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sum is undisposed of by the said will, and belongs to the defendant Nenbai as widow of the testator. Refer to the Commissioner to take an account of the property of the testator received or taken possession of by the executors, or any and which of them, and of their application thereof, &c. Fourth defendant to pay his own costs. Costs of all other parties, as between attorney and client, to be paid out of the estate.

Attorneys for the plaintiff: Messrs. *Little, Smith, Nicholson, and Bowen.*

Attorneys for the defendants: Messrs. *Payne, Gilbert, and Sayani.*

17 B. 357.

[357] APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.*

NANDRAM DALURAM (*Original Defendant*) Appellant, v. NEM-  
CHAND JADAVCHAND (*Original Plaintiff*), Respondent.\*  
[19th April, 1892.]

*Arbitration—Award—Decree in terms of award—Appeal—Award by three out of four arbitrators—Illegal award.*

Where a decree has been passed in terms of an award, an appeal lies only where the question is whether the award was illegal, being void *ab initio*.

[F., 24 C. 469 (471); Appl., 2 N.L.R. 81 (83); R., 18 A. 422 (426, 427) (F.B.)=16 A.W.N. 137; 29 B. 285=6 Bom. L.R. 1132 (1134); 18 M. 423 (430) (F.B.); 9 Ind. Cas. 173=21 M.L.J. 263=9 M.L.T. 251=(1911) 1 M.W.N. 151 (164); 5 O. C. 13 (14); 74 P.R. 1894 (F.B.); 112 P.L.R. 1901 (F.B.); 6 S.L.R. 169.]

SECOND appeal from the decision of Rao Bahadur Chunilal Maneklal, First Class Subordinate Judge of Ahmedabad with Appellate Powers.

Suit (No. 348 of 1886) and cross suit (No. 389 of 1886) for account. On the application of the parties both suits were referred to the arbitration of four arbitrators. In January, 1888, one of the arbitrators resigned, and another was by consent appointed in his place.

In April, 1888, the last mentioned arbitrator ceased to take part in the proceedings, and on the 12th July, 1888, the other three arbitrators gave their decision: two of them publishing one award, and the third, differing from his colleagues, publishing a separate award.

The plaintiff, Nandram, objected to both the awards, and contended (*inter alia*) that they were illegal, not being the award of the four arbitrators who had been appointed.

The Subordinate Judge held that the award of the two arbitrators, being that of the majority, should be filed, and he made a decree in terms of that award.

Against that decree Nandram (plaintiff in suit No. 348 of 1886) appealed, and the appellate Court confirmed the order, observing: "On a consideration of the authorities cited on either side, the tendency appears to allow an appeal only in a case in which there is no award either in fact or in law, but not to allow an appeal in any other case, and the determination of the question raised on behalf of the respondent [358] depends upon the question whether the disputed award is a mere nullity, and this latter question must be answered in the negative. The

\* Second Appeal No. 685 of 1890.

award is assailed on the grounds that the arbitrators, who decided against the plaintiff (Nandram), accepted bribes from the other side; that the parties had appointed four arbitrators, but the fourth arbitrator has not made an award and has been absent at Rutlam; that Chunilal was appointed, not an arbitrator, but an umpire; that the two arbitrators who have decided against the plaintiff had once submitted their award which the Court remitted for amendment, and those arbitrators fraudulently destroyed that award and made a new award; that the arbitrators have allowed time-barred items; that the amount due is illegal and faulty; that the Court had no jurisdiction, as the amount on the credit and debit sides of the accounts exceeded Rs. 5,000.

"Such are the grounds urged by the appellant against the award, but they are neither singly, nor as a whole, sufficient to make the award a nullity. For the purpose of the preliminary objection raised on behalf of the respondent, the distinction between void and voidable awards should be borne in mind, and although the grounds urged by the appellant might be sufficient to hold that the award is voidable, still they cannot possibly be held as making the award void *ab initio*. I therefore hold that no appeal lies against the decree of the Court below."

Nandram appealed to the High Court.

Rao Saheb Vasudeo Jagannath Kirtikar (Government Pleader), for the appellant:—Where a decree is based upon an award, and the legality of the award is impugned, an appeal lies against the decree. An award in which all the arbitrators have not joined is not legal. The lower Courts were wrong in holding that the objections raised against the award do not render it illegal, and therefore void *ab initio*. The Full Bench ruling of the Allahabad High Court in *Lachman Das v. Brijpal* (1) is in point. See also *Muhammad Abid v. Muhammad Asghar* (2); *Dagdusa Tilakchand v. Bhukan Govind Shet* (3); *Debendra Nath Shaw v. Aubhoy Churn* [359] *Bagchi* (4); *Samal Nathu v. Jaishankar Dalsukram* (5); *Suppu v. Govindacharyar* (6); *Sashti Charan Chatterjee v. Tarak Chandra Chatterjee, &c.* (7).

*L. M. Wadia* (with *Gangaram B. Rele*), for the respondent:—The lower Court has, no doubt, not found directly that the award is good in law, but it is clear from the judgment that the Court was of opinion that the award is legal. The award being legal, no appeal can lie against a decree based upon it. We rely upon *Vishnu Bhanu Joshi v. Ravji Bhanu Joshi* (8), *Naurang Singh v. Sadapal Singh* (9); *Bhagirath v. Ram Ghulam* (10); *Ramonoogra Chobey v. Mussamut Putmoorta Chobayan* (11); *Sreenath Ghose v. Raj Chunder Paul* (12); *Shaikh Elahee Buksh v. Shaik Hajoo* (13); *Lalla Ishuree Pershad v. Hur Bhunjun Tewaree, and Sustee Churn Chuckerbutty v. Taruk Chunder Chatterjee* (14); *Sreenath Chatterjee v. Kylash Chunder Chatterjee* (15); *Maharajah Jcymungul Singh Bahadoor v. Mohun Ram Marwaree* (16); *Protap Chunder Roodro v. Huro Monee Dossia* (17).

#### JUDGMENT.

SARGENT, C. J.:—In this case, the matters in dispute between the parties in two suits Nos. 389 of 1886 and 348 of 1886 were referred to

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|--------------------------|--------------------------|--------------------------|
| (1) 6 A. 174.            | (2) 8 A. 64.             | (3) 9 B. 82.             |
| (4) 9 C. 905.            | (5) 9 B. 254.            | (6) 11 M. 85.            |
| (7) 8 B. L. R. 315.      | (8) 3 B. 18.             | (9) 10 A. 8.             |
| (10) 4 A. 239.           | (11) 7 W. R. C. R. 205.  | (12) 8 W. R. C. R. 171.  |
| (13) 14 W. R. C. R. 33.  | (14) 15 W. R. 9 (F.B.).  | (15) 21 W. R. C. R. 248. |
| (16) 23 W. R. C. R. 429. | (17) 24 W. R. C. R. 188. |                          |

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arbitration. On the application to file the award numerous objections were taken, which were, however, disallowed by the Court, and a decree was finally passed in the terms of the award. The plaintiff in Suit No. 348 of 1886 then appealed against the decree; and the Court below has dismissed the appeal on the ground that no appeal lay against the decree. The reasons for this decision are to be found in the judgment of the Lower Appeal Court in the Appeal (No. 68 of 1889) from the decision in Suit No. 348 of 1886, where the Subordinate Judge with appellate powers after referring to the authorities held that an appeal would lie where the award was a nullity, not where it was only voidable.

[360] The earlier cases turn upon s. 325 of the Civil Procedure Code of 1859, which says that when judgment shall be given according to the award, the judgment shall be final. In *Sashti Charan Chatterjee v. Tarak Chandra Chatterjee* and *Lala Iswari Prasad v. Bir Bhajan Tewari* (1), the Calcutta Full Bench (*dissentiente* Paul, J.) answered the question "When an award has been ordered to be filed, and judgment has been given in accordance with it under s. 327, Act VIII of 1859, is such judgment open to appeal?" by saying that "it was open to an appellant to show that the paper which has been filed is not an award." In *Maharajah Joymungul Singh Bahadoor v. Mohun Ram Marwaree* (2), where the question came before the Privy Council, there had been an arbitration in the course of a suit under the same Act, and the decree passed in the terms of the award had been set aside on appeal by the High Court on the ground that the award had not been signed by the arbitrators separately, and that ten days had not been allowed for objections; and the case was remanded (with remarks on the objections generally as a guide to the Court below) to have these defects remedied, and the several objections heard. On remand the award was properly signed, and the objections were duly heard after proper notice and adjudicated on;—one of which was that the arbitrators had been guilty of misconduct in conducting the arbitration "so as to vitiate the award." The High Court, on appeal to it, held that no appeal would lie from the decree in the terms of that award, and the Privy Council, on appeal from that decision, held that the High Court was right—1st, in reversing the first decree and remanding the case, and, 2ndly, in holding that there was no appeal from the decree passed on remand.

In *Debendra Nath Shaw v. Aubhoy Churn Bagchi* (3) Sir Richard Garth, Chief Justice, after expressing some doubt, concluded, on the authority of the Full Bench decision in *Sashti Charan Chatterjee v. Tarak Chandra Chatterjee*, *Lala Iswari Prasad v. Bir Bhanjan Tewari* (1), that an appeal would lie where the question is whether there is a legal award, which he held was raised [361] in that case by the objection that the award had been signed only by three of the arbitrators. In *Lachman Das v. Brijpal* (4), where the question arose under s. 522 of Act X of 1877, the Court, after referring to the decision of the Privy Council in *Maharajah Joymungul Singh Bahadoor v. Mohun Ram Marwaree* (2), held that an appeal would lie where "there was in fact or in law no award." It is not clear from the judgments delivered in this case whether by the expression "in law no award" the Court meant not only an award which has no legal effect *ab initio*, but also one which is voidable under s. 522. The Madras Court in *Suppu v. Govindacharyar* (5), would appear to place the larger meaning on the term

(1) 8 B.L.R. 315.

(2) 23 W. R. C. R. 429.

(3) 9 C. 905.

(4) 6 A. 174.

(5) 11 M. 65.

in law no award." In *Debendra Nath Shaw v. Aubhoy Churn Bagchi* (1), it is to be observed that the objection taken to the award was that the three arbitrators who signed it could not, under the circumstances, make an award; in other words, that there was no award made, having legal effect *ab initio*; and it appears to us that the judgment of the Privy Council in *Maharajah Joymungul Singh Bahadoor v. Mohun Ram Marwaree* (2) is irreconcilable with any other view than that it is only where the award is not a legal award in the above sense that the appeal will lie.

In the present case, one of the objections taken by the appellant is that the decision by three of the arbitrators, when four were appointed, is illegal; and, if established, it would render the award illegal *ab initio*. We must, therefore, remand the case for a decision on that issue.

*Case remanded.*

17 B. 362.

[362] APPELLATE CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Birdwood.*

CHANDRA NAIK (*Applicant*) v. BAHINABAI AND ANOTHER  
(*Opponents*).<sup>\*</sup> [22nd April, 1892.]

*Watandars Act (Bombay Act III of 1874), s. 10 †—Certificate issued by Collector more than twelve years after death of last holder—Court bound to act on certificate—Limitation—Limitation Act (XV of 1877), art. 178.*

In execution of a decree against Nijaling Naik his lands were sold in February, 1876, and Hanmantbhatt purchased them and took possession on 10th August 1876. Nijaling Naik died in July 1877, and in February 1888, his son and heir, alleging that the lands were *watan*, applied to the Collector for a certificate under s. 10 of the *Watandars Act* (Bombay Act, III of 1874). The Collector referred the matter to his subordinates for inquiry, and the certificate was not issued until the 13th March 1890.—that is more than twelve years after the death of the last holder, Nijaling Naik.

*Held*, that, although more than twelve years had elapsed, the Court could not refuse to act on the certificate of the Collector, as provided by s. 10 of the *Watandars Act*.

THIS was a reference made by Rao Sahab Raghavendrarao Ramchandra Gangoli, Subordinate Judge of Bagalkot, under s. 617 of the *Civil Procedure Code* (Act XIV of 1882).

<sup>\*</sup> Civil Reference No. 10 of 1891.

† Section 10 of the *Watandars Act* (Bombay Act III of 1874):—When it shall appear to the Collector that by virtue of, or in execution of, a decree or order of any British Court any *watan* or any part thereof, or any profits thereof, recorded as such in the revenue-records or registered under this Act, and assigned under s. 23 of this Act as remuneration of an officiator, has or have after the date of this Act coming into force, passed or may pass without the sanction of Government into the ownership or beneficial possession of any person other than the officiator for the time being; or that any such *watan* or any part thereof, or any of the profits thereof, not so assigned has or have passed or may pass into the ownership or beneficial possession of any person not a *watandar* of the same *watan*, the Court shall, on receipt of a certificate under the hand and seal of the Collector, stating that the property to which the decree or order relates is a *watan* or part of a *watan*, or that such property constitutes the profits or part of the profits of a *watan*, or is assigned as the remuneration of an officiator, and is, therefore, inalienable, remove any attachment or other process then pending against the said *watan* or any part thereof, or any of the profits thereof, and set aside any sale or order of the sale or transfer thereof, and shall cancel the decree or order complained of so far as it concerns the said *watan* or any part thereof, or any of the profits thereof.

(1) 9 C. 905.

(2) 23 W.R.C.R. 429.