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120, which gives a period of six years." No doubt the learned Judges in that case had very good reasons for coming to that conclusion, but I have not had the advantage of considering them, as the report gives no reasons upon this point. Under the circumstances I agree with my brother Tyrrell in remanding the case as proposed by him.

Issue remitted.

Before Mr. Justice Oldfield and Mr. Justice Mahmood.

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May 5.

JAWAHAR SINGH (PLAINTIFF) *v.* MUL RAJ (DEFENDANT). *

Arbitration—Powers of arbitrators—Payment by instalments—Appeal—Civil Procedure Code, ss. 518, 522.

The arbitrators to whom the matters in difference in two suits for money were referred to arbitration made an award for payment to the plaintiff of certain sums by the defendant, and further directed that these sums should be paid by certain instalments. The plaintiff preferred objections to the award in so far as it directed payment by instalments, and the Court, holding that the arbitrators had no power to make such a direction, modified the award to that extent, under s. 518 of the Civil Procedure Code. On appeal, the District Judge, while allowing the power of the arbitrators to direct payment by instalments, reduced the number of instalments which had been fixed.

Held that the decree of the first Court not being in accordance with the award, an appeal lay to the Judge, with reference to s. 522 of the Code.

Held also that as it was clear that the reference to arbitration gave the arbitrators full powers not only as to the amount to be paid, but also as to the manner of payment, the lower appellate Court was wrong in reducing the number of instalments which had been fixed.

Per MAHMOOD, J.—The word "award" used in the last sentence of s. 522 of the Code must be understood to mean an award as given by the arbitrators, and not as amended by the Court under s. 518. The words "in excess of, or not in accordance with, the award," used in s. 522 were intended to enable the Court of appeal to check the improper use of the power conferred by s. 518.

THE appellant in these cases, Jawahar Singh, brought two suits against the respondent, Mul Raj, one being to recover Rs. 1,316 due for profits and Government revenue and the other for Rs. 2,687-14 due on a bond. The parties referred the matters in dispute in these suits to arbitration. The majority of the arbitrators,

* Second Appeals Nos. 1483 and 1484 of 1885, from decrees of C. W. P. Watts, Esq., District Judge of Saháranpur, dated the 29th May, 1885, modifying decrees of Maulvi Muhammad Maksud Ali Khan, Subordinate Judge of Saháranpur, dated the 27th February, 1885.

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in the suit for profits and Government revenue, awarded the plaintiff Rs. 1,021-9, and in the suit on the bond, Rs. 1,778-7, and directed that both these amounts should be paid by certain instalments, and that each party should pay his own costs in both suits. The plaintiff preferred objections to the award in so far as it directed payment by instalments, and each party to bear his own costs. The Court of first instance accepted the award, except in so far as it directed payment by instalments of the sums, holding that the arbitrators had no power to make such a direction. The defendant appealed from the decree of the first Court in both cases with reference to the question of payment by instalments, and the plaintiff preferred objections to the decree in both cases, under s. 561 of the Civil Procedure Code, with reference to costs.

The lower appellate Court held that the arbitrators were empowered to direct payment by instalments, but it was of opinion that they had not exercised this power with discretion, and it reduced the number of instalments. It dismissed the plaintiff's objections, holding that the arbitrators had full power to make the order they did relative to costs.

The plaintiff appealed to the High Court in both cases, contending that the decree of the first Court was not appealable; that the arbitrators had no power to order payment by instalments; and that the lower appellate Court had improperly dismissed his objections relative to costs. The defendant preferred an objection under s. 561 of the Civil Procedure Code, to the effect that "the lower appellate Court was wrong in amending the award passed by the arbitrators as to the time fixed for the payment of the instalments."

Munshis *Hanuman Prasad* and *Madho Prasad*, for the appellant.

Mr. *Carapiet*, for the respondent.

OLDFIELD, J.—In this case the plaintiff sued to recover a sum of money due for profits and Government revenue. In the Court of first instance the dispute was referred to arbitration, and the majority of the arbitrators gave an award in favour of the plaintiff for Rs. 1,021-9, payable by instalments. The first Court, under s. 518 of the Code, modified the award, so far as it related to the payment of instalments, on the ground that this was not a

matter which was referred to arbitration. The defendant appealed to the District Judge; and the Judge, though allowing the power of the arbitrators to settle the manner of payment of the instalments, reduced the number of the instalments that had been fixed. From this decision the plaintiff has appealed, and the defendant has filed objections. The plaintiff's plea that no appeal lay to the Judge is bad, with reference to s. 522 of the Code, which disallows appeals "except in so far as the decree is in excess of, or not in accordance with the award." I am of opinion that the decree of the first Court not being in accordance with the award, an appeal lay to the Judge. With regard to the defendant's objection, it has force. The question before the Judge was, whether the first Court had rightly modified the award under s. 518 of the Code, and from the terms of the reference to arbitration, it is clear that it gave the arbitrators full powers, not only as to the amount to be paid, but also as to the mode of payment. Under these circumstances, it appears to me that the plaintiff's appeal must be dismissed, and the defendant's objection allowed, and a decree will be passed in the terms of the award. Each party will bear their own costs. The defendant will have the costs in this Court.

In the connected case, S. A. No. 1484 of 1885, I am of opinion that the plaintiff's appeal fails, because there was an appeal to the Judge, and as no objections have been taken here to the Judge's decree, it is sufficient to say that the appeal must be dismissed with costs in this Court.

MAHMOOD, J.—I concur in my learned brother Oldfield's judgment in both cases. In S. A. No. 1483 of 1885, the submission to arbitration, dated the 19th November, 1884, refers all the disputes involved by the suit between the parties; in other words," the reference *'of a cause'* and *'of all matters in difference in a cause'* means exactly the same thing, and only gives the arbitrators power to decide on the questions raised by the pleadings, which are necessary for the determination of the cause" (Russell on *Arbitration*, p. 117). This shows that the arbitrators cannot go beyond the scope of the suit. Now, in this case, the claim is one for money, and a large part of the argument of the learned Munshi on behalf of the appellant was to the effect that the arbitrators exceeded their powers in fixing the instalments. Again,

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at p. 391 of Mr. Russell's work, it is said :—" An arbitrator may in general fix the time and place at which payment is to be made, though he need not do so unless he think fit. It seems he may award one party to give the other a promissory note payable at a future day, for that is the same thing in effect as awarding the payment of the money at the future day. So he may order one party to execute a bond for the payment to the other of an ascertained sum of money at a specified time. He may direct payment to be made by instalments. He may add that if the sum awarded be not paid by the appointed day, the party shall pay a larger sum by way of penalty ; or when the payment is to be by instalments, that if one be overdue the whole amount shall be payable at once." This is the general rule which is observed in England, and I see no reason why it should not equally be followed in this country. With reference to the remarks of my learned brother as to s. 518 of the Code, I agree that the word " award," used in the last sentence of s. 522, must be understood to mean an award as given by the arbitrators, and not as amended by the Court under s. 518. The words " in excess of, or not in accordance with, the award," used in the former section, were intended to enable the Court of appeal to check the improper use of the power conferred by s. 518, and, in the absence of such a check, a Court of first instance, professing to act under s. 518, might pass a decree far in excess of the powers given by that section.

Under these circumstances I agree with the orders proposed by my learned brother Oldfield in both cases.

1886
May 21.

Before Mr. Justice Straight, Offg. Chief Justice, and Mr. Justice Mahmood.

MAHRAM DAS (PLAINTIFF) *v.* AJUDHIA (DEFENDANT).*

Act IV of 1882 (*Transfer of Property Act*), *ss.* 10, 11—*Vendor and purchaser—Contemporaneous "ikrar-namah"—Condition restraining alienation—Restriction repugnant to interest created—Lambardar and co-sharer—Collection of rents by co-sharer—Suit by lambardar for money had and received—Costs—Suit to recover costs by way of damages.*

M, a co-sharer in a village, transferred to *A*, another co-sharer, a two annas share, by deed of sale. Upon the same date, *A* executed an *ikrar-namah* in which

* Second Appeal No. 1640 of 1885, from a decree of J. Liston, Esq., Deputy Commissioner of Lalitpur, dated the 2nd June, 1885, confirming a decree of J. Greenwood, Esq., Extra Assistant Commissioner of Lalitpur, dated the 14th April, 1885.