

1885

BENNETT
v.
BENNETT.

NORRIS, J.—I have no power to make an order for alimony *pendente lite*. The suit between the petitioner and the respondent came to an end when the decree *nisi* was made, and I have, therefore, no power to order alimony *pendente lite*. The respondent will be entitled to apply, when the decree is to be made absolute, for permanent alimony. Mr. Hill, on behalf of the petitioner, says that the petitioner is willing to make the respondent an allowance until an application can be made for permanent alimony. The payment of that allowance, Mr. Hill says, will be dependent on respondent leading a chaste life. At present I can make no order; with reference to Mr. Hill's statement that the petitioner is willing to make an allowance to the respondent, I think that Rs. 60 a month would be a fair and reasonable sum to be paid to her till such time as she can make an application for permanent alimony.

Application dismissed.

Attorney for J. D. Bennett: *Dignam and Robinson.*

ORIGINAL CIVIL.

Before Mr. Justice Wilson.

1885.
March 26.

IN THE MATTER OF NUNDOLLOL MOOKERJEE (APPLICANT) v. CHUNDER KANT MOOKERJEE (OPPOSITE PARTY).

Award—Arbitrator recommending solution of disputed points—Award objected to as being a recommendation—Objection to award—Act XIV of 1882, s. 525.

A document, although headed as an "award" and signed by the arbitrator, which merely recommends a solution of the questions referred to arbitration, will not be treated by the Court as an award on an application made under s. 525 of the Code of Civil Procedure.

THIS was an application on behalf of one Nundololl Mookerjee to make absolute a rule *nisi* obtained by him on the 17th June 1884, calling upon one Chunder Kant Mookerjee to show cause why an award, dated the 17th June 1884, should not be filed, and judgment passed thereon.

It appeared that by two several letters, bearing date the 6th May 1884, signed by Nundololl Mookerjee and Chunder Kant

Mookerjee, one Chundy Churn Bannerjee had been appointed arbitrator to decide certain matters regarding the location of certain fish stalls in a market in Aberitolla Street which were in dispute between them. On the 17th June 1884 the arbitrator drew up a document which was headed with the word "Award," and commenced as follows: "On being appointed arbitrator at the request of both parties to decide the dispute in connection with the market No. 11, Aberitolla Street, between Baboo Chunder Kant Mookerjee, the owner thereof, and Baboo Nundololl Mookerjee, whose dwelling-house is situated directly to the north of a portion of the said bazaar, I paid several visits to the place and heard both the parties;" and after stating the two points for determination, and making observations thereon, the arbitrator concluded the document with these words: "I should therefore recommend that the fish stalls might continue where they have been for some time past, that is, in the east wing of the market, and that all the vegetable and fruit stalls might be conveniently located in the west wing, as the owner would likely suffer no loss thereby, while it would remove a source of inconvenience to Baboo Nundololl Mookerjee."

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(Sd.) CHUNDY CHURN BANNERJEE,

17th June 1884.

Arbitrator.

Chunder Kant Mookerjee appeared, on the application, to oppose the filing of the award, setting out in an affidavit that he had had no notice of the occasions on which the arbitrator had inspected the market, nor had he attended any of the meetings of the arbitrator; that the first intimation he received of the fact that Chundy Churn Bannerjee had acted as arbitrator was on receipt of the so-called "award," and that he had written to the arbitrator declining to be bound by his award, which he (Chunder Kant) stated to be bad in law.

The arbitrator put in an affidavit stating that he had sent verbal notice to Chunder Kant Mookerjee of his intended inspection of the market, and of all meetings; and that, although Chunder Kant Mookerjee had not attended, yet his *am-mokhtar*, and the sons of Chunder Kant Mookerjee had attended the meetings and conducted the reference on behalf of Chunder Kant Mookerjee.

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Mr. *Bonnerjee* and Mr. *Mitter* appeared to show cause, and objected that the award made was not a good one, and contended that no judgment could be passed on such an award; and referred to *Ichamoyee Chowdhrahee v. Prosunno Nath Chowdhri* (1).

Mr. *Sale* (with him Mr. *Pugh* and Mr. *O'Kinealy*) in support of the rule cited *Dutto Singh v. Dosad Bahadur Singh* (2) as dissenting from *Ichamoyee Chowdhrahee v. Prosunno Nath Chowdhri*, (1), and contended that *no cause had been shewn* against the rule, as defined in the case of *Dandekar v. Dandekars* (3) It being insufficient to come in and simply object on affidavit. That cause should not only be alleged but be proved to the satisfaction of the Court, or it should be shown that there was reasonable ground for objection. That the expression "recommend" in the award was a sufficient expression of opinion on the part of the arbitrator; that the words "I am of opinion that A is entitled to claim 134 pounds for non-performance of his contract" had been held a sufficient award; *Matson v. Trower* (4).

Mr. Justice WILSON considered that the document purported rather to be a recommendation than an award; and refused to make a decree in accordance therewith on the ground that the document was no award, decided nothing, and was too obscure to be enforced.

Rule discharged.

Attorney for petitioner: *Mookerjee and Deb.*

Attorney for Chunder Kant: *Carruthers.*

(1) I. L. R. 9 Calc., 557.

(2) I. L. R. 9 Calc., 575.

(3) I. L. R. 6 Bom., 663.

(4) Ry. & Moo., 17