June 6, 1911

Present : Wood Renton J.

THEPANISA *v.* ALLISA.

136—*C. R. Avissawella,* 6,971

Arbitration—Award—Appeal lies from order disallowing objection to award—Procedure for entering up judgment in terms of award indicated.

Where a person files objections to an award, and the objections are disallowed, the Court should not enter judgment in terms of the award at once ; there ought to be an interval between the disallowance of the objections and the giving of judgment in terms of the award ; and notice of the day fixed for judgment should be given to the parties.

If objections to an award are over-ruled, it is open to the objecting party to appeal. The last clause in section 692 prohibits appeals only from decrees entered up on judgment in pursuance of the award.

THE facts appear sufficiently from the judgment.

Vernon Grenier, for respondent.—No appeal lies against the decree in this case, which has been drawn up in terms of an award. The appellant may have his remedy by way of revision, but not by way of appeal. See *Prolis v. Amerasuria,*[1] *Casseem v. Packeer,*[2] *Menika v. Ismail Dawudu.*[3]

Aserappa, for the appellant.—Numerous appeals have been entertained by the Supreme Court under similar circumstances.

Counsel then argued on the merits.

[1] *(1901) 5 N. L. R. 178.*

[2] *(1892) 2 C. L. R. 69.*

[3] *(1900) 1 Br. 192.*

June 6, 1911. WOOD RENTON J.— *June 6, 1911*

Thepanisa v. Allisa

Various points of interest have been argued in this case. On behalf of the plaintiff-respondent, Mr. Vernon Grenier took a preliminary objection that no appeal lay, in view of the provisions of section 692 of the Civil Procedure Code. That section, if I may say so respectfully, is by no means a model of draftsmanship, and, so far as I am aware, there are no reported decisions on the point with which I am about to deal. The section in question provides, in effect, that no appeal shall lie from a decree in pursuance of a judgment given according to the award, except in so far as the decree is in excess of, or not in accordance with, the award. It has been held, in cases with which we are familiar, that even although an appeal is not competent, it is still open to the Supreme Court to review decrees entered up on judgments in accordance with the terms of award, in the exercise of its powers of revision. But in the present case it appears to me that the learned Commissioner of Requests did not comply with the provisions of section 692, requiring the Court to give judgment according to the award on a day of which notice shall be given to the parties. Here the arbitrator made his award, the appellant filed objections, the Court held an inquiry into those objections, and reserved its order thereon for a particular day. On that day the Court proceeded to disallow the objections, and at the same time to give judgment in terms of the award. That, in my opinion, was an irregularity. I am quite aware of the difficulty in the construction of section 692 to which the clause " or if it has been made, and the Court has refused such application " gives rise. But I think that the reasonable construction of the section is this—that there ought to be an interval between the disallowance of objections and the giving of judgment in terms of the award, and that notice of the day fixed for judgment should be given to the parties. I think that the reason for that interval is to give parties, affected by the decision of the Court on objections to an award, the opportunity of appealing. It seems to me that the real construction of the section on the point that I am considering is this : If objections to an award are over-ruled, it is open to the objecting party or parties to appeal. The last clause in section 692 prohibits appeals only from decrees entered up on judgments in pursuance of the award. It does not take away from the aggrieved party the right to appeal from a decision by the Court on objections to an award before decree has been entered ; and in view of the serious questions which are frequently disposed of by awards, I think that it is most important that such a right of appeal should exist. If, however, the objecting party does not appeal from the disallowance of his objections; and judgment is entered up, in terms of the section, upon the award, he has no longer any right of appeal, and if he is to succeed at all in getting the decree reviewed, it must be reviewed by the Supreme Court in

June 6, 1911

WOOD RENTON J.

Thepanisa v. Allisa

revision. In my opinion this preliminary objection fails. I have only a few words to say on the merits of the case. None of the objections urged before me could possibly bring the case under the head of misconduct on the part of the arbitrator. If any effect could be given to them at all, it could only be under sections 688 or 690, which define the powers of the Court as to the correction and remitting of awards respectively. On the evidence, however, I do not think that any case for an interference with this award has been made out. It is true that the terms of the original reference are vague. It is also true that, at the inquiry before the arbitrator, the issue between the parties was fought out as one of prescriptive possession. At the same time, both sides were heard fully, and the arbitrator has written an award, in which he carefully analyses the evidence and comes to a conclusion in the respondent's favour, which I see no reason to think is unsound. There is only one further point urged by Mr. Aserappa in support of the appeal, as to which I wish to say a word. His contention was that the arbitrator here had dealt with the question of jurisdiction, that that was a question for the Court, and, further, that even if it was competent for him to adjudicate on the value of the land at all, he should have done so as a valuator, and not as an arbitrator, and should have given sworn evidence in the Court of Requests in support of his conclusion. This argument is ingenious, and was forcibly pressed upon me. But I think it is unsound, and for the following reason. I find in the journal entries the following minute : " Parties move that the matters in dispute be referred to Mr. Bandaranayake for the valuation of the land, and if it is under Rs. 300 to arbitrate, or otherwise to return the same with his valuation." The meaning of that minute, in my opinion, clearly is that the parties were prepared to accept the valuation of the arbitrator as a matter to be decided by himself. The arbitrator did inspect the land, and has given reasons for the conclusion at which he arrived as to its value. I dismiss the appeal with costs.

Appeal dismissed.