

[FULL BENCH.]

Before Mr. Justice Norman, Officiating Chief Justice, Mr. Justice Loch,
Mr. Justice Kemp, Mr. Justice L. S. Jackson, and Mr. Justice Paul

1871
May 23.

SASHTI CHARAN CHATTERJEE AND OTHERS (DEFENDANTS) v. TARAK
CHANDRA CHATTERJEE AND OTHERS (PLAINTIFFS.)*

LALA ISWARI PRASAD AND OTHERS (PLAINTIFFS) v. BIR BHAN-
JAN TEWARI AND OTHERS (DEFENDANTS.)†

*Arbitration—Finality of Decree—Award—Appeal—Act VIII of 1859,
ss. 325, 327.*

On the application of one party to a reference to arbitration, without the intervention of a Court, to have the award filed and for judgment thereon, an objection of the other party that the award had been come to after the arbitrators' authority had been repudiated, was overruled, and judgment was passed by the Moonsiff in accordance with the award. *Held* (PAUL, J., dissenting) an appeal lay from the decision of the Moonsiff.

I. L. R.
1 Alla 156.

In another case the question was referred to a Full Bench whether when an award has been ordered to be filed, and judgment has been given in accordance with it under section 327 of Act VIII of 1859, is such judgment open to appeal? The answer given (PAUL, J., dissenting) was :—It is open to an appellatant to show that the paper which has been filed is not an award. If it is an award, and judgment is given in accordance with such award, such judgment is final,—*Per* PAUL, J. the judgment is final.

No. 868 of 1870.—In this case there had been a reference to arbitration without the intervention of a Court, and an award had been made. The plaintiffs applied, under section 327 of Act VIII of 1859, to the Moonsiff of Chauki Magoorah, that the award might be filed in Court. The application was at first refused on the ground that the award had not determined all the matters referred; but, a review having been granted, the Moonsiff considered the objections which were taken to the award, one of which was that, before the arbitrators completed

* Special Appeal, No. 868 of 1870, from a decree of the officiating Judge of Jessore, dated the 17th February 1870, affirming a decree of the Moonsiff of that district, dated the 29th September 1869.

* Special Appeal, No. 741 of 1870, from a decree of the Subordinate Judge of Sarun, dated the 14th February 1870, reversing a decree of the Moonsiff of that district dated the 13th August 1869.

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their decision, they had been repudiated by the defendants, or in other words that, before the award was made, the authority of the arbitrators was revoked; and having considered the objections, he held that there was no valid ground for not enforcing the award; and directed "that the suit be decreed in favor of the plaintiffs; that the award of the arbitrators be upheld; that the plaintiffs do get from the defendants costs in this suit, with interest at one per cent." He directed also that a memorandum should be sent to the Registrar. The defendants appealed to the Subordinate Judge, and urged that there was no mutual submission to arbitration; that the defendants did not assent to the supposed agreement of reference; and that one of the arbitrators, whose signature purports to appear on the award knew nothing of the award, that he had not signed it, in fact that his signature must be a forgery. The Subordinate Judge held that there was no right of appeal, and dismissed the appeal. Hence the present special appeal which was heard before COUCH, C.J., and MITTER, J. The question was referred to a Full Bench, "Whether in the present case an appeal lay from the Moonsiff."

The question was referred with the following remarks by COUCH, C.J. (who, after stating the facts, continued):—In the case of *Madhusudan Das v. Adaita Charan Das* (1), "it was

(1) *Before Mr. Justice L. S. Jackson and Mr. Justice Markby.* made an application, not precisely under the terms of section 327, but asking that the private award of the arbitrators be enforced, and that he get possession of the lands and other things thereby awarded to him.

The 26th June 1869.

MADHUSUDAN DAS DEFENDANT) v.
 ADAITA CHARAN DAS (PLAINTIFF)*

Baboo Prasanna Kumar Roy for the appellent.

Baboo Tarak Nath Dutt for the respondent.

JACKSON, J.—I think it is quite clear that the Subordinate Judge was wrong in entertaining this appeal. The plaintiff, or petitioner in the Moonsiff's Court,

The Moonsiff, it seems to me quite clear, intended to give Judgment for the plaintiff in exact accordance with that award and in so far as he refused anything to the plaintiff, it was where the plaintiff had sought, under cover of this application, to get possession of something not given him by the award. I think, therefore, that the Judgment of

* Special Appeal, No. 3285 of 1868, from a decree of the 1st Subordinate Judge of Hooghly, dated the 11th September 1868, modifying a decree of the Moonsiff of that district, dated the 13th March 1868.