Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Maharajah Joymungul Singh Bahadoor v. *Mohun Ram Marwaree from the High Court of Judicature at Fort William in Bengal; delivered Thursday, March* 11*th*, 1875.

Present:

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.

THIS is an Appeal against a judgment of the High Court, dated the 18th January 1871, which dismissed an Appeal that had been brought against a judgment of the Zillah Judge of Bhaugulpore, dated the 1st February 1870.

The circumstances out of which this Appeal arises are shortly these. The Respondent, who is a Mahajun, sued the Appellant, who is a person of high rank in the district, for the balance of an account arising out of transactions between them. That suit was first dismissed. There was an Appeal by the Respondent from that decision to the High Court, and the High Court remanded the case for re-trial to the Zillah Judge with certain directions. Upon its coming back to the Judge it was suggested by him that all matters in dispute should be referred to arbitration; and that was done the consent of the parties,—the arbitrators being a European gentleman, formerly the judge of Bhaugulpore, and a member of the Bengal civil service, and a Mahomedan who exercised judicial functions in the district as the Judge of the Small Cause Court.

Those gentlemen entered upon the inquiry, and in the course of it certain books of account which had been produced by the Plaintiff were, on his application, given back to him. He took them out of the hands of the arbitrators, meaning, as he says, to bring them back; but they were, according to his account of what happened afterwards, taken from him by violence; and in any case they disappeared, and have not since been forthcoming. The arbitrators, however, made their award. It is not necessary to state in detail the form in which it was made. It suffices to say that they did not sign that award, as first made, together. The Mahomedan Judge first expressed his opinion, and after going through the facts stated that in his opinion the balance found by him to be due should be paid by the Appellant to the Respondent. It then went to Mr. Sandys, the other arbitrator, who seems to have made further inquiry, and to have had some communication on the subject with his co-arbitrator. But the award was on that occasion signed by them separately. It was then filed in the Zillah Court, and the Judge passed a decree in conformity with it. From that decree there was an Appeal to the High Court, and the decree was set aside, and properly set aside, by the High Court, apparently on two grounds. The first was, that the Judge had proceeded irregularly, inasmuch as he had passed his decree without allowing the parties the 10 days for bringing in objections to an award which the Code of Procedure allows them. The other ground on which the learned Judges of the High Court, or at least Mr. Justice Norman, proceeded, was that the award was altogether informal, inasmuch as it had been signed by the arbitrators separately. The result of that proceeding in the High Court was that the judgment appealed against was

reversed with costs, and the case sent back to the Zillah Judge,—Mr. Justice Norman observing, "The Judge will consider whether it would not "be proper to send back the papers signed in "pursuance of his former suggestion that an "award may be duly and regularly signed by "the arbitrators in the presence of each other." And in another passage he said, "We leave it to "the Judge, on hearing any objections made by "the Defendant, or on the application of the "Plaintiff for that purpose, to remit the award "to the arbitrators under the provisions of the "323rd section, if he thinks that the ends of "justice will be served thereby." The other Judge, Mr. Justice Elphinstone Jackson, after expressing a doubt whether there was any informality in the separate signature by the arbitrators, says, "As, however, my learned colleague "is of an opposite opinion, I am ready to concur "with him in remanding this case to the Judge, "in order that he may take steps to have the "award formally signed by the arbitrators at the "same time and not on different dates. I think "also that there must be a remand, in order that "the Appellant may obtain 10 days time after "the award is signed within which to prefer any "objection he can legally urge against the "award."

Now, Mr. Doyne has pressed strongly upon their Lordships that the intention of the Court in making this remand was that the case should go back again to the arbitrators for re-consideration and re-adjudication before it came at all before the Judge in the shape of an award, and that it was an essential part of that proceeding that the missing books should be produced and considered by the arbitrators, or that if they could not be produced their loss shou'd be in some manner enquired into and accounted for. But their Lordships do not take that view

of the order of remand. It seems to them clear, upon the face of the judgments of the learned Judges that their intention was that the case should go back to the Judge; that he should in the first instance have the award put into a formal shape by getting it signed by both the arbitrators together; that when so signed it should be regularly filed; that the parties should have 10 days within which to take their objections, whether founded on the abstraction of the books, or any other legal ground, to the validity of the award; and that the Judge should then proceed to adjudicate upon those objections. He himself seems to have taken that view of his duty, and he accordingly proposed to have the award signed by both the arbitrators in his presence. Then arose a new difficulty. Mr. Sandys, taking exception to some things that had been done, wrote a letter to the Judge, in which, after stating these objections, he says, "Under "the circumstances above detailed, I feel that I "cannot with any seemly propriety continue to "act any longer in this arbitration; and in the "perplexity this gives rise to, I can discover no "other alternative to be left me than herewith "to submit my resignation." The Judge was very unwilling to accept that resignation, and induced Mr. Sandys to withdraw it. The result was that Mr. Sandys and the Mahomedan gentleman came before the Judge; they signed the award; the award was then regularly placed upon the file of the Court, and formal objections were brought in by the Appellant. One of these objections, the 5th, was that the act of the Moulvie (the Mahomedan arbitrator) in allowing the Plaintiff to take away his books was an irregular and illegal proceeding, and amounted to such misconduct as would vitiate the award. The Judge adjudicated upon those objections, under the 324th and 325th sections

of the Code of Procedure, and over-ruled them. He then made a decree in conformity with the award, going neither beyond it, nor altering it in any way. Upon that there was a final appeal to the High Court, which resulted in the Judgment now under appeal.

Their Lordships entirely concur with the first point taken by the learned Judges of the High Court, namely, that the appeal was an appeal against the Judgment passed in pursuance of an award made by the arbitrators; and that the Judgment being in accordance with the award, was, under the 325th section of the Code of Procedure, final. If this were so, it follows that no appeal lay against that decision of the Judge to the Court; and, *a fortiori*, that this appeal from the Judgment of the High Court cannot be maintained. Their Lordships have already dealt with the objection raised by Mr. Doyne, to the effect that the award was not in fact an award within the meaning of the Code of Procedure, inasmuch as it had not been made pursuant to the instructions with which the case was remanded; and that the arbitrators ought again to have considered the questions referred to them with the books, if they could get them, or to have pursued the inquiry concerning the books. Therefore it is not necessary to say more upon that point.

It was, however, further objected that the award was informal, and not properly the subject of a final adjudication by the Judge, because Mr. Sandys, at the time when he signed it, was *functus officio*. But their Lordships, looking to the mode in which he merely tendered his resignation to the Judge in a letter addressed to him, and afterwards withdrew it at the request the Judge, are of opinion that he never formally divested himself of his character of arbitrator; and concur with the High Court in thinking

that the award was a formal award; that there has been an adjudication as to its validity, and that that adjudication is final.

Their Lordships will therefore humbly advise Her Majesty to affirm the Judgment of the High Court, and to dismiss this Appeal, with costs.