1888
APRIL 27.

INSOLVENCY JURISDICTION.

13 B. 114.

Bombay has no jurisdiction to make such an order against a person resident more than two hundred miles from Bombay; and secondly, that even if it has the jurisdiction, the granting of such an order is a matter of discretion, and that in the present case that discretion has been improperly exercised.

[118] The order in question was made under s. 58 of the Indian Insolvent Act (Stat. 11 and 12 Vict., cap. 21). The provisions of that section are stated in the most general terms (His Lordship read the section). But it has been contended that we must read it with s. 4, and that the combined effect of these two sections taken together is that the Insolvent Court has only the same powers as are possessed by the High Court, and that by the Civil Procedure Code (Act XIV of 1882), the High Court has no power to order the attendance of any person residing at a distance of more than two hundred miles from Bombay. We are of opinion, however, that we cannot thus limit the power of the Insolvent Court. The Act (11 and 12 Vict., cap. 21) confers upon that Court very large powers (*e.g.*, s. 36), and we think that we must give to s. 58 a construction in harmony with the general provisions of the Act. It is to be remembered also that the insolvent has already submitted to the jurisdiction of the Court. He has applied for and obtained the benefit of the Insolvent Act, and we think that he is now bound to submit to any further order which the Court may think fit to make under the Act. We hold that the Judge had power in this case to make the order appealed against.

It has been argued that the discretion of the Judge was improperly exercised. That is a matter, however, with which we should be reluctant to interfere, especially in a case like this. The learned Judge of the Insolvent Court must necessarily have a far greater knowledge of all the circumstances of the case than we have; and he no doubt took them into consideration before making the order.

We must dismiss this appeal with costs.

Appeal dismissed.

Attorneys for the insolvent:—Messrs. *Ardesir, Hormusji, and Dinsha.*
Attorneys for the Official Assignee:—Messrs. *Craigie, Lynch, and Owen.*

---

13 B. 119.

[119] ORIGINAL CIVIL.

Before Mr. Justice Jardine.

UMERSEY PREMJI AND ANOTHER (*Plaintiffs*) *v.* SHAMJI KANJIAND BHANJI KANJI (*Defendants*).*

[13th August, 1888.]

Arbitration—Award—Making and filing award—Award made but not filed within the time specified by order of Court—Civil Procedure Code (Act XIV of 1882), ss. 508 514, 521.

The present suit for dissolution of partnership and all matters in dispute between the parties thereto were by Judge's order dated 18th July, 1887, referred to the arbitration of A. and B. The time for making and filing the award was by subsequent orders extended to the 18th May, 1888. The award was made on that

---

* Suit No. 207 of 1886.

1888
AUG. 13

ORIGINAL CIVIL.

13 B. 119.

day, but was not filed until the 18th June, 1888. The second defendant obtained a rule calling on the other parties to show cause (*inter alia*) why the award should not be set aside by reason of its not having been filed in time.

Held, that the omission to file the award on or before the 18th May, 1888, did not render it invalid.

The word "made" in ss. 514 and 521 of the Civil Procedure Code (Act XIV of 1882) does not include the filing of the award.

[F., 27 A. 459 (461)=2 A.L.J. 201=25 A.W.N. 47 ; 8 C.W.N. 916 (918); 89 P. R. 1907 ; Appl., 22 M. 22 ; R., 26 A. 105 (107).]

RULE obtained by defendant No. 2 on the 14th July, 1888, calling on the plaintiffs and defendant No. 1 to show cause why an award dated the 16th May, 1888, and filed on the 20th June, 1888, should not be set aside (as not filed in time); or, in the alternative, why the same should not be remitted to the arbitrators for re-consideration, on the grounds set forth in the affidavit of defendant No. 2, dated the 13th July, 1888.

The suit was for dissolution of partnership, and prayed that accounts might be taken, *&c.* On the 18th June, 1886, a receiver was appointed, who subsequently collected certain outstanding debts due to the partnership.

By a Judge's order dated the 18th February, 1887, made by consent of the parties, the suit and all matters in dispute between the parties were referred to the arbitration of Dossa Kirpall and Dossa Morarji, and by Judge's orders dated the 20th June, 1887, and the 22nd December, 1887, the time for making and filing their award was extended to the 18th May, 1888.

The following paragraphs from the affidavit of defendant No. 2 set forth the grounds on which he obtained the above rule :—

[120] "5. On the 30th day of June, 1888, I received a notice from this Court, dated the 28th *idem*, intimating that the said award had been filed on the 20th June, 1888, and that the plaintiffs intended to submit it in chambers on the 5th instant.

"6. Without waiving any rights I may have to object that the said award was not made and filed within the time limited by the Court (should such prove to have been the case), I say that by the said award the arbitrators have not, as I am informed and believe, decided any of the following matters :—

"(1) What is to be done with the moneys collected by and now in the hands of the receiver, Mr. L. N. Banaji?

"(2) Who is to recover the outstandings still remaining due to the partnership and unrecovered, and what is to be done with such recoveries?

"(3) Who is to receive and keep charge of the account books, &c., of the said partnership?"

The rule now came on for hearing.

Jardine, for the plaintiffs, showed cause.—The award is good. The defendant waived any irregularity in filing the award. The award was made on the 18th May during vacation, and was filed in due course after vacation had terminated.

Anderson, contra, in support of the rule.—The order of reference to arbitration directs that the award shall be made and filed before a certain date, which date (by orders extending the time) became the 18th May, 1888. This award was made on the 18th May, but was not filed until 20th June. It is, therefore, invalid.

1888
AUG. 13.

ORIGINAL CIVIL.

13 B. 119.

The following authorities were referred to;—*Behari Das* v. *Kalian Das* (1); *In the matter of an arbitration between James Ward and The Secretary of State for the War Department* (2); *Browne* v. *Collyer* (3); Russell on Arbitration, 544: High Court Rules, Form No. 56.

JUDGMENT.

JARDINE, J.—On reading the correspondence I find that Mr. Anderson's client, defendant No. 2, has not waived his right to object to the validity of the award, on the ground that it was [121] not delivered within the time allowed under the order of the Court, although it was made and signed within that period.

Mr. Anderson relies on the interpretation placed by the Court at Allahabad in *Behari Das* v. *Kalian Das* (1) on the last clause of s. 521 of the Code of Civil Procedure, *viz.*, "and no award shall be valid unless made within the period allowed by the Court." On considering the clause along with ss. 508 and 514 the learned Judges held it to be equivalent to a rule that the award must be delivered within that period. No other reported case dealing with the clause has been shown me. The clause appears in the same words in s. 521 of the Code of 1877, and a similar enactment is found in Act VIII of 1859 in the proviso to s. 318. At the hearing I noticed that the language of s. 516, which treats the making, signing and filing of an award as different acts, causes some difficulty in adopting this interpretation. In s. 525 the making and filing are again distinguished. By s. 508 the Court refers the matter in difference which the arbitrator is "required to determine," and fixes a time for the "delivery of the award." In s. 514 provision is made where the "arbitrators cannot compelete the award within the time specified in the order. The Court may, if it thinks fit, either grant a further time and from time to time enlarge the period for the *delivery* of the award, or &c." There completion and delivery seem to be distinguished.

The English cases cited by Mr. Jardine on Stat. 3 and 4 Will. IV, cap. 42, s. 39—*Browne* v. *Collyer*(3); *In the matter of an arbitration between James Ward and The Secretary of State for the War Department*(2)—show that in England it has long been open to the Court, in a case like the present, to enlarge the time: see Russell on Awards, 544; and as to the cases in which the Court will exercise the power, *Edwards* v. *Davies*(4). It is possessed by the Courts of Equity—*In re Warner and Powell's Arbitration* (5)—and may be applied where the arbitrator has not made his award within the period fixed by the parties [122] themselves—*May*. v. *Harcourt* (6). It was also pointed out, at the hearing, that the decision in the Allahabad case depended on another circumstance besides the omission to file the award in Court within the period provided by the order of reference.

The question before me being of general importance, and the interpretation contended for by Mr. Anderson being at first sight contrary to the English decisions and legislation and the spirit of such enactments as s. 578 of the Civil Procedure Code, I took time in order to see what other and more recent authorities I could find, besides those cited, bearing

(1) 8 A. 543. (2) 32 L. J. Q. B. 53. (3) 20 L. J.Q. B. 426.
(4) 23 L. J. Q. B. 278. (5) L. R. 3 Eq. 261. (6) 13 Q. B. Div. 688.

1888
AUG. 13.

ORIGINAL CIVIL.

13 B. 119.

on the point. I will now refer to the cases I have found and think applicable.

There is the case of *Simson* v. *Vencatagopalam* (1). The head note mentions the "return" of the award; but the judgment shows that the award was not *made* in the fixed time, and there was apparently no point raised about the filing being beyond the fixed time. The same may, I think, be said of the case of *Bhugwan Dass* v. *Nund Lall Sein* (2). Sections 514 and 521 of the Civil Procedure Code (Act XIV of 1882) are substitutes to a certain extent for the rules contained in ss. 318 and 324 of Act VIII of 1859 which I proceed to quote.

Section 318.—"When the arbitrator or arbitrators shall not have been able to complete the award within the period specified in the order, from the want of the necessary evidence or information, or other good and sufficient cause, the Court may from time to time enlarge the period for the delivery of the award, if it shall think proper." (Then follows a rule about the umpire): "Provided that an award shall not be liable to be set aside only by reason of its not having been completed within the period allowed by the Court, unless on proof that the delay in completing the award arose from corruption or misconduct of the arbitrator or arbitrators, or umpire, or unless the award shall have been made after the issue of an order by the Court superseding the arbitration and recalling the suit."

[123] Section 324.—"No award shall be liable to be set aside except on the ground of corruption or misconduct of the arbitrator or umpire. Any application to set aside an award shall be made within ten days after the same has been submitted to the Court."

Section 320 corresponds with s. 516, and provides that when an award shall be *made* it shall be *submitted* to the Court under the signature of the person who made it.

The older law, including the very point I have to decide under the present Code, received interpretation from Mr. Justice Norman in the case of *S. M. Jagatsunderi* v. *Sonatan* (3). If s. 320 of the old Code be compared with s. 516 of the new, it would appear that his judgment was brought to the notice of the Legislature. Comparing ss. 315 and 318, (to which s. 508 about the reference and s. 514 correspond), the learned Judge observes: "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 submitted, 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 ss. 315 and 318 is something different from the submission of the award to the Court under s. 320."

Now, although by s. 516 of the new Code (Act XIV of 1882) the arbitrators are to cause the award to be filed in Court, the Legislature has adhered to the words "complete" and "delivery" while using in s. 516 the

(1) 9 M. 475. (2) 12 C. 173. (3) 5 B. L. R. O. C. 357 (361 and 362).

1888
AUG. 13.
ORIGINAL
CIVIL
13 B 119.

words " caused to be filed " instead of " submitted," and in s. 521 " made " instead of " completed." It would be contrary to this decision to hold that " made " includes the filing of the award, and I think it would also be a strain on the language. The phrase " make an award " is frequent in Acts of Parliament, *e. g.*, the Common Law Procedure Act, 1854, s. 15, [124] "shall make his award under his hand." The making of an award is different to the publishing of it—*Musselbrook* v. *Dunkin*(1); *Mac Arthur* v. *Campbell*(2). As to what is a delivery, see Comyn's Dig, Tit. Fait, A 3 and 4 and B. 5; *Armitt* v. *Breame*(3). In *Brown* v. *Vowser* (4) the delivery is distinguished by Lord Ellenborough, C.J., from the completion of the award in these terms:—" The award was complete when it was ready to be delivered within the time appointed, and prior to the actual delivery ; the arbitrator was then *functus officio* : and if any accident had happened afterwards to prevent his making a delivery, it would still have been an award." See also cases in 1 William's Saunders, 582, under *Veale* v. *Warner*: *Henfree* v. *Bromley*(5) is another authority on the principle.

On careful examination of the chapter in the present Code about arbitration I see no indication of any intention of the Legislature to alter the law as laid down by Norman, J., following the English practice, but on the contrary different words have been used which have each received judicial interpretation. While I have the misfortune to differ from the learned Judges who decided *Behari Das* v. *Kalian Das* (6), I may remark that the more fully argued case decided by Norman, J., does not seem to have been brought to their Lordships' notice, nor the corresponding sections of the older Code. I find, for the above reasons, that s. 514 does not apply, as the arbitrators did actually make or complete the award within the time allowed, although they did not file it within that period. I also find that the last clause of s. 521 does not apply, whereas the earlier part of that section prohibits the Court from setting the award aside. I think in thus ruling I am carrying out the real intent of the Legislature. "It is the duty of Courts of justice to give that construction which most fairly carries out the manifest purpose(7)." "The course of legislation has been to prevent an arbitration, to which the parties have assented, failing through the mere mistake [125] or inadvertence of the arbitrator"—*per* Mellor, J., in *Lord* v. *Lee*(8). In the same case, Blackburn, J., after tracing the history of arbitration observes at p. 409 : " Surely it is a very salutary enactment which enables a Judge to cure a defect of form, and which the parties might have cured themselves."

The next question is, whether I ought under s. 520 to remit the award in order that the three matters left undetermined may be disposed of by the arbitrators. I think they all come within the terms of the reference, which was of " this suit and all matters in dispute between the parties." The plaint prays for directions about the outstanding debts and books of account of the partnership. As to these matters and as to the disposal of the moneys in the hands of the receiver, I am of opinion that they are matters in difference, and that an affirmative decision is required from the arbitrators : see *Jewel* v. *Christie* (9) ; *Harrison* v. *Creswick* (10) ; *In the matter of Robson and Railston* (11). The case of

(1) 9 Bing. 605. (2) 5 B. & Ad. 518. (3) 1 Salk. 75.
(4) 4 East 584. (5) 6 East. 308. (6) 8 A. 543.
(7) Per Stuart, V. C., *In re Warne and Powell's Arbitration*, L. R. 3 Eq. 266.
(8) L. R. 3 Q. B. 410. (9) L. R. 2 C. P. 296.
(10) 21 L.J. C. P. 113. (11) 1 B. & Ad. 723.

1888
AUG. 13.
ORIGINAL CIVIL.
13 B. 119.

Spencer v. *Spencer* (1) shows the advantage of having an affirmative decision about outstanding debts to prevent further litigation. I may add, that the plaintiffs consented to the award being remitted when Mr. Anderson's client first proposed that this course should be taken. The latter expenses having been caused by his contesting the validity of the award, I order that he pay his own and plaintiffs' costs. The other defendant to pay his own.

Attorneys for the plaintiffs :—Messrs. *Bomanji and Hormusji.*

Attorneys for the defendants :—Messrs. *Hore, Conroy, and Brown.*

---

13 B. 126 = 13 Ind. Jur. 265.

[126] ORIGINAL CIVIL.

Before Mr. Justice Jardine.

DULARI (*Petitioner*) *v.* VALLABDAS PRAGJI (*Respondent*).*

[15th August, 1888.]

Pauper—Petition for leave to sue as a pauper—Practice—Applicant must show a good cause of action—Civil Procedure Code (XIV of 1882), s. 407—Illegal agreement—Agreement against public policy—Guardian and ward—Agreement for marriage by a guardian to give a ward in marriage on payment of a sum of money.

The plaintiff applied for leave to sue as a pauper. She stated as her cause of action that a young girl had been left in her charge and had been maintained by her for a number of years ; that in January, 1888, arrangements had been made with a Bhatia to get this girl married, and that she (the plaintiff) was to receive Rs. 2,500 on the marriage ; that the defendant had also agreed to pay her (the plaintiff) Rs. 2,000 if she would give the girl to him in marriage ; that before the marriage ceremony could be performed the defendant had induced the girl to quit the plaintiff's house for immoral purposes. She claimed Rs. 2,500 as damages, and prayed leave to sue as a pauper.

Held, following *Chatterpal Singh* v. *Raja Ram* (2) that the facts being clear and the law evident, the case might be finally disposed of on the plaintiff's application to sue as a pauper.

Held, also, that the alleged agreement on which the suit was brought, was immoral and against public policy, and that the action was not maintainable.

[F., 20 A. 299 (301) ; R., 22 B. 658 (661) ; 1 C.L.J. 261 (265) ; 4 Ind. Cas. 975=91 P.L.R. 1909=131 P.W.R. 1909 ; D., 16 B. 673 (674) ; 13 M. 83 (87).]

PETITION for leave to sue as pauper. The case now came on for the investigation of the petitioner's alleged pauperism.

The petitioner in her petition claimed to recover from the defendant a sum of Rs. 2,500. She alleged that at Gokul, in Upper India, a young girl, named Laxmibai, had been made over to her by Laxmibai's mother when she was dying. On the mother's death the petitioner had taken the girl and had ever since maintained her. The following paragraphs of the petition set forth the petitioner's alleged cause of action :—

" (4) That in the month of January last, arrangements had been made with a respectable Bhatia gentleman, to get the said girl married on payment to your petitioner of Rs. 2,500, in consideration of the expenses

---

* Pauper Petition, No. 20 of 1888.

(1) 2 Y. & J. 249.

(2) 7 A. 661.