1863. January 30.

section 22 was introduced for the purpose of enabling the Court to exercise its discretion and to allow the whole or part of such commission as the Administrator General would have been entitled to in case there had been no revocation. Under that section, then, the Court must see, first, what the Administrator General would have had in the absence of revocation, and, secondly, what in the discretion of the Court he should now receive. Then was there a 'collection' of the Government promissory notes? Although I entertain some doubt as to whether they were 'collected' when merely taken into the manual possession of the Administrator General, yet considering their ready convertibility, I think, on the whole, they must be treated like other valuable chattels and therefore as having been 'collected.'

APPELLATE JURISDICTION (*a*)

Regular Appeal No. 26 of 1861.

KULA NÁGABUSHANAM.....*Appellant.*

KULA SESHÁCHALAM.....*Respondent.*

Where in a suit to recover a sum of money on an award the five arbitrators came to a decision and made, dated and signed a rough draft of their award, and the defendant then withdrew from the submission, and a fair copy was then made, bearing the same date as that of the rough draft, but signed by only four of the arbitrators:—*Held*, that the award was complete at the date of the rough draft, and that its validity was not affected by the subsequent occurrences.

The validity of an award cannot be impeached because the arbitrators afterwards do an act required neither by the law nor the terms of the submission.

1863. January 31. *R. A. No. 26 of* 1861.

THIS was a regular appeal from the decree of C. R. Pelly, the Acting Civil Judge of Masulipatam, in Original Suit No. 104 of 1859. This suit was brought on an award to recover rupees 3,622-2-0, with interest at the rate of 12 annas per cent. per mensem on rupees 1,930-9-0.

The Civil Judge, holding the award valid, decreed for the plaintiff.

Mayne (*Venkatarâyalu Náyudu* with him) for the appellant, the defendant.

Branson for the respondent, the plaintiff.

The facts and arguments appear sufficiently from the judgment of the Court, which was delivered by

HOLLOWAY, J.:—This suit was brought to recover a sum of money upon an award.

(*a*) Present Strange and Holloway, JJ.

1863. *January* 31. R. A. *No.* 26 *of* 1862.

The only substantial plea in the lower court was that the defendant had withdrawn from the submission to arbitration previously to the making of the award.

The Civil Judge of Masulipatam considered it established by the evidence that the award had been completed, and a rough draft of the decision made, previously to the defendant's withdrawal ; and as against this defendant he found, substantially, for the plaintiff with costs.

The leading counsel for the appellant, in his very ingenious argument, contended that the weight of evidence was clearly in favour of the proposition, that the fair copy of the award which was signed by four out of five of the arbitrators, was not made until after the withdrawal, and that as a plain proposition of law, the fair draft was the award, and that no other evidence whatever was admissible upon the subject. We intimated during the argument that, the submission to arbitration containing no specification of any particular method of awarding, the question to be decided upon the evidence was whether or not the arbitrators had in truth arrived at a final decision upon the question submitted to them, previously to the announcement of the defendant's withdrawal ; for if so we felt clear that the effect of that decision would not be neutralized by the circumstance that the fair copy was executed subsequently. The evidence given by the arbitrators' first and second witnesses, is that they met several times, came to a decision, reduced that decision to writing, and then transmitted it to the gumáshta, another of the plaintiff's witnesses, for the making of a fair copy.

The third witness called by both parties distinctly shows that the decision had in fact been come to and that the arbitrators conceived the decision final upon the matter submitted, for when asked by him with reference to their intention to furnish each party with a copy, why they could not let the matter alone when the defendant refused to have anything more to do with it, they answered "no : we have come to a decision, so we will offer a copy to each party." The third witness for the defence, also, called for both parties, say that he does not know whether or not the fair copy was written previously to the defendant's withdrawal. We consider that the weight of the evidence, as it appears to us wholly uncontradicted, shows that the arbitrators had

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came to a decision upon the matters submitted to them previously to the letter withdrawing the submission. If nothing more existed the decision would be binding. The arbitrators then drew up a fair copy, affixing to it the same date as that to the original rough draft, thereby showing the date at which they conceived their purely judicial functions to have ended. We are of opinion that a valid award having been made, its validity cannot be impeached because the arbitrators chose subsequently to do an act required neither by the law nor the terms of the submission. The fact that they did draw up the fair copy is merely evidentiary that the oral determination and the original rough draft were not and were not intended by the arbitrators to be a completed award. Looking at native practice in such matters, we consider that this fact is entirely outweighed by the evidence on the other side, that a valid award binding upon the parties was made, and that the judgment of the court below is right.

This decision upon the facts of the case renders it unnecessary to notice several questions upon the pleadings and the power of amendment which were ably argued upon both sides.

The result of our judgment is the dismissal of this appeal with costs.

Appeal dismissed.

APPELLATE JURISDICTION (*a*)

Special Appeal No. 177 *of* 1861.

SRINIVÁSA AYYANGÁR ..... *Appellant.*

KUPPAN AYYANGÁR ..... *Respondent.*

Special Appeal No. 182 *of* 1861.

RÁYAN KRISHNAMÁCHÁRIYÁR ..... *Appellant.*

KUPPANAYYANGÁR ..... *Respondent.*

A member of a Hindu family cannot as such inherit the property of one taken out of that family by adoption.

The severance of an adopted son from his natural family is so complete that no mutual rights as to succession to property can arise between them.

Special Appeal No. 15 *of* 1859 affirmed.

1863. January 31. 28 A.A. Nos. 177 and 182 of 1861.

THESE were special appeals from the decision of G. H. Fullerton, the Officiating Civil Judge of Chingleput in Appeal Suits Nos. 104 and 105 of 1861.

(*a*) Present Strange and Holloway, J J.