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against the judgment-debtor and seeking to sell the same property. This is not the case of an order having been made in favour of a decree-holder at a time when several other decree-holders had obtained attachment of the same property. We say nothing as to what might be the effect of the order under section 280, section 281 or section 282 in favour of one decree-holder so far as the other decree-holders were concerned who had obtained attachment. This view is consistent with the view taken by the Full Bench of this Court in *Badri Prasad* v. *Muhammad Yusuf* (1). We set aside the decrees below and remand this case under section 562 of the Code of Civil Procedure to the first Court to be disposed of according to law. Costs of this appeal and in the Court below will abide the result.

Appeal decreed and cause remanded.

1896. *June* 3.

Before Mr. Justice Knox and Mr. Justice Blair,

RAM DHAN SINGH (PLAINTIFF) *v.* KARAN SINGH AND ANOTHER (DEFENDANTS).*

Civil Procedure Code, section 522—*Award—Appeal—Grounds of appeal from a decree passed upon a judgment in accordance with an award.*

Held that an appeal would not lie from a decree passed upon a judgment given according to an award merely because there might have been some irregularities in the procedure of the arbitrator, such alleged irregularities having been considered by the Court which passed the decree and having been found by that Court not to be of a such nature as to render the award no award in law. *Jagan Nath* v. *Manna Lal* (2), *Bindessuri Pershad Singh* v. *Jankee Pershad Singh* (3), and *Lachman Das* v. *Brijpal* (4), referred to.

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

Munshi *Gobind Prasad* for the appellant.

Mr. *J. Simeon* and Munshi *Badri Das* for the respondents.

KNOX and BLAIR, JJ.—This is a first appeal from an order passed by the Judge of Sháhjahánpur whereby he remanded a case for decision by the Court of the Munsif, in which Court that case

* First Appeal No. 5 of 1896, from an order of W. F. Wells, Esq., District Judge of Sháhjahánpur, dated the 21st November 1895.

(1) I. L. R., 1 All., 381.
(2) I. L. R., 16 All., 231.
(3) I. L. R., 16 Calc., 482.
(4) I. L. R., 6 All., 174.

was originally instituted. After institution the parties to the suit referred all the matters in dispute between them to arbitration. For some reason or another the first reference to arbitration never reached the stage of an award capable of being embodied in a decree of the Court. A second reference was made, and in this again all the matters in dispute were referred to a fresh arbitrator, and we are told that in the order of reference it was set out that the arbitrator was to decide these matters according to his good faith and conscience. The arbitrator thus selected received the reference on the 13th of February 1895. He fixed the 18th of February for the hearing, and issued a process calling upon the parties to appear on that date together with such evidence as they might have. The record shows that the process was duly served upon the defendants, who are now respondents to this appeal, and who stand to one another in the relation of father and son. The respondents said that they could not attend on the date fixed and asked for another date to be appointed. As a matter of fact another date was fixed, and the arbitrator in the return made by him to the Court says distinctly that a process was issued informing the parties of the date and that they did receive notice of it. Moreover upon the date fixed one of the defendants did appear and attend the proceedings before the arbitrator. According to the arbitrator's return that defendant produced no evidence of any kind, and the arbitrator proceeded to decide the matter upon the statements made before him by the appellant and by certain persons, whom he describes as reliable people, who had been present at the marriage ceremonies. The suit between the parties was a suit for damages on account of breach of promise of giving in marriage.

We are asked by the vakíl for the respondent to regard the return made by the arbitrator as a piece of waste-paper upon which no reliance can be placed, and to hold that the various matters which he certifies as having been done in proper order were never so done at all. We see no reason why we should treat the return of a gentleman who is stated to be a man of position and reliability, who was by the act of the parties themselves elevated

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into the position and status of a court to decide the matters in dispute between them, as though he were an unreliable and irresponsible person. It seems to us that we should extend the same consideration and courtesy, if not more, to the proceedings of arbitrators that we would to the proceedings of a Court. If indeed such proceedings should on the face of them show that they were unreasonable or manifestly improper, it might then be contended, and the contention would be listened to, that the arbitrator had been guilty of misconduct. Where the arbitrator certifies that all was done in order, and there is no evidence to show that it was not so done, we shall attach the same presumption that we would to the proceedings of a court of justice.

Upon the return being made, the respondents filed a paper setting out five objections. It appears that the Munsif considered these objections and characterised them as being absurd. Looking to the return made and to the absence of any evidence to the contrary, we consider that the epithet which the Munsif applied to them, was under the circumstances, justified. He might have added that they were misleading, if not false. The plaintiff did produce evidence before the arbitrator. The arbitrator did inform the defendants of the date and place of arbitration. These facts were denied in the objections put forward, and, as the denial was not supported by any evidence, the learned Munsif was right in not giving the denial preference over the recorded return of the arbitrator to the contrary. The Munsif held that there had been no misconduct. He gave judgment according to the award.

An appeal was preferred to the learned Judge, who apparently fell into the error of considering that an arbitrator, selected and appointed as this arbitrator was, was bound to put upon the record every step taken by him with the same method and regularity which we should expect, but do not always secure, in proceedings before courts of justice. He overlooked the certificate of the arbitrator certifying that a process had been issued upon the defendants and received by the defendants, and, because he did not find the process upon the papers in the record, he held that there was

no proof that the defendants were informed of the date fixed for arbitration. A manifest fact to the contrary which he overlooked was the fact that one of the defendants did appear before the arbitrator. Indeed, from the learned Judge's own judgment we gather that the Judge felt satisfied that both defendants had received notice, for he says about the second defendant who did not appear that he inclined to the belief that the defendant Karan Singh had notice of the date of arbitration and purposely absented himself in order to have a ground for objection to the award if adverse to him. It would be no wonder if gentlemen of position and respectability were to decline the office of arbitrator if they understood that their award was so completely at the mercy of shifty litigants, and that such persons had only to absent themselves to put an end to the award if it proved adverse to them. The Judge admitted the appeal, and on the ground that the award was not a valid one set it aside and passed the order of remand objected to.

In appeal before us it is contended that no appeal lay to the Judge. We think that under the circumstances no appeal did lie. The decree passed by the Munsif was in accordance with the award, it was not in excess of it, and it was passed after the objections raised under section 521 of the Code of Civil Procedure had been decided by the Munsif and held to be of no effect. It was not therefore the case of a decree given without a judicial determination whether there had or had not been an award. Mr. *Simeon*, who appears for the respondents, pressed us with the case of *Jagan Nath* v. *Mannu Lal* (1). In that case the contention was that the person who had made the reference to arbitration was not competent under the circumstances to make the reference, and that, as it was he who was dead, the reference and the award were not binding after his death. In other words, the Judge who entertained that appeal had to deal with a memorandum which raised the question whether there had been any valid submission to arbitration, and whether in consequence there had been any arbitration or award

(1) I. L. R., 16 All., 231.

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at all, not whether there had been in the course of the arbitration certain irregularities of procedure, or whether there had been any misappreciation of evidence. We are also referred to the case of *Bindessuri Pershad Singh* v. *Jankee Pershad Singh* (1). The learned Judges who decided that case held that an appeal did lie under the circumstances. The case they had to deal with was that of an award filed under the provisions of section 526 of the Code of Civil Procedure, and the contention raised in the appeal was that the Subordinate Judge had no jurisdiction to entertain the application, that the submission to arbitration was indefinite and vague, and the powers given to the arbitrator were not defined. These were matters which, as they went to the root of the question whether there had been any submission to arbitration, and in consequence any award, the Judge had jurisdiction to enter upon and determine in appeal. The only plea in that case which at all corresponds with the plea taken in the present case was the plea that the arbitrator took no evidence and proceeded in the absence of the objector. The learned Judges passed this plea over in entire silence, and, we think, rightly so, for we find that the Subordinate Judge had considered the last named objections and come to a determination upon them. The raising of them in appeal under such circumstances would not by itself give room for an appeal to be entertained. The Full Bench decision of this Court in *Lachman Das* v. *Brijpal* (2) laid down that an appeal lies from a decree passed in accordance with an award when such decree is impugned on the ground that there was no award in law or in fact upon which judgment and decree could follow under section 522 of the Code of Civil Procedure. To use the words employed by Mr. Justice Oldfield:—"An appellate Court must so far look behind the decree as to see whether the thing called an award is an award which the Code of Civil Procedure contemplates." The objection in that case was that an umpire had been appointed by the Court to sit with the arbitrators when the reference gave no power to the Court to appoint an umpire. We have looked into

(1) I. L. R., 16 Calc., 482. (2) I. L. R., 6 All., 174.

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every one of the pleas raised before the lower appellate Court in appeal. They are all pleas which raise the question of misconduct or corruption or irregularity in procedure. Not one of them raised the question that there had been any defect in submission or any want of determination by the Subordinate Judge upon the pleas raised. So far as the pleas were concerned, there had been a valid submission to arbitration, and the only defects alleged in the award were defects of detail and procedure which the Court below held to be unfounded. There had been an award proved good and valid in spite of the objections raised. Judgment had been given in accordance with that award and no appeal lay. We accordingly decree this appeal with costs, set aside the decree of the lower appellate Court and restore that of the Munsif.

Appeal decreed.

Before Mr. Justice Knox and Mr. Justice Aikman.

1896
June 5.

RAM DAS (OBJECTOR) *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL (DECREE-HOLDER).*

Civil Procedure Code, section 411 – *Suit in formâ pauperis – Court-fee payable out of the subject-matter of the suit – Mode of realization of Court-fee by Government.*

In a suit brought in *formâ pauperis* the plaintiff was successful, and the decree directed that the court-fee which would have been payable had the suit not been in *formâ pauperis* should be the first charge on the property the subject-matter of the suit and should be recoverable from the defendant in the same manner as the costs of the suit. *Held*, that it was not necessary for Government to bring a separate suit to recover the court-fee, but that the same might be realized from the property the subject of the suit by proceedings in execution.

THE facts of this case sufficiently appear from the judgment of KNOX, J.

Babu *Durga Charan Banerji* for the appellant.

Mr. *E. Chamier* for the respondent.

KNOX, J.—This is a first appeal from an order passed by the Subordinate Judge of Agra. The circumstances which led up to the order appealed from are as follows :—

First Appeal No. 44 of 1894, from an order of Babu Baijnath, Subordinate Judge of Agra, dated the 2nd December 1893.