1918.

KHEMA RUKHAD *In re.*

judgment he has just delivered to that expressed by Mr. Justice Brandt in *Queen-Empress* v. *Ahmed*[1]. The disputed agreement Exhibit 18/1 is a curious one, for it purports to treat the cattle in question as a security for the return of the wife of accused No. 1 or alternatively as damages for her non-return. If this agreement be established, the rights of the parties under it can best be determined in a civil Court. The complainant can therefore now do what he could have done in the first instance, viz., have his rights ascertained in a civil Court instead of attempting to steal a march upon his opponents by instituting criminal proceedings against them for theft of the cattle the subject of the agreement, Exhibit 18/1, charges which the trial Magistrate has held to be unfounded.

I accordingly agree with the order proposed by my learned brother.

Order set aside.

R. R.

[1] (1886) 9 Mad. 448.

ORIGINAL CIVIL.

Before Mr. Justice Beaman.

1917. *March* 30.

MAHOMEDALI ADAMJI PEERBHOY AND OTHERS (PLAINTIFFS) *v.* THE SECRETARY OF STATE FOR INDIA IN COUNCIL (DEFENDANTS).*

Land held under Sanad from Government—Resumption of land—Valuation of land to be determined by a committee appointed by Government—Construction of the word "committee"—Valuation fixed by the majority binding on parties to the Sanad—Distinction between arbitrators and valuers.

Land was held by the plaintiffs under a Sanad from Government which provided "the said ground to be at any time resumable by Government for

* O. C. J. Suit No. 935 of 1915.

public purposes, six months' notice being previously given and a just valuation of all buildings or improvements thereon being paid the owner, the amount of which a Committee appointed by Government is in such a case to determine ". The land being resumed with due notice given under the above clause the Government appointed a committee of three persons to value the compensation to be paid to the plaintiffs. Two members of the committee valued the land at Rs. 90,383, the third valuing it at Rs. 1,79,774. The Government accepted the report of the majority as the determination by the committee under the terms of the Sanad and took possession of the land after payment of Rs. 90,383 to the plaintiffs. The plaintiffs filed the present suit to recover compensation at the higher valuation, or any sum in excess of Rs. 90,383 which the Court might think just and proper.

Held, dismissing the suit (1) that it was the understanding and within the contemplation of all the parties to the Sanad that the determination of the just value of the land to be made by a committee appointed by Government should be accepted if that determination represented the concurrent opinion of a majority of the committee ; (2) that the valuation agreed upon by the majority of the committee appointed by Government was the valuation expressed to be determined and so made binding upon the parties to the resumption term in the Sanad.

Sir Adamji Peerbhoy, a Borah Mahomedan of Bombay, died on the 11th day of August 1913, leaving a will, dated the 4th day of August 1913. The plaintiffs, the sons of the deceased, were the executors of the said will.

The testator was possessed of two pieces of land situate at Mount Pleasant Road and Mount Napean Road, Bombay, bearing New Survey Nos. 7173, 7174. A portion of each of the said plots of land was held under Sanads from the Government of Bombay, dated, respectively, the 6th of May 1842 and 10th of June 1845. The resumption clause in the said Sanads provided as follows :—

" .....the said ground to be at any time resumable by Government for public purposes six months' notice being previously given and a just valuation of all buildings or improvements thereon being paid the owner the amount of which a committee appointed by Government is in such a case to determine ".

On 26th April 1910, the Collector of Bombay served on Sir Adamji Peerbhoy a notice to the effect that the Sanadi land was required for a public purpose and

1917.

MAHOMEDALI ADAMJI v. SECRETARY OF STATE FOR INDIA.

requiring him to deliver possession thereof on 1st November 1910. Sir Adamji Peerbhoy did not give up possession of the land in pursuance of the said notice, nor did he admit the claim of the Government of Bombay.

The Government of Bombay thereafter opened negotiations with Sir Adamji with a view to come to some agreement for the acquisition of the said land. Certain correspondence then took place and on the 7th of June 1911, the Collector of Bombay wrote to Sir Adamji Peerbhoy stating that the Government of Bombay had sanctioned(1) the resumption of the Sanadi portion of plot No. 7174 according to the terms of the Sanad and (2) the grant of a lease of the Sanadi portion of plot No. 7173 for a term of 999 years at a rental of 1/2% on the value of the land, such value being calculated at Rs. 15 per square yard. By his letter, dated the 9th of June 1911, addressed to the Collector of Bombay, Sir Adamji Peerbhoy confirmed the arrangement set forth in the said letter.

A committee was thereafter appointed to proceed with the determination of the amount of compensation to be awarded to Sir Adamji Peerbhoy in respect of the Sanadi land, plot No. 7174. The said committee consisted of the Collector of Bombay, the Executive Engineer and Mr. Gregson, the last-named being a nominee of Sir Adamji Peerbhoy. Sir Adamji died on 11th of August 1913 before the committee made its final report and the plaintiffs as the executors of his will, subsequently appointed Mr. N. D. Kanga as their nominee on the committee in place of Mr. Gregson.

On the 17th of August 1913, the committee made its report. It appeared from the said report and the minute of dissent referred to therein that the three members of the committee did not agree, that while the Collector

of Bombay and the Executive Engineer valued the improvement to the Sanadi portion of plot No. 7174 at Rs. 90,383, Mr. Kanga valued the same at Rs. 1,79,774. On the 1st of February 1915, the Collector of Bombay paid Rs. 90,383-5-11 to the plaintiffs and the Government took possession of the Sanadi land on the 22nd of May 1915.

The plaintiffs thereupon, after giving notice as required by section 80 of the Civil Procedure Code, filed the present suit praying that the defendants might be ordered to pay to them as executors of the will of Sir Adamji Peerbhoy Rs. 89,391, being the difference between the two valuations, or such other sum as to the Honourable Court might seem just, in excess of the amount already paid to them for the improvements on the Sanadi portion of plot bearing New Survey No. 7174. The main contention of the plaintiffs was that notwithstanding the use of the word "committee" the resumption clause read as a whole provided for an ordinary submission to arbitration, and that as the report of the committee was not unanimous the Court had power to decree a sum of Rs. 89,391 in excess of that already paid, or such other sum as the equities of the case demanded.

The defendants contended *inter alia*, that the word "committee" necessarily connoted a majority, that the determination by the majority of the committee was a determination by the committee within the meaning of the Sanad and that the valuation was "just" within the terms of the Sanad.

The suit was by consent of parties set down for trial of the following preliminary issues of law :—

1. Whether the Collector of Bombay, the Executive Engineer and Mr. Kanga were Arbitrators as alleged in para. 8 of the plaint or a committee of valuers ?

2. Whether if they were a committee of valuers the valuation of Rs. 90,383 made by two members of the committee was not the valuation determined by the committee within the meaning of the Sanad ?

1917.

MAHOMEDALI ADAMJI v. SECRETARY OF STATE FOR INDIA.

3. Whether even if the valuation of Rs. 90,383 be not a valuation determined within the meaning of the Sanad this Honourable Court has any jurisdiction to determine what amount should be paid to the plaintiffs for the improvements on the Sanadi land comprised in plot No. 7174 ?

Mulla with *Jinnah* and *Desai*, for plaintiffs.

Kanga with *Strangman* (Advocate-General), for defendants.

BEAMAN, J.:—The preliminary point I am asked to determine is in effect this: Whether the decision of a valuation committee appointed by Government under the resumption term of the plaintiffs' Sanad must be an unanimous decision of the committee or may be a majority decision ? The resumption term provides that a just valuation shall be paid and that such a valuation is to be determined by a committee appointed by Government. The defendant's contention in the briefest form is that in all such connections the word "committee" necessarily connotes a majority. No case can be given, it was argued, of any committee appointed to settle any matter as yet uncertain where by implication it was not intended that a majority decision should be the decision of the committee. On the other hand the plaintiffs contend that notwithstanding the use of the word "committee" this part of the resumption clause read as a whole provides for an ordinary submission to arbitration.

The point on a first view would seem to be of the simplest. Such difficulties as it may give rise to have been occasioned by the decisions of the English Courts that in all cases of submission to arbitrators the resultant award must be an unanimous award of the arbitrators named. And it is very difficult to discover in principle or reason any ground upon which a valid distinction could be drawn between the case of three arbitrators appointed by parties to a dispute and three

valuers. In the cases of *In re Carus-Wilson and Greene*[1] and *In re Dawdy*[2] the point of primary importance was whether the valuation of valuers was an award within the meaning of the Common Law Procedure Act and as such could be impeached in the Courts. But in the judgments, the learned Judges took particular pains to distinguish between the object with which arbitrators and valuers are appointed, respectively; and upon that ground they proceeded further to mark off the different limits within which the activities of arbitrators and valuers respectively are intended to be confined and the resultant powers of superintendence which Courts may have over them. A very little reflection upon these distinctions, which have afterwards been embodied in all authoritative text-book writings, will show that even if they are valid as far as they go they do not touch the principle of unanimity which is here in controversy. But the defendant's argument has been made to depend primarily upon the committee appointed under the resumption term being a committee of valuers and not of arbitrators. It is true that as the argument developed and it began to be perceived that this contention would not go the length of giving valid distinctions for the purposes of unanimity between the two classes of cases under examination, much greater stress was laid upon what was alleged to be the connotation of the word "committee." In the case of *United Kingdom Mutual Steamship Assurance Association* v. *Houston & Co.*,[3] Mathew J. ruled very emphatically that where it was a true case of arbitration and there had been a submission to more than one arbitrator, unless all the arbitrators concurred in the award, there could be no arbitration award at all. Now, if that be true of an arbitration committed to two or more arbitrators without

(1) (1886) 18 Q. B. D. 7. (2) (1885) 15 Q. B. D. 426.
(3) [1896] 1 Q. B. 567.

1917.

MAHOMEDALI ADAMJI v. SECRETARY OF STATE FOR INDIA.

any special provision in the case of this agreement, as I began by saying it is extremely difficult to find any ground in reason or principle why the same rule should not govern a valuation, pure and simple, committed to two or more valuers. In either case, if we start by using the word "committee" in the sense that parties to an arbitration commit the matters in difference between them to the decision of an arbitrator or body of arbitrators, there would be little difficulty in denominating that body in accordance with strict legal usage as a committee of the matters in dispute at the hands of the parties at variance. Yet so naming collectively the individual arbitrators nominated could hardly be said to take the case out of the authority of the current of English decisions upon the point. I should have thought that in every case of the kind, whether the persons concerned were arbitrators in the strict sense or mere valuers, assuming the parties relying upon their decision had committed the matters in difference or to be in difference between them to their judgment and the members were capable of yielding a majority decision, as a matter of common sense it would have been presumed that the parties intended to accept any such decision of the majority. It is easy to put cases where there may be such a submission to arbitration or appointment of valuers and no majority decision has been come to. As in the case before me the plaintiffs asked what would have been the result if each of the three members of the committee valued the property in dispute differently. Such considerations do not, in my opinion, give rise to any real difficulty. The answer is plain. In all cases of that kind, there is no majority decision of the committee, or to take the other supposition, the body of arbitrators. I am, however, wholly unable to discover, as I said, any reason which commends itself to me for applying one rule in the case of arbitration and

another in the case of a committee of valuers. I doubt much whether the defendant's main contention here, viz., that a committee connotes a majority of a committee would be sufficient. But I do emphatically think that all common sense would point to the adoption of the construction I am asked to put upon this resumption term by the defendant. I should not have had the least hesitation in doing so but for the embarrassment caused by the view taken in England of analogous cases of arbitration. There can, I think, be little doubt, however, but that the English Courts were quite satisfied with the distinctions they drew so emphatically between the cases of arbitrators proper and mere valuers, and would have employed them had it been necessary to do so to put such a decision as that which I am called upon to give here upon a different ground from such a decision as that in the case of *United Kingdom Mutual Steamship Assurance Association* v. *Houston & Co.*[1]. My own feeling is that while no such distinction upon an exhaustive analysis would be found to be valid, the real answer is that in every case of the kind in the absence of special provision, parties confiding their differences to the judgment of a body made up of an uneven number of individuals ought to be understood as implying that they would accept the decision of the majority of them. There was certainly nothing in the actual wording of the resumption term in the Sanad before me repugnant to such a construction, nor, have I the least doubt that when that Sanad was drafted it was the understanding and within the contemplation of all the parties to it that the determination of the just value of the land to be made by a committee appointed by Government should be accepted if that determination represented the concurrent opinion of a majority of such committee.

(1) [1896] 1 Q. B. 567.

1917.

MAHOMEDALI ADAMJI v. SECRETARY OF STATE FOR INDIA.

In that view, I find upon the preliminary point raised by the defendant that the valuation agreed upon by the majority of the committee appointed by Government is the valuation expressed to be determined and so made binding upon both the parties to the resumption term in the Sanad.

Upon the first preliminary issue, which is really merely introductory, I hold as a matter of form rather than substance that the three persons named therein were not arbitrators but constituted a committee of valuers contemplated in the resumption clause of the Sanad. On the second I have already found. It is unnecessary to find upon the third issue.

The suit will now be dismissed with all costs.

Solicitors for the plaintiffs: Messrs. *Edgelow, Gulabchand Wadia & Co.*

Solicitor for the defendant: Mr. *E. F. Nicholson.*

Suit dismissed.

G. G. N.

ORIGINAL CIVIL.

Before Mr. Justice Marten.

1917. *July* 3.

SIR DORABJI JAMSETJI TATA, KT. (PLAINTIFF) *v.* EDWARD F. LANCE AND OTHERS (DEFENDANTS).*

Indian Contract Act (IX of 1872), section 30—Bombay Act III of 1865, section 1—Lottery—Sanction of Government of India—Effect of sanction to save criminal prosecution—Sanction cannot override Imperial Acts or Acts of Indian Legislature defining civil law—Contract to purchase a ticket in a lottery though sanctioned by Government is void—Injunction cannot be granted in support of a void contract—Motion—Costs.

O. C. J. Suit No. 630 of 1917.