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KNOX, J.—I also concur in decreeing the appeal. In fact I should have had no difficulty in arriving at this decision, but for a reference which was pressed upon us to the judgment in *Raghubir Singh* v. *Nandu Singh* (1), to which I was a party. Upon reference to the notes taken when that case was argued, I am of opinion that there was this clear distinction between that case and the case now before us, that in the prior case the claim for pre-emption proceeded not merely upon the *wájib-ul-arz*, but also upon a custom alleged in the plaint and borne out by the language used in the *wájib-ul-arz*. In the present case no attempt has been made to base the claim upon custom, and I have not been referred to any clause in the *wájib-ul-arz* which indicated that any custom upon this point existed prior to the completion of the *wájib-ul-arz*, which was admittedly completed in the village between the time the deeds of conditional sale were executed between the parties and afterwards became a complete sale.

Appeal decreed.

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

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January 27.

RAM MANOHAR MISR (DEFENDANT) v. LAL BEHARI MISR AND ANOTHER (PLAINTIFFS).*

Civil Procedure Code—s. 514—Arbitration—Power of Court to extend time for making award.

A Court has power to act under s. 514 of the Code of Civil Procedure at any time before the award is actually made, whether the time previously limited for making the award has expired or not. *Raja Har Narain Singh* v. *Chaudhrain Bhagwant Kuar* (2) referred to.

The facts of this case sufficiently appear from the judgment of the Court.

Mr. *J. E. Howard*, for the appellant.

The Hon'ble Mr. *Spankie*, for the respondents.

EDGE, C. J., and TYRRELL, J.—This is an appeal from a decree passed in accordance with an award. The learned counsel for the

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* Second Appeal No. 873 of 1889 from a decree of J. C. Leupolt, Esq., District Judge of Gházipur, dated the 15th April 1889, confirming a decree of Babu Mrittonjoy Mukerji, Subordinate Judge of Gházipur, dated the 29th March 1884.

(1) Weekly Notes, 1891, p. 134. (2) L. R. 18, I. A. 55; s.c. I. L. R., 13 All. 309

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appellant desired to argue that the arbitrator had been guilty of misconduct. That point was decided against his client by the Court below, and is not apparently open to him in appeal here. Section 522 of the Code of Civil Procedure enacts how and when the decree is to be drawn up, and further enacts:—"No appeal shall lie from such decree except in so far as the decree is in excess of, or not in accordance with, the award." It is not contended that the decree in question is either in excess of or not in accordance with the award. The other contentions put before us on behalf of the appellant are, that no time was fixed by the Court originally for the making of the award; that no order under s. 508 of the Code of Civil Procedure was drawn up; that the Judge wrongly exercised his discretion in extending the time for the making of the award, and that some of the orders of extension were made after the time previously limited for making the award had expired. We have gone through the different petitions and orders in this case. On the 16th of July 1886, there is the order of the Court referring the matter to arbitration, and, as we read that order, it fixed the 16th of August 1886 for the award to be returned to the Court. There was a further order made on the 21st of July 1886. It appears that the arbitrator went to Gaya. It appears also that the Judge went on leave; and it appears by the proceedings that at the desire of the respective parties the matter was suspended during the time of the Judge's absence on leave. When he came back from leave he made an order directing that a formal order should be drawn up, and the papers forwarded to the arbitrators. We must presume that a formal order was drawn up in accordance with the Judge's direction and forwarded to the arbitrators. We may further infer that that was done from the fact that subsequently there was an application for extension of time, and from the fact that the arbitrator himself petitioned for a further extension of time, alleging in that petition that he had been ill with fever. Now on the 17th of December 1886 the last order extending the time was made. By that order the time was extended to the 17th of January 1887. The award was made on the 11th of January 1887, consequently it was made within the extended time given by the Judge.

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In the case of *Raja Har Narain Singh* v. *Chaudhrain Bhagwant Kuar*, their Lordships of the Privy Council held that under s. 514 of the Code of Civil Procedure, a Judge has power from time to time to extend the time for making an award. In the case which was before them one of the orders extending the time was made some days after the time which had been fixed by the previous order had elapsed; so that, having regard to the facts of the case which was before their Lordships of the Privy Council, we must infer that their Lordships were of opinion that a judge has power at any time before the award is actually made to act under s. 514 of the Code of Civil Procedure. The award in that case was upset on another ground. Now we have come to the conclusion on the facts appearing in the record of this case that the proceedings were not *ultra vires*, and that the award having been made within the time which was given by the order of the 17th of December 1886 cannot be impeached on any of the grounds to which we have been referred. There was another ground taken by the counsel for the appellant to which we shall now refer. It was that his client had revoked the agreement to refer, and had done so before the award was made, and at a time when there was no order extending the time for the making of the award. That attempted revocation was put before the Court by means of an application, which was apparently rejected. Now we are of opinion that neither party to this reference had any power to revoke the agreement to refer without the consent of the Court. There are grounds upon which the order of reference may be amended or set aside, but when once a Court has passed its order of reference, as it did here in the appeal which was before it pass that order on the agreement of the parties, we are of opinion that neither party had power to revoke except by consent of the Court and under an order of the Court. We dismiss this appeal with costs.

Appeal dismissed.

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(1) L. R. 18, I. A. 55 : s.c. I. L. R. 13 All. 300.