

PUNCHINONA v. ELIAS APPU.

*D. C., Colombo, 470.*1903.
June 23.

Arbitration—Award out of time—Power of Court to extend the time allowed for making the award, after award has been filed in Court—Civil Procedure Code, s. 691.

The District Court has no power to extend the time allowed for making an award after the arbitrator has filed his award in Court.

Once the award is made, its power to enlarge the time for making it is gone.

THE facts of the case appear in the judgment of Layard, C.J.

F. M. de Saram, for appellant.

Dornhorst, K.C., for respondent.

23rd June, 1903. LAYARD, C.J.—

The appellant was the administrator of the estate of Kahanda-wala-arachchige Don Gregoris Appu, deceased. His final account was filed on the 19th April, 1900. The respondent to this appeal filed a petition on the 22nd October, 1900, praying for a judicial settlement of the appellant's account, and the said matter was referred to the arbitration of Mr. Advocate Seneviratne on the 20th March, 1901.

The arbitrator made his award on the 12th July, 1902, and the appellants on the 11th September, 1902, moved to set aside the award. The appellant's main objection to the award was that it was made outside the period allowed by the Court. The District Judge has held that the award was in fact made twelve days out of time, but has refused to set aside the award. He appears to consider that it would be inequitable to set aside the award on account of the few days' delay in the making and delivery of the award, as it means the loss and waste of all the trouble and cost of the inquiry and entails on the parties further trouble and costs. However much we deplore the results that must necessarily follow a reversal of the order of the District Judge in this case, still we cannot, in view of the provisions of section 691 of the Civil Procedure Code, hold that the award is good. That section expressly enacts that no award is valid unless made within the period allowed by the Court. This award was

1903. admittedly not made within such period, and is consequently
June 23. invalid.

LAYARD
C.J.

The arbitrator is the person really responsible for the trouble and costs the parties have been put to in this case, and I think he will see his way to refund the fee charged by him as arbitrator, so as to reduce as far as possible the costs of the arbitration inquiry which has been abortive entirely owing to his neglect in not making his award in time, and not applying to the Court for further time before pronouncing his award.

The award must be set aside and the proceedings returned to the District Court so that the appellant's account may be judicially settled by the District Judge. The appellant is entitled to his costs of appeal.

WENDT, J.—

I also think that the award cannot be sustained. The District Judge appears to have considered that he had the power to extend the time for the making of the award even after the award was made and filed in Court. That was the view taken by the Indian Courts in the case of *Har Narain v. Bhagwant* (I. L. R. 10 All. 137), but the Privy Council, reversing their decision, emphasized the words of section 521 of the Indian Code of Civil Procedure, which also appear in section 691 of our Code: "No award shall be valid unless made within the period allowed by the Court," and held that once the award was made, the power of the Court to enlarge the time for making it was spent and could not be exercised (I. L. R. 13 All. 300). The award in the present action is therefore invalid, and the appeal must be allowed.
