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as they were at the date of the hypothecation-bond of the 22nd July 1876, to be sold in enforcement of the lien in execution of the decree; and that the rest of the lower Court's decree be confirmed; and under the circumstances of the case I would make no order as to the costs of this appeal.

Decree modified accordingly.

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 June 23.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Tyrrell.

SALIG RAM (PLAINTIFF) v. JHUNNA KUAR (DEFENDANT).*

Agreement to refer to arbitration—Award—Suit in respect of matter referred barred—Act I of 1877 (Specific Relief Act), s. 21.

The parties to a suit applied for an adjournment of it on the ground that they had agreed to refer the matters in difference between them in such suit to arbitration. The Court accordingly adjourned the suit, and the matters in difference therein were referred to arbitration by the parties, and an award was made thereon disallowing the plaintiff's claim. *Held* that, under these circumstances, the further hearing of such suit was barred.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court.

Mr. Conlan and Munshi Hanuman Prasad, for the appellant.

Mr. Howell, Babu Jogindro Nath Chaudhri, and Munshi Kashi Prasad, for the respondent.

The judgment of the Court (STUART, C. J., and TYRRELL, J.) was delivered by

TYRRELL, J.—In this case a preliminary objection is taken by Mr. Howell for the respondent that there is no appeal to this Court, the arbitration having been private and not by order of the Court. This objection we disallowed, seeing that no award had been filed and that therefore s. 522 did not apply. This matter is further alluded to in the following judgment.

This was a suit brought in the Court of the Subordinate Judge of Agra by one Salig Ram against two persons named Jhunna Kuar and Chain Sukh in respect of some sums of money aggregating Rs. 5,175-7-0. The suit was instituted on the 17th November, 1880. The first hearing was fixed for the 4th January,

* First Appeal, No. 124 of 1881, from a decree of Maulvi Sultan Hasan Khan, Subordinate Judge of Agra, dated the 12th July, 1881.

1881. On this date both parties appeared in the Court of the Subordinate Judge and asked for adjournment of the suit to any date beyond 15 days from the 4th January, 1881, alleging that they had come to an agreement that all the matters in dispute between them, including the present suit, should within the said period of fifteen days be settled and determined by private arbitration. The Subordinate Judge assented to this prayer, and adjourned the suit to the 21st January, 1881.

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On the 22nd January, 1881, the parties appeared again in Court and filed pleadings, the defendants asserting that the arbitration had taken place on the 7th January, and that its result embodied in writing had been registered in the registration department on the 18th idem, and the plaintiff on the other hand objecting (a) that the arbitrators were partial to the other side; (b) that prior to their arbitration award he had served them with oral and written notices that he revoked his consent to arbitration; and (c) that the arbitration having been made without the intervention of the Court could have no effect on the pending suit. The Subordinate Judge framed an issue on these allegations and found on evidence that the plaintiff had made a valid agreement to refer this suit, among other matters, to the arbitrament of certain persons, and to abide by their decision therein; that the arbitrators made their award on the 9th January, 1881, and caused its registration on the 18th; that prior to the 9th January, 1881, the plaintiff had not, orally or in writing, notified to the arbitrators his revocation of reference to their arbitrament, and that the only notice he gave on the subject was not sent till the 17th January, or eight days after the arbitrators had made their award dismissing his claim as brought in this suit. The Subordinate Judge therefore rightly held, though in rather obscure and somewhat inadequate terms, that the plaintiff was barred from proceeding with this suit. This finding and decree are impugned here on six pleas, which resolve themselves into three only; which are that the arbitration award was bad by reason of corruption; that it could not therefore be noticed by the Court below; and that it was a nullity, inasmuch as the plaintiff had, before the award was made, formally withdrawn from his contract to refer. This last plea is negatived by unanswerable facts and dates disclosed by the

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record, and was not pressed before us. The other pleas are without weight independently of the fact that by the plaintiff's own showing, (see his written statement filed in Court on the 22nd January, 1881), the improper gratification said to have been given to one of the arbitrators is alleged by him to have been given on the 14th January, 1881, or subsequently to the arbitration proceedings. The Court below did not, as indeed it could not, treat the proceedings in arbitration as if they had been had and made under the Civil Procedure Code, and consequently pleas founded on the provisions of the 37th Chapter of that Code were and are irrelevant to the decree before us. It is undeniable, and it is admitted by the appellant, that on the 17th December, 1880, he executed a formal agreement in writing between himself on the one part and Jiwa Ram, Chain Sukh, Sri Gopal, and Jhunna Kuar on the other to refer to arbitrators named in the deed the matters in dispute in this suit, the said arbitrators being thereby appointed and empowered to decide these matters, and the parties solemnly binding themselves that "we agree and contract that in respect of the said dispute whatsoever the said arbitrators decide, divide, adjudge, award, settle and determine with regard to any and every point in issue, this decision shall be accepted by us, and we shall make no objection thereto." This agreement was registered according to law on the 20th December, 1880: and remained binding on, and unrevoked by, the parties, or any of them, till after the award made thereunder had been made and recorded.

By part of that award the claim brought in this action by the appellant against Jhunna Kuar, respondent, was found to be bad, and was dismissed: and under the rule of law embodied in the final provision attached to s. 21 of the Specific Relief Act (I of 1877), it is not competent to the plaintiff, who had made a contract to refer a controversy to arbitration, which contract was carried into effect, to maintain a suit in respect of any subject which he has contracted to refer. The further hearing therefore of the present suit, under the circumstances explained above, was rightly held to have been barred: and the decree of the lower Court must be affirmed. We dismiss this appeal with costs.

Appeal dismissed.