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THE SECRETARY OF STATE FOR INDIA IN COUNCIL v. MADARI LAL.

undoubtedly does, to matters of set-off of a very limited kind, and excluding as it does counter claims as understood in the Judicature Acts in England it might preclude the defendant from proving in this action the value of the plant and boats which had been taken over by the Magistrate of Allahabad as stated by the learned Chief Justice. I am, however, now after having had the advantage of conferring with the learned Chief Justice and my learned brothers waived my doubt, and I have done so with special reference to the terms of paragraph 17 of the deed of the 24th October 1873, which, as the learned Chief Justice has explained, renders the dispute between the parties as to the value of the boats a question forming part and parcel of the claim, the matter being one which arises out of the same transaction as the claim. I think therefore that there is nothing in s. 111 of the Code of Civil Procedure to prevent our going into the question of the value of the plant. This is my answer to the reference.

PRIVY COUNCIL.

P. C. 1891 *January* 27.

RÁJA HAR NARAIN SINGH (DEFENDANT) *v.* CHAUDHRAIN BHAGWANT KUAR AND ANOTHER (PLAINTIFFS).

[On appeal from the High Court at Allahabad.]

Arbitration under the Civil Procedure Code—Invalidity of award when not made within the time fixed by the Court—Civil Procedure Code, ss. 508, 514, 521—*Costs.*

When once an award has been delivered it is no longer competent to the Court to grant further time, or to enlarge the period for the delivery of this award under section 514 of the Code of Civil Procedure.

Where an award was not made within the period fixed by the Court's order but was made after the date given in the last order extending the time for its delivery, *held*, that the award was invalid. The decree of the Court dealing with the award as if duly made within the time, could not be treated as enlarging it.

The judgment in *Chuha Mal* v. *Hari Ram* (1) approved.

Order to be that the suit should proceed. Neither party to be entitled to costs in either Court below after the first judgment with regard to the stage at which the objection was taken; and the costs prior to that to abide the issue.

Present: LORD WATSON, LORD MORRIS, and SIR R. COUCH.

(1) I. L. R. 8, All., 548.

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APPEAL from a decree (16th December 1887,) affirming a decree (6th April 1885) of the Subordinate Judge of the Agra district.

This suit was brought by the respondents, the widow and mother of Chaudhri Bishambar Singh, deceased, against the appellant and two other defendants, to recover money and property alleged to have been deposited with them. The appellant denied having appropriated, or possessed, the property. On the 16th July 1884, the parties filed in the Court of the Subordinate Judge an agreement to refer all matters in dispute to the arbitration of Lalas Bansidhar and Jagannath Prasad, nominated by the plaintiffs, and Lalas Radha Prasad and Janki Prasad, by the defendant, with Lala Sakhan Das as umpire. On the 17th an order of reference, made by the Court, fixed the 19th August 1884 for the hearing of the suit by the Court. On the 9th August the time for the delivery of the award was extended to the 5th November, and again on the 4th November to the 30th. On the 5th December there was an application for further extension which was granted till the 5th January 1885, on which day a further extension was granted until the 19th January. The award was not, however, delivered till the 23rd March. It was in favour of the plaintiff for Rs. 29,431 payable by the Rája, defendant, he being the only one of the defendants whom the arbitrators held liable. His objections were heard by the Subordinate Judge. They did not include the objection that the award had been delivered after the expiration of the time for delivering it. The award was maintained by the decree, which was for the above amount, each party to pay their own costs.

From that decree the defendant appealed to the High Court. A division Bench (STRAIGHT and TYRRELL, J. J.) dismissed the appeal with costs.

The first objection taken in the High Court was that the award was not a valid one. The judgment, however, (having pointed out that the Court, which makes the reference, is intended by the Code to have complete control in the matter,) was that the direction to the Court to fix a time might be regarded as merely directory, not as

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mandatory. And the conclusion of the Senior Judge of the Division Bench was the following :—

"At any rate, whatever defects there may have been in the order of the 5th January 1885, they were, in my opinion, defects that could be cured, and I hold that the adoption of the award must be taken to amount to an enlargement of the time for the delivery of the award to the date on which it was in fact delivered, and to a ratification of what had been done by the arbitrators. Moreover, no objection was taken by either of the parties to his acceptance of the award on the ground now urged, and it seems to me not unreasonable to assume that any such objection was waived by them."

On this appeal—

Mr. *J. H. A. Branson*, for the appellant, argued that the award not having been made within the period allowed by the Court, for that reason, was invalid. On three occasions the time fixed for the delivery of the award expired, without any award having been made, or any extension of time having been granted. No date had been fixed in the first instance, and on the last occasion when extension of time was granted, the time limited in the previous order of extension had already expired. Thus the last date was irregularly fixed, but even that had expired when the award was delivered.

He referred to *Nusserwanjee Pestonjee* v. *Meer Mynoodeen Khán*, wullud (1) decided on reference to the Bombay Regulation VII of 1827. Also to the Code of Civil Procedure, Act XIV of 1882, ss. 508, 514 and 521, and to the previous law in s. 318 of Act VIII of 1859. Also to the statute 52 and 53, Victoria, chapter 49, the Arbitration Act, 1889, s. 9, where the Court's power to enlarge the time, after the expiration of the time for making it, is expressly enacted for England, and to *Gunga Gobind Naek* v. *Kalee Prosunno Naek* (2); *Simson* v. *Venkatagopalam* (3); *Beharí Das* v. *Kalian Das* (4); *Chuha Mal* v. *Hari Ram* (5).

Mr. *Lumley Smith*, *Q. C.*, and Mr. *Reginald Brown*, for the respondents, supported the decree of the High Court. They con-

(1) 6 Moo. I. A., 134.
(2) 10 W. R., 206.
(3) I. L. R., 9 Mad. 475.
(4) I. L. R., 8 All. 543.
(5) I. L. R., 8 All. 548.

tended that the Court had power to enlarge the time and in fact had done so. If the appellant had at any time a right to the extensions made, that right had been waived. The sections of the Civil Procedure Code were directory; the appellant did not take his objection at the right time, and passed over the irregularity.

They referred to *Lord* v. *Lee* (1); *May* v. *Harcourt* (2). The Common Law Procedure Act 1854, (17 and 18 Vic. C. 125 s. 15.)

Mr. *J. H. A. Branson*, in reply, referred to *Mason* v. *Wallis* (3). Their Lordships' judgment was delivered by LORD MORRIS.

LORD MORRIS.—This case must, in their Lordships' opinion, be decided entirely upon the construction of the Civil Procedure Code, ss. 508, 514 and 521, and it does not appear that the construction of those sections can be very much aided by analogies drawn from sections of the English Common Law Procedure Act which have been referred to, dealing with arbitrations, because a specific rule has been laid down in the Code for dealing with arbitrations, probably grounded on reasons of public policy.

By s. 508 it is laid down that the Court shall by Order refer to the arbitrator the matter in difference which he is required to determine, and shall fix such time as it thinks reasonable for the delivery of the award and specify such time in the Order. In this case the Order of Reference made by the Court does not specify, directly, any time. It merely fixes a date for the hearing of the case by the Court, which is not in strict compliance with the terms of the section, though it might be sufficient. Their Lordships are of opinion that s. 508 is not merely directory, but that it is mandatory and imperative. S. 521 declares that no award shall be valid unless made within the period allowed by the Court, and it appears to their Lordships that this section would be rendered inoperative if s. 508 is to be merely treated as directory. In the present case, however, the Subordinate Judge repeatedly made orders enlarging the time, and in those orders fixed the time within which the award was to be made, although he did not do so in the original Order of

(1) L. R. 3 Q. B., 404. (2) L. R. 13 Q. B. D., 688.
(3) 10 B. and C., 107.

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Reference; and their Lordships are of opinion that it was competent for the Subordinate Judge to do so under s. 514 of the Code, which enables the Court to grant a further time and from time to time to enlarge the period for the delivery of the award, in cases when it cannot be completed within that period, from want of necessary evidence or from any other cause. The last order of enlargement made by the Subordinate Judge was on the 13th of March 1885, extending the time to the 20th of March 1885, and no longer. No award was delivered within that time, though one was delivered on the 24th of March 1885, and the first question which appears to their Lordships to arise is, whether it would have been competent for the Subordinate Judge to have extended the time after the award was made. Their Lordships are of opinion that it would not. When once the award was made and delivered the power of the Court under s. 514 was spent, and although the Court had the fullest power to enlarge the time under that Section as long as the award was not completed, it no longer possessed any such power when once that time was passed. The Court did, however, receive the award delivered on the 24th of March 1885, and a decree was made upon it by the Subordinate Judge, which was confirmed by the High Court. The objection now put forward for the appellant is that this award is not valid. That contention has to support it the express statutory enactment that no award shall be valid unless made within the period allowed by the Court. The utmost period allowed by the Court was until the 20th of March 1885, and therefore the award delivered on the 24th of March 1885 was so delivered by arbitrators who no longer had any lawful authority to make it. Again, as a matter of fact, there was no enlargement of the time made by the Court after the 20th March 1885.

This objection to the award was apparently not brought to the notice either of the Subordinate Judge or of the High Court. But the statute is there, and the Judges were bound to take judicial notice of it.

In the case of *Chuha Mal* v. *Hari Ram* (1) Mr. Justice Oldfield lays down the law upon this subject very clearly. He says—"The

(1) I. L. R., 8 All. 548.

award in this case was not made within the period allowed by the Court, and consequently it must be held to be invalid; that is, there was no award on which the Court could make a decree." That judgment appears quite in point in this case, and it is a judgment of which their Lordships entirely approve.

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Upon these grounds their Lordships will humbly advise Her Majesty to reverse the judgments of the Subordinate Court and the High Court, to declare the award invalid, and to direct that the suit shall be proceeded with, and that neither party shall be entitled to costs in either Court below from and after the date of the first of the said judgments; and that the costs prior to that date shall await the issue of the case. The respondents must pay to the appellant the costs of this appeal. The reason for not giving the appellant the costs in the Courts below arises from the fact that their Lordships are of opinion that the point upon which this award is now held to be invalid, was certainly not raised before the Subordinate Judge, nor, as far as appears, in the objections that were urged before the High Court.

Appeal allowed.

Solicitors for the appellant :—*Messrs. Barrow and Rogers.*

Solicitors for the respondent :—*Messrs. Linklater and Co.*

APPELLATE CIVIL.

1891
January 30.

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

BISHNATH PRASAD (PLAINTIFF) *v.* JAGARNATH PRASAD AND OTHERS (DEFENDANTS).*

Limitation—Application for leave to appeal in formâ pauperis—Subsequent appeal in regular form—Payment of Court-fee on appeal no retrospective effect.

Where an application for leave to appeal *in formâ pauperis* having been presented and rejected, a regular appeal was subsequently filed, but after the period of limitation had expired.

* Second appeal No. 423 of 1890, from a decree of H. F. D. Pennington, Esq., Additional Judge of Ghâzipur, dated the 3rd January 1890, confirming a decree of Munshi Lalta Prasad, Subordinate-Judge of Ghâzipur, dated the 3rd May 1889.