MISCELLANEOUS CIVIL.

Before Mr. Justice Bisheshwar Nath Srivastava and Mr. Justice B. S. Kisch.

RAM AUTAR AND OTHERS (DEFENDANTS-APPELLANTS) v. RAM SAMUJH (PLAINTIFF) AND OTHERS (DEFENDANTS-RESPONDENTS).* 1931 *April*, 21.

Court Fees Act (VII of 1870), schedule II, article 11—Arbitration without intervention of court—Party applying to have the award filed in court—Award filed and judgment pronounced—Appeal against the order allowing the award to be filed—Court fee payable on the appeal against an order allowing the filing of award—Civil Procedure Code (Act V of 1908), schedule II, rule 20.

Where a case was referred to arbitration without the intervention of the court and a party made an application under rule 20 of schedule II of the Code of Civil Procedure to have the award filed in court and the court after necessary inquiry ordered the award to be filed and pronounced judgment according to the award and an appeal was filed against the order allowing the award to be filed, *held*, that the order filing the award can neither be regarded as a decree nor as an order having the force of a decree and this being so the appeal falls within the purview of article 11, schedule II of the Court Fees Act and is therefore chargeable with a court fee of Rs. 2 only. *Sarwan Pande* v. *Jagat Pande*, (1) and *Agya Singh* v. *Sundar Singh*, (2) relied on. *Hari Mohan Singh* v. *Kali Prasad Chaliha*, (3) and *Ghulam Khan* v. *Muhammad Hassan* (4) distinguished.

Mr. *L. S. Misra* for the appellants.

SRIVASTAVA and KISCH, JJ. :—In this case there was a reference to arbitration without the intervention of the court. The plaintiff respondent made an application under rule 20 of schedule II of the Code of Civil Procedure to have the award filed in court. The

*Miscellaneous Appeal No. 20 of 1931, against the order of Babu Jagdamba Saran, Additional Subordinate Judge of Gonda, dated the 9th of December, 1930.

(1) (1927) 25 A.L.J., 741.
(2) (1927) I.L.R., 9 Lah., 380.
(3) (1705) I.L.R., 33 Calc., 11.
(4) (1901) I.L.R., 29 Calc., 167.

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court after necessary inquiry ordered the award to be filed and pronounced judgment according to the award. Upon the judgment so pronounced a decree was prepared in due course. The defendants appellants have filed an appeal against the order of the Additional Subordinate Judge of Gonda ordering the award to be filed and have paid a court fee of Rs. 2 on the memorandum of appeal. The taxing officer has reported that the memorandum of appeal ought to bear an *ad valorem* court fee on the value of the appeal and has relied on a decision of the Calcutta High Court in *Hari Mohan Singh* v. *Kali Prosad Chaliha* (1) in support of his report.

We are of opinion that the court fee paid is correct. Rule 21 of schedule II of the Code of Civil Procedure shows that the court, if it is satisfied that the award should be enforced, shall in the first place order the award to be filed and then proceed to pronounce judgment according to the award. Thus it will appear that the rule provides for two distinct steps, one being described as an order and the other a judgment followed with a decree. Clause (2) of the same rule further provides that no appeal shall lie from the decree following the judgment except in so far as the decree is in excess of or not in accordance with the award. Section 104 which provides for appeals from certain orders has by its clause (*f*) allowed an appeal against orders filing or refusing to file an award in an arbitration without the intervention of court. Turning to the definition of decree given in section 2, clause (2) of the Code of Civil Procedure it will be noticed that the word "decree" does not include "(*a*) any adjudication from which an appeal lies as an appeal from an order". Thus it seems perfectly clear that an order filing the award cannot be regarded as a decree and therefore special provision has been made for appeal

(1) (1905) I.L.R., 33 Calc., 11.

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against it as an order. It is not possible to say that such an order has the force of a decree because rule 21 of schedule II of the Code of Civil Procedure has, as stated before, made express provision for a decree to be passed in accordance with the judgment following the order directing the award to be filed. We are therefore of opinion that the order under appeal can neither be regarded as a decree nor as an order having the force of a decree. This being so the case falls within the purview of article 11, schedule II of the Court Fees Act and is therefore chargeable with a court fee of Rs. 2 only. The same view appears to have been taken by the Allahabad High Court in *Sarwan Pande* v. *Jagat Pande* (1) and by the Lahore High Court in *Agya Singh* v. *Sundar Singh* (2).

As regards the decision in *Hari Mohan Singh* v. *Kali Prosad Chaliha* (3), it was passed in a case arising under section 526 of the old Civil Procedure Code (Act XIV of 1882). The definition of decree in the Civil Procedure Code of 1882 provided that orders not specified in section 588 were within the definition. Section 588 shows that an order directing an award to be filed under section 526 was not provided for in that section. Thus there was very good reason for holding that an order under section 526 was a decree within the definition of it as given in section 2 of Act XIV of 1882, but the position under the provisions of the Code of Civil Procedure (Act V of 1908) as pointed out above is quite different. The decision of their Lordships of the Privy Council in *Ghulam Khan* v. *Muhammad Hassan* (4) which was relied upon by their Lordships of the Calcutta High Court was also passed under the old Civil Procedure Code and cannot therefore afford any guidance in determining whether an order passed under rule 21 of schedule II is or is not to be regarded

(1) (1927) 25 A.L.J., 741.
(2) (1927) I.L.R., 9 Lah., 380.
(3) (1905) I.L.R., 33 Calc., 11.
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as a decree within the definition of it as given in Act V of 1908.

For the above reasons we are of opinion that the court fee of Rs. 2 paid on the memorandum of appeal is correct.

APPELLATE CRIMINAL.

Before Mr. Justice Muhammad Raza.

1931 *February*, 12.

MANGAL SINGH (APPELLANT) *v.* KING-EMPEROR (COMPLAINANT-RESPONDENT).*

Criminal Procedure Code (Act V of 1898), section 298(2)—Charge to Jury—Judge expressing his opinion with regard to certain witnesses and their evidence in his charge to Jury—Trial, if vitiated on account of expression of his opinion by Judge.

Where a Judge in his charge to the jury expressed his opinion with regard to certain witnesses and their evidence it cannot be said that the charge was defective merely for that reason and that the trial was vitiated. A Judge has a right to express in the course of his summing up his opinion and if he expresses his opinion which is an unfair opinion and which prejudices accused, the superior appellate court can and should interfere to remove the ill consequences of such action by finding misdirection, but to this clear sound rule of law it is not necessary to add the condition in effect that every word that the Judge says wherein he expresses his opinion should be qualified by most elaborate safeguards. It would not be in accordance either with usual or good practice to treat a case of misdirection, if, upon the general view taken, the case has been fairly left within the jury's province. If the Judge attempts to take the case out of the jury's province by something in the nature of imposing his own view upon the jury it is a case of misdirection, but if a Judge simply states his own opinion which the law allows him to state, in such a manner that intelligent jurymen should see for themselves that it is only his opinion and nothing else, it is not necessary for him to add as a safeguard a remark that it is only his opinion

*Criminal Appeal No. 545 of 1930, against the order of M. Mahmud Hasan, Additional Sessions Judge of Lucknow, dated the 10th of November, 1930.