

Privy Council Appeals No. 73 of 1921 and 16 of 1922.

Champsey Bhara and Company - - - - - *Appellants*

v.

The Jivraj Balloo Spinning and Weaving Company, Limited - *Respondents*

The Jivraj Balloo Spinning and Weaving Company, Limited - *Appellants*

v.

Champsey Bhara and Company - - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 6TH MARCH, 1923.

Present at the Hearing :

LORD DUNEDIN.

LORD ATKINSON.

LORD WRENBURY.

[*Delivered by LORD DUNEDIN.*]

In these consolidated appeals it will be convenient to consider the first case by itself. The appellants as sellers entered into two contracts with the respondents as buyers of certain bales of cotton. The contracts were made subject to the rules and regulations of the Bombay Cotton Trade Association, Limited. Rule 12 of the said Association provides :—

“ All questions or disputes as to quality between buyer and seller shall be referred to the arbitration of two disinterested persons, one to be chosen by each disputant, such arbitrators having the power to call

in a third arbitrator. The award made by such arbitrators or any two of them shall be final and binding subject only to the right of appeal to the Appeal Committee. All arbitrations held under this Rule must be held in accordance with Rule 5, and only shareholders and/or Directors shall be eligible to act on arbitrations held in the rooms of the Association. Associate members, however, shall be eligible to act as arbitrators when the arbitration is held in the seller's jetha and/or godown as provided under Rule 5."

Rule 13 provides :—

" All questions in dispute (other than that of quality) arising out of, or in relation to, contracts made subject to the Rules and Regulations of The Bombay Cotton Trade Association, Limited, provided one of the parties to the contract is a member or associate member of the Association, shall be referred to the arbitration of two disinterested persons being shareholders or directors of the Association, one to be chosen by each disputant ; such arbitrators having the power to call in a third arbitrator who must also be a shareholder or director of the Association.

" The award made by such arbitrators or any two of them shall be final and binding on both parties, subject only to the right of appeal to the Board within 15 days of the date of the arbitrators' award on payment of Rs. 100."

The cotton was delivered but objected to by the respondents as being not up to contract. Upon this an arbitration was entered into between the parties, and the arbitrators under Section 12 made an award as to quality. Thereupon, the respondents rejected the cotton. The appellants retorted by claiming damages. This dispute was referred to arbitrators under Section 13. They issued their award as follows :—

" To all to whom these presents shall come, we, Purshotamdas Thakoredas of Bombay, Hindu Inhabitant, and Vincent Alpe Grantham, also of Bombay, European Inhabitant, send greeting. Whereas by a contract dated 17th day of August, 1918, Messrs. Champsey Bhara and Company had agreed to sell to the Jivraj Balloo Spinning and Weaving Company, Limited, 100 bales of Mundra M. G. Fully Good Staple cotton on the terms and conditions mentioned in the contract. And whereas by another contract dated 4th day of September, 1918, the said Messrs. Champsey Bhara and Company had also agreed to sell to the said Jivraj Balloo Spinning and Weaving Company, Limited, 100 bales of New M. G. Mundra Cotton Fully Good Staple on the terms and conditions therein contained. And whereas both the said contracts were made subject to the rules and regulations of the Bombay Cotton Trade Association, Limited. And whereas the goods tendered under the said contracts by the said Messrs. Champsey Bhara and Company were rejected by the Jivraj Balloo Spinning and Weaving Company, Limited, on the grounds contained in their letters dated 25th November, 1918, and 11th November, 1918, respectively. And whereas the said Messrs. Champsey Bhara and Company claimed from the said Jivraj Balloo Spinning and Weaving Company, Limited, the sum of Rs. 25,000 (rupees twenty-five thousand) in respect of the aforesaid contracts. And whereas the said Jivraj Balloo Spinning and Weaving Company, Limited, denied liability in respect of the said sum or any part thereof. And whereas the said disputes were referred to the arbitration of us, Purshotamdas Thakoredas and Vincent Alpe Grantham, who were appointed Arbitrators by the Deputy Chairman of the Bombay Cotton Trade Association, Limited. And whereas on the 12th day of December the time for

making our Award was extended by the Deputy Chairman to the 27th day of December, 1918. Now know ye that we, the said Purshotamdas Thakoredas and Vincent Alpe Grantham, having taken upon ourself the burden of the said reference, and having done all acts necessary to enable us to make a valid Award, hereby make our Award as follows, that is to say :--We award and direct that the said Jivraj Balloo Spinning and Weaving Company, Limited, do pay to the said Messrs. Champsey Bhara and Company the sum of Rs. 25,000 (rupees twenty-five thousand), and we do further award and direct that the said Jivraj Balloo Spinning and Weaving Company, Limited, do pay the costs of this our Award, which we assess at the sum of Rs. 55 (rupees fifty-five).

" In witness whereof we have hereunto set our respective hands this 23rd day of December, 1918.

" Signed and Published this 23rd day of December, 1918, by us, Purshotamdas Thakoredas and Vincent Alpe Grantham in the presence of	}	(Signed) PURSHOTAMDAS THAKOREDAS. V. A. GRANTHAM.
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(Signed) J. A. GRANT."

An appeal was made to the Appeal Committee, who confirmed the award. The respondents then presented a petition to the Court asking that the award should be set aside. They alleged two grounds (1) that there was no question referable to the arbitrators under Section 13 ; (2) that there was an error of law on the face of the award. The case depended before Pratt J., who dismissed the petition. Appeal was taken to the Appellate Division of the High Court, and they reversed the judgment holding that there was an error in law on the face of the award. The way that the learned Judges arrived at that conclusion was this : They said that the recital that the respondents had rejected the cotton on the grounds mentioned in the letters of the 11th and 25th November, 1918, respectively, allowed them to look at the letters. The letter of the 11th November is as follows :—

" To Messrs. Champsey Bhara and Company.
" Dear Sirs,

" Re : D/Order No. 27 dated 6.11.18 for
" 100 bales N. M. G. Mundra.

" Please note that at the survey held this day on the above lot tendered by you against contract No. 56, dated 4.19.18 as the Arbitrators have in their award allowed Rs. 10½ off, we hereby reject the said lot and refuse to take delivery thereof.

" THE JIVRAJ BALLOO SPINNING AND WEAVING COMPANY, LTD."

The letter of the 25th November is in identical terms referring to the other contract. The learned Judges then held that if Clause 52 of the Regulations is looked at—it being the clause which deals with what is to happen when arbitrators, as to quality, makes certain findings—it becomes apparent that the arbitrators here could only have arrived at their judgment if they entirely misinterpreted Article 52. They based their opinion upon the case of *Landauer v. Asser* 1905 2 K.B. 184.

The law on the subject has never been more clearly stated than by Williams J in the case of *Hodgkinson v. Fernie*, 3 C.B., N.S. 189 :—

“ The law has for many years been settled, and remains so at this day, that, where a cause or matters in difference are referred to an arbitrator, whether a lawyer or a layman, he is constituted the sole and final judge of all questions both of law and of fact The only exceptions to that rule, are, cases where the award is the result of corruption or fraud, and one other, which though it is to be regretted, is now, I think, firmly established, viz., where the question of law necessarily arises on the face of the award, or upon some paper accompanying and forming part of the award. Though the propriety of this latter may very well be doubted, I think it may be considered as established.”

This view has been adhered to in many subsequent cases, and in particular in the House of Lords in *British Westinghouse Company v. Underground Electric Railways Company*, 1912, A.C. 673.

The question to be decided is : Does the error in law appear on the face of the award ? In the *British Westinghouse* case it clearly did. The arbitrator had stated a special case and got an opinion of the Divisional Court ; in making his award he stated that opinion and founded his award upon it. The opinion as given was held to be erroneous, and so there was an error in law on the face of the award. In *Landauer v. Asser* the state of affairs was different. The question was as to liability and interest on a policy of insurance effected by sellers for and on account of buyers, and the arbitrator framed his award thus :—

“ I decide that as the parties to the contract dated the 3rd November, 1903, were by the terms thereof principals thereto, their interest and liability in insurance is defined to be the value of the invoice plus 5 per cent., and that the buyers are therefore entitled to and only to the said amount, the balance one way or the other being due from or to the sellers.”

The Court of Appeal held that this entitled them to look at the contract and to come to the conclusion that the decision was erroneous in law. The case of *Landauer v. Asser* is not binding on their Lordships, and it was contended that it was wrongly decided, but in their Lordships' opinion it is not necessary to consider that point, for the present case differs from *Landauer's* case in an essential particular. In that case the legal proposition was stated in terms on which the award proceeded. In the present case, no legal proposition at all is stated as a ground of the award. The reference to the letters is only in the narrative, and even when the letters are looked at they only contain the view of one party. To make this case equiparate with that of *Landauer* the award would have to run somewhat thus :—“ In respect of the ground of rejection contained in the letters of the 11th and 25th November, and in respect of Clause 52 of the Articles, I decide that, etc.”

Now the regret expressed by Williams J. in *Hodgkinson v. Fernie* has been repeated by more than one learned Judge, and it is certainly not to be desired that the exception should be in any way extended. An error in law on the face of the award means, in their Lordships' view, that you can find in the award or a document actually incorporated thereto, as for instance, a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award and which you can then say is erroneous. It does not mean that if in a narrative a reference is made to a contention of one party that opens the door to seeing first what that contention is, and then going to the contract on which the parties' rights depend to see if that contention is sound. Here it is impossible to say, from what is shown on the face of the award, what mistake the arbitrators made. The only way that the learned judges have arrived at finding what the mistake was is by saying: "inasmuch as the arbitrators awarded so-and-so, and inasmuch as the letter shows that the buyer rejected the cotton, the arbitrators can only have arrived at that result by totally misinterpreting Clause 52." But they were entitled to give their own interpretation to Clause 52 or any other article, and the award will stand unless, on the face of it, they have tied themselves down to some special legal proposition which then, when examined, appears to be unsound. Upon this point, therefore, their Lordships think that the judgment of Pratt J. was right and the conclusion of the learned Judges of the Court of Appeal erroneous.

The counsel for the respondents then argued the other point, which the learned Judges of the Court of Appeal found it unnecessary to decide, and which the Trial Judge decided against them. He said that upon a proper construction of the contract the moment his client rejected the cotton in virtue of the decision by the arbitrators as to quality, he was entitled to do so, and the contract was repudiated or came to an end; that then the arbitration clause could no longer be appealed to, and he said that inasmuch as this was a plea to jurisdiction the Court ought to decide it.

Their Lordships think that this argument is based upon a confusion of thought. The question of whether an arbitrator acts within his jurisdiction is, of course, for the Court to decide, but whether the arbitrator acts within his jurisdiction or not depends solely upon the clause of reference. It is, therefore, for the Court to decide in this case whether the dispute which has arisen is a dispute covered by Clause 13 of the Articles. It clearly is so, because it is undoubtedly a dispute arising out of or in relation to a contract made subject to the rules and regulations of the Cotton Trade Association. Now that clause refers to the arbitrator the whole question whether it depends on law or on fact, with the exception only of dispute as to quality. It is, therefore, for the arbitrator and not for the Court to decide what is the effect of a rejection based on an award as to quality. In

truth this point is decided in terms by the recent case of *Sanderson v. Armour* (1922 S.C.H.L. 117). It was a Scotch case, but in no way depended upon any peculiarity of the law of Scotland.

The decision of the first appeal in this sense disposes of the second appeal without further argument, as it is obvious that in that case even the reference in the narrative to the grounds of defence in the letters is absent, and there is nothing but the bare statement that a certain sum was awarded. It follows that in the first appeal the appeal must be allowed and the judgment of the Trial Judge restored; the appellants must have their costs here and in the Courts below. The second appeal must be dismissed and the respondents will have their costs.

Their Lordships will humbly advise His Majesty accordingly.

In the Privy Council.

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DELIVERED BY LORD DUNEDIN.

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