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not bargain away her son's right, which was only a *spes successionis*. It was not a settlement of a *bond fide* family dispute such as has been recognized by the Privy Council.

The minor himself cannot be considered a party to the suit, as no guardian had been appointed. He, therefore, cannot be personally bound as a party to the compromise and decree.

With regard to the last point, the mere fact that Jagta joined her minor son, who was quite an unnecessary party, in her suit, will not, we think, make the decision against her *res judicata* against her son.

In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Piggott and Mr. Justice Walsh.

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March, 2.

SARDAR MAL, HARDAT RAI (PLAINTIFF) *v.* SHEO BAKHSH RAI, SRI NARAIN (DEFENDANT).*

Act No. IX of 1899 (*Indian Arbitration Act*), *schedule I, clause* (3)—*Arbitration—Award made after three months from notice calling on arbitrator to enter on reference but within three months from the arbitrator entering upon the reference.*

Held on a construction of clause (3) of schedule I to the Indian Arbitration Act, 1899, that the provisions "entering on the reference" and "having been called upon to act by notice in writing" are alternative in this sense that where no reference is entered upon at all then the time runs from the notice calling upon the arbitrators to act. But, on the other hand, even though the arbitrators may be called upon to act by entering upon the reference, if they enter upon the reference they have three months from that moment for making their award.

"Entering upon the reference" means not when the arbitrator accepts the office or takes upon himself the duty, but when he actually enters upon the matter of the reference, when the parties are before him, or under some peremptory order compelling him to conclude the hearing *ex parte*. *Baring Gould* v. *Sharpington* (1) and *Baker* v. *Stephens* (2) referred to.

THIS was an appeal from an order of the District Judge of Cawnpore refusing to file an award. The facts of the case are thus stated in the order under appeal:—

"This was an application for filing an award under section 11 of the Indian Arbitration Act. There were eight parties who on the 14th of January, 1919, submitted the dispute to the

* First Appeal No. 81 of 1921, from an order of I. B. Mundle, District Judge of Cawnpore, dated the 21st of February, 1921.

(1) (1899) 2 Ch., 80. (2) (1867) L. R., 2 Q. B., 523.

arbitration of Lala Sheo Narain and Lala Gauri Shankar. The award was made as late as 23rd of August, 1919. Two of the parties, Sri Ram Mahadeo Prasad and Sheo Bakhsh Sri Narain, have raised various objections to the validity of the award, but only one such objection is pressed by their learned pleader and runs as follows:—

'Because the arbitrators proceeded with the arbitration in the absence of the objectors and did not give full opportunity to the objectors to defend themselves in the proceedings.'

"A fresh objection was taken at the time of the arguments on the ground that the provisions of the first schedule, clause (3), have not been complied with and that the arbitrators have not made their award in writing within three months after entering on the reference, nor have they made their award within three months after having been called on to act by notice in writing by one of the parties to the submission."

[Here the District Judge discussed and disposed of the first objection.]

"Coming to the second point, an arbitrator 'enters on the reference' when he hears the case. According to the evidence of Lala Sheo Narain the case was actually heard on the 12th of July, 1919. The award was made within three months of that date. It is proved from the record that on the 22nd of April, 1919, a notice was sent in writing to the arbitrators by Sri Ram Mahadeo Prasad calling on them to act on the submission. There is certainly a condition attached to the notice asking the arbitrators to make an award within seven days, otherwise not to proceed with the arbitration at all. The condition, so far as it is illegal, is clearly void, but I think the arbitrators were bound to make the award within three months of the date they were called on to act. As the award was actually made on the 23rd of August, 1919, the provisions of schedule I, clause (3), have not been complied with."

Mr. *B. E. O'Conor*, Mr. *G. W. Dillon*, Dr. *S. M. Sulaiman*, Dr. *Surendra Nath Sen* and Babu *Saila Nath Mukerji*, for the appellant.

Dr. *M. L. Agarwala*, Dr. *Kailas Nath Katju* and Munshi *Panna Lal*, for the respondents.

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SARDAR MAL, HARDAT RAI v. SHEO BAKHSH RAI, SRI NARAIN

PIGGOTT and WALSH, JJ. :—We have come to the conclusion that this appeal must be allowed.

We think the learned Judge has placed too narrow an interpretation upon the words of clause 3 in the schedule.

We are of opinion that the provisions "entering on the reference" and "having been called upon to act by notice in writing" are alternative in this sense that where no reference is entered upon at all then the time runs from the notice calling upon the arbitrators to act. But, on the other hand, even although the arbitrators may be called upon to act by entering upon the reference, if they enter upon the reference, they have three months from that moment for making their award and for enlarging the time for making the award if the circumstances at the reference satisfy them that they cannot complete the award within three months. To hold otherwise would seem to strike out from clause 3 the words "within three months after entering on the reference" in a case where one of the parties happened to call upon the arbitrators to act before they began the reference.

This clause was considered by the English Court of Appeal in *Baring-Gould* v. *Sharpington* (1). And the view which we take seems to be that which was laid down by the Master of the Rolls, the late Lord LINDLEY, in a passage contained in page 91 of the report.

In addition to that, under the old clause in England, which was slightly different in form, an equally strong court came to the conclusion in *Baker* v. *Stephens* (2) that "entering upon the reference" means "not when an arbitrator accepts the office, or takes upon himself the duty, but when he actually enters upon the matter of the reference, when the parties are before him, or under some peremptory order compelling him to conclude the hearing *ex parte*."

The result is that the appeal is allowed and the award is ordered to be filed. The appellant will get his costs here and below.

This order as to costs does not include the respondent Sri Kishan. We direct that there should be no order as against him for costs.

Appeal allowed.

(1) (1899) 2 Ch., 80

(2) (1867) L. R., 2 Q. B., 523