

ing pre-emption as in the present case. In the present case we are not concerned with the statutory pre-emptive rights of a bidder at an auction-sale either in execution of a decree or for arrears of Government revenue. We are concerned only with the rights of a co-sharer under the specific terms of the *wajib-ul-arz*, which imposes restrictions on the transfer of interests in the lands of the village. Moreover, we are not called upon to decide whether the policy of the rule of pre-emption in the form in which it is here claimed and provided by the *wajib-ul-arz* is in itself wise. The *wajib-ul-arz* is admittedly binding upon all co-sharers—certainly upon the parties to the present suit—and if that document provides pre-emption in respect of simple mortgages, as I hold that it does, we are bound to give effect to its terms.

My answer to this reference[?] is in the affirmative.

APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Mahmood.

NAINSUKH RAI (PLAINTIFF) v. UMADAI (DEFENDANT)*.

Arbitration—Setting aside award—Corruption or misconduct of arbitrator—Revocation of submission to arbitration—Civil Procedure Code, s. 508.

An award cannot be set aside by the Court on the mere surmise that the arbitrator has been partial.

After the parties to a suit have agreed to refer to arbitration, and the order of reference has been made by the Court under s. 508 of the Civil Procedure Code, neither of them can arbitrarily and on no sufficient ground withdraw from the agreement.

Pestonjee Nussurwanjee v. Manockjee & Co. (1) followed.

THE plaintiff in this suit claimed to recover Rs. 720, principal and interest, from the estate of Ghasiram, deceased, in the possession of the defendant, his widow. In support of his claim the plaintiff produced his account-books, containing what was alleged to be an acknowledgment by the defendant of the debt. The Court of first instance dismissed the suit. The plaintiff appealed, and at this stage of the case the parties, by an application to the lower

* Second Appeal No. 1754 of 1883, from a decree of Maulvi Muhammad Maksud Ali Khan, Subordinate Judge of Saharanpur, dated the 11th September, 1883, affirming a decree of Muhammad Said Khan, Munsif of Muzaffarnagar, dated the 8th May, 1883.

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appellate Court (Subordinate Judge), dated the 12th July, 1883, agreed to a reference of the case to the arbitration of one Fakir Chand, and to abide by any decision which he might make. The Court, on the same day, directed that "orders should issue to the arbitrator, and he should be requested to submit his award by the 31st July, 1883." On the same day a formal proceeding was drawn up by the Court, addressed to the arbitrator, informing him that he had been nominated as arbitrator in the case, and requesting him to submit his award by the 31st July, 1883. On the 16th July, 1883, before this proceeding had issued to the arbitrator, the defendant (respondent) prayed that the agreement to refer to arbitration might be declared null and void, and the case decided on the merits by the Court, as the arbitrator was a connection of the plaintiff, — a fact which the defendant was not aware of when she consented to refer the case to his arbitration, and which the plaintiff had concealed from her. This petition the Court ordered to be filed. The case then went before the arbitrator, who, on the 21st August, 1883, made an award in the plaintiff's favour. On the 28th August, 1883, the defendant preferred objections to the award to the effect (a) "that the award was inadmissible, as the defendant had, before the records were sent to the arbitrator, declined to abide by his award"; (b) "that the award was also inadmissible because the arbitrator had exceeded his powers"; and (c) "that the arbitrator had been partial to the plaintiff, and had made an award against facts, as he was a relative of the plaintiff." The lower appellate Court framed the following issues on these objections, viz.: (i) "what is the effect of the respondent's revocation of her consent to the reference to arbitration before the award was made; (ii) whether or not the corruption or misconduct of the arbitrator is proved; (iii) did the arbitrator exceed his powers in determining the case?"

On the 1st and 2nd issues the Court decided as follows:—"As to the first point, the respondent's denial, after giving an agreement in writing, is insufficient. The only complaint which can now be made is whether or not the award has been made improperly owing to the corruption of the arbitrator; but this ground, given in the first issue, is not reasonable. (2) The plaintiff's relationship with the arbitrator is not denied. The rea-

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sions given by him for his award are as follow :—That the defendant's signature corresponds with that on the account-book ; that the defendant's account-books were not produced, though called for ; and that the defendant's husband's accounts were entered in the plaintiff's account-book. But he failed to determine and investigate the two important points whether the defendant's husband actually carried on dealings with the plaintiff, and that he, and subsequently the defendant, having stated the accounts, admitted the balance or not. When the arbitrator did not pay attention to these matters, the Court therefore suspects his impartiality, as it was not a case in which the arbitrator should have given a decree in a summary manner. The defendant and the plaintiff's gomashita, who up to this time very zealously conducted the case on behalf of the appellant, are on bad terms. The defendant is a childless widow possessed of property, and men like the plaintiff do not look upon her person and property without any reason. It is not strange if the present opportunity may have been afforded, through the plaintiff's karinda, by stating a person (inclined to favour) as a very trustworthy person, getting an agreement to refer to arbitration executed in his favour, and causing the arbitrator to give a judgment in accordance with the plaintiff's wishes. The arbitrator did not take the evidence of even one witness, nor did he make an equitable award. I am therefore of opinion that the award was not impartially made and should be set aside." The Court accordingly set aside the award, and proceeded to decide the appeal itself. It dismissed the appeal and affirmed the decree of the first Court.

In second appeal the plaintiff contended that the award had been improperly set aside, there being no evidence to prove corruption or misconduct on the part of the arbitrator, and the award having been impugned only on the ground that it was partial and opposed to the merits of the case ; that the arbitrator had not exceeded his authority ; and that an award should not be set aside on the ground that the arbitrator had not determined the matters referred to him, but in such a case the procedure prescribed by s. 520 of the Civil Procedure Code should be followed.

For the respondent it was contended that the reference to arbitration had been revoked by her before the award was given, and therefore the award was invalid.

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Mr. *G. T. Spankie* and Pandit *Ajudhia Nath*, for the appellant.
Pandit *Sundar Lal*, for the respondent.

The Court (OLDFIELD and MAHMOOD, JJ.) delivered the following judgment:—

OLDFIELD, J.—The Subordinate Judge has rejected the award on the mere surmise that the arbitrator was partial, the grounds being that his decision is summary, and he failed to take evidence. An award can only be set aside for corruption or misconduct. But there are no sufficient reasons for assuming corruption or misconduct; and in the absence of any evidence on these points the award cannot be set aside. The defendant, after having agreed to refer to arbitration, and after the order of reference had been made by the Court under s. 508, could not arbitrarily and on no sufficient ground withdraw from her agreement (*Pestonjee Nussurwanjee v. Manockjee & Co.*, 12 Moo. I. A. 130). The objection therefore on the defendant's part, that the reference had been revoked, fails. The decree is set aside, and the case will go back to the Subordinate Judge to determine the other objection taken to the award, and if it fails, to decree in accordance with the award; costs to follow the result. •

Appeal allowed.

CIVIL REVISIONAL.

Before Mr. Justice Oldfield and Mr. Justice Mahmood.

RAGHUNATH DAS (PETITIONER) v. RAJ KUMAR (OPPOSITE PARTY) *.

Civil Procedure Code, ss. 206, 622—Order amending decree—High Court's powers of revision.

Per OLDFIELD, J.—When an original decree is amended under s. 206 of the Civil Procedure Code, it as amended is the decree in the suit; and an appeal therefore lies from it under the provisions of s. 540, when the validity of the amendment can be questioned. The matter of amending a decree under s. 206 does not by itself constitute a "case," within the meaning of s. 622 of the Civil Procedure Code, but forms part of the proceedings in the suit in which the decree is made.

Held, therefore, *per* OLDFIELD, J., that, where an original decree, which was appealable, was amended by the Court of first instance, under s. 206 of the Civil

* Application No. 216 of 1884, for revision under s. 622 of the Civil Procedure Code of an order of Maulvi Muhammad Abdul Qaiyum, Subordinate Judge of Bareilly, dated the 6th May, 1884.