

entertain it ; it would necessarily lie, therefore, in the Civil Court. In this case the tenant has executed a kabuliati by which he undertook to surrender the holding after a certain period. It is stated that the landholder has not as yet taken any steps to enforce the agreement to surrender. I am unable to see what there is to prevent the tenant from maintaining the present suit to have it declared that the agreement is not binding upon him. With reference to the fact that, as I read it, the District Judge in his judgment of the 7th of November 1894, refrained from deciding the question as to whether the agreement to pay an enhanced rent had or had not been obtained under pressure of undue influence, there is, in my opinion, no bar to the tenant maintaining this suit for the cancellation of the kabuliati as a whole. In the case relied upon by the respondent it was held that a suit to set aside a perpetual lease of agricultural land on the ground that the word importing perpetuity had been fraudulently inserted in this lease was "peculiarly within the jurisdiction of the Civil Court." I see no reason why this view should not be extended to a suit to set aside a kabuliati on the ground that it had been obtained by undue influence. For the above reasons I dismiss this appeal with costs.

Appeal dismissed.

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

ABDUL MAJID KHAN (DEFENDANT) v. KADRI BEGAM (PLAINTIFF).*

Construction of document—Award—Award of the nature of a family settlement directing an annuity to be paid "ta haiyat walidain."

An award drawn by an unprofessional arbitrator in India is not to be construed according to the same principles as an award settled by counsel or a solicitor in England, but in accordance with what may reasonably be supposed under the circumstances of the case to have been the intentions of the arbitrator.

Where an award, which was of the nature of a family settlement between a father, mother and son, of certain property which had been given by the father to the mother in lieu of dower and then by the mother to the son, directed that a certain annuity should be paid out of the property to the father

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and mother "*ta haiyat walidain*," it was held that the annuity was to be paid during the joint lives of the father and mother and also during the life of the survivor.

THIS appeal arose out of a suit to recover money in virtue of an award. The plaintiff was the widow of one Nawab Rashid Khan, and the defendant Abdul Majid Khan was her son. Rashid Khan had assigned certain property to his wife, the plaintiff, in lieu of her dower, and she during his minority made a gift of the property so assigned to the defendant. Subsequently the defendant apparently showed a disposition to become extravagant, and thereupon the father, mother and son agreed that a settlement of the property should be made through an arbitrator. An arbitrator was appointed and made his award on the 7th of February 1885, which award was subsequently registered. By this award it was provided that the defendant should pay out of the property the subject of the award Rs. 600 yearly to his father and mother; and it was provided that his payment should be made "*ta haiyat walidain*", which is, literally translated, "to the term of the lives of the two parents." The annuity was duly paid during the lifetime of the father and for a short period after his death. Subsequently, however, the defendant ceased paying anything to his mother, who accordingly sued to recover a certain instalment of the annuity by sale of the property in question.

The Court of first instance (Munsif of Bareilly) gave the plaintiff a decree for half the amount of her claim, which decree was in substance affirmed by the lower appellate Court (Subordinate Judge of Bareilly). The defendant appealed to the High Court, and his appeal coming before a single Judge of the Court was dismissed. From the judgment of the single Judge the defendant appealed under section 10 of the Letters Patent.

Mr. A. E. Ryves and Maulvi Ghulam Mujtaba, for the appellant.

Mr. T. Conlan, for the respondent.

EDGE, C. J. and BURKITT. J. :—In this suit Musammat Kadri Begam sues her son, Abdul Majid Khan, on an award, to obtain

a decree for sale. The facts of the case are somewhat peculiar. The plaintiff was the wife of one Nawab Rashid Khan, who was the owner of the property sought to be sold. He assigned the property to his wife, the plaintiff, in satisfaction of dower due by him to her, and she during his minority made a gift of the property to the defendant. When the defendant came of age he showed a disposition to be extravagant, and thereupon the father, mother and son agreed that an arbitrator should determine what provision should be made for the family. Now the arbitrator made an award, and upon that award this suit has been brought. He awarded that 600 rupees yearly should be paid out of the property in question to the father and mother, and ordered that the payment should be made "*ta haviyat wabidain*" which has been translated "to the term of the lives of the two parents." Nawab Rashid Khan, the husband, has died, and for some time after his death the money was paid regularly to the mother by the son. He has now, however, taken a different view of his legal and filial duties, and he declines to pay his mother anything. Of course, if in point of law he is not liable to make any payment to his mother, the fact that he is her son and the fact that the property in question belonged to her and that she need not have given it to him cannot impose on him any liability in law to make any payment of the kind. It has been contended that the arbitrator intended by his award that this annual payment of Rs. 600 should be made for the joint lives only of the father and mother, and that after the death of either the son should be under no obligation to make any payment to the survivor. It is difficult to conceive that the arbitrator, who at the time was carrying out the wishes of the family, should have entertained any such intention. It is difficult to understand how he could have intended that on the mother's death the father should be left penniless by his dutiful son. And if that was not his intention in the case of the mother dying and the father surviving, his intention must have been that the money should be paid during the joint lives of the father and mother and during the lifetime

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of the survivor. There is no doubt that the language used in the award is somewhat ambiguous, and we were pressed by Mr. *Ryves* with the decision of *Kindersley, V. C.*, in *Grant v. Winbolt* (1). In that case the Vice-Chancellor arrived with great difficulty at the conclusion which he expressed. We have not to construe this award as we should have to construe an award settled by counsel or a solicitor in England, but as an award drawn by a plain man of Bareilly, probably of no great business habits, who would know little or nothing about the subtleties of the English system of conveyancing. We have to construe it as we think it was intended by the arbitrator it should be construed, and we hold that it was his intention that the liability to make the payment should continue during the life of the survivor of the parents.

We have said this was a suit for sale. A decree for sale under section 88 of the Transfer of Property Act was made, treating the award as if it were a mortgage or document creating a charge upon land. It does not appear from anything put before us that the arbitrator had any power to charge the lands in question; consequently a decree for sale was bad. However, the plaintiff is entitled to a decree for money. We set aside the decree for sale, and we give the plaintiff a decree for the Rs. 600 (six hundred) annuity for the year in question, together with interest from the date of suit until realisation at 12 per cent. per annum. We also give her her costs of this appeal.

To the extent above indicated we modify the decree below. In other respects we dismiss the appeal.

Decree modified.

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January 28.

Before Sir John Edge, Kt., Chief Justice and Mr. Justice Burkitt.
SRI GIRDHARIJI MAHARAJ (PLAINTIFF) v. CHOTE LAL AND OTHERS
(DEFENDANTS).*

Landholder and tenant—Rights of zamindars in land forming part of the abadi—Custom—Customary law of the North-Western Provinces.

According to the general custom prevalent in the North-Western Provinces, a person, agriculturist or agricultural tenant, who is allowed by a zamindar

* Appeal No. 29 of 1897 under section 10 of the Letters Patent.