

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of The
Queensland Railway Commissioners v. Will-
cocks, from the Supreme Court of Queensland;
delivered 11th July 1893,*

Present:

THE EARL OF SELBORNE.

LORD HALSBURY.

LORD HOBHOUSE.

LORD MACNAGHTEN.

SIR RICHARD COUCH.

[*Delivered by the Earl of Selborne.*]

IN the view of their Lordships there are two points only to consider in this case:—First, whether the matters which are said to have been beyond the jurisdiction of the Arbitrators were referable under Section 52 of the General Conditions, which were attached to an Indenture of Contract entered into between the Appellants and the Respondent for the execution by the Respondent of certain works; and secondly, whether in point of fact they were referred.

Their Lordships are of opinion that the Court below was right in holding them to be referable under the 52nd Section of the Conditions. Parties may refer whatever they please, and very often they deliberately intend to prefer the judgment of Arbitrators to a decision according to law. They seem to have taken pains to exclude any objection to an Award on any ground of want of jurisdiction or excess of authority, so long as upon the face of the Conditions the matter was referable.

In the 52nd Section there is a very full enumeration of various matters, which appears to their Lordships to cover both the claim for extras and the claim for hindrance, delay, or impediment; and, unless in that Section itself, or, somewhere else by necessary implication, the matters to be referred are limited, that generality must prevail. On the face of the Section the only exception is as to "such matters or things as are not herein-before left to the decision or to be governed by the certificate of the Chief Engineer." It has not been shown that that exception applies to either of these matters: and their Lordships cannot imply, from the manner in which arbitration is mentioned in any other place, that there was meant to be any other exception. It is not under the 17th Section of the Conditions left to the absolute decision or to the certificate of the Chief Engineer whether works, claimed to be paid for as extras, are to be allowed or not. Therefore that is not within the exception; and with regard to the delay, it is manifest on the face of Section 50 that it was not meant to be left to the decision of the Chief Engineer or governed by his certificate. Under both those Sections there were certain conditions stated which *primâ facie* ought to have been complied with by the Contractor, in order to entitle him to make a claim for extras, or on account of delay; and if the Arbitrator thought those conditions had not been complied with, and that there was no excuse for non-compliance which he ought to entertain, doubtless it would have been right for him to disallow the claims. But that is not the question before their Lordships. In such a case the parties are precluded, in express terms, from objecting to the Arbitrator's jurisdiction; and whether he went right or went wrong is not now the question, but whether the matter was referable.

Their Lordships are clearly of opinion that it was referable.

The question whether it was referred or not depends upon the letters which passed between the parties. The Contractor, when sending in the particulars of his claim to the Company, which included the matters in question, required to have them referred under the 54th Section of the Conditions. To that a letter in reply was sent by the Company. It appears to their Lordships that this letter is itself to be reasonably construed, and that the true construction of it (especially taking into account what followed, that the Company themselves took measures to have an Umpire appointed "in accordance with the General Conditions of Contract") is this:—They agree that the questions between the parties, described as the unsettled claims of the Contractor, shall be referred under the General Conditions of the Contract. In order to have that reference carried through they proceed to appoint their Arbitrator, as the Contractor had appointed his. But they think it right to add that they mean to dispute and object to the right or power of the Arbitrators "to hear, determine, or make any "Award" concerning certain claims, including those in question; as they did not consider those claims properly referable to Arbitration. The word "hear," no doubt, shows an objection to the Arbitrators doing anything in the matter, but it appears to their Lordships that on the true construction of the sentence it is merely a notice by the Company of an objection which they intend to take before the Arbitrators, and if necessary before any Court, to the competency of the Arbitrators, under such a Reference as is authorised by the General Conditions of the Contract, to enter into those particular matters. There was therefore, in their Lordships' opinion,

intended to be, and there was sufficiently in substance, a reference such as was contemplated by the Conditions; and the only question is whether the General Conditions of the Contract authorised a reference in regard to these particular things or not, which, as has already been said, their Lordships think it did.

Their Lordships will therefore humbly advise Her Majesty to dismiss this Appeal with costs.