

The 7th June 1870.

*Present:*

The Hon'ble H. V. Bayley and W. Markby,  
Judges.

**Arbitration award — Appeal — High  
Court's powers of revision.**

In the matter of

Shaikh Elahee Buksh and others, *Petitioners.*

*versus*

Shaikh Hajoo and another, *Opposite Party.*

*Baboo Debendro Chunder Ghose* for Petitioners.

*Baboo Mohinee Mohun Roy* for Opposite Party.

A judgment passed by a Moonsiff in accordance with an arbitration award is not subject to an appeal to the Judge. A judgment of a Judge reversing a judgment of the lower Court passed in accordance with an arbitration award, was accordingly set aside by the High Court under its extraordinary powers of revision under the Charter Act as passed without jurisdiction.

*Markby, J.*—I THINK this rule must be made absolute. There was a suit before the Moonsiff. That suit was referred to arbitration. Pending the arbitration, a dispute arose as to whether or not the arbitrators could proceed. An application was made to the Court, and the Moonsiff expressed an opinion that the arbitration could proceed. Thereupon, two of the arbitrators proceeded to make the award, and the Moonsiff gave a judgment in accordance with that award.

Against that decision, the defendant appealed to the Judge. The Judge was of opinion that the award was invalid, and upon a consideration of the evidence on the record, he found that the plaintiff's claim was not satisfactorily proved, and therefore reversed the judgment of the Moonsiff and dismissed the plaintiff's suit.

We think that the order of the Judge was made without jurisdiction and ought to be set aside. The function of the Court in arbitration cases in dealing with an award is laid down in Sections 324 and 325 Act

VIII of 1859. Under Section 324, an award can only be set aside on two grounds, *viz.*, on the ground of corruption, and on the ground of misconduct on the part of the arbitrators. Under Section 325, the Court, if no application to set aside the award on the grounds above-mentioned be made, or if any application be made but refused, shall proceed to pass judgment according to the award, and in every case in which judgment shall be given according to the award; the judgment shall be final. No provision is therefore made for a case in which the award is absolutely void; and whether or no it is convenient that that should be the state of the law, it is quite clear that the remedy is not and cannot be by an appeal to the Judge. Of course, we do not in the least mean to intimate any opinion whether this award was a good or a bad award, or whether it can be enforced—that question is not before us. All that we do mean to say is that when a judgment was passed by the Moonsiff in accordance with it, that judgment was not subject to any further appeal to the Judge. We think that this opinion of ours is in accordance with the view of law taken in a case reported at page 205, Volume VIII, Weekly Reporter; and although it is true that it appears at first sight somewhat in conflict with the view taken in a case reported at page 393, Volume XII, Weekly Reporter, I doubt if it is really so. This last case was one of a very peculiar character. The reference to arbitration did not take place until after a remand from this Court; and looking to the order of reference, I doubt very much whether the record ever really left the Court. I am inclined to think that only the question on remand was referred to the arbitrators. At any rate, it is obvious that the course taken by the Judge in this case is erroneous. There was no judgment, according to the argument of the very party who appears to show cause, upon which an appeal could lie. The only contention is that the proceeding under the arbitration was void, and there was no judgment by the Moonsiff of his own, but only a decree according to the award. Upon this fact alone, however, it seems clear to us that no appeal could lie because there was no judgment to appeal against.

We think, therefore, that the Judge acted without jurisdiction in this case, and that his judgment must be set aside and this rule made absolute with costs assessed at two gold-mohurs.