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what the day shall be, it may well consider the distance at which the property to be sold is situate, and the length of time it would reasonably take its officer to get to the spot and put up the required notice there. Thus the Court itself can guard against any injustice being done to the judgment-debtor. Moreover if there is any difficulty on this head, the High Courts, under s. 287, can frame rules for the guidance of the subordinate tribunals in these matters which would effectually prevent any inconvenience or unreasonable delay.

In the case before us more than thirty days elapsed from the copy of the proclamation of sale being fixed up in the Court-house and the date of the sale. There does not therefore appear to us to have been any material irregularity, and affirming the decision of the Subordinate Judge, we dismiss the appeal with costs.

Appeal dismissed.

1880
July 22.

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

LEKHRAJ SINGH AND OTHERS (DEFENDANTS) v. DULHMA KUAR AND OTHERS (PLAINTIFFS).*

Agreement to have case decided on the evidence of third person—Arbitration—Revocation of agreement—Act X of 1873 (Oaths Act), ss. 8-12—Act X of 1877 (Civil Procedure Code), Ch. XXXVII.

The plaintiffs and some of the defendants in a suit agreed that the matters in difference between them in the suit should be decided in accordance with the statement made on oath by one J after he had made a local inquiry into such matters. The Court trying the suit accordingly directed that J should be examined on a certain day. Before J was examined the defendants objected to the case being decided in accordance with J's evidence, but the Court disallowed the objection, and having taken J's statement on oath decided the case in accordance therewith.

Held by STUART, C. J., that the provisions of ss. 8 to 12 of Act X of 1873 were not applicable to the reference of the case to J; that such reference was in the nature of a reference to arbitration under the Code of Civil Procedure; that it would have been valid and binding on the parties had all the defendants joined in it; but that, as all the defendants did not do so, the proceedings were illegal, and they should be set aside and the suit be decided on the merits.

Held by OLDFIELD, J., that the reference of the case to J was not made under or governed by the provisions of the Civil Procedure Code relating to arbitration, and therefore the defendants were competent to revoke the agreement; and that, assuming the reference was made under the provisions of the Oaths Act, there was

* Second Appeal, No. 929 of 1879, from a decree of M. Brodhurst, Esq., Judge of Benares, dated the 21st May, 1879, affirming a decree of Paudit Jagat Narain, Subordinate Judge of Junpur, dated the 22nd March, 1878.

no rule of law prohibiting the revocation of such a reference, and therefore the defendants were competent to revoke the same.

THE plaintiffs in this suit claimed possession of certain land. They claimed as the heirs of one Jagan Nath Singh, alleging that on the 18th June, 1821, Jagan Nath Singh had given a usufructuary mortgage of the land to one Parshadi Singh, represented by certain of the defendants in the suit, his heirs, and the mortgage-debt had been satisfied out of the usufruct. The defendants in the suit were the heirs of Parshadi Singh and certain persons who were tenants of the land in suit. The heirs of the mortgagee, who alone defended the suit, set up as a defence to it, *inter alia*, that the mortgage-debt had not been satisfied. On the 13th March, 1878, the vakils of these defendants and of the plaintiffs preferred a petition to the Court of first instance, in which they stated that they were willing that the suit should be decided in accordance with the statement made on oath by one Jhabbu Singh after he had made a local inquiry. The Court of first instance accordingly made an order that Jhabbu Singh should be examined on the 22nd March, 1878. On that day, before the evidence of Jhabbu Singh was taken, the defendants made an application to the Court objecting to the case being decided in accordance with Jhabbu Singh's evidence, on the ground that he had not made a local inquiry, and they had reason to believe that his evidence would not be impartial. The Court disallowed the objection, and proceeded to examine Jhabbu Singh. He deposed that the plaintiffs were entitled to possession of the land, and the Court accordingly gave the plaintiffs a decree for possession of the same. The defendants appealed, contending that their vakils had no authority to consent to the case being decided on the evidence of Jhabbu Singh. The lower appellate Court held that the vakalat-namas of the vakils in question gave them such authority, and further that the vakils had acted with the consent of the defendants, and affirmed the decree of the first Court.

In second appeal it was contended again on behalf of the defendants that they had not agreed to abide by the statement on oath of Jhabbu Singh, and that, even if they had done so, yet, inasmuch as they had revoked such consent before he was examined, which they were competent to do, they were not bound by his statement.

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The *Junior Government Pleader* (Babu Dwarka Nath Banarji) and Muunshi *Hanuman Prasad*, for the appellants.

The *Senior Government Pleader* (Lala Juala Parsad), for the respondents.

The Court (STUART, C. J., and OLDFIELD, J.,) delivered the following judgments :

STUART, C. J.—I cannot agree that the Indian Oaths Act X of 1873 has any application to the reference in this case. The sections of that Act which have any bearing on the question are those relating to the power of a Court to tender certain oaths, and these sections are 8 to 12 inclusive. But it is perfectly clear to me that these sections have no application whatever to a party in the position of this reference or to any other person outside the case, and who is neither a “witness” nor a “party,” and who is merely called in in the way of arbitration or reference to assist in its disposal by means of an award or other statement of the like nature.

What occurred in this case was the following. After the pleadings had been filed on both sides, issues settled, and evidence taken, certain of the parties, that is, all the plaintiffs and certain of the defendants, preferred an application in the Court of the Subordinate Judge of Jaunpur to have the case referred to what was called the “oath” of one Jhabbu Singh, as referee or arbitrator, stating that they would “abide by whatever decision the said referee will make honestly and in good faith,” and upon this reference Jhabbu Singh, the referee, after having had an “oath” administered to him, prepared and filed what is called a “deposition” or otherwise a “statement,” but which really was an award or judgment on the matters referred to him. The oath to him was of course superfluous, but it did not make him less a referee or arbitrator, and what he did would have been perfectly valid if the reference to him had been shown to come within the provisions of the Civil Procedure Code on the subject of such references, commencing with s. 506. This section is indeed the only one that could have applied if “all” the parties had been represented in the reference. But no less than twelve of the defendants were not parties to the reference to Jhabbu Singh, and therefore s. 506 can be of no avail

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in such case, for it distinctly provides that "all the parties to a suit must join in the reference to arbitration." The result is that what was done in the present case in the way of reference to Jhabhu Singh, including the reference to him, and his award by whatever name it was given, was altogether illegal and ineffectual, and must be set aside, and the case must be sent back to the Subordinate Judge with directions that he resume the suit from the last irregular proceeding in it, and that the Subordinate Judge do dispose of the case on the merits according to law. The respondents must pay the costs of this appeal, which I modify at two gold mohars.

OLDFIELD, J.—The first three pleas fail. It must be accepted that the appellants and respondents agreed by their application to the Court dated 13th March, 1878, to submit the matter in dispute between them to be decided by the statement on oath of Jhabhu Singh after he had gone to the mauza and made inquiries. The application was allowed by the Court, but subsequently and before Jhabhu Singh had been examined on oath the appellants applied to be allowed to revoke their submission on the ground that Jhabhu Singh had made no inquiries, and they had reason to believe that he was partial to the respondents. The Court disallowed their prayer and proceeded to examine the referee, and decided the suit on his statement.

The question now raised is whether such a reference once agreed upon and accepted by the Court may be revoked. The reference does not appear to me to have been made under, or to be governed by, the provisions of the Code of Procedure relating to arbitration; and if it be held to have been made under the Oaths Act, I am aware of no rule under which a submission to reference of this kind may not be revoked before the referee has given his evidence in pursuance of it.

I would decree the appeal and reverse the decrees and remand the suit to the Court of first instance for disposal on the merits. Costs of this appeal to be costs in the cause.

Cause remanded.