APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.

1892.
April 19.

NANDRA'M DALURA'M, (ORIGINAL DEFENDANT), APPELLANT, *v.* NEMCHAND JA'DAVCHAND, (ORIGINAL PLAINTIFF), RESPONDENT.*

Arbitration—Award—Decree in terms of award—Appeal—Award by three out of four arbitrators—Illegal award.

Where a decree has been passed in terms of an award, an appeal lies only where the question is whether the award was illegal, being void *ab initio*.

SECOND appeal from the decision of Ráo Bahádur Chunilál Máneklál, First Class Subordinate Judge of Ahmedabad with Appellate Powers.

Suit (No. 348 of 1886) and cross suit (No. 380 of 1886) for account. On the application of the parties both suits were referred to the arbitration of four arbitrators. In January, 1888, one of the arbitrators resigned, and another was by consent appointed in his place.

In April, 1888, the last mentioned arbitrator ceased to take part in the proceedings, and on the 12th July, 1888, the other three arbitrators gave their decision: two of them publishing one award, and the third, differing from his colleagues, publishing a separate award.

The plaintiff, Nandrám, objected to both the awards, and contended *(inter alia)* that they were illegal, not being the award of the four arbitrators who had been appointed.

The Subordinate Judge held that the award of the two arbitrators, being that of the majority, should be filed, and he made a decree in terms of that award.

Against that decree Nandrám (plaintiff in Suit No. 348 of 1886) appealed, and the Appellate Court confirmed the order, observing: "On a consideration of the authorities cited on either side, the tendency appears to allow an appeal only in a case in which there is no award either in fact or in law, but not to allow an appeal in any other case, and the determination of the question raised on behalf of the respondent

* Second Appeal, No. 635 of 1890.

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depends upon the question whether the disputed award is a mere nullity, and this latter question must be answered in the negative. The award is assailed on the grounds that the arbitrators, who decided against the plaintiff (Nandrám), accepted bribes from the other side; that the parties had appointed four arbitrators, but the fourth arbitrator has not made an award and has been absent at Rutlam; that Chunilál was appointed, not an arbitrator, but an umpire; that the two arbitrators, who have decided against the plaintiff, had once submitted their award which the Court remitted for amendment, and those arbitrators fraudulently destroyed that award and made a new award; that the arbitrators have allowed time-barred items; that the amount due is illegal and faulty; that the Court had no jurisdiction, as the amount on the credit and debit sides of the accounts exceeded Rs. 5,000.

"Such are the grounds urged by the appellant against the award, but they are neither singly, nor as a whole, sufficient to make the award a nullity. For the purpose of the preliminary objection raised on behalf of the respondent, the distinction between void and voidable awards should be borne in mind, and although the grounds urged by the appellant might be sufficient to hold that the award is voidable, still they cannot possibly be held as making the award void *ab initio*. I, therefore, hold that no appeal lies against the decree of the Court below."

Nandrám appealed to the High Court.

Ráo Sáheb *Vásudeo Jagannáth Kirtikar* (Government Pleader) for the appellant:—Where a decree is based upon an award, and the legality of the award is impugned, an appeal lies against the decree. An award, in which all the arbitrators have not joined, is not legal. The lower Courts were wrong in holding that the objections raised against the award do not render it illegal and, therefore, void *ab initio*. The Full Bench ruling of the Allahabad High Court in *Lachman Dás* v. *Brijpál*(1) is in point. See, also, *Muhammad Abid* v. *Muhammad Asghar*(2); *Dagdusa Tilakchand* v. *Bhukan Govind Shet*(3); *Debendra Náth Shaw* v. *Aubhoy Churn*

(1) I. L. R., 6 All., 174. (2) I. L. R., 8 All., 61.
(3) I. L. R., 9 Bom., 82.

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Bágchi[1]; *Samal Nathu* v. *Jaishankar Dalsukrám*[2]; *Suppu* v. *Govindacharyar*[3]; *Sashti Charan Chatterjee* v. *Tarak Chandra Chatterjee*, *&c.*[4].

L. M. Vádia (with *Gangirám B. Rele*) for the respondent:—The lower Court has, no doubt, not found directly that the award is good in law, but it is clear from the judgment that the Court was of opinion that the award is legal. The award being legal, no appeal can lie against a decree based upon it. We rely upon *Vishnu Bháu Joshi* v. *Rávji Bháu Joshi*[5]; *Naurang Singh* v. *Sadapal Singh*[6]; *Bhagirath* v. *Rám Ghulám*[7]; *Ramonoogra Chobey* v. *Mussamut Pulmoorta Chobayan*[8]; *Sreenáth Ghose* v. *Ráj Chunder Paul*[9]; *Shaikh Elahee Buksh* v. *Shaik Hujoo*[10]; *Lalla Isharee Pershad* v. *Hur Bhunjun Tewaree*; and *Sustee Churn Chuckerbutty* v. *Tarak Chunder Chatterjee*[11]; *Sreenáth Chatterjee* v. *Kylash Chunder Chatterjee*[12]; *Mahárájah Joymungul Singh Bahádoor* v. *Mohun Rám Márwáree*[13]; *Protap Chunder Roodro* v. *Huro Monee Dossia*[14].

SARGENT, C. J.:—In this case, the matters in dispute between the parties in two suits Nos. 389 of 1886 and 348 of 1886 were referred to arbitration. On the application to file the award numerous objections were taken, which were, however, disallowed by the Court, and a decree was finally passed in the terms of the award. The plaintiff in Suit No. 348 of 1886 then appealed against the decree; and the Court below has dismissed the appeal on the ground that no appeal lay against the decree. The reasons for this decision are to be found in the judgment of the lower appeal Court in the appeal (No. 68 of 1889) from the decision in Suit No. 348 of 1886, where the Subordinate Judge with appellate powers after referring to the authorities held that an appeal would lie where the award was a nullity, not where it was only voidable.

(1) I. L. R., 9 Calc., 905.
(2) I. L. R., 9 Bom., 254.
(3) I. L. R., 11 Mad., 85.
(4) 8 Beng. L. R., 315.
(5) I. L. R., 3 Bom., 18.
(6) I. L. R., 10 All., 8.
(7) I. L. R., 4 All., 283.
(8) 7 W. R., 205 Civ. Rul.
(9) 8 W. R., 171 Civ. Rul.
(10) 14 W. R., 33 Civ. Rul.
(11) 15 W. R., 9 (Full Bench).
(12) 21 W. R., 248 Civ. Rul.
(13) 23 W. R., 429 Civ. Rul.
(14) 24 W. R., 188 Civ. Rul.

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The earlier cases turn upon section 325 of the Civil Procedure Code of 1859, which says that when judgment shall be given according to the award, the judgment shall be final. In *Sashti Charan Chatterjee* v. *Tarak Chandra Chatterjee* and *Lála Iswari Prasád* v. *Bir Bhanjan Tewari* (1), the Calcutta Full Bench (*dissentiente* Paul, J.) answered the question "When an award has been ordered to be filed, and judgment has been given in accordance with it under section 327, Act VIII of 1859, is such judgment open to appeal?", by saying that "it was open to an appellant to show that the paper which has been filed is not an award." In *Mahárájah Joymungul Singh Bahádoor* v. *Mohun Rám Márwáree* (2), where the question came before the Privy Council, there had been an arbitration in the course of a suit under the same Act, and the decree passed in the terms of the award had been set aside on appeal by the High Court on the ground that the award had not been signed by the arbitrators separately, and that ten days had not been allowed for objections; and the case was remanded (with remarks on the objections generally as a guide to the Court below) to have these defects remedied, and the several objections heard. On remand, the award was properly signed, and the objections were duly heard after proper notice and adjudicated on;—one of which was that the arbitrators had been guilty of misconduct in conducting the arbitration "so as to vitiate the award." The High Court, on appeal to it, held that no appeal would lie from the decree in the terms of that award, and the Privy Council, on appeal from that decision, held that the High Court was right—1st, in reversing the first decree and remanding the case, and, 2ndly, in holding that there was no appeal from the decree passed on remand.

In *Debendra Náth Shaw* v. *Aubhoy Churn Bágchi* (3) Sir Richard Garth, Chief Justice, after expressing some doubt, concluded, on the authority of the Full Bench decision in *Sáshti Charan Chatterjee* v. *Tarak Chandra Chatterjee*, *Lála Iswari Prasád* v. *Bir Bhanjan Tewari* (1), that an appeal would lie where the question is whether there is a legal award, which he held was raised

(1) 8 Beng. L. R., 315. (2) 23 W. R., 429 Civ. Rul.
(3) I. L. R., 9 Calc., 905.

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in that case by the objection that the award had been signed only by three of the arbitrators. In *Lachman Dás* v. *Brijpal* (1), where the question arose under section 522 of Act X of 1877, the Court, after referring to the decision of the Privy Council in *Mahárájah Joymungul Singh Bahádoor* v. *Mohun Rám Márwáree* (2), held that an appeal would lie where "there was in fact or in law no award." It is not clear from the judgments delivered in this case whether by the expression "in law no award" the Court meant not only an award which has no legal effect *ab initio*, but also one which is voidable under section 522. The Madras Court in *Suppu* v. *Govindacharyar* (3) would appear to place the larger meaning on the term "in law no award." In *Debendra Nath Shaw* v. *Aubhoy Churn Bagchi* (4), it is to be observed that the objection taken to the award was that the three arbitrators who signed it could not, under the circumstances, make an award; in other words, that there was no award made, having legal effect *ab initio*; and it appears to us that the judgment of the Privy Council in *Mahárájah Joymungul Singh Bahádoor* v. *Mohun Rám Márwáree* (2) is irreconcileable with any other view than that it is only where the award is not a legal award in the above sense that the appeal will lie.

In the present case, one of the objections taken by the appellant is that the decision by three of the arbitrators, when four were appointed, is illegal; and, if established, it would render the award illegal *ab initio*. We must, therefore, remand the case for a decision on that issue.

Case remanded.

(1) I. L. R., 6 All, 174.
(2) 23 W. R., 429 Civ. Rul.
(3) I. L. R., 11 Mad., 85.
(4) I. L. R., 9 Calc., 905.