Mr. Paul says if this be the correct view, Sections 376 to 378 may as well be struck out of the Code. I think not, and I believe those sections capable of doing very useful service. But I may observe that, if parties had a right to re argue the same points over and over again (for they are not limited to a single application), it would be simply impossible to carry on the business of the Courts, and I am sure the Legislature never contemplated any such thing.

I must therefore decline to admit the right claimed by Mr. Paul of re-arguing this case for the purpose of convincing us that the conclusion at which we deliberately arrived on a point of law, was not the conclusion at which we ought to have arrived.

There is, however, a manifest error in the decree in this case relating to the quantity of land which might very well have been set right in simple routine, but which I think ought to be corrected, and that correction, as pointed out, may accordingly be made, but without costs.

Markby, J.—I am of the same opinion. I think it quite clear that no person has a right to call upon the Court to hear a fresh argument upon a question which has been already submitted to it, and which it has determined. Were it otherwise, litigation would be absolutely interminable; and though the language of this part of the Code might have been more clear and precise, I am quite sure this was never intended.

B. L. R. Vol. V, p. 357.

(Original Civil.)

The 6th July 1870.

Before Mr. Justice Norman.

S. M. JAGATSUNDERI DASI,

versus

SONATAN BYSAK.

Award—Submission—Completion—Delivery—Act VIII of 1859, ss. 315,318 and 320.

By an order of Court, of January 17th, 1867, a suit was referred to two arbitrators, under Section 312, Act VIII of 1859, who were to make their award in writing, and submit the same to the Court within three months. No order for enlarging that time was made. The first meeting of the arbitrators was held on May 22nd, 1867, and four subsequent meetings were held, at which all the parties attended, and evidence was taken; at the last of which meetings, namely on 27th July, an objection for the first time was taken on behalf of the defendant that the time limited by the order of reference had expired, but the arbitrators proceeded with the reference. The award was made on 12th August 1867, and remained with one of the arbitrators until his death in August 1867. Subsequently it was produced by the other arbitrator, on the application of the parties to the suit, and delivered to the successful party, by whom it was brought into Court on the 10th May 1870, and judgment was moved for in accordance therewith. *Held*, that the arbitrators had authority to make the award. The award was properly submitted to the Court. Section 320, Act VIII of 1859, does not make it necessary for the arbitrators to submit the award to the Court personally. Submission to the Court, under Section 320, is not necessary to the completion of an award under Sections 315 and 318.

Although an arbitrator may deliver his award to one of the parties, he ought not to hand over with it the proceedings, depositions, and exhibits.

THIS was an application, on behalf of one of the parties to the suit, to have an award of two arbitrators made therein confirmed, and for an order of Court in accordance therewith. The order of reference to arbitration was made on the 17th January 1867, and the time fixed by the Court, within which the arbitrators were to make their award in writing and submit it to the Court, was three months. After some hearings before the arbitrators, the case was, by the desire of the parties, adjourned beyond the three months granted by the Court for the making and submission of the award. No application was made to the Court for the extension of the time. The arbitrators made and signed their award on the 12th August 1867, but they did not communicate it to the parties. In August 1868, one of the arbitrators, in whose possession the award had remained, died, and the award was, on the application of the party in whose favor it was made, delivered to him by the other arbitrator, and submitted by him to the Court on the 10th May 1870.

Mr. Branson in support of the application contended that the award was complete. By the English cases an award is to be considered as published when the parties have notice that it is ready for delivery on payment of the reasonable charges—*Musselbrook* v. *Dunkin* (1) and *Macarthur* v. *Campbell* (2). So soon as the award was made by the arbitrators, and was ready for delivery, it was made sufficiently to satisfy the order of the reference. The award has been submitted, however irregularly, to the Court, and the requirements of Act VIII of 1859 have been complied with. An award which is required to be in writing and ready to be delivered at a certain time is complete

(1) 9 Bing., 605.
(2) 5 B. & Ad., 518.

if made in writing and ready to be delivered by the arbitrator within the appointed time, though not actually delivered—*Brown* v. *Vawser* (1). In *Henfree* v. *Bromley* (2), an award signed and ready for delivery was then altered by one of the arbitrators, and it was held that the award was still good, and not vitiated by the alteration, the arbitrator being held to be *functus officio*, and a stranger to the award. This award was good when made and signed by the arbitrators, and it has been submitted to the Court.

The Advocate-General (Offg.) contra.—The award is not complete until it has been submitted to the Court by the arbitrators after they have made and signed it. Until this has been done, the requirements of Act VIII of 1859 have not been complied with, and no valid award exists. The time fixed for the completion of the award having expired, and this having been brought to the arbitrators' notice before they made their award, they ought to have applied to the Court for an extension of time. The difference between the English form of order of reference and the wording of Act VIII of 1859 with respect to awards was intentional, or it would have been the same as the English form. There is no reason for the difference, if only signature and publication were necessary, but Act VIII makes submission to the Court also requisite. The cases that have been cited, therefore, do not apply here, the form of procedure in this Court being different. There is nothing to show that the arbitrator who is dead did not alter his opinion, which he might have done; the award cannot be considered final while the power of alteration by the arbitrators remains. The time for completing the award has long expired, and the award ought not now to be enforced. [*Norman, J.*, referred to *Hungate's case* (3)].

Mr. Branson in reply.

Norman, J.—By an order of this Court dated the 17th of January 1867, this case was referred in accordance with the provisions of Section 312, Act VIII of 1859, to Baboo Grish Chandra Banerjee and Baboo Romanath Law, as arbitrators, who were "to make their award in writing and submit the same to this Court within three months from that date." No order for enlarging the time for making the award appears to have been made. The proceeding submitted to this Court with the award show that the first meeting of the arbitrators took place on the 22nd May 1867. Subsequent meetings were held on the 12th June, the 22nd June, the 6th July, and the 27th July, which were attended by all the parties, and at which evidence was taken. On the 27th July, Baboo Dinanath Bose for Sonatan Bysak, objected that the time limited by the order of reference for making the award had expired, but his objection was over ruled by the arbitrators. The award was made on the 12th August 1867, but the fees not being paid, the award remained with Baboo Grish Chandra Banerjee till his death in August 1868. In May 1870, the parties applied to Baboo Romanath Law for the award. Baboo Romanath Law found it in Baboo Grish Chandra Banerjee's desk, and delivered it to the successful party, by whom it was brought into Court. Baboo Romanath Law says, "I did not personally submit it to the Court. I did so through the successful party."

Mr. Branson now moves for judgment in accordance with the award; several objections have been taken by the Advocate General for Sonatan Bysak,—first that the objection having been taken before them, the arbitrators ought not to have proceeded to make their award after the expiration of three months from the date of the order of reference. This objection was fully and properly answered by the arbitrators. It is enough for me to say that the first meeting did not take place till after the time limited in the order for making the award had expired; that Sonatan Bysak subsequently attended, took part in the proceedings, and made no objection till the last meeting, when he found that the decision was likely to go against him. The arbitrators show there were good reasons why the award should not have been completed within the time limited. Now it has been held, in numerous English cases, that if, after the time for making an award has expired, the parties attend further meetings before the arbitrators, with full knowledge of the circumstances, and without making any objection, they are precluded from saying that the authority of the arbitrator is at an end,—see the cases collected in Russell on Awards, page 144. In the present case

(1) 4 East, 584.
(2) 6 East, 308.
(3) 5 Rep. 103.

Section 318 of Act VIII of 1859 cures any objection on the ground that the award was not made within the time limited by the order of this Court.

The next objection is that the award was not submitted to the Court until after the death of Baboo Grish Chandra Banerjee, though the order of reference provides that the arbitrators are to submit their award to the Court within three months. I was at first disposed to think that the objection was fatal. No doubt, as a general rule, the award must follow the terms of the order of reference, and, accordingly, where the order provided that the award should be made and published to both parties by a certain day, and the arbitrators made and published it to the plaintiff and one of the defendants on that day, it was held that the award could not be enforced, because it was not published to both the defendants on that day.—*Hungate's case* (1). So where an order of reference, instead of providing that the award be ready to be delivered, direct that it be delivered to the parties by a certain day, the award will not be enforceable unless it is actually delivered by that day,—see Russell on Awards, page 245. If the matter stood on the order of reference alone, I think it would be clear that the award could not be enforced. But as the award is one made under the provisions of Act VIII of 1859, in order to see how the award is to be submitted to the Court, we must look to Section 320 of that Act. That section does not say by whom the award is to be submitted. It is to be submitted "under the signature of the person or persons by whom it is made." There is nothing in the language of the enactment which makes it necessary that the arbitrators should personally submit the award to the Court. Section 315 directs that "the Court shall fix a time for the delivery of the award." Section 318 provides that "when the arbitrators have not been able to complete the award within the period specified in the order, the Court may enlarge the time for the delivery of the award." These two sections show that the Act contemplated the award as completed before it is actually submitted to the Court.

No doubt, when there are several arbitrators, the judicial act of making an award must be the act of all the arbitrators. They must all be present together, and concur in that which is to stand as their joint judgment. But when the award is completed, and the functions of the arbitrators as judges are at an end, it matters little through what channel the award is transmitted, or, in other words, by whom it is submitted to the Court. I think, therefore, that the reason of the thing, as well as the change in the language, shows that the completion and delivery of the award mentioned in Sections 315 and 318 is something different from the submission of the award to the Court under Section 320. The award having been completed in the life time of Baboo Grish Chandra Banerjee, I think that either Baboo Romanath Law, the surviving arbitrator, or the plaintiff, who obtained the award from him, was competent to submit the award to the Court, notwithstanding the previous death of Baboo Grish Chandra Banerjee.

There will, therefore, be a decree in pursuance of the award. I desire to observe that although an arbitrator may deliver the award to one of the parties to the suit, he ought not to hand over with it the proceedings, depositions, and exhibits in the suit. These it would be his plain duty to transmit to the Court; were it otherwise, one party might get possession of valuable documents entrusted by the Court to the arbitrator or belonging to the opposite party, merely because he chose to pay the arbitrators' fees.

Application granted.

(1) 5 Rep., 103.

B. L. R. Vol. V, p. 362.

(*Original Civil.*)

The 31st May 1870.

Before Mr. Justice Norman.

SAYAMALAL DUTT,

versus

SAUDAMINI DASI and others.

Hindu Law — Widow—Unchastity—Adoption.

A Hindu widow, who has become unchaste, is living in concubinage, and is in a state of pregnancy resulting from such concubinage, is incompetent to receive a son in adoption.