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to him, and that therefore he was in the same position as if he had not appealed at all. To put it shortly, the only decree for sale that exists is the decree, dated the 8th of April, 1893, and that is a decree of the High Court of Allahabad. The operation of this decree has never been stayed, and there is no decree of His Majesty in Council in which it has become merged. The period of limitation applying to the enforcement of it at all material times was therefore a period of three years. The respondents' right is therefore barred by limitation

Their Lordships will therefore humbly advise His Majesty that this appeal should be allowed, and that the application of the 11th of June, 1909, should be dismissed and that the respondents should pay the costs of that application and of the appeal to the High Court as well as of this appeal.

*Appeal allowed.*

Solicitor for the appellant:—*Douglas Grant.*

Solicitors for the respondent Jawahir Lal:—*Barrow, Rogers and Nevill.*

J. V. W.

## REVISIONAL CIVIL.

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*March*, 31.

*Before Mr. Justice Muhammad Rafiq and Mr. Justice Piggott.*

CHATARBHUJ (PLAINTIFF) *v.* RAGHUBAR DAYAL (DEFENDANT).*

*Arbitration—Jurisdiction—Power of court to supersede an arbitration proceeding under its orders before submission of award—Revision—Civil Procedure Code* (1908), *section* 115 ; *schedule II, paragraph* 15.

*Semble* that the intention of the second schedule to the Code of Civil Procedure is that when once a reference to arbitration has been made under the orders of the court that reference should only be superseded for one of the reasons given in the schedule itself, and that allegations of corruption against the arbitrator should be dealt with under paragraph 15, after the award has been received.

Even if a civil court possesses inherent jurisdiction to supersede an arbitration proceeding under its orders, such jurisdiction should be cautiously and sparingly exercised, and an application invoking such jurisdiction should at least suggest grounds for supposing that the applicant will suffer some irreparable injury if prompt action is not taken. The High Court can interfere in revision when the inherent jurisdiction of a court is exercised wrongly and with material irregularity. *Atlas Assurance Company* v. *Ahmedbhoy Habibbhoy* (1) not followed.

* Civil Revision No. 89 of 1913.

(1) (1901) I.L.R., 34 Bom., 1.

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THE facts of this case were as follows :—

A suit was brought in the court of the Subordinate Judge of Agra which by consent of parties was referred to arbitration on the 28th of March, 1911. The arbitrator closed the case on the 11th of July, 1911. On the 20th of July, 1911, the defendant presented an application before the court asking it to revoke the order of reference. The court fixed the 28th of July for hearing of this application and ordered that the plaintiff's pleader be informed of this fact. On the 28th of July, 1911, the court took up the application presented by the defendant and passed an *ex parte* order revoking the reference and took the case on to its own file. An order was sent to the arbitrator to return all the papers connected with the case and the order reached the arbitrator on the 30th of July. The arbitrator sent in all the papers, among which was an award purporting to have been made on the 27th of July. On the 8th of June, 1912, the court asked the plaintiff's pleader to tell his client to appear in person on the 20th of June, 1912, the date fixed for hearing of the case otherwise the suit would stand dismissed. On the 20th June, 1912, the plaintiff filed an application to the effect that the court's order revoking the reference to arbitration was wrong and that it should proceed with the award according to law. The Subordinate Judge rejected this application and dismissed the suit without hearing the parties. The plaintiff applied in revision to the High Court.

Mr. *Nihal Chand*, for the applicant, submitted that the Subordinate Judge had no jurisdiction to revoke the order of reference according to schedule II, paragraph 3, clause (2), and paragraphs 5, 8 and 15 of the Code of Civil Procedure. He referred to *Halimbhai Karimbhai* v. *Shanker Sai* (1), *Jamna Kunwar* v. *Nasib Ali* (2), *Perumalla Satyanarayana* v. *Perumalla Venkata Ranjayya* (3), *Sultan Muhammad Khan* v. *Sheo Prasad* (4), *Chiddu* v. *Kunwar Sen* (5), *Abdul Hamid* v. *Riaz-ud-din* (6), *Shiam Sundar Lal* v. *Bhairon Singh* (7), *Pestonjee Nussurwanjee* v. *Manockjee and Co* (8), and to "The Law of Arbitration" by Durga Charan Banerji.

(1) (1885) I.L.R., 10 Bom., 381.
(2) (1902) I.L.R., 24 All., 312.
(3) (1908) I.L.R., 27 Mad., 112.
(4) (1897) I.L.R., 20 All., 145.
(5) (1906) I.L.R., 29 All., 49.
(6) (1907) I.L.R., 30 All., 32.
(7) (1905) Weekly Notes, 51.
(8) (1868) 12 Moo. I.A., 112, 180.

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In most of the aforesaid cases the reference to arbitration was without the intervention of court and the rulings laid down that even in such cases a party could not withdraw a reference to arbitration at his mere will and pleasure without a sufficient and just cause. The cases reported in I. L. R., 10 Bombay, page 381, and I. L. R., 30 Allahabad, page 32, were direct authorities in favour of the plaintiff. According to section 15 of schedule II a court should hold its hands till the award is challenged by either party. The award having been given on the 27th of July was delivered before the order superseding the reference and was, therefore, not a nullity. The proper procedure for the court below was to give notice of the award to the parties. He referred to *Chaturbuj Das* v. *Ganesh Ram* (1) and *Rangasami* v. *Muttusami* (2).

The omission of the Subordinate Judge to have notice of the application of the 20th of July served on plaintiff's pleader was a material irregularity.

Babu *Durga Charan Banerji* (for the Hon'ble Dr. *Tej Bahadur Sapru*), for the opposite side, submitted that the lower court had jurisdiction to supersede the order of reference for just and sufficient cause. The Legislature never contemplated that this Court in revision should interfere in matters in which a lower court has exercised a discretion as to the sufficiency or otherwise of the ground on which that court acted. Further the courts possess an inherent power which entitles them to revoke a reference in the interest of justice. He referred to *Chiddu* v. *Kunwar Sen* (3), *Mahomed Wahiduddin* v. *Hakiman* (4) and *Atlas Assurance Company* v. *Ahmedbhoy Habibbhoy* (5).

The plaintiff has taken a long time in coming before this Court and the effect is that the defendant's objection for setting aside the award would now be time-barred under article 158, schedule I, of the Limitation Act.

PIGGOTT, J.—The revisional jurisdiction of this Court is being invoked by a plaintiff whose claim for a sum of Rs. 1,200 plus interest has been dismissed by the Additional Subordinate Judge of Agra, under somewhat peculiar circumstances. The suit having

(1) (1898) I.L.R., 20 All., 474. (3) (1906) I.L.R., 29 All., 49.
(2) (1887) I.L.R., 11 Mad., 144. (4) (1902) I.L.R., 29 Calc., 278.
(5) (1908) I.L.R., 34 Bom., 1.

been duly instituted was referred to arbitration by an agreement under paragraph 1 of the second schedule to the Code of Civil Procedure. The arbitrator had been directed to submit his award by the 8th of August, 1911. On the 20th of July, 1911, the defendant presented to the court an application supported by affidavit, asking the court to supersede the arbitration, on the ground that he had lost confidence in the fairness and impartiality of the arbitrator. The court directed that this application should come up for orders on the 28th of July, 1911, after notice to the plaintiff's pleader. It did not take the precaution of issuing orders to the arbitrator to suspend his proceedings pending the disposal of the said application. It is a matter for controversy whether the plaintiff's pleader did or did not receive notice. The record does not show that he did, and on the date fixed (July 28th, 1911,) the matter was actually heard and disposed of *ex parte*. The court had no materials before it except the affidavit filed along with the application of the 20th of July, 1911, and this affidavit is very badly drafted and does not bind down the deponent to affirming anything material as of his own personal knowledge. The court, however, contented itself with taking note of the fact that no one appeared to contest the application, and thereupon passed an order superseding the arbitration and fixing a date for proceeding with the suit. It at the same time issued an order to the arbitrator directing him to send in all papers connected with the proceedings before him. It would seem that this order reached the arbitrator on the 30th of July, 1911, and his reply reached the court on the 1st of August, 1911. He sent in a large number of papers, and with the rest, an award in favour of the plaintiff for Rs. 1,200 plus a certain amount of interest, the said award purporting to be dated the 27th of July, 1911.

The plaintiff went up to this Court in revision against the order of 28th of July, 1911, but a Bench of this Court held that no case had yet been decided within the meaning of section 115 of the Code of Civil Procedure, and that there could be no interference at this stage.

By the time the learned Subordinate Judge came to take up the suit again it would seem that he was beginning to entertain an impression unfavourable to the plaintiff's conduct of the case; at

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any rate he passed a peremptory order requiring the personal attendance of the plaintiff on the next date fixed for hearing. The case then came up on the 20th of June, 1912, the plaintiff being represented by a pleader, but not appearing in person as directed. His pleader put in three applications, one after the other, all of which were rejected by the Court. One at least of these applications was very improperly worded, and I feel compelled to place on record the impression left on my mind by a perusal of the proceedings of that date, that there was some loss of temper on both sides. A mere inspection of the order by which the learned Subordinate Judge finally dismissed the plaintiff's suit suggests that it was written in haste and in some agitation of mind. The order as passed does not specify under what provisions of the Code of Civil Procedure it purports to be passed, and it certainly seems open to argument whether the court intended to apply the provisions of order XVII, rule 2, or those of order IX, rule 12, of the Code of Civil Procedure. When a court comes to the conclusion that a plaintiff before it has so mismanaged his case that, whatever may be the merits of his claim, it is right and proper that his suit should be dismissed without an adjudication on the merits, it is most desirable that the court should itself pause to consider, and should place clearly on record, the precise provisions of the law under which it proposes to act. The plaintiff appealed to the District Judge against the order of dismissal, but the District Judge held the order to have been passed under order IX, rule 12, of the Code of Civil Procedure and not to be open to appeal. The question of the propriety of the District Judge's order is not before us and there has been no argument on the point. I mention the matter only by way of explaining the unsatisfactory position into which the litigation has now got and as accounting for the plaintiff's delay in bringing the matter before this Court in revision.

The plaintiff's contention now is that the Subordinate Judge's order of the 28th of July, 1911, superseding the arbitration was either altogether without jurisdiction, or at any rate was vitiated by such material irregularity as to make it a proper subject for interference by this Court in revision. If this order be set aside, it is further contended that the Subordinate Judge had no jurisdiction to proceed with the suit himself, and that all his subsequent

orders, up to and including the order dismissing the suit, are equally without jurisdiction. It is further suggested that we should quash this order of dismissal, and remand the case to the court below, with directions that it should take cognizance of the arbitrator's award in favour of the plaintiff, and either pass a decree in the terms of that award, or consider whether it is open to it, at this stage, to pass an order setting aside the award under paragraph 15 of the second schedule to the Code of Civil Procedure.

We were taken in argument through a great deal of the voluminous case-law on the subject, but most of the cases cited seem to me but remotely relevant to the facts before us. It is settled law that, in the case of an agreement to refer to arbitration come to out of court, neither party can revoke the agreement at his own will and pleasure; but either party may do so for good and sufficient cause, and various cases have arisen in which the courts have been called upon to inquire into the validity or sufficiency of the cause alleged for revoking such an agreement. It was conceded before us in argument that a reference to arbitration made under the orders of the Court cannot be terminated by a mere revocation on the part of the plaintiff or defendant; but can only be superseded by an order of the court. The second schedule to the Code of Civil Procedure specifies certain cases in which the court may supersede a reference to arbitration made under its orders; the fact that one of the parties concerned has lost faith in the fairness or impartiality of the arbitrator is nowhere laid down as a valid ground for superseding the arbitration. Corruption or misconduct on the part of the arbitrator is a good ground for setting aside the award after the same has been received, but it is nowhere laid down that the court is authorized to take cognizance, during the pendency of the arbitration, of an allegation that the arbitrator is corrupt or partial, or is misconducting himself, so as to suspend the proceedings in arbitration and, if satisfied of the truth of the allegation, to supersede the arbitration before any award has been received. It is contended that the court must be presumed to have inherent jurisdiction to do both these things, for good cause shown. The learned advocate for the defendant in this case, who is himself a most distinguished

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authority on the subject of the law of arbitration, could only refer us to one reported case, *Atlas Assurance Company* v. *Ahmedbhoy Habibbhoy* (1), where this proposition was definitely laid down. I must confess to grave doubts on the point. The learned Judge of the Bombay High Court speaks of the necessity of protecting a party from "multiplied expenses" and "interminable delays" on the part of the arbitrator. With all respect for his opinion, I suggest that in an arbitration conducted under the orders of the court (and this is the case with which we are now dealing) the court has very large powers of control. Against "interminable delays," at any rate, it can provide at once by its order specifying the period within which the award is to be returned. It seems to me unsound on general principles to invoke the "inherent jurisdiction" of the court in a matter for which provision appears to be made in the Code itself. I am by no means satisfied that the intention of the second schedule to the Code of Civil Procedure is not, that when once a reference to arbitration has been made under the orders of the court, that reference should only be superseded for one of the reasons given in the schedule itself, and that allegations of corruption or misconduct against the arbitrator should be left to be dealt with under paragraph 15, after the award has been received.

I should be quite content, however, to dispose of the matter now before us on the principles laid down by Mr. Justice Davar in *Atlas Assurance Company* v. *Ahmedbhoy Habibbhoy*. The "inherent jurisdiction" of the court, if it can be called into play at all in this fashion while the arbitration is pending, should be, "cautiously and sparingly exercised," and only when it is obvious that the ends of justice would not be met by requiring the dissatisfied party to wait and see what the award might be and then to assail it on the ground of corruption or misconduct, if satisfied that such allegations can be made out. An application to a court to interfere with an arbitration proceeding pending under its orders should at least suggest grounds for supposing that the applicant will suffer some irreparable injury if prompt action is not taken. In the present case the learned Subordinate Judge seems to me to have taken action on an unsatisfactory application supported by

(1) (1908) I.L.R., 34 Bom., 1.

a worthless affidavit. Having decided to entertain that application, he did not at once issue orders to the arbitrator to suspend his proceedings pending inquiry; he did not cause notice of the application to be formally served on the opposite party; he superseded the arbitration with no legal evidence before him of any one single fact justifying his interference; and he did so by an *ex parte* order which was not prefaced by any finding that the plaintiff or his pleader had notice of the date fixed for hearing the defendant's application.

Now we are dealing in this case with an order which was admittedly not within the jurisdiction of the court below under any of the provisions of the Code of Civil Procedure which deal specifically with the whole question of submissions to arbitration. The order can only be justisfied, if at all, by invoking the inherent jurisdiction of the court. Under these circumstances I do think that it is both proper and necessary that this Court, having the record before it in revision, should consider the circumstances under which that inherent jurisdiction was invoked and the manner in which it was exercised. In my opinion it was invoked under circumstances which did not call for its exercise, and was exercised "with material irregularity."

I think that, if we set aside this order of the 28th of July, 1911, and all subsequent orders in the case as passed without jurisdiction, we can direct the court below to take up and consider the question of the validity of the award. It was suggested in argument that the provisions of article 158 of the first schedule to the Indian Limitation Act (Act IX of 1908) would prevent this. In reply to this I hold that the defendant's application of the 20th of July, 1911, was, though premature and irregular in form, in substance a plea of corruption and misconduct against the arbitrator. The court would have jurisdiction to take cognizance of it as an objection against the award, and to do so on the date on which it takes cognizance of the award itself. I would hold further that the award, though received by the court on the 1st of August, 1911, has not, in consequence of the mistaken order of the 28th of July, 1911, been legally before the court at all up to this present date. That court should, therefore, take cognizance of it on the date on which it receives back the record from this Court, issue

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notice of the same to the parties, and allow ten days for objections in case the defendant desires to file further objections. It may be a matter for inquiry whether the award was really made on the date which it purports to bear, as it would certainly amount to misconduct on the arbitrator's part if he made the award after the court's order of the 28th of July, 1911, reached him, and purposely antedated it.

For these reasons, I would set aside the order dismissing the plaintiff's suit, as well as the order superseding the arbitration, and remand the case to the court below with directions as suggested above.

RAFIQ, J.—I concur.

BY THE COURT.—The order of the Court is that the order of the lower court dismissing the plaintiff's suit, as also the order superseding the arbitration, is set aside, and the case is remanded to the court below to consider the validity of the award and to dispose of the suit according to law. The costs of this application will be costs in the suit.

*Application allowed.*

## REVISIONAL CRIMINAL.

1914

*April*, 2.

*Before Mr. Justice Piggott.*

EMPEROR v. MUHAMMAD ISHAQ.*

*Act No. XLV of* 1860 *(Indian Penal Code), sections* 52, 191 *and* 193—*Perjury—Verification of application for execution containing statements in fact untrue—"Good faith."*

A man cannot be convicted of perjury under section 193 of the Indian Penal Code for having acted rashly, or for having failed to make reasonable inquiry with regard to the facts alleged by him to be true. It must be found that he made some statement which he knew to be false, or which he believed to be false, or which he did not believe to be true, and this finding should be arrived at independently of the definition of "good faith" in section 52 of the Code.

ONE Muhammad Ishaq presented to the Court of Small Causes at Benares an application for execution of a decree, duly verified according to law, stating that a decree had been passed on a certain date by the Court of Small Causes in his favour for a certain sum of money against one Bhola Sahu. As a matter of fact on the

* Criminal Revision No. 185 of 1914 from an order of B. J. Dalal, Sessions Judge of Benares, dated the 7th of March, 1914.