Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Ghulam Jilani and Others v. *Muhammad Hassan, from the Chief Court of the Punjab; delivered 3rd December* 1901.

Present at the Hearing:

LORD MACNAGHTEN.
LORD ROBERTSON.
LORD LINDLEY.

[*Delivered by Lord Macnaghten.*]

The object of this Appeal is to set aside an award which was made on a reference to arbitration with the view of determining the rights and interests of the parties to this litigation in two Government leases.

The Appeal is against two decisions of the Chief Court of the Punjab. The one determined that no appeal lay from the decree of the Subordinate Judge made in accordance with the award. The other was passed on Revision. It varied the decree but only in a matter of little or no practical importance.

The question appears to their Lordships to turn upon the true construction and effect of the provisions of the Code of Civil Procedure relating to arbitration. The decisions of the Indian Courts on those provisions are so conflicting that it may be useful to state generally the conclusions at which their Lordships have arrived on some of the disputed points brought to their attention in the course of the argument.

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The chapter in the Code of Civil Procedure on *Reference to Arbitration* (Chapter XXXVII.) deals with arbitrations under three heads :—

1. Where the parties to a litigation desire to refer to arbitration any matter in difference between them in the suit. In that case all proceedings from first to last are under the supervision of the Court.
2. Where parties without having recourse to litigation agree to refer their differences to arbitration and it is desired that the agreement of reference should have the sanction of the Court. In that case all further proceedings are under the supervision of the Court.
3. Where the agreement of reference is made and the arbitration itself takes place without the intervention of the Court and the assistance of the Court is only sought in order to give effect to the award.

Full directions are to be found in the Code as to the course of procedure in cases falling under Head No. 1 and large powers are given to the Court with the view of making the award in such cases complete operative and final. The Court makes an order of reference on the agreement (which must be the agreement of all parties to the suit) being brought before it and fixes a time for the delivery of the award with power to enlarge the time if necessary. When the award is submitted to the Court the Court may in certain specified cases correct or modify it subject to a right of appeal. In certain specified cases it may remit the matter to the arbitrators or to the umpire as the case may be. No award is to be set aside except in one of three cases specified and defined in Section 521. It is to be observed that by the Limitation Act Schedule 2 Article 158 the period of limitation prescribed for an application under the Code to set aside

an award is a period of 10 days only from the time when the award is submitted to the Court exclusive of the time requisite for obtaining a copy of the award (Limitation Act Section 12). Then comes Section 522 which provides that if the Court sees no cause to remit the award and if no application has been made to set aside the award or if the Court have refused such application " the Court shall after " the time for making such application has " expired proceed to give judgment according " to the award." It is enacted that " upon the " judgment so given a decree shall follow " and shall be enforced in manner provided in the Code for the execution of decrees. At the end of the section there are these important words " No appeal shall lie from such decree except " in so far as the decree is in excess of or not " in accordance with the award."

Those words appear to be perfectly clear. Their Lordships would be doing violence to the plain language and the obvious intention of the Code if they were to hold that an appeal lies from a decree pronounced under Section 522 except in so far as the decree may be in excess of or not in accordance with the award. The principle of finality which finds expression in the Code is quite in accordance with the tendency of modern decisions in this country. The time has long gone by since the Courts of this country shewed any disposition to sit as a Court of Appeal on Awards in respect of matters of fact or in respect of matters of law (see *Adams* v. *Great North of Scotland Railway Company*, 1890, A.C. 31).

In cases falling under Heads II. and III. the provisions relating to cases under Head I. are to be observed so far as applicable. But there is this difference which does not seem to have been always kept in view in the Courts in India. In cases falling under Head I. the agreement to refer and the

application to the Court founded upon it must have the concurrence of all parties concerned and the actual reference is the order of the Court. So that no question can arise as to the regularity of the procedings up to that point. In cases falling under Heads II. and III. proceedings described as a suit and registered as such must be taken in order to bring the matter—the agreement to refer or the award as the case may be—under the cognizance of the Court. That is or may be a litigious proceeding—cause may be shown against the application—and it would seem that the order made thereon is a decree within the meaning of that expression as defined in the Civil Proceedure Code.

Now the agreement of reference in the present case was made in the course of litigation. The Respondent who has not appeared on this Appeal was Plaintiff. The Appellants were Defendants. The Plaintiff's case was that his father had been promised by the Government a lease of 4,000 acres to be granted at once and an additional lease of 2,000 acres on the completion of a canal intended to irrigate the lands to be leased. According to the Plaintiff's story on his father's death he admitted the father of the Defendants to a one-fourth share in the adventure on the terms of his finding the money required to bring the land into cultivation. The lease of the 4,000 acres was granted to the two adventurers. The father of the Defendants found the money for the construction of the canal and got the lease of the additional 2,000 acres granted to himself alone. The Plaintiff alleged that the profits of the canal had more than covered the expenses of construction and inasmuch as under the second lease the Defendants were in possession of 500 acres in excess of their proper share he claimed that the Defendants should make over to him their interest in the first lease of 4,000 acres as well as three-

fourth share in the canal and account for profits in excess of their proper share. The Defendants' case was that it was arranged in consideration of the Defendants' father finding all the money that the Plaintiff should be content with 200 acres only. The Defendants further objected that the suit was not competent and that so much of the claim as asked for a share of profits and a settlement of accounts was excluded from the cognizance of the Civil Court by the Punjab Tenancy Act of 1887 Section 77 Clause *k*. The issues as settled were twelve in number including the following "No. 2 Whether "the whole or any part of the claim is not "cognizable by a Civil Court?" Then the parties went into evidence but before the case was heard they agreed to refer all matters in dispute to two arbitrators one named by each party. An order of reference was duly made by the Court. The arbitrators named by the parties took upon themselves the burden of the reference and they concurred in an award which on the face of it seems to be a fair and reasonable settlement of the matters in dispute. The award was duly submitted to the Court. Both parties objected to it. The Plaintiff raised some minor objections. The Defendants objected to the whole award. The Subordinate Judge over-ruled all objections and in due course pronounced a decree in accordance with the award.

From the decree of the Subordinate Judge the present Appellants the Defendants in the suit appealed to the Chief Court of the Punjab. The Court sitting as a full Bench held that no appeal lay. In that decision their Lordships entirely concur though it appears from a case which was cited by Sir William Rattigan 84 P. R. 1901 that a subsequent full Bench of the same Court has disapproved of the ruling of the full Bench in the present case.

Unfortunately in dismissing the Appeal it was suggested by the full Bench that although an Appeal would not lie from the decree of the Subordinate Judge an application might be made in revision under Section 622 of the Code. Accordingly the Appellants were permitted to present an application in revision under that section.

The Court heard the case in revision and altered the decree in a manner which might have been proper if the Court had had jurisdiction to interfere in the matter. The alteration satisfied the Appellants even less than the original decree.

Their Lordships are inclined to agree with the view of Clark J. in 84 P. R. 1901 that in the case of an award revision would be more objectionable than an appeal. If an application in revision were admissible in a case like the present the finality of any award would be open to question. Their Lordships however are of opinion that such an application is incompetent. The application in revision in the present case was avowedly an application to set aside the award. As such it was plainly prohibited by the Limitation Act of which the Court is bound to take notice though no objection is made by the parties. In the next place even if the application had been in time it could not in their Lordships' opinion be brought under Section 622. The question whether the suit was competent was one of the issues in the suit and as such referred to the arbitrators. They were not indeed bound to give an award on each point. They had to give their award on the whole case. In point of fact however they did decide the question. They may have erred in law but arbitrators may be judges of law as well as judges of fact and an error in law certainly does not vitiate an award. The award having been duly made and not having been corrected or modified and the appli-

cation to set it aside having been refused the Subordinate Judge had no option but to pronounce a decree in accordance with it. The Subordinate Judge does not appear to have exercised a jurisdiction not vested in him by law or to have failed to exercise the jurisdiction so vested or to have acted in the exercise of his jurisdiction illegally or with material irregularity. He appears to have followed strictly the course prescribed by the Code.

Inasmuch as their Lordships hold that the application in revision was incompetent it would be a work of supererogation to discuss the various objections raised by the Appellants in the High Court. It is enough to say that in their Lordships' opinion there does not appear to have been any substance in any one of them.

The logical result of the view which their Lordships have expressed would be to restore the decree of the Subordinate Judge. But inasmuch as the decree as altered is probably in the form which it would have taken if the award had been corrected or modified their Lordships think the better course will be simply to dismiss the Appeal.

Their Lordships will therefore humbly advise His Majesty that the Appeal ought to be dismissed.