

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Buta v. The Municipal Committee of Lahore, from the Chief Court of the Punjab ; delivered the 2nd August 1902.*

Present at the Hearing :

LORD DAVEY.

SIR FORD NORTH.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Sir Andrew Scoble.*]

Buta, the Plaintiff and Appellant, is a contractor of Lahore who, in 1887, obtained a contract from the Defendants, the Municipal Committee of that city, for the building of a Town Hall, to be called the Victoria Jubilee Hall, in commemoration of Her late Majesty's Jubilee. The building was completed in February 1890, but when the final accounts came to be settled disputes arose between the parties which were referred to arbitration by an agreement dated the 18th February 1891. The material portion of this agreement is as follows:—“ And whereas certain differences and  
“ disputes have arisen and are still pending  
“ between the said parties so far as relate to measurements of work done and to the rates to be  
“ paid for the same where such rates have not  
“ been agreed upon between the said parties:  
“ And whereas the said parties hereto for the  
“ purpose of finally adjusting the said matters  
“ in difference and dispute between them  
“ have mutually agreed to refer the same to

“ the judgment determination and award of  
 “ Mr. John C. Hayward and Mr. P. Ross of the  
 “ North-Western Railway . . . .

“ Now these presents witness that in pursuance  
 “ of the said agreement they the said parties  
 “ hereto do hereby severally and respectively  
 “ covenant and agree that they and their  
 “ respective heirs legal representatives and  
 “ successors shall and will duly and fully abide by  
 “ observe and perform the award order arbitra-  
 “ ment and final determination of the said John  
 “ C. Hayward and P. Ross . . . . of and con-  
 “ cerning all the matters and things, claims and  
 “ demands in difference and dispute between the  
 “ parties hereto, that is to say, so far as such  
 “ matters and things, claims and demands relate  
 “ to measurements of work done and to the rates  
 “ to be paid for the same where such rates have  
 “ not been agreed upon between the said parties  
 “ hereto ;

“ And also all other matters in difference  
 “ controversies claims and demands whatever  
 “ now subsisting or depending by or between the  
 “ said parties or in anywise incident or relating  
 “ thereto.”

It was also agreed that the award should be made a Rule of Court under the provisions of Chapter XXXVII. of the Civil Procedure Code.

The arbitrators made and published their award on the 30th June 1891 and on the same day the Plaintiff wrote to the Defendants' Secretary a letter requesting that he might be “ granted (1)  
 “ a copy of the award given by the arbitrators ;  
 “ (2) a copy of the details furnished by the arbit-  
 “ rators in respect of all the items ; and (3) a  
 “ copy of the order given by Mr. Sinclair, Junior  
 “ Government Advocate, in reply to the letter  
 “ addressed to him by the Secretary of the  
 “ Municipal Committee, under which a decision  
 “ was passed as to the powers of the arbitrators.”

This letter is of importance in connection with his subsequent proceedings.

On the 23rd July 1891 the Defendants accepted the award, and on the 30th July, their Secretary wrote to the Plaintiff that he was prepared to hand him "a cheque for the balance of the amount due, after deducting from the amount of the award the sums that have been paid to you already." Three days before the date of this letter, the Plaintiff had written to the arbitrators, making a number of objections to the award, and stating that unless he got a "sound and satisfactory answer" to his objections, he was not prepared to accept the award. In this letter, there is no suggestion of misconduct on the part of the arbitrators.

On the 31st August 1891 the Defendants applied to have the award filed in the Court of the District Judge of Lahore, and while this application was pending, on the 25th April 1892, they paid into Court the sum of Rs. 10,395. 12. 3 which they alleged to be the balance due to the Plaintiff under the award of the arbitrators. This sum was paid by the Court to the Plaintiff. The application to file the award was afterwards withdrawn, apparently at the suggestion of the Court, with liberty to the Defendants to file a fresh application if necessary.

On the 1st November 1893 the Plaintiff filed his plaint in the suit now under appeal, "for adjustment of accounts and recovery of the money that may be found due to him" for work done and materials supplied under the contract of 1887, for additional work done outside the contract, and for damages. In his plaint no reference was made to the arbitration and award, but in their written statement, the Defendants relied upon it as an answer to the greater part of the demand, and they disputed the claim for damages. The Plaintiff, by his replication, challenged the award on the ground that

“ the arbitrators exceeded their jurisdiction and  
 “ were guilty of misconduct ” and that “ if valid,  
 “ it was so only to the extent of the matters with  
 “ which the arbitrators dealt.”

The material issue was as to the validity of the award, and it now becomes necessary to state, as briefly as may be, the proceedings of the arbitrators, and the form which their award ultimately took.

The first question which the arbitrators had to determine was the scope of the reference, which was primarily to determine the matters in difference between the parties “ so far as such matters “ relate to measurements of work done, and to “ the rates to be paid for the same where such “ rates have not been agreed upon between “ the parties.” This was clear enough, but the agreement of reference further referred to them “ all other matters in difference controversies “ claims and demands whatever now subsisting “ or depending by or between the said parties or “ in anywise incident or relating thereto,” and being not unnaturally uncertain as to the meaning of these words, the arbitrators wrote to the Defendants’ secretary, on the 25th May 1891, asking for an opinion “ whether this clause “ is to be taken as a distinct clause of agreement “ or is it subordinate to matters preceding it ? ” The Secretary, on the following day, wrote to Mr. Sinclair, the barrister who had prepared the agreement, asking him to “ be so good as to state “ what the clause in question is intended to “ convey ”; and on the 18th June Mr. Sinclair wrote that the clause “ merely covers any in- “ cidental or minor matters arising out of the “ main subject of the reference to arbitration, “ viz. (1) measurements; (2) rates where not “ fixed, and must be taken and construed “ accordingly.” This correspondence does not appear to have been communicated to the Plaintiff until after the award was made, and

the omission to do this is one of the acts of misconduct charged against the arbitrators. Upon this point their Lordships consider it sufficient to repeat what was said by Lord Selborne in delivering the judgment of this Committee in *Rolland v. Cassidy* (L.R. 13 App. Cas. 777),—“ It would be prudent and discreet  
 “ for arbitrators, when they desire to put them-  
 “ selves on the best footing of information as to  
 “ matters of law to ask all the parties to be  
 “ present when they communicate with any  
 “ gentleman whom they may see upon that  
 “ subject. But if they cannot be shown to have  
 “ acted with improper partiality or for any other  
 “ purpose than that of being correctly informed  
 “ about the law, and avoiding mistakes of law,  
 “ and if they cannot be shown to have been misled  
 “ as to the law, it seems an extraordinary thing  
 “ . . . . if they, having been rightly advised as  
 “ to the law, and having taken all the steps  
 “ which they did take for the sole purpose of  
 “ getting correct information as to the law, that  
 “ should be a ground for setting aside the award.”  
 In this case their Lordships are satisfied that though there may have been an error of judgment on the part of the arbitrators, there is no ground for impeaching the good faith of any of the parties concerned, or the correctness of the opinion given by the Counsel consulted.

Another ground of misconduct alleged against the arbitrators was that Mr. Hayward, one of them, delegated his duty to his son and employed him to take the measurements instead of taking them himself. On this point, the evidence of Mr. Ross, the surviving arbitrator (Mr. Hayward having died before the institution of the suit) is that “ Mr. Hayward was present when the  
 “ measurements were taken, except once, and he  
 “ was present throughout the enquiry, except  
 “ once, which was towards the end of the enquiry

“ . . . Mr. Hayward was responsible for the  
 “ measurements. . . . I worked out quantities  
 “ myself. If Mr. Hayward’s and my calculations  
 “ differed, we went through the details, and saw  
 “ where the error lay. . . . If the quantities did  
 “ not agree we went into the calculation of each  
 “ item.” It is plain from this evidence that the  
 parties had the benefit of Mr. Hayward’s experi-  
 ence and judgment on the matters referred to  
 him, and there is no doubt that an arbitrator  
 may delegate to a third person the perform-  
 ance of acts of a ministerial character, which  
 is at most, all that Mr. Hayward did in this  
 case.

The charge of misconduct against the arbitra-  
 tors therefore fails, and the form of the award  
 must next be considered. It is printed in the  
 Record as Exhibit D 1, and appears to consist of  
 two parts—the first of which is headed “ Abstract  
 “ of cost of Victoria Jubilee Hall, Lahore ” and  
 gives the detailed measurements and rates allowed  
 by the arbitrators with a column of “ remarks ”  
 showing in some cases the basis of their decision ;  
 and the second of which is headed “ Arbitrators’  
 “ Award ” and concludes in these terms—“ We  
 “ award and adjudge that the Municipal Com-  
 “ mittee do pay to Buta contractor the sum of  
 “ Rs. 58,876. 8. 6 only as the total value of the  
 “ work done.” It may here be noted that the  
 amount thus awarded is shown in the first part  
 of the exhibit as the total resulting from the  
 calculation of the quantities ascertained, at the  
 rates allowed by the arbitrators.

It was contended before their Lordships that  
 the second part of Exhibit D 1 must alone be  
 looked at as constituting the award, and that if  
 so, it was manifestly in excess of the authority  
 given to the arbitrators who were empowered  
 only to settle measurements and rates, and not to  
 calculate the sum due or to direct payment of

the value of the work done. But their Lordships are unable to accede to this argument. The surviving arbitrator Mr. Ross says in cross-examination by Plaintiff's Counsel—"Exhibit D I" is the award in question. . . . The statement "showing details of the amount awarded to the Plaintiff is annexed to the award. It is part of the award and was so intended by us. It shows in separate columns the quantities and rates fixed by us after enquiry." And another witness Mr. Bull, Municipal Engineer at Lahore, who was present when the award was published, says:—"The arbitrators had a figured statement, which was read out to Plaintiff. It was read out in English, and I think Mr. Hayward's interpreter interpreted to Plaintiff. This was after the award had been signed. They took ten or fifteen minutes in interpreting to Plaintiff. I am quite positive that the detailed statement was translated." That the Plaintiff knew of this detailed statement is shown by his letter asking for a copy of it to which reference has already been made, and which was written on the same day that the award was published.

Their Lordships have come to the conclusion that they must regard the the whole of Exhibit D I as constituting the award, and this disposes of a great deal of the technical argument that was addressed to them with regard to the validity of the award, as that portion of the award which relates to the "measurements of work done and the rates to be paid for the same where such rates have not been agreed upon between the parties" is clearly separable from that portion of the award which goes beyond the strict terms of the agreement of reference. They see no reason to doubt that the arbitrators came to an honest determination upon the specific matters referred to them, and any faulty direction they

may have given in excess of their authority may be treated as null.

The next objection raised on the part of the Plaintiff to the validity of the award is that the arbitrators failed to allow for certain portions of the work done, and that in two instances they lowered the rates agreed on by the parties. In the judgment of the learned Judge of the Chief Court of the Punjab, before whom this case came on appeal, the evidence on these points is very carefully examined, with the result that it was found that the items alleged to have been omitted were included in other items of which they formed only a subsidiary portion, and for which rates were allowed; and that in the cases in which the rates were said to have been lowered, no rates had been agreed upon, and the matter was in the discretion of the arbitrators. Their Lordships see no reason to dissent from these conclusions.

With regard to the damages claimed in the plaint, these fall under three heads. In the first place, the Plaintiff claims that he was entitled to exemption from octroi duty on the materials used by him in the building, but it is clear that the Defendants refused to grant him this privilege when the contract came before them for ratification, and that he acquiesced in their decision. In the second place, he claims damages on account of loss suffered by him on account of the delay of the Defendants in putting up certain girders, and for expenses incurred by him in clearing up the building after completion. It is unnecessary to examine the evidence on these points as both the District Judge and the Chief Court have found that this claim is barred by limitation. In the third place, he claims interest on the balance due to him. As to this both Courts have found that he "could under no circumstances be held entitled to interest on



“ the amount due under the award after the end  
“ of July 1891 when he was informed by the  
“ Municipal Secretary that the money would be  
“ paid to him if he came to the office ” ; and the  
Chief Court passed a decree in his favour for  
Rs. 1,767 under this head.

The case came before the Chief Court upon two appeals—one by the Plaintiff and one by the Defendants—against the judgment of the District Judge of Lahore by whom the suit was originally tried. The Chief Court varied the Decree of the District Judge in the Defendants' Appeal, and dismissed the Appeal of the Plaintiff. Their Lordships agree with the decision thus formulated, and they will humbly advise His Majesty that the Decrees of the Chief Court of the Punjab of the 20th July 1898 ought to be confirmed and this Appeal dismissed. The Appellant must pay the Respondents' costs of this Appeal.

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