valued at Rs. 63,379 in all.

Among other defences the arbitration proceedings were set up; and it was alleged that the question whether the plaintiff had not been separated from the deceased Rao in his lifetime, and had not received a fixed allowance from him, having become disentitled to succeed on account of infidelity to her husband, had been decided against the claimant by the arbitrators' award. Accordingly, at the hearing, an issue was fixed as to the fact of the reference having been made on the submission of parties, and as to the effect of the award. And the judgment of the Deputy Commissioner, thereupon, was that the submission to arbitration had not extended so far as to include the question whether the plaintiff had become disentitled to succeed by reason of adultery. He held, therefore, that the award as to her incapacity to inherit her husband's property was not binding, and decreed in the plaintiff's favour for the half share claimed by her.

The Additional Commissioner, to whom an appeal was preferred, held, on the contrary, that the award had been duly made, and

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 from maintaining this suit.

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This latter decision was reversed by the Judicial Commissioner who held, in the judgment now under appeal, that the arbitrators had received no such authority, on the reference to them by the parties, as would have enabled them by their award to exclude the plaintiff from the succession. The suit was, accordingly, remanded to the Additional Commissioner, who was directed to decide it upon the merits, irrespectively of the award. This he did on the 24th February 1881, making a decree in favour of the plaintiff, and against the present appellant, who, on the 29th April 1881, obtained admission of an appeal to Her Majesty in Council against the decree of the Judicial Commissioner of the 22nd November 1880, reversing the first decree of the Additional Commissioner, which had maintained the effect of the arbitrators' award.

On this appeal,—

Mr. J. Graham, Q.C., and Mr. A. M. Bremner appeared for the appellant.

The respondent did not appear.

For the appellant it was argued that the award of the arbitrators was binding on the parties, and that the Judicial Commissioner had erred in holding, in the judgment of 22nd November 1880, that it was not so. The arbitrators received authority to inquire into any matters affecting the respective rights of the parties; and, as it had not been shown that they had misconducted themselves, or fallen into any error affecting the merits of the case, there was no ground for treating the award as invalid. A similar case had occurred in *Mussumut Rubbee Koor v. Jewut Ram* (1), which arose in the Provincial Court of Benares in 1811, and was decided in the Sadr Diwani Adalat at Calcutta in 1818. Reference was also made to the judgment in *Eshenchunder Singh v. Shamachurn Bhutto* (2).

Their Lordships' judgment was delivered by

SIR R. COUCH.—In this case the plaintiff, the younger widow of one Dhiraj Singh, who died on the 10th December 1875,

(1) 2 Sel. Rep., S. D. A., for 1818, p. 267.

(2) 11 Moo. I. A., 7.

brought her suit to recover half of the property which had been left by Dhiraj Singh. The defendant was the elder widow of the deceased. The property which was claimed in the suit consisted of 24 villages which are specified in the schedule to the plaint. The defendant pleaded, first, that the matters between the parties had been referred to arbitration by an agreement in writing, and that there was an award of the arbitrators which decided that the plaintiff was not entitled to recover half of the property. She further pleaded that the plaintiff was unchaste before the death of her husband, and that therefore she would not be entitled to inherit the share of the property which was claimed.

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In the first Court, the Deputy Commissioner of Narsinghpur, who tried the case, framed several issues, two being whether the question of the distribution of the property of Dhiraj Singh had been referred to arbitration by agreement between the parties in writing, and an award thereon been made, and whether the agreement was binding. Probably it was meant to include in this issue the question whether the award, as well as the agreement, was binding. Another issue was, whether the plaintiff was unchaste before the death of her husband, and so debarred from inheriting. In his judgment he said it was doubtful, he thought, whether the plaintiff did sign the submission to arbitration; but he did not consider that even if she did it was binding, and he gave a decree in favour of the plaintiff for the half-share of the villages claimed.

That decision went by way of appeal to the Additional Commissioner of the Jabbalpur and Nerbudda Divisions, who came to the conclusion that the submission to arbitration was signed by the plaintiff. He also held that the award was valid, and reversed the order of the lower Court and dismissed the plaintiff's claim. He says: "From a careful consideration of all these circumstances, I cannot agree with the lower Court that the award of the arbitrators is invalid, or that there is any doubt as to the contract by plaintiff to refer."

Then the case went by way of what was formerly called a special appeal, but which is now called a second appeal, to the Judicial Commissioner of the Central Provinces. The Judicial

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Commissioner, on that second appeal, had no jurisdiction to deal with any findings of fact. The facts as found by the lower Appellate Court would have to be taken as being the real facts of the case. However, he did deal with the question whether the agreement was signed and made by the plaintiff, and he considered that the lower Appellate Court was fully justified in that finding. But he appears to have thought that he could go into the whole case, because he says: "I have two questions to decide: first, whether the lower Appellate Court had evidence for the finding that the agreement was genuine; secondly, whether it was right in upholding the award." After finding that the agreement was signed, he went into the question whether the award was to be upheld, and decided that the arbitrators had exceeded their authority in entering into the question of the plaintiff's chastity, and that the award was bad: and on that ground he reversed the decision of the Additional Commissioner.

The question really now before their Lordships is, whether this award is binding upon the plaintiff? The submission was made by two agreements, one signed by Rani Chandan and the other by Rani Bhagoti, the elder widow. The one signed by Rani Chandan, the plaintiff in the suit, is in these terms; "Agreement executed by younger Rani Chandan, widow of Rao Dhiraj Singh, late malguzar of Bilehra and Karabgaon, to Maharaj Singh (umpire), malguzar of mauza Nadia; Lala Jaget Singh (arbitrator), malguzar of mauza Bamhori; Mohanjo Chachandia (arbitrator), malguzar of mauza Kathangi; Thakur Aman Singh (arbitrator), thekedar of mauza Manakpur; and Raghunath Seth (arbitrator) of mauza Karabgaon; to the effect that there is a difference between me and the elder Rani about our respective rights; that I have appointed you as arbitrators; that I shall accept what you may give as the limit of my rights." The agreement signed by the Rani Bhagoti is precisely similar in its purport.

There is thus a general reference to the arbitrators to decide between the two widows upon their respective rights, and particularly with respect to Rani Chandan, the younger, what was the limit of her rights, raising the entire question, not merely

whether she was entitled to maintenance, but whether there were facts which would disentitle her to succeed to any portion of the estate of her deceased husband. The arbitrators, so far as appears, were gentlemen of some position in the neighbourhood, and apparently must have been well competent to decide such a question as this between the two widows. It may also be observed that probably it was the very best tribunal to which a dispute of this kind could be referred. They make their award, and they say: "As you, both the Ranis, have appointed us as arbitrators and umpire with your own consent to settle the matter in difference between you about your respective rights, we have this day come to your place in order to give our decision. Inquiries being set on foot, Rani Chandan stated that she has been living separate, from the lifetime of the deceased Rao Sahib; that he, Rao Sahib, used to provide for her maintenance to the extent of her requirements; that she is not willing to accept that allowance now; and that some separate allowance for her should be fixed by the arbitrators according to their judgment, so as to avoid the possibility of her being driven to make constant demands against the elder Rani." Then: "Question by Arbitrators.—Why did the Rao Sahib keep you separate and fix a maintenance for you? Answer.—I do not know the reason." So they heard what Rani Chandan had to say. Then they appear to have heard what the other widow Rani Bhagoti, had to say, and she stated that "Rani Chandan has always been living separate; that she will pay what Rao Sahib used to pay her (Rani Chandan) as maintenance; that the reason why Rani Chandan has been living separate is this, that her character has been entirely bad, so much as that she cannot describe it; that she (Rani Chandan) is a woman of small intelligence; that for these reasons the Rao Sahib at first intended to turn her out, but refrained from doing so to avoid a scandal, and was constrained to keep her separate and to make provisions for her as stated." Then the award says: "On hearing the statement of both the Ranis we inspected the order passed on the proceedings taken for mutation of names."

Those proceedings, it may be well to mention here, were proceedings which had been taken immediately upon the death of

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Dhiraj, and which resulted in Rani Bhagoti being found to have been in possession since a date in the deceased's lifetime, and an order for the mutation being made in her favour. The award then goes on: "In that order it is held as proved that the younger Rani Chandan has been living separate and receiving maintenance. The statement of the elder Rani was made the subject of full inquiries, and it is proved to be the whole truth and correct, *i.e.*, the old and young people of the village corroborate the elder Rani's statement word by word. The mutation proceedings terminated in Rani Bhagoti being put in possession of the estate, and the younger Rani being allowed a maintenance." That was correct. Thus it appears that these gentlemen did make inquiries into the allegation of Rani Bhagoti, and the ground which it was alleged disqualified Rani Chandan from inheriting any portion of her husband's property. They then go on: "This we opine is quite reasonable and just, and we the arbitrators hold that this maintenance is all that can be allowed, save that we consider that a money allowance of Rs. 600 per annum be allowed to the younger Rani Chandan for her maintenance; that she be allowed to keep her own jewels." They award her that 600 rupees per annum for maintenance.

Now upon the face of this award they appear to have inquired into the matters which had to be inquired into to see what the rights of the two widows were, and especially the right of Rani Chandan. They decided against her, and there does not appear to be any ground for saying that they misconducted themselves, or made any mistake in conducting the inquiry. The only thing apparently that can be suggested arises from the evidence which one of them, Jagat Singh, gave, in which, when he was cross-examined, he seems to have said, in reply to some question which is not given, "How could we give her half when the Sirkar had not done so in the *dakhil kharij*?"—that is, in the mutation proceedings. He may have given that as some reason in answer to a question put to him, Why did you not give her half when you were making this award? But that is not a sufficient ground for saying there was anything like misconduct on the part of this gentleman, nor is there any other

ground upon which their Lordships can say that this award ought not to be held to be a binding award.

Their Lordships will therefore humbly advise Her Majesty to reverse the decree of the Judicial Commissioner. Consequently the decision that the award is binding which was come to by the lower Appellate Court will stand, and the respondent will pay the costs of this appeal.

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*Decree reversed.*

Solicitors for the appellant: Messrs. *Ashurst, Morris, Crisp, and Co.*

## APPELLATE CIVIL.

*Before Mr. Justice Tottenham and Mr. Justice Ghose.*

LALLA BHAGUN PERSHAD AND OTHERS (JUDGMENT-DEBTORS) v.  
HOLLOWAY (DEBTEE-HOLDER).\*

1885  
March 6.

*Act XIV of 1882, ss. 232, proviso (b), and 244 (cl. a.)—Civil Procedure Code—  
Transferee of a money decree to one of several co-judgment-debtors—  
Execution.*

Certain property was mortgaged by *A* to *B*. Subsequently, this property was purchased by *O* at a sale held in execution of a decree obtained by a third person against *A*; *B* then brought a suit on his mortgage-bond against *A* and *C*, and obtained a decree for the sale of the mortgaged properties, and also a personal decree against *A*; *B* assigned his rights under this decree to *C*, who applied for execution under s. 232 of the Code. *A* objected to execution issuing, relying on proviso (b) to s. 232.

*Held*, that proviso (b) to s. 232 applies only to decrees for money personally due by two or more persons; and that the decree obtained by *B* against *A* and *C* not being a personal decree against *C*, (he having been made a defendant only by reason that he had purchased the mortgaged property subject to the mortgage debt), *C*, as assignee of *B*, was entitled to take out execution.

A CERTAIN mouzah, Ruderpore Mehda, was mortgaged by Lalla Bhagun Pershad and others (hereafter called the mortgagors); to one Mani Singh. Subsequently to the mortgage this mouzah

\* Appeal from Appellate Order No. 364 of 1884, against the order of W. Verner, Esq., Judge of Bhagulpore, dated the 10th of July 1884, reversing the order of Baboo Dwarka Nath Mitter, Second Subordinate Judge of that district, dated the 14th April 1884.