

1920.

VAMAN
VITHAL
v.
VENKAJI
KHANDO.

on that footing he is entitled to his share in the property in suit. The contention which was urged before the lower appellate Court that after his adoption by Godubai, he lost all his rights in his natural family, even though the adoption was invalid, has been quite properly abandoned before us.

The result is that the decree of the lower appellate Court is affirmed and this appeal dismissed with costs.

This judgment will govern appeal No. 978 of 1917 also.

There will be only one set of costs in appeal No. 978.

Decree affirmed.

R. E.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Fawcett.

1920.

Septem-
ber 21.

RAVJIBHAI KASHIBHAI (ORIGINAL DEFENDANT), APPLICANT v. DAHYA-
BHAI ZAVERBHAI PATEL (ORIGINAL PLAINTIFF), OPPONENT^o.

*Civil Procedure Code (Act V of 1908), section 115, Schedule II, para 16—
Arbitration—Award—Award filed in Court—Court should give time to the
parties to file objections to the award—Procedure and practice.*

In a pending suit, the parties referred their disputes to an arbitrator, who heard the parties, made the award, and filed it in Court. On the day the award was filed the Court examined the parties who happened to be in Court, overruled the objections which one of the parties made to the award, and passed a decree in terms of the award. The party aggrieved having applied to the High Court :

Held, that though no appeal lay from the decree so made on the ground that there was any defect in the award itself, yet the High Court could, under section 115 of the Civil Procedure Code, set aside the decree and remit the award to the lower Court to enable the applicant to file his objections to it within the time prescribed by law.

^o Civil Extraordinary Application No. 248 of 1919.

1920.

 RAJJI BHAI
 v.
 DAHYABHAI

Walji Mathuradas v. Ebji Umersey⁽¹⁾, followed.

THIS was an application under the extraordinary jurisdiction of the High Court, against a decree passed by B. H. Desai, Subordinate Judge at Nadiad.

The plaintiff filed a suit for injunction, in which the defendant filed his written statement in due course. The parties next referred their disputes to the arbitration of a pleader. The pleader heard the parties and made his award.

The award was filed in Court on the 16th August 1919. Both parties happened to be present in Court that day. The Court examined them in great detail. The plaintiff accepted the award. The defendant raised objections to it; they were considered and overruled by the Court. The Court then passed a decree in terms of the award the same day.

The defendant applied to the High Court.

G. N. Thakor, for the applicant.

M. H. Mehta, for opponent No. 1.

MACLEOD, C. J.—Following the case of *Walji Mathuradas v. Ebji Umersey*⁽¹⁾ we think that we must hold that there is no appeal in this case as it has not been shown that the award is illegal *ab initio*. What the petitioner complains of is that the Court pronounced judgment according to the award on the day the award was filed, and did not wait the ten days prescribed by Schedule II, para. 16 (1) of the Code and Article 158 of Schedule I of the Indian Limitation Act. No doubt it was held in *Najm-ud-din Ahmad v. Albert Puech*⁽²⁾ that where a judgment is pronounced before the time has expired an appeal will lie. With all due respect I cannot see how an appeal will lie in such a case, because it is not suggested that there is any defect in the award. It may

(1) (1904) 29 Bom. 285.

(2) (1907) 29 All. 584.

1920.

RAVJIBHAI
v.
DAHYABHAI.

be that the award is a nullity or illegal *ab initio*. Then, as laid down by Sir Lawrence Jenkins in the case I have referred to, there may be an appeal. But where the learned Judge has not followed the procedure laid down by the Second Schedule of the Code and does not allow a party the time which the law allows him to make objections, but proceeds to pass at once a decree in accordance with the award, then it cannot be said that there is any defect in the award itself, and under sub-para. (2) of para. 16 of the Second Schedule it appears to be plain that no appeal would lie, but we think it is case in which we should exercise our discretion under section 115 of the Civil Procedure Code, and, therefore, we set aside the decree and the case must go back to the lower Court to enable the petitioner to file his objection which he must do within ten days after he has notice of the proceedings having reached the lower Court.

Costs will be costs in the suit.

Rule made absolute.

R. R.

CRIMINAL REVISION.

FULL BENCH.

1920.

October
11, 29.

*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah,
Mr. Justice Pratt, Mr. Justice Fawcett and Mr. Justice Setalvad.*

(Afterwards)

*Before Sir Norman Macleod, Kt., Chief Justice, and
Mr. Justice Shah.*

EMPEROR v. PURSHOTTAM ISHWAR AMIN*.

Indian Penal Code (Act XLV of 1860), section 193—Perjury arising from contradictory statements—Alternative charge—Series of acts consisting of contradictory statements—Criminal Procedure Code (Act V of 1898), sections 236, 195, 537 (b), 164—Judicial proceeding—Statement taken under

* Criminal Application for Revision No. 196 of 1920.