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claim set up is bogus or *bond fide*. In the present case I think that it is quite clear that the Magistrate came to the conclusion that there was no *bond fide* belief by the defendants that they had any title whatever to the property and that they were in reality wilfully committing a wrongful act. If he came to that conclusion he was certainly justified in making the order under section 107. I reject the application.

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APPELLATE CIVIL.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkill.

GANGA PRASAD AND ANOTHER (DEFENDANTS) v. KURA (PLAINTIFF)*
Civil Procedure Code, sections 521, 588—Award—Objections to award—Award set aside—Appeal.

Held that no appeal lies from an order under section 521 of the Code of Civil Procedure setting aside an award. *Shyama Charan Pramanik v. Prothad Durwan* (1) followed. *Naurang Singh v. Sadajal Singh* (2) overruled. *Pureshnath Dey v. Nobin Chunder Dutt* (3) and *Rughoobur Dyal v. Maina Koor* (4) referred to.

IN this case a suit was brought for a declaration that a certain bond was a forgery. The defendants pleaded that the bond was genuine. The question was referred to arbitration through the Court and an award was passed declaring that the bond was a forgery. An objection to this finding was preferred under section 521 of the Code of Civil Procedure, and the Court (Munsif of Kairana) sustained the objection; set aside the award; considered the case on the merits, and ultimately found in favour of the genuineness of the bond. The plaintiff appealed. The lower appellate Court (District Judge of Saharanpur) going behind the order of the first Court, entertained the question of the alleged misconduct of the arbitrators; held that no misconduct was proved and that the award was a binding award, and accordingly passed a decree in conformity with the award. The defendants appealed to the High Court.

* Second Appeal No. 681 of 1904, from a decree of L. G. Evans, Esq., District Judge of Saharanpur, dated the 29th of April, 1904, reversing a decree of Pandit Bishun Lal Sharma, Munsif of Kairana, dated the 23rd of December, 1903.

(1) (1904) 8 C. W. N., 390. (3) (1869) 12 W. R., 93.
(2) (1887) 1. L. R., 10 All., 8. (4) (1888) 12 C. L. R., 564.

Hon'ble Pandit *Sundar Lal*, Mr. *G. W. Dillon*, and Mr. *R. Malcomson* for the appellants.

Mr. *A. H. C. Hamilton* and Babu *Jogindro Nath Chaudhri*, for the respondent.

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STANLEY, C.J. and BURKITT, J.—A preliminary objection is raised to the hearing of this appeal under the following circumstances. The suit was brought to have it declared that a certain bond was a forgery. The defendants set up the defence that it was a genuine document. The question then was referred to arbitrators through the Court and an award was passed declaring that the bond was a forgery. An objection to this finding was preferred under section 521 of the Code of Civil Procedure to the Munsif, and his finding was that the objection was well founded, and accordingly he set aside the award and went into the question between the parties on the merits, ultimately holding that the bond was genuine. On appeal the lower appellate Court going behind the order of the Court of first instance passed under section 521, entertained the question of the alleged misconduct of the arbitrators, held that no misconduct was proved and that the award was a binding award, and accordingly he passed a decree in conformity with the award. Against this decision the present second appeal has been preferred.

The preliminary objection raised to the hearing of the appeal is that no appeal lies. The answer to this is that no appeal against the order of the Munsif setting aside the award lay to the District Judge, and that consequently the decree of the District Judge passed upon the award was without jurisdiction. Section 521 of the Code provides that no award shall be set aside except on certain grounds therein mentioned, and amongst others the corruption or misconduct of the arbitrator or umpire. The succeeding section provides that if the Court sees no cause to remit the award or any of the matters referred to arbitration for reconsideration *and if no application has been made to set aside the award, or if the Court has refused the application*, the Court shall give judgment according to the award; the last paragraph of that section provides that "no appeal shall lie

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from such decree except in so far as the decree is in excess of, or not in accordance with, the award."

Now it is admitted that section 521 is not mentioned in section 588 which gives a right of appeal in case of orders. Therefore *prima facie* there is no appeal from an order setting aside an award. Section 522 only enables the Court to pass a decree upon an award if no application has been made to set it aside, or if the Court has refused such application. That section does not apply to the facts of the present case, for here, not merely was an application made to the Court to set aside the award, but an order was passed under section 521 setting it aside. Under these circumstances we think that upon the language of these sections of the Code no appeal lay from the order of the Munsif.

We are, however, met with the decision of a learned Judge of this Court in the case of *Naurang Singh v. Sadopal Singh* (1). In that case Mahmood, J., held that where a Court of first instance wrongly set aside an arbitration award and passed a decree against the terms thereof and a Court of first appeal, holding that the award was not open to objection upon the grounds mentioned in section 521, passed a decree strictly in accordance with the award, such appellate decree is entitled to the same finality as the first Court's decree would have been under the last paragraph of section 522 and cannot be made the subject-matter of second appeal. In arriving at this decision the learned Judge dissented from the decision in *Pureshnath Dey v. Nobin Chunder Dutt* (2) and *Rughoobur Dyal v. Maina Koer* (3). We have carefully considered his judgment, and are unable to concur in it. We think the view which was taken of the sections in question by the Calcutta High Court in the appeal of *Shyama Charan Pramanik v. Prohbad Durwan*, (4) is the correct view, and for the reasons given by the learned Judge before whom that appeal came. The facts of that case are on all fours with those of the present and in it Mr. Justice Banerjee, after reference to the authorities, in a long and well-considered judgment came to the conclusion that no appeal lay from an order

(1) (1887) 1 L. R., 10 All., 8.

(2) (1869) 12 W. R., 93.

(3) (1883) 12, C. L. R., 564.

(4) (1904) 8, C. W. N., 390.

passed under section 521 setting aside an award. It is unnecessary to recapitulate the reasons which he has given distinctly and clearly in his judgment. We therefore overrule the preliminary objection, and as we hold that the learned District Judge had no jurisdiction to entertain the appeal from the order passed under section 521, we allow the appeal and we remand the appeal to the lower appellate Court under the provisions of section 562 of the Code of Civil Procedure, with directions that it be re-admitted on the file of pending appeals and be disposed of on the merits. The costs here and hitherto will follow the event.

Appeal decreed and cause remanded.

Before Mr. Justice Sir William Burdett.

GHASI RAM (PLAINTIFF) *v.* HAR GOBIND AND OTHERS
(DEFENDANTS).*

Act No. VII of 1870 (Court Fees Act), sections 7, sub-sections (v) and (vi) and 12—Court fee—Pre-emption—Valuation of suit—Appeal—Act No. X of 1897 (General Clauses Act), section 3(59).

Held that the expression “the year next before the date of presenting the plaint” occurring in clause (e) of sub-section (v) of section 7 of the Court Fees Act, 1870, denotes a period of 365 days reckoning backwards from the date of presentation of the plaint.

Held also that where a Court had based its decision as to the valuation of a suit upon a wrong construction of the expression “the year next before the date of presenting the plaint,” an appeal was not precluded by section 12 of the Court Fees Act, 1870.

THIS was a suit for pre-emption of land not paying Government revenue. The plaintiff entered in his plaint as the value of the suit a sum which he alleged to be fifteen times the nett profits of the land for the year preceding the suit as prescribed by section 7, sub-section (v), of the Court Fees Act, 1870. The defendants disputed this valuation. On the issue thus raised the Court of first instance (Subordinate Judge of Moradabad) entered into a calculation of the amount of court fee payable on the plaint. The plaint was presented on the 16th July, 1902. The Court, however, took as the basis of its calculation the last

* Second Appeal No. 565 of 1904, from a decree of H. D. Griffin, Esq., District Judge of Moradabad, dated the 27th of February, 1904, confirming a decree of Lala Mata Parshad, Subordinate Judge of Moradabad, dated the 8th of December, 1902.

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