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this to have been the intention of the Legislature, I would give effect to it.

AIKMAN, J.—The question for decision in this appeal is one of considerable difficulty. The wording of the latter portion of section 411 of the Code of Civil Procedure is not so clear as it might be, but I cannot think that the intention of the Legislature was to compel Government to bring a separate suit in a case like the present to recover the value of the court-fees which the plaintiff was relieved from paying on his plaint owing to his being a pauper. The result of such a suit would be a foregone conclusion, and it would only entail additional expense and trouble. I therefore concur in the order of my brother Knox. I may add that if the lower Court in its decree in the pauper suit had made the plaintiff as well as the defendant liable for the value of the Court-fees, as I think ought to be done in such cases, the present difficulty would not have arisen.

By the Court.

We dismiss this appeal with costs.

Appeal dismissed.

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June 8.

FULL BENCH.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Knox, Mr. Justice Blair, Mr. Justice Banerji, Mr. Justice Aikman and Mr. Justice Blennerhassett.

IBRAHIM ALI AND ANOTHER (PLAINTIFFS) *v.* MOHSIN ALI (DEFENDANT).*

Civil Procedure Code, sections 521, 522—*Award—Decree on judgment in accordance with award—Appeal.*

Where a decree has been made upon a judgment given upon an award and is not in excess of and is in accordance with the award, an appeal from such decree will lie on the ground that the so-called award upon which the judgment and decree are based is from one cause or another no award in law.

Where an application to set aside an award on the ground of the misconduct of an arbitrator has been made under section 521 of the Code of Civil Procedure, and such application has been refused after judicial determination and a decree made under section 522 of the Code, which is in accordance with and not in

* First Appeal No. 146 of 1894, from a decree of H. G. Pearse, Esq., District Judge of Agra, dated the 2nd April 1894.

excess of the award, no appeal based upon any similar ground will lie from the decree so made. But an appeal will lie in the case last mentioned where, an application to set aside the award on the ground of misconduct of the arbitrator having been made, the Court has passed its decree without considering such application, or where the Court has not allowed sufficient time to the parties to file objections to the award. *Bhagirath* v. *Ram Ghulam* (1) approved. *Maharajah Joymungul Singh Bahâdoor* v. *Mohun Ram Marwaree* (2), *Nandram Daluram* v. *Nemchand Jadavchand* (3) and *Lachman Das* v. *Brijpal* (4) referred to.

THE plaintiffs in the suit out of which this reference arose were sons of a certain *waqif*, and brought their suit under section 539 of the Code of Civil Proceedure against their brother the *mutawalli* of the endowed property, charging him with various acts of misconduct in the management of the property and praying as their principal reliefs that a new manager might be appointed for the endowed property; that the defendant might be called on to render accounts, and that instructions might be given for the future management of the endowed property.

The defendant filed a lengthy written statement, into the details of which it is not necessary to enter, for after the framing of issues by the Court the parties agreed that the case should go to arbitration.

Three arbitrators were appointed, two of whom agreed in delivering an award in favour of the *mutawalli* defendant, while the third arbitrator delivered a dissentient opinion in favour of the plaintiffs. Objections were taken by the plaintiffs to the award, these objections being mainly as to certain alleged irregularities in the procedure of the arbitrators, which, it was said, amounted to misconduct on their part. The objections did not amount to an allegation of any circumstance such as would have rendered the award void *ab initio*.

The Court (District Judge of Agra) considered the plaintiffs' objections, and held that the acts attributed to the arbitrators, even if considered as proved, amounted only to irregularities, which would not vitiate the award and which must be considered to have been waived, inasmuch as no objection was taken at the time when

(1) I. L. R., 4 All., 283.
(2) 23 W. R., 429.
(3) I. L. R., 17 Bom., 357.
(4) I. L. R., 6 All., 174.

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the arbitration was going on. The Court accordingly overruled the objections and passed a decree in accordance with the award of the majority of the arbitrators.

Against this decree the plaintiffs appealed to the High Court, urging similar objections to those which they had filed in the Court below against the award. On the appeal coming on for hearing before a Division Bench a preliminary objection was raised that no appeal lay under the circumstances of the case. Upon this objection being raised, the following order of reference was passed :—

BANERJI and AIKMAN JJ.—"This is an appeal from a decree made upon a judgment given in accordance with an award of arbitrators. It is not alleged that the decree is in excess of, or not in accordance with, the award. The objections raised in the Court below in reference to the award were objections under section 521 of the Code of Civil Procedure imputing misconduct to the arbitrators. They were considered by the Lower Court and overruled. The same objections have been repeated in the memorandum of appeal before us. The first question which arises for consideration is whether an appeal lies from the decree on the grounds on which this appeal has been preferred. The question is one of difficulty, and the rulings of the different High Courts on the point are not unanimous. In this Court also there has been a conflict of decisions on the point. We may refer to the ruling of the Full Bench in *Lachman Das and another* v. *Brijpal and another* (1), to *Bhagirath* v. *Ram Ghulam* (2), *Muhammad Ismail Khan* v. *Imam Ali Khan* (3), *Sreenath Ghose* v. *Raj Chandra Paul and others* (4) and the ruling of their Lordships of the Privy Council in *Maháráj ah Joymungul Singh* v. *Mohun Ram Marwaree* (5). In view of these conflicting rulings and the importance of the question, we refer it to a Full Bench, and we direct that this appeal be laid before the Honorable the Chief Justice for the appointment of a Full Bench to decide the question."

(1). I L. R., 6 All., 174.
(2) I. L. R., 4 All., 283.
(3) Weekly Notes, 1888, p. 131.
(4) 8 W. R. 171.
(5) 23 W. R. 429.

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The reference was accordingly laid before a Full Bench of the whole Court.

Babu *Jogindro Nath Chaudhri* for the appellants.

Munshi *Ram Prasad* for the respondent.

The judgment of the Court [EDGE, C. J., KNOX, BLAIR, BANERJI, AIKMAN and BLENNERHASSET, JJ.,] was delivered by EDGE, C. J.

The plaintiffs have brought an appeal from a decree which was passed on a judgment given in accordance with an award which had been made by two out of three arbitrators who had been appointed by an order of Court under Chapter XXXVII of the Code of Civil Procedure. The order of reference provided for an award being made by the majority. The grounds of appeal made allegations of misconduct against the arbitrators. It is not necessary to consider whether the matters alleged, if true, amounted to misconduct within the meaning of section 521 of the Code of Civil Procedure. A preliminary objection was taken to the hearing of the appeal on the ground that the concluding sentence of section 522 of the Code prohibited the appeal. The question as to whether an appeal could be entertained from a decree made in accordance with section 522 of the Code on the ground of misconduct of the arbitrator or arbitrators was referred to the Full Bench. We may mention here that against the award which was made in this case objections were duly taken under section 521 of the Code in the Court below and that the Court heard and determined those objections, and having determined them gave judgment in accordance with the award. One of those objections raised the question of the alleged misconduct of the arbitrators.

On behalf of the respondent it was contended that a decree which was in accordance with section 522 was under all circumstances unappealable.

On behalf of the appellants it was contended that when objections are taken under section 521 to an award an appeal lies from a decree made under section 522 on a judgment given in accordance with that award, whether or not the Court acting

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under section 522 heard and determined the objections raised under section 521.

In the course of the argument the following cases were cited:—*Anund Mohun Paul Chowdhry* v. *Ram Kishen Paul Chowdhry* (1), *Ramonoogra Chobey* v. *Mussamut Putmoorta Chobayan* (2), *Sreenath Ghose* v. *Raj Chunder Paul* (3). *In the matter of the petition of Sheikh Ilahi Bax* (4), *Muhammad Ismail Khan* v. *Imam Ali Khan* (5), *Kirpa Ram* v. *Laljit* (6) *Ram Dhan Singh* v. *Karan Singh* (7), *Sashti Charan Chatterjee* v. *Tarak Chandra Chatterjee* (8), *Maharajah Joymungul Singh Bahadoor* v. *Mohun Ram Marwaree* (9), *Boonjad Mathoor* v. *Nathoo Shahoo* (10), *Lachman Das* v. *Brijpal* (11) *Venkayya* v. *Venkatappayya* (12), *Nandram Daluram* v. *Nemchand Judavchand* (13), *Jagan Nath* v. *Mannu Lal* (14) and *Sujan Rai* v. *Jhabba* (15).

Some of these cases appear to us to have little or no bearing on the point before us. The case before their Lordships of the Privy Council, *viz.*, *Maharajah Joymungul Singh Bahadoor* v. *Mohun Ram Marwaree* (9) was one in which the Court which had made the order for reference had not allowed sufficient time for the filing of objections to the award. It is obvious from the judgment in that case that their Lordships of the Privy Council considered that if the Court which made an order of reference did not allow sufficient time for filing objections to the award when made, an appeal lay; and it may be inferred from that judgment that, when the Court had heard and determined objections filed to the award and then made a decree in accordance with the award, no appeal lay in respect of any of the matters included in the objections.

The decree which is unappealable by reason of section 522 of the Code is a decree made on a judgment given upon an award, and

(1) 2 W. R., 297.
(2) 7 W. R., 205.
(3) 8 W. R., 171.
(4) 5 B. L. R., App. 75.
(5) Weekly Notes 1888, p. 131.
(6) Weekly Notes 1892, p. 151.
(7) Supra p. 414.
(8) 8 B. L. R., 315.
(9) 23 W. R., 429.
(10) I. L. R., 3 Calc., 375.
(11) I. L. R., 6 All., 174.
(12) I. L. R., 15 Mad., 348.
(13) I. L. R., 17 Bom., 357.
(14) I. L. R., 16 All., 231.
(15) Weekly Notes 1893, p. 45.

which is not in excess of, and is in accordance with, the award. Now in some of the cases to which we have been referred there was no award. A decree which purports to be passed under section 522 on a document which is not in fact an award is a decree the appeal against which is not prohibited. There must be an award for the prohibition of section 522 to apply. As was pointed out by the Bombay High Court in *Nandram Daluram* v. *Nemchand Jadavchand* (1), where three only out of four arbitrators who were appointed to make an award, professed to make an award, the result was that there was no valid award, in fact, no award which was not void *ab initio*. Arbitrators are tribunals with limited powers. Their powers must be exercised in accordance with the agreement of reference and the order of the Court, and within the period allowed by the Court, and before the Court has by order superseded the arbitration. What we mean is that, if the order requires that the award shall be by a majority of the arbitrators agreeing, it is no award if it is not made by such majority. In the case of a private arbitration, if by the agreement of reference the award is to be made by all the arbitrators, it is no award unless it is made by all the arbitrators, and unless they all agree in it. If the power of the arbitrators is revoked, as, for example, by the Court passing an order superseding the arbitration under Chapter XXXVII of the Code, or if the period fixed for making the award has expired before the award is made, the arbitrators have no longer seisin of the reference, and they are *functi officio* and cease to have any more power to make an award than the man in the street. In such cases any award which they might purport to make would be void *ab initio*. It would in fact be no award in the arbitration. It being a condition precedent to the non-appealability of a decree under section 522 of the Code that there should have been an award, it follows that where there was no award, in such cases as we have put, the making of the decree was without jurisdiction, and an appeal lay. We do not mean to imply that the instances to which we have referred are exhaustive of the cases in which the document purporting to be an

(1) I. L. R., 17 Bom., 357.

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award would in reality be no award. In the case of *Lachman Das* v. *Brijpal* (1), which, being a Full Bench decision of this Court, was pressed upon us, there was in fact no award. An umpire whom the Court was not authorized in that case to appoint was appointed by the Court and had acted, and it followed that the award made by him was no award. Another objection was that the award was not made within the period allowed by the Court. A further objection was that Lachman Das was not a party to the reference. Now these were all four good grounds which, if substantiated in fact, showed that, so far as Lachman Das was concerned, there was no award at all, although there was a document which purported to be an award. In our opinion the observations of the Chief Justice in that case which went beyond what was necessary to show that there was no award in the ordinary legal meaning of the term affecting Lachman Das upon which a decree affecting his interests could be passed were purely *obiter dicta*. We may say that we do not agree with the *obiter dicta* which fell from the learned Chief Justice in that case. We think that the law on this particular point and the reason for it are very correctly summarized by Mr. Justice Straight in *Bhagirath* v. *Ram Ghulam* (2).

Another condition to a decree under section 522 being unappealable is that there should have been a judgment in accordance with an award. In our opinion a further condition precedent to the decree is that the Court should hear and determine any objection raised under section 521. Section 522 enables the Court to pass judgment in accordance with the award, if it sees no cause to remit the award, or if no application has been made to set aside the award, or if the Court has refused an application to set aside the award. It follows that if an application to set aside an award is made, the Court cannot proceed to give judgment in accordance with the award until it has refused the application, and the Court is not competent to refuse the application without considering and determining it. So, in our opinion, when an application to set aside an award has been made, and has not been judicially determined, the Court is not

(1) I. L. R. 6 All., 174. (2) I. L. R., 4 All., 283.

competent to proceed under section 522, and if it does proceed under that section and make a decree, there is no prohibition in that section against an appeal from a decree made under those circumstances. If, however, an application to set aside an award is made on the ground of the misconduct of an arbitrator, and that application is refused after judicial determination and a decree made under section 522 which is in accordance with the award and not in excess of it, no appeal lies. The award is not a void award in such a case, even though the Court may have wrongly decided the question of misconduct. At the most it might be a voidable award, and the Legislature has not chosen, and we think rightly, to allow an appeal from the judicial decision of a Court on a question of the corruption or misconduct of an arbitrator. The Court having decided rightly the question raised by an application under section 521 against the applicant there is an award within the meaning of section 522 in accordance with which judgment can be given and a decree made under that section. We may point out in conclusion that the decision of the Privy Council to which we have referred shows that a Court before acting under section 522 of the Code must allow the parties the time prescribed by the Indian Limitation Act for filing their applications to set aside the award.

In our view of the law the preliminary objection to this appeal is well founded and the appeal does not lie. With this opinion the appeal will go back to the Bench which made the reference.

In accordance with the above opinion the appeal was, on the 10th of July 1896, dismissed by the Division Bench (Banerji and Aikman, JJ.) which had made the reference.
