

1891

MIRZA ANAND
RAM.
v.
MAUSUMA
BEGUM.

(1) and the case of *Gobind Ram v. Narain Das* (2). Also there is a case decided in 1866, viz., *Musammât Thakoorayeen Bhagmanee Koonwar v. Syud Farzand Ali and others* (3). It appears to us that these cases are in point.

Following these authorities, we allow this appeal with costs and set aside so much of the decree of the Court below as affects the Mahârâja of Vizianagram. We do not disturb the decree so far as it affects Ilahi Bhaksh and Abdul Rahman.

Appeal modified.

1890
May 2.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Knox.

UMMI FAZL (DEFENDANT) v. BAHIM-UN-NISSA AND OTHERS (PLAINTIFFS).*

Civil Procedure Code, ss. 522, 525—Award—Decree on an award filed in Court, how to be framed—Appeal.

When an award has been filed in Court, as provided by s. 525 of the Code of Civil Procedure, the judgment and decree based thereon must be drawn up specifically in terms of the award. If the decree merely decrees in general terms the claim of one party or of the other, it cannot be said that such decree is in accordance with the award, and being "not in accordance with the award" an appeal will lie therefrom.

The facts of this case, so far as they are necessary for the purposes of this report, appear from the judgment of the Court.

Pandit *Sundar Lal* and Mr. *Malcomsen*, for the appellant.

Munshi *Ram Prasad*, Maulvi *Ghulam Mujtaba* and Maulvi *Mahmud Husain*, for the respondents.

EDGE, C. J., and KNOX, J. An agreement of reference having been entered into between certain parties, the arbitrator appointed by that agreement made his award. Musammât Bahim-un-nissa, one of the persons interested in the award, applied to the Court of the Subordinate Judge of Sahâranpur to have the award filed in Court. The application was made under s. 525 of the Code of Civil Procedure. In her application she also asked that a decree should be passed according to the award in her favor against the

* First Appeal No. 88 of 1890 from a decree of Maulvi Sayyid Muhaammad, Subordinate Judge of Sahâranpur, dated the 13th November 1887.

(1) I. L. R., 5 All. 503. (2) I. L. R., 9 All. 394.
(3) N. W. P., H. C. Rep., 1866 R. C. A. 20.

1890

 UMMI FAZZ
 v.
 RAHIM-UN-
 NISSA.

defendants, who were other parties to the arbitration. On the 13th of November 1889, the Subordinate Judge delivered a judgment and made a decree. So far as the filing of the award is concerned, it appears to us that that was a good order, but that we need not consider, as there is no appeal from an order directing an award to be filed. So far as that decree purports to be a decree under s. 522 of the Code of Civil Procedure, it was appealable if it was in excess of, or not in accordance with, the award. The decree was as follows:—"It is decreed and ordered that the plaintiff's claim be decreed with costs. The costs incurred by the defendants be borne by themselves except the defendant Zahur Muhammad, who shall get his costs from the plaintiffs. The plaintiff to get her whole costs from Musammat Ummi Fazz, the answering defendant. The rest of the defendants are exempted from the costs incurred by the plaintiff." That is not a decree as contemplated by s. 522 of the Code of Civil Procedure. A decree in general terms of that kind does not comply with that section. A Judge when proceeding under s. 522 of the Code to give judgment and make a decree, must give a judgment according to the award; that is, he must state in his judgment what his construction of the award is as to the rights and interests of the parties. He must say, for instance, that under the award the plaintiff is entitled to mauza A, the defendant is entitled to mauza B, and so on, and, having given that judgment, the decree must be drawn up in accordance with that judgment; that is, it must be a decree dealing with the specific rights of the parties, and not merely decreeing the plaintiff's claim in general terms, as was done here. When a decree so framed upon the judgment has been drawn up, the question whether an appeal would lie from it would depend on whether it was in excess of, or not in accordance with, the award. In the case of a decree in general terms, such as that in this case, a Court has no opportunity of judging whether the decree is in excess of the award. Certainly it is not in accordance with the award, because it defines specifically no rights and interests whatsoever. Errors of this kind by judicial officers would probably not arise if those officers, before proceeding under a particular section, took the trouble to read the section care-

1890

UMMI FAZL
v.
RAHIM-UN-
NISSA.

fully, in order to ascertain what was the procedure the law required them to follow. We must set aside, as we do, the decree of the 13th November 1889, so far as it purports to be anything beyond an order for filing the award. We express no opinion on the merits of this case. The appeal is allowed on the one ground which we have considered. The other grounds, in the view which we take of this case do not at present arise. We remand the case under s. 562 of the Code of Civil Procedure to the Court of the Subordinate Judge, and direct him to dispose of the suit according to law. The costs of this appeal will be costs in the cause.

Appeal decreed.

1891
May 20.

Before Sir John Elye, Kt., Chief Justice and Mr. Justice, Tyrrell.

CHAND MAL AND ANOTHER (PLAINTIFFS) v. ANGAN LAL (DEFENDANT). *

Suit by purchaser of decree to recover money of deceased Judgment-debtor in the hands of his agent—Limitation—Act XV of 1877 (Limitation Act), sch. ii, No. 120.

ne A P, having certain moneys lying at his credit in Calcutta, empowered A L to receive the same and hold them on his behalf. A P died at Moradabad, and subsequently to his death, the said moneys, which remained in the hands of A L, were attached by one of the creditors of A P in execution of a decree. The decree-holder sold his rights under the decree in respect of the moneys in the hands of A L to the plaintiffs, who sued to obtain the same from A L.

Held that the period of limitation applicable to such a suit was that prescribed by art. 120 of the second schedule of the Indian Limitation Act (Act XV of 1877).

Gurudas Pyne v. Ram Narain Sahu (I. L. R., 10 Cal. 860) referred to.

The facts of this case were as follows :--Narain Das, an ancestor of the plaintiffs, obtained a decree for a debt against Ajudhia Prasad, the elder brother of the defendant, on the 23rd July 1878, from the Court of the Judicial Assistant Commissioner, Peshawar, for Rs. 30,545-12-0. Nothing having been realised in respect of this decree, a certificate under s. 223 of the Code of Civil Procedure was obtained in 1881 for the execution of the decree in the district of Moradabad, of which Ajudhia Prasad was a resident, but it appears

* First appeal No. 29 of 1890 from a decree of Babu Anant Ram, Subordinate Judge of Moradabad, dated the 9th January 1890.