1921.

Present : Bertram C.J. and Ennis J.

COSTA *et al.* *v.* SILVA *et al.*

20—D. C. Colombo, 960.

Arbitration—No objection taken by parties to award within specified time —Letter from arbitrator to Court drawing attention to points in the award—Compromise—Re-opening on ground of miscalculation.

As a general rule, agreements by way of compromise should not be re-opened on the ground that some item is omitted in the calculation of one side.

Even if an arbitrator or one of the parties is visited by an afterthought after an award, it is in the interest of justice that awards, if not challenged within the prescribed time, should be final.

ON April 1, 1920, by the agreement of all the parties the Court referred to the arbitration of Abeyratne Mudaliyar the following questions :—

(1) What was the probable annual maintenance between the years 1902 and 1918 of (*a*) Nallanayagam fields, (*b*) Issanmedilla, and (*c*) Medakumbura ?

(2) What was the probable annual expenditure between the years 1902 and 1918 on the improvement of (*a*) Nallanayagam fields, (*b*) Issanmedilla, and (*c*) Medakumbura ?

(3) What was the probable income derived annually between the years 1902 and 1918 from (*a*) Nallanayagam fields, (*b*) Issanmedilla, and (*c*) Medakumbura ?

The arbitrator filed this award on September 13, 1920, and notice thereof was issued to the parties on September 21, 1920.

No application was made by any one to the Court to set aside, modify, or correct the award within fifteen days after the receipt of the notice, but on November 5, 1920, the District Judge ordered

that the award should be sent back to the arbitrator to find out the income as stated in his letter to Court, also to find the interest on the income, and that these questions would be adjudicated by the Court after the amounts had been ascertained by the arbitrator, and that the commission should re-issue to the arbitrator.

The arbitrator sent the following letter to Court :—

D. C. Colombo, 960 Testamentary.

The District Judge, Colombo.

SIR,—WITH reference to the award I have made in the above case as arbitrator on September 12, 1920, I have the honour to bring to your notice that in question 1 (*b*) the amount Rs. 2,845·22 is a clerical error. The Rs. 776·97 shown in 2 (*b*) as expenditure on improvements should be deducted from Rs. 2,845·22; therefore, the correct amount should be Rs. 2,068·25, in place of Rs. 2,845·22.

I also beg to bring to the notice of the Court that defendants requested me to calculate the income derived from fish in Nallanayagam tank, value of timber trees, and other catch crops. I did not inquire on these points, as I thought they did not form part of the reference.

I am, Sir,
Your obedient Servant,

C. A. ABEYRATNE,
Arbitrator.

Samarawickreme, for appellant.

Drieberg, K.C. (with him *Garvin*), for respondents.

July 7, 1921. BERTRAM C.J.—

This is an appeal against an order of one of the District Judges of the Colombo District Court remitting an award to an arbitrator for consideration of certain points specified in the order. The arbitrator was duly appointed and made his award. He had succeeded, except on one of the points, which he determined for himself, in bringing the parties to a complete agreement on all the points submitted to him. No objection was taken to his award within the time required by the Civil Procedure Code, but over a month after the date on which he files it, he himself, whether *ex mero motu* or on the suggestion of one of the parties it is impossible to say, wrote a letter to the Court drawing attention to two points. The first was a clerical error as to a figure in the award. No objection is raised to the correction of this figure. The second point is that in calculating the income of a field known as Nallanayagam field, which included a tank, he did not take into consideration the income derived from the fish in the tank or from the timber trees and other catch crops. He states in his letter that the defendants had requested him so to do, but that he considered that these points did not form part of the reference.

1921.

BERTRAM C.J.

Costa v. Silva

A question of law was raised in the case, which it is unnecessary for us to decide. The question was whether it is a condition precedent to the right of the Court to correct, to remit, or set aside an award that an application should have been made for this purpose by one of the parties within the fifteen days from the date of the receipt or notice of the filing of the award under section 687 (see *Hendrick Appu v. Juanis Naide*[1]). It is unnecessary for us to decide this question of law, because on the facts I think this application is one which ought not to be granted. The arbitrator expressly reports with reference to Nallanayagam field that the parties agree that the income of Nallanayagam field should be fixed at Rs. 225 average per annum from 1902 to 1918. The request of the defendants of which the arbitrator speaks must have been either made before this agreement, in which case it is obvious that both parties have acquiesced in the determination of the arbitrator, and the matter ought not to be re-opened, or it was an afterthought in the interval between the agreement and the filing of the award, in which case the defendants ought to have approached the arbitrator and explained their position, or it may have been an afterthought which occurred to the defendants after the filing of the award, in which case the arbitrator would have paid no attention to it. Even if an arbitrator or one of the parties is visited by an afterthought after an award, it is in the interest of justice that awards of this sort, if not challenged within the prescribed time, should be final, and I do not think in this case any good cause has been shown for allowing an intervention. Even if a Court is empowered of its own motion to intervene, it is a good general principle that agreements by way of compromise should not be re-opened, because some item is omitted in the calculation of one side.

In my opinion the appeal should be allowed, with costs.

ENNIS J.—I agree.

Appeal allowed.