

1912.

Present : Lascelles C.J. and Grenier J.

FERNANDO v. FERNANDO.

196—D. C. Chilaw, 4,197.

*Arbitration—Order as to costs by arbitrator.*

Where a submission to arbitration does not include either an express submission with regard to costs, or a submission of all matters in dispute between the parties, an arbitrator has no power to adjudicate on the costs of the arbitration.

**T**HIS was an appeal by the defendant from the refusal of the District Judge of Chilaw to modify an award in certain respects.

*van Langenberg, K.C.*, for the appellant.

*Wadsworth*, for the respondent.

February 20, 1912. LASCELLES C.J.—

His Lordship dealt with several objections not material to this report, and continued:—

The fifth objection relates to costs. I think it is clear law that where the submission does not include either an express submission with regard to costs, or a submission of all matters in dispute between the parties, an arbitrator has no power to adjudicate on the costs of the arbitration—*Dagdusa Tikakchand v. Bhukas Govina Shet*,<sup>1</sup> and *Williams v. Slepmy*,<sup>2</sup> with regard to the law before "The Arbitration Act, 1889."

It is the duty of the Court, under section 689, to make such order as it thinks fit with regard to the question of costs, and I think that the matter should be referred back to the Court for that purpose.

With regard to the costs of this appeal, no order can be made until we have adjudicated on the third ground of appeal. If the appellant is successful on this ground I would award him half the costs of appeal, if he is unsuccessful I would order him to pay the respondent's costs.

GRENIER J.—I agree.

*Sent back*

<sup>1</sup> 9 Bombay 85.

<sup>2</sup> 7 Q. B. 257.