1896.

YELLAPPA v. RAMCHANDRA.

In the case relied on by the District Court, fraud was alleged, and that possibly may distinguish it from the later case; but whether that be so or not, we consider that the latter was correctly decided, and must, therefore, follow it. We reverse the decree and restore that of the Subordinate Judge, with costs in both appellate Courts on respondents.

Decree reversed.

APPELLATE CIVIL.

Before Mr. Justice Jardine and Mr. Justice Ranade.

1896.
January 8.

VYANKATESH CHIMAJI JOSHI AND ANOTHER (ORIGINAL DEFENDANTS), APPELLANTS, *v.* SAKHARAM DAJI GANPULE (ORIGINAL PLAINTIFF), RESPONDENT.*

Award—Decree upon an award—Res judicata—Civil Procedure Code (Act XIV of 1882), *Secs.* 13 *and* 522.

A judgment and decree passed in terms of an award under section 522 of the Civil Procedure Code (Act XIV of 1882) constitute a *res judicata*.

Wazeer Mahton v. *Chuni Singh* (1) followed.

SECOND appeal from the decision of A. S. Moriarty, Acting District Judge of Ratnágiri, in Appeal No. 164 of 1894.

Plaintiff alleged that he was a pujári of the shrine of Parshuram near Chiplún and that the defendant was the manager of the shrine; that as such manager the defendant had to make certain payments to the family to which he (the plaintiff) belonged; and that he (the plaintiff) was entitled to a share of such payments; that in 1892 he had brought a suit (No. 232 of 1892) against the defendant to recover the share due to him for the years 1889—1892 and that that suit was referred to arbitration; and that by the award made he was held entitled to his share; that the award was duly filed in Court and a decree (No. 232 of 1892) passed in accordance therewith.

He now sued for his share for the years 1891—1893.

* Second Appeal, No. 575 of 1894.

(1) I. L. R., 7 Cal., 727.

1896.

VYANKATESH CHIMAJI v. SAKHARAM DAJI.

The defendant contended that the decree (No. 232 of 1892) passed upon the award was not conclusive of the plaintiff's right.

The Joint Subordinate Judge of Chiplún held that the judgment of 1892, which affirmed plaintiff's right, was conclusive and binding upon the defendants. He, therefore, passed a decree for the plaintiff.

On appeal the District Judge of Ratnágiri confirmed the decree.

Defendants preferred a second appeal to the High Court.

Daji Abaji Khare for the appellants:—The judgment in the suit of 1892 does not operate as a *res judicata*. A judgment can be only treated as *res judicata* when it is the decision of a Court of competent jurisdiction. An arbitrator is not a Court of competent jurisdiction: his jurisdiction is limited to the decision of the particular matter referred to him. Further, the award dealt only with the claim for certain specified years. It cannot be a bar to all inquiry as to other years. The case of *Wazeer Mahton* v. *Chuni Singh*(1) will be cited against us, but see the later case of *Keshava* v. *Rudran*(2). *Jenkins* v. *Robertson*(3) was a case of a consent decree.

Ganesh Krishna Deshmukh for the respondent (plaintiff):—*Jenkins* v. *Robertson*(3) has been explained in *In re South American and Mexican Company*; *Ex parte Bank of England*(4). I rely upon *Wazeer Mahton* v. *Chuni Singh*(1).

JARDINE, J.:—The chief question argued is whether a judgment and decree of a Court passed under section 522 of the Code of Civil Procedure according to an award can constitute a *res judicata* as held in *Wazeer Mahton* v. *Chuni Singh*(1), a case on the Code of 1859. Perhaps some doubt is thrown on that decision by the view taken by Turner, C. J., and Kindersley, J., in *Keshava* v. *Rudran*(5), where a decree passed upon the oath of a party under sections 9 and 11 of the Indian Oaths Act was held not to create the estoppel, *Jenkins* v. *Robertson*(3) being cited to show

(1) I. L. R., 7 Cal., 727.
(2) I. L. R., 5 Mad., 259.
(3) L. R., 1 H. L. Se., 117.
(4) (1895) 1 Ch., 37.
(5) I. L. R., 5 Mad., 259.

that there was no *judicium*. The same case has been relied on by Mr. Khare. It differs from a reference to arbitration under Chapter XXXVII of our Code, inasmuch as there was no such reference of the matters in dispute, but, as observed by the Lord Chancellor in his judgment, "the interlocutor in the former action having been the result of a compromise between the parties, it cannot be considered as a *judicium*: nor can it be admitted as *res judicata*." The case is explained by Vaughan Williams, J., in *In re South American and Mexican Company, Ex parte Bank of England*(1), as no decision whatever upon the general law. In the appeal from that learned Judge, Lord Herschell, L. C., and Lindley, L. J., held that a judgment by consent cannot be re-opened. Per the Lord Chancellor (p. 50) : "The truth is that a judgment by consent is intended to put a stop to litigation between the parties just as much as a judgment which results from the decision of the Court after the matter has been fought to the end." *A fortiori* a judgment and decree passed after solemn investigation by arbitrators on the award may constitute *res judicata*. We are, therefore, of opinion that *Wazeer Mahton* v. *Chuni Singh*(2) should be followed, and we confirm the decree with costs.

Decree confirmed.

(1) (1895) 1 Ch., 37. (2) I. L. R., 7 Cal., 727.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Candy.

KRISHNAJI NARASINVA KARANDIKAR (ORIGINAL DEFENDANT No. 1), APPELLANT, *v.* KRISHNAJI NARAYAN JOSHI (ORIGINAL PLAINTIFF), RESPONDENT.*

1896. *January* 10.

Khoti Settlement Act (Bombay Act I of 1880), *Secs.* 16, 17, 18, 20, 21, 22 *and* 23—*Land Revenue Code (Bom. Act V of* 1879), *Secs.* 108 *and* 110—*Khot—Privileged occupant—Dhárekari—Entry made by Survey Officer—Conclusive and final evidence—Entry specifying the amount and nature of rent.*

Under the Khoti Act (Bombay Act I of 1880) it is only an entry of the Survey Officer specifying the nature and amount of rent payable to the khot by a privileged occupant according to the provisions of section 33 in a record made under section 17 that is declared to be final and conclusive evidence.

* Second Appeal, No. 710 of 1893.