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rity. I confess that I am unable to agree in this view of the law. What the parties to a reference to arbitration intended is that the persons to whom the reference is made should meet and discuss together all the matters referred, and that the award should be the result of their united deliberations. This conference and deliberation in the presence of all the arbitrators is the very essence of the arbitration, and the sole reason why the award is made binding. In a case recently decided by this Court—*Rohilkhand and Kumaon Bank v. Row* (1), I took occasion to express my views upon a cognate subject, holding that no judgment can be given in a Court consisting of several Judges, unless those Judges have conferred together, heard evidence and arguments together, and formed their opinions upon the entire arguments and evidence so heard. I held that the only proper decree was that of the majority after such conference. Here the same principle should be applied. Whatever may have been the arbitrator's motive for withdrawing, his non-participation in the deliberations of the others makes their award *ultra vires* and of no effect.

I therefore concur with my brother Oldfield that the appeal should be decreed and the case remanded to the lower appellate Court under s. 562 of the Civil Procedure Code. Costs to follow the result.

Appeal allowed.

Before Mr. Justice Oldfield and Mr. Justice Mahmood.

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January 15.

MAHADEI (PLAINTIFF) v. RAM KISHEN DAS AND OTHERS (DEFENDANTS) *
Court-fees—Act VII of 1870 (Court-Fees Act), ss. 6, 12, 28—Order requiring additional court-fee on claim, passed subsequent to decree—Decree prepared so as to give effect to subsequent order—Civil Procedure Code, ss. 54, 55, 584.

A Judge, after disposing of an appeal on the 1st March, 1883, again took it up, and on the 21st March, 1883, directed the appellant to pay additional court-fees on her memorandum of appeal. On the 2nd May, 1883, the appellant paid the additional court-fees under protest, and a decree was then prepared, bearing date the 1st March, 1883, but it referred to and carried into effect the subsequent order of the 21st March and the 2nd May.

Per MAHMOOD, J., that as soon as the Judge had passed the decree of the 1st March, 1883, he ceased to have any power over it, and was not competent to

* Second Appeal No. 71 of 1884, from a decree of R. J. Leeds, Esq., District Judge of Gorakhpur, dated the 1st March, 1883, affirming a decree of Hakim Shah Rahat Ali, Subordinate Judge of Gorakhpur, dated the 21st March, 1872.

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introduce new matters not dealt with by the judgment; that the order of the 21st March and the deposit of the 2nd May, whether right or wrong, were not proceedings to which effect could be given in the antecedent decree of the 1st March, 1883; and that the decree was *ultra vires* to that extent, and was therefore liable to correction in second appeal under s. 584 of the Civil Procedure Code.

The powers conferred by ss. 54 (a) and (c) and 55, read with s. 582 of the Civil Procedure Code, or by s. 12 of the Court-Fees Act (VII of 1870), read with clause (ii) of s. 10, are intended to be exercised before the disposal of the case, and not after it has been decided finally so far as the Court is concerned.

The powers conferred by s. 28 of the Court-Fees Act cannot be exercised by an order passed after the decision of the case to which the question of the payment of court-fees relates, and, even assuming that they can be so exercised, such an order, though it may be subject to such rules as to appeal or revision as the law may provide, cannot be given effect by making insertions in an antecedent decree.

Per OLDFIELD, J.—That the Court had power to make the order it did, inasmuch as the collection of court-fees was no part of a Judge's functions in the trial of a suit which could be said to have ceased with its determination; and the provisions of the Court-Fees Act fixed no time within which the presiding Judge could exercise his power of ordering documents to be stamped, and seemed, on the other hand, to contemplate the exercise of that power at any time subsequent to the receipt, filing or use of a document, and to make the validity of the document and the proceedings relative thereto dependent on the document being properly stamped.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of Mahmood, J.

Mr. T. Conlan and Mr. A. Reid, for the appellant.

Mr. C. H. Hill, for the respondents.

MAHMOOD, J.—(After disposing of the first five grounds of appeal against the appellant, continued):—But on the sixth and last ground, I think that the appeal is good. It is necessary to bear in mind the following facts:—The appeal was heard by the District Judge, and finally dismissed by him on the 1st March, 1883. After he had thus disposed of it, he again took it up (it is not very apparent how), and on the 21st March, 1883, he directed the appellant to value the relief sought by her within a week from that date. The appellant, on the 31st March, filed an application, in which she objected to the case being re-opened in this manner by the District Judge, and maintained that the valuation which she, on behalf of her minor son, had made in the Court of first instance, and also in the District Judge's Court, was correct. Upon

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this application the District Judge, on the 3rd April, passed the following order:—"All the questions raised in this petition have been determined by my order of the 21st March, 1883, and the petitioner is required to value the relief sought in accordance with s. 7, cl. iv. of Act VII of 1870." The appellant, Musammât Mahadei, on the 7th April, made another application, in which she reiterated her objections to the re-opening of the case, and reasserted the correctness of the valuation previously made by her, and at the same time, under protest, valued the relief sought by her at Rs. 2,000. On the 18th April, the District Judge passed an order peremptorily requiring the appellant to deposit within two weeks court-fees calculated on the valuation of Rs. 2,000. Then, on the 2nd May, 1883, the appellant filed a court-fee stamp of Rs. 109-4, with an application, which was consigned to the records. A decree was then prepared, bearing date the 1st March, 1883, but it referred to and carried into effect the subsequent order of the 21st March and the deposit of the 2nd May, that is, the court-fee stamp which was calculated in accordance with the views of the District Judge as expressed in his order of the 21st March. That decree has now come before us in second appeal, and it is impeached in the sixth ground of appeal in the following terms:—"That the lower Court was wrong in its estimation of the amount of court-fees payable by the appellant, and it erred in compelling the appellant to pay an additional sum on this account after the decision of the case."

We have therefore to consider the question whether, under s. 584 of the Civil Procedure Code, so much of the Judge's decree as goes beyond his judgment of the 1st March, 1883, ought to be set aside. I think that this question should be answered in the affirmative.

By s. 6 of the Court-Fees Act, it is provided that fees are to be levied on certain documents, and that no such document shall be receivable in Court without payment of the prescribed fee. If any difficulty should arise regarding the amount of fee to be paid on any document, s. 12 provides that "every question relating to valuation for the purpose of determining the amount of any fee chargeable under this chapter on a plaint or memorandum of

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appeal shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit: but whenever any such suit comes before a Court of appeal, reference, or revision, if such Court considers that the said question has been wrongly decided, to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided, and the provisions of s. 10, paragraph ii, shall apply." Then s. 28 says:—"No document which ought to bear a stamp under this Act shall be of any validity unless and until it is properly stamped. But if any such document is, through mistake or inadvertence, received, filed, or used in any Court or office without being properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of a High Court, any Judge of such Court may, if he thinks fit, order that such document be stamped as he may direct; and on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance."

These are the only sections of the Court-Fees Act which appear to bear on the present matter. The question is:—Do they give jurisdiction to a Court to introduce into a decree matters lying outside its judgment, or to exercise any powers in connection with a decretal order after the Court passing it has become *functus officio* by having disposed of the case? I think that the proper answer is No. As soon as the Judge had passed the decree of the 1st March, 1883, he ceased to have any power over it, and was not competent to introduce new matters not dealt with by the judgment. The orders of the 21st March and the 18th April, and the deposit of the 2nd May, may very possibly have been correct so far as the calculation of the amount of court-fees is concerned; but upon that point I express no opinion, because according to my view they were not proceedings to which effect could be given in the antecedent decree of the 1st March, 1883. That decree seems to me, therefore, *ultra vires* to that extent. My reasons for this conclusion are that the learned District Judge could exercise such powers, either under the Civil Procedure Code, s. 54, clauses

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(a) and (c) and s. 55, read with s. 582, or under s. 12 of the Court-Fees Act which must be read with clause (ii) of s. 10, to which it expressly refers. Reading these provisions of the law, it seems to me clear that the powers thereby conferred are intended to be exercised *before* the disposal of the case, and not after it has been decided finally, so far as the Court is concerned. In the one case *rejection* and in the other *dismissal* are the penalties provided by the law if the deficiency in court-fees is not supplied in proper time, and it is obvious that neither of these powers can be exercised after the case has been decided and the Court has become *functus officio*.

But it is contended that s. 28 of the Court-Fees Act confers a power which the other sections to which I have referred do not, and that such power may be exercised at any time after the decision of the case without any limitation, because the matter of realizing court-fees is not a part of the trial or adjudication of the case, the result of which is incorporated in the decree. The point is not free from doubt, as the language of the statute is not sufficiently explicit; but even if the contention be accepted, it would go to show that that which is not the result of such trial or adjudication should not be included in the decree which can give effect only to such adjudication. That the decision as to payment of court-fees by parties to the litigation is an adjudication cannot, I think, be doubted, for in some cases it may be made the subject of appeal, as was held in *Chunia v. Ram Dial* (1) and again in *Gulzari Mal v. Jadaun Rai* (2). And when such adjudication takes place long after the case has been disposed of by the Court, I confess I am unable to see how effect can be given to it by inserting anything in a decree which represents only the result of an antecedent adjudication. I am, however, unable to accept the contention, because the Court-Fees Act does not separately provide any means for recovery of the additional court-fees, and the only penalties for failure to supply the deficiency are those to which I have already referred, and which consist in the powers of the Court exercisable only antecedently to the final decision of the case. Nor am I aware of any rule of law which would vitiate or annul a decree obtained by a party who, subse-

(1) I. L. R., 1 All. 360. (2) I. L. R., 2 All. 63.

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quent to such decree, having been ordered to pay additional court-fees under s. 28 of the Act, fails to do so. The only interpretation, therefore, (so far as the present question is concerned), that I can put upon that section is, that the powers thereby conferred are to be exercised only before the final decision of the case to which the question of the payment of the court-fees relates, and that the provision as to the retrospective effect of the validity of such documents relates only to these documents which, being defectively stamped, have been wrongly received and used in the course of the trial of a case which has not yet been finally adjudicated upon. If I held otherwise, and decided that under s. 28 of the Court-Fees Act the Judge had power to make his decree of the 1st March different from what it would have been if the subsequent orders had not been passed, I should practically be deciding that, even after the dismissal of the appeal, the District Judge retained some kind of jurisdiction to be exercised *suo motu* in the case, and that he could at any time take up the oldest decree of his Court and modify it seriously as to costs in connection with the amount of court-fees.

But even if it be conceded that the powers conferred by s. 28 of the Court-Fees Act could be exercised by an order passed after the decision of the case, it seems to me that such an order must be regarded as a separate proceeding, to which effect could not be given by making insertions in an antecedent decree. The order may be subject to such rules as to appeal or revision as the law may or may not provide, but it could not, in my opinion, be dealt with in the decree, which represents only the result of a previous adjudication. It appears to me, therefore, that the course which the learned Judge adopted in this case amounted to exceeding his powers under the law, and that constitutes a substantial error which ought to be corrected by us in second appeal under s. 584 of the Civil Procedure Code. I would therefore modify the decree of the lower appellate Court so far as it gives effect to the order as to court-fees passed subsequent to the decree. But considering that the substantial part of the appeal has failed, I would make costs in all the Courts payable by the appellant.

OLDFIELD, J.—(After disposing of the first five grounds of appeal against the appellant continued) :—The last plea refers to

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the Judge's order directing the plaintiff to pay additional court-fees on his memorandum of appeal. It appears that it was after the decision of the appeal that the Judge passed his order, and it is contended he could not do so after decision. I am not prepared to say that the Judge had no jurisdiction to make such an order after decision of the suit, and it is only in respect of his order so far as it compelled the appellant to pay courts-fees that objection is made. The collection of court-fees is no part of a Judge's functions in the trial of a suit which can be said to have ceased with its determination.

These fees are levied under the provisions of the Court-Fees Act. S. 6 provides that no document in which a fee is chargeable shall be received in a Court of Justice unless the proper fee be paid in respect of it, and such fees are collected by stamps, and by s. 28 no document which ought to have a stamp under the Act shall be of any validity unless and until it is properly stamped, and if such document is through mistake or inadvertence received, filed, are used in any Court without being properly stamped, the presiding Judge may, if he thinks fit, order such document to be stamped as he may direct, and on such document being stamped accordingly, the same and every proceeding relative thereto shall be as valid as if it had been properly stamped in the first instance.

These sections fix no time within which the presiding Judge can exercise his power of ordering documents to be stamped, and seem, on the other hand, to contemplate the exercise of this power at any time subsequent to the receipt, filing or use of a document, and to make the validity of the document and the proceedings relative thereto dependent on the document being properly stamped.

I am of opinion, therefore, that the Court had the power to make the order it did, and we are precluded from entertaining an objection on the question of valuation of the memorandum of appeal, to which the other objection of the appellant relates, by the provisions of s. 12 (i) of the Act.

The appeal is dismissed with costs.

Appeal dismissed.