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in the new second mahal exclusively owned, after the partition, by the defendants. This Court held that the Civil Court had no jurisdiction to partition the *dera*, because admittedly the suit involved partition also of the site on which the *dera* stood and that it was in fact re-opening the partition of 1867, and that there was a remedy open to the plaintiffs in the Revenue Courts, namely to assess the ground rent of the premises occupied by the defendants. In our opinion, therefore, that case has no application. We think that the decision of the court below was correct and we dismiss the appeal with costs, but the costs of the lower appellate court and of the first court will abide the result. The third ground of appeal has not been argued and has been definitely abandoned for good reasons.

Appeal dismissed.

Before Mr. Justice Walsh and Mr. Justice Ryves.

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February, 3.

ABDUL SHAKUR (PLAINTIFF) *v.* MUHAMMAD YUSUF (DEFENDANT) AND HAFIZ CHHEDDA SHAH (PLAINTIFF).*

Act No. IX of 1899 (*Indian Arbitration Act*)—*Reference to two arbitrators and an umpire—Subsequent addition by consent of parties of other arbitrators—Objection raised after the pronouncement of the award to the appointment of additional arbitrators—Estoppel.*

A reference to arbitration was made under Act No. IX of 1899. The reference was to two arbitrators and an umpire. Subsequently the parties agreed to appoint two more arbitrators on either side. The six arbitrators and the umpire proceeded with the arbitration and pronounced a unanimous award. One party then applied for the award to be filed and the other party took objection, *inter alia*, to the number of the arbitrators.

Held that, though either side might have objected in the first instance to the appointment of additional arbitrators, it was too late to do so when they had all along acquiesced in the appointment and after the arbitrators had pronounced their award.

THIS was an appeal from an order of the District Judge of Cawnpore refusing to file an award made under the provisions of the Indian Arbitration Act, 1899.

The facts of the case are fully set forth in the judgment of the Court.

Maulvi *Iqbal Ahmad*, for the appellant.

Saiyid *Raza Ali*, and Babu *Piari Lal Banerji*, for the respondents.

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* First Appeal No. 143 of 1920 from an order of L. S. White, District Judge of Cawnpore, dated of July, 1920.

WALSH and RYVES, JJ. :—In this case it has been found that there was a submission in writing. It is quite true that the submission in writing contained a reference to two arbitrators and an umpire, which is the ordinary normal number, probably because this is the number, contemplated by the Legislature, but the fact that there was a reference to three specified individuals in the submission does not make it any the less a written submission. From that moment the jurisdiction of the civil courts was ousted, except for the purpose of an application to file or set aside an award in accordance with the appropriate provisions of the Arbitration Act of 1899. A reference, although contained in this case in the same document, need by no means be contained in the submission and frequently is not, but this is a matter wholly independent and distinct from the submission to arbitration ; for example, if all three persons named in the reference or submission died, the submission would still exist as such although no arbitrator remained. After the arbitrators and the umpire had entered upon their duties the present respondent Muhammad Yusuf, who objects now to the filing of this award, gave his evidence. For some reason (probably an excellent one in the interests of the parties themselves, and they are the best judges in such matters ; it is a matter which does not concern either the Legislature or the Courts), four additional men were appointed as arbitrators. It has been found by the District Judge that the applicant who objects to the award raised no objection of any sort or kind to this addition. He continued, as before, a party to the reference and arbitration proceedings, and eventually the seven arbitrators proceeded to make their award with his full consent and acquiescence. In fact they made an unanimous award and all of them appended their signatures to the document. This result, if not unparalleled, is probably rare in the history of arbitration. The other party thereupon applied to the court under section 11 of the Arbitration Act to file the award and the present applicant appears to have raised a host of objections, including alleged misconduct on the part of some of the arbitrators, and further took the wholly technical point that, although he had submitted to arbitration and had been a party throughout the proceedings and had consented to the award being made, there was in fact

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no legal reference. In our view the Act does not limit in any way the number of arbitrators nor does it prevent the parties, if they choose to do so as a matter of business by common consent, altering either the number or the constitution of the tribunal to suit their own needs. What it does is to provide that the reference may be submitted to one or two arbitrators and that in the event of the arbitrators failing to agree, they may appoint an umpire and that in certain contingencies, for example one party refusing to appoint any arbitrator at all, or the arbitrator who has disagreed with the other refusing to appoint an umpire, the aid of the court may be invoked by the party who is thus obstructed, to secure by the order of the court the appointment which the obstructing party or the arbitrators decline to carry out. In this case the original appointment of the arbitrators and the umpire was in writing and contained in the original submission ; and, therefore, according to the strict principles of law a variation of it could not be enforced against either party against the will of the other without some writing by common consent, and if Muhammad Yusuf had objected at any stage before the additional four arbitrators entered upon their duties, he would undoubtedly have been in a strong position and entitled to hold the other side to the original appointment of the three ; but this he did not do and inasmuch as he has co-operated in and acquiesced in the altered state of things, whatever objection might otherwise be brought against the tribunal as ultimately constituted, he is absolutely estopped by the well known principle of equity from raising the question now that the matter has been decided against him. The difficulty appears to have arisen in England under circumstances where an effort was made in the shipping world to utilize the services of more than two arbitrators. There the charterers raised an objection and refused to go on and the ship owners who were on the other side tried to compel them to do so and went to the Court of Appeal seeking the aid of the court under the cognate section 8 or 9 of Act IX of 1899. The English Court of Appeal held that those sections were not applicable to a reference to three arbitrators. That is a very different thing from saying that a person who has himself become a party to an arbitration with a number of arbitrators,

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can, after the proceedings have been completed, turn round and for the first time raise an objection. This Court has already held that an appeal lies against an order refusing to file an award under this Act. There is nothing in this objection to the validity of the award, and it will be the duty of the court below to file it unless it is satisfied that there is something in the other objections which the objector still desires to raise. The appeal must be allowed and the matter remitted to the lower appellate court to restore it to its pending file and to dispose of the remaining objections according to law. The appellant must have his costs of the appeal and the amount certified therein. Notice was issued by the appellant for some reason or another to the umpire and he is represented by counsel here. The respondent no. 2 is therefore entitled as against the appellant to such costs in this appeal as the law allows.

Appeal allowed and cause remanded.

Before Mr. Justice Walsh and Mr. Justice Ryves.

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February, 8

MURLIDHAR PANDE (APPLICANT) *v.* LACHHMI PANDE AND OTHERS (OPPOSITE PARTIES)*

Act No. IV of 1912 (*Indian Lunacy Act*)—*Procedure—Inquisition as to person alleged to be a lunatic—Court not competent to delegate its judicial functions to an arbitrator or commissioner—Expert evidence.*

It is not competent to a Judge who has to conduct an inquisition under the Indian Lunacy Act, 1912, into the state of mind of an alleged lunatic to abrogate his own judicial functions and appoint some person by way of an arbitrator or commissioner to make a report on the state of mind of the alleged lunatic. If a Judge, in these or similar circumstances, finds it necessary to have expert opinions to assist him, it is his duty to call such persons as may be able to give the evidence needed and examine them upon oath.

THIS was an appeal under section 83 of the Indian Lunacy Act, 1912, from an order of the District Judge of Ghazipur appointing a manager of the estate of a person who had been found to be of unsound mind so as to be incapable of managing his affairs.

The facts of the case sufficiently appear from the judgment of RYVES, J.

Mr. *M. L. Agarwala* and Pandit *Uma Shankar Bajpai*, for the appellant.

* First Appeal No. 111 of 1920 from an order of Baij Nath Das, District Judge of Ghazipur, dated the 15th of June, 1920.