

## ORIGINAL CIVIL.

*Before Mr. Justice Heaton and Mr. Justice Marten.*

THE FORT PRESS Co., LIMITED, APPELLANTS AND DEFENDANTS v. THE MUNICIPAL CORPORATION OF THE CITY OF BOMBAY, RESPONDENTS AND PLAINTIFFS.\*

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*Land acquisition—Compensation—Binding agreement can be made between parties fixing the amount of compensation before the Collector has made his award—Offer and acceptance by letter—Contract—Specific performance of contract—Powers of Municipal Commissioner—Powers of Directors of Joint-Stock Companies—Collector—Award—Indian Contract Act (IX of 1872), sections 2 and 10—Land Acquisition Act (I of 1894), sections 6 (3) and (7), 11, 18, 25, 31, 48 and 51 (2)—The City of Bombay Municipal Act (III of 1888), sections 61 (m), 64, 69, 87, 90, 91, 92, 296 and 517—Specific Relief—Declaration, form of.*

In August 1916, the plaintiffs, the Municipal Corporation for the City of Bombay, wishing to acquire certain property belonging to the defendant Company, for the purpose of widening a street entered into negotiations with the defendants in order to arrive at the price the defendants would accept for their property. No agreement having been arrived at, the plaintiffs applied to the Government to acquire the property for them by proceedings under the Land Acquisition Act. Thereafter, on 12th July 1917, the defendants resumed negotiations with the plaintiffs. On 26th July 1917, the usual notification was published in the *Government Gazette*. On 12th September 1917, the Secretary of the defendant Company in pursuance of the previous correspondence between the parties and the interviews of their respective engineers wrote to the plaintiffs' engineer:—"The Company is willing to accept without prejudice the sum of Rs. 1,45,517 inclusive of 15 per cent. for compulsory acquisition. The amount will be subject to deductions of the capitalised dues to the Collector and of the easements of the neighbouring properties if any." The said letter was placed by the plaintiffs' engineer before the Municipal Commissioner who endorsed on it his approval of the acceptance of the offer. On the 14th September 1917, at a meeting before the Deputy Collector who held inquiry under the Land Acquisition Act, the plaintiffs' solicitor produced the letter of 12th September 1917. The defendants' engineer stated at the meeting that the term "without prejudice" in their letter had no longer any force as the Municipality had accepted the proposal of the defendants. Thereupon the Deputy Collector recorded the agreement between the parties

\* O. C. J. Appeal No. 30 of 1919 : Suit No. 358 of 1918.

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and adjourned the inquiry to determine the claims of owners of adjoining premises to easements of light and air. On the 22nd September 1917, the Directors of the Company passed a resolution approving of the letter of 12th September 1917, and noting that the said letter conveyed the acceptance of the plaintiffs' offer by the Secretary on behalf of the Company. On 23rd October 1917, the defendants through their solicitors intimated to the plaintiffs' engineer that they had withdrawn the offer made by them on the 12th September 1917. The plaintiffs' solicitors replied that there was a definite agreement concluded between the parties and that the defendants were not entitled to resile from the same. At an adjourned meeting before the Collector held on 29th January 1918, the defendants made a formal claim of Rs. 5,71,600 as compensation and the proceedings were adjourned by the Collector. The plaintiffs, thereupon sued for a declaration (1) that there was a contract binding on the defendants in terms of the letter of the 12th September 1917, which had been accepted by the plaintiffs, (2) that the defendants were not entitled to claim in the proceedings before the Collector any sum for compensation other than or beyond Rs. 1,45,517 and (3) that if the Collector awarded as compensation more than Rs. 1,45,517 the excess amount would belong to the plaintiffs and if he awarded less the plaintiffs were bound to pay Rs. 1,45,517. The plaintiffs further prayed for an injunction restraining the defendants from claiming as compensation in the said proceedings more than Rs. 1,45,517. The defendants contended that their letter of 12th September 1917, was not an offer but was an invitation to the plaintiffs to make an offer to the defendants, that the Municipal Commissioner's endorsement was neither an offer nor an acceptance of the offer, and that the acceptance of their offer if any was not communicated to them or to their duly authorised agent. The defendants further pleaded in the alternative that if there was an agreement as alleged by the plaintiffs it was void and of no effect for want of mutuality, that neither party was bound by it as under section 48 of the Land Acquisition Act the Government could withdraw from the compulsory acquisition altogether if they liked, and lastly that neither the Directors nor the Secretary nor the defendant Company had any power to enter any agreement for the sale of the said property. The trial Court decreed the plaintiffs' claim in terms of the declarations prayed for, holding that in view of the previous negotiations and the correspondence in September 1917 there was a concluded agreement that the defendants would accept Rs. 1,45,517 for the property in question, irrespective of the proceedings before the Collector and that the agreement was not *ultra vires* the Directors.

*Held*, confirming the decree of the trial Court, that the defendant's letter of the 12th September 1917, was an offer and not a mere invitation to offer and that the offer and the acceptance thereof had been made by the duly authorised agents of the defendants and the plaintiffs, respectively.

*Held*, further, that the offer and acceptance amounted to an agreement definitely fixing the compensation as between the parties themselves whatever sum may be ultimately awarded by the Collector and with an obligation on either party to refund any excess or make good any deficiency as the case might be and that this agreement was a "contract" within the meaning of sections 2 and 10 of the Indian Contract Act, which was capable of being specifically enforced against the defendants.

*Held*, also, that the agreement was not wanting in mutuality nor rendered nugatory as between the parties merely because power of withdrawal was reserved to the Government under section 48 of the Land Acquisition Act.

The dicta of Bowen L. J. in *The Moorcock*<sup>(1)</sup>, referred to.

APPEAL from the decision of Macleod J. decreeing plaintiffs' suit for specific performance of contract.

In August 1916, the plaintiffs, the Municipal Corporation for the City of Bombay, were desirous of acquiring certain property in Armenian Lane, Fort, belonging to the defendants for the purpose of a Development Scheme. The original intention was that the plaintiffs should purchase the property from the defendants and in pursuance thereof negotiations were entered into in order to arrive at the price the defendants would accept for their property. On the 15th August 1916, the Executive Engineer of the plaintiffs wrote to the defendants' Secretary suggesting an interview to settle the amount of compensation to be paid for the defendants' property. On the 19th August 1916, the Directors by resolution appointed two of their members to dispose of the matter with power to select any Civil Engineer and to carry out the work through him. By a resolution of the 23rd September 1916, the Directors appointed the firm of Vakde and Chinoy to settle the rate of the land and the price &c., of the buildings. Mr. Vakde was to supervise the said work.

As, however, there was delay in concluding the agreement the plaintiffs applied to the Government to acquire

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<sup>(1)</sup> (1889) 14 P. D. 64 at p. 68.

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the property for them by proceedings under the Land Acquisition Act.

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Thereupon, by a resolution, dated 1st June 1917, the Directors resolved that in accordance with the estimate made by Mr. Vakde in connection with the plot of the land the figures of Rs. 1,41,100 be accepted and correspondence should be opened with the Municipality in the matter.

On the 13th July 1917, the Engineers Messrs. Vakde and Chinoy reported that Mr. Vakde had, the previous day, interviewed the Executive Engineer who agreed to pay subject to the sanction of the Municipal Commissioner Rs. 1,44,517 inclusive of all interests including 15 per cent. for compulsory acquisition. The amount was subject to deductions of the capitalised dues of the Collector of Fazindars as well as the claims of easements of neighbouring properties if any. The defendants were to be allowed to pull down the chimney on this land and remove the materials.

By a resolution of 14th July 1917, Mr. Vakde was asked to raise the said sum of Rs. 1,44,517 to 1,50,000 and to effect a settlement with the Executive Engineer for that amount.

On the 27th August 1917, after the land had been notified for acquisition the previous day, the Executive Engineer wrote to Messrs. Vakde and Chinoy as follows :—

“With reference to the last interview your Mr. Vakde had with me on the 12th July *re* the compensation to be paid to your clients for the above property, I have the honour to inquire whether your clients have accepted the offer made by me without prejudice and subject to the sanction of the Municipal Commissioner.”

On 31st August 1917, the Directors after recording that Mr. Divecha on behalf of Messrs. Vakde and Chinoy

informed the Board that the Municipality would not pay more than Rs. 1,44,517, resolved that the said sum might be accepted.

On the 5th September 1917, Mr. Vakde saw the Executive Engineer when he suggested that the defendants might be given Rs. 1,000 in addition to the Rs. 1,44,517 in lieu of their being allowed to remove the chimney and the Executive Engineer agreed to this proposal. The same day Messrs. Vakde and Chinoy wrote to the Secretary informing him of the result of this interview with the Executive Engineer and requesting the Board to inform the Executive Engineer of their accepting the offer in terms of the letter of 13th July with the alternative they chose. The same day also the defendants' Secretary wrote to Messrs. Vakde and Chinoy enclosing the Collector's Notice of the 22nd August 1917, and asking them to attend before the Collector on the 14th September 1917, and do the needful in the matter on behalf of the Company as already instructed by the Board.

On the 7th September 1917, the Secretary sent a circular to the Directors annexing a copy of Messrs. Vakde and Chinoy's letter, suggesting that it was better to accept the offer of Rs. 1,000 for the chimney instead of removing it and, if that was accepted requesting sanction might be accorded for the writing of a letter to the Municipality accepting the offer including the chimney of Rs. 1,45,517 from which would be deducted easements, Collector's dues, &c., in accordance with the rules. The circular was initialled by four of the Directors, the fifth being away.

The Secretary accordingly wrote to the Executive Engineer on the 12th September 1917, as follows :—

“ With reference to the interview our Engineer Mr. Vakde had with you I have the honour to state that the Company is willing to accept without

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prejudice the sum of Rs. 1,45,517 inclusive of 15 per cent. for compulsory acquisition and cost of the chimney. The amount will be subject to deduction of the capitalised dues to the Collector and of the easements of the neighbouring properties, if any.

The Executive Engineer of the Municipality showed the letter to the Municipal Commissioner who endorsed it as follows :—

“Discussed with Executive Engineer. Compared figures with original estimate. I approve of the case being settled on the conditions stated in the last letter from the Fort Press Company for Rs. 1,45,517.”

On the 14th September 1917, a meeting was held before the Deputy Collector who held inquiry under the Land Acquisition Act. Mr. Crawford solicitor appeared for the Municipality and Mr. Vakde appeared to represent the proprietors of the Bombay Fort Press Company. Mr. Vakde put in a conveyance and certain Collector's bills relating to the property and Mr. Crawford produced the defendants' letter of the 12th September with the Municipal Commissioner's endorsement. Thereupon Mr. Vakde stated that the term in the defendants' letter “without prejudice” had no longer any force as the Municipality had accepted the proposal. The agreement was recorded by the Deputy Collector.

The inquiry before the Deputy Collector was adjourned to the 10th October 1917, to determine the claims of owners of adjoining premises to easements of light and air.

On the 22nd September 1917, the Directors of the defendant Company resolved at a Board meeting as follows :—

“In the matter of the plot of the Company's land situated within the Fort, a notice, dated the 22nd August 1917, from the Collector has been received and the hearing in connection with the acquisition of the said property is fixed for the 10th of October. Therefore Mr. Vakde is sent to do the needful.”

At the same Board meeting another resolution was passed which, after referring to the amount of Rs. 1,45,517 having been fixed between Mr. Vakde and the Executive Engineer as also to Messrs. Vakde and Chinoy's letter of the 5th September informing the Board thereof and to the Secretary's circular of the 7th September, proceeded as follows:—

"In accordance with the same an official letter was written on the date the 12th September to the Executive Engineer conveying the acceptance of the said offer on behalf of the Company. The same is hereby noted."

At the meeting on the 10th October one claimant appeared to claim compensation for loss of easement over the property. The Collector noted that Mr. Vakde held no power of attorney from the defendants and so could not legally represent them. The proceedings were adjourned to the 31st October. The same day Messrs. Vakde and Chinoy informed the defendants of what had occurred before the Collector.

On the 23rd October 1917, Messrs. Craigie, Blunt and Caroe, solicitors for the defendants, wrote to the plaintiffs' Engineer:—

"With reference to the letter, dated the 12th September from the Secretary of our clients to you we are instructed by our clients to withdraw on their behalf the offer made by them in that letter for the sale to the Municipality of the property in Armenian Lane at Rs. 1,45,517 and accordingly beg to do so hereby."

On 31st October 1917, the plaintiffs' solicitors replied to the defendants' solicitors as follows:—

*Re*: Acquisition of property of the Fort Press Co., Limited at Armenian Lane, Fort, Bombay.

Your letter of the 23rd instant addressed to the Executive Engineer, Municipality, has been placed in our hands for reply.

It is not open to your clients to withdraw from their offer of the 12th September last which was accepted and acted on long before your letter

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was received. That offer was made with the full knowledge that the acquisition proceedings were fixed for the 14th September before the Deputy Collector and your clients' Engineer Mr. Vakde attended the inquiry on that day when your clients' letter of the 12th September and the acceptance of that offer on behalf of the Municipality were recorded by the Deputy Collector with the assent of Mr. Vakde who produced your clients' documents of title which were also recorded and it then only remained for the Collector, after dealing with any claims to easements that might be made by owners of adjoining properties, to apportion the compensation between your clients and such other claimants, if any, and the meeting was adjourned till the 10th instant in view to such claims being brought in and considered.

At the adjourned meeting on the 10th instant Mr. Vakde was again present on behalf of your client when one of the adjoining owners asserted a claim and was examined in support of it and the proceedings were again adjourned till today to enable this claimant to formulate his claim, and meanwhile special notice to be given by the Collector to the owner of another property who was away from Bombay but who it appeared might have some claim.

To-day the matter was again adjourned to consider claims to easements.

We request you under the above circumstances to inform us on what grounds your clients now consider they are entitled to withdraw from the terms stated in their letter of the 12th ultimo.

Adjourned meetings were held before the Deputy Collector on 31st October, 22nd November, 29th November and 17th December 1917.

On 29th January 1917, the following notice of claim was sent to the Collector by the Secretary of the defendant Company:—

The Collector of Bombay,  
 Bombay.

*Re* : Acquisition of land at Fort under Plot No. IV.

Please note that the Fort Press Co., Ltd., the owners of the property mentioned in the notice, dated the 27th August 1917, claim a sum of Rs. 5,71,660-0-0 as compensation for the acquisition of the property in question.

The Fort Press Co., Ltd, also object to the measurement made under section 8 of the Act.

Secretary,

The Fort Press Co., Ltd.

The same day, an inquiry was held before the Collector and the following note was made by him :—

“Present parties as before.

Mr. Kanga appears for the Fort Press Company. He says that in this case no agreement is arrived at. But if it is, this is not the place to decide that matter. He may therefore be allowed to lead evidence and the award may be made under section 21.

He says that the compensation should be Rs. 5,71,660. He refers to Appeal No. 32 of 1917 decided on 11th December 1917 which shows that consent awards are no good for evidence as to proper value. Mr. Kanga puts in the Secretary's letter, dated 29th January 1918, as to the Company's claim.

Mr. Crawford objects to that letter going in unless I decide that the offer and acceptance in Exhibit 3 does not hold good and that even if it does it is proper to record further evidence in elucidation of the amount stated therein.”

The proceedings were adjourned by the Collector.

On the 14th March 1918, the plaintiffs filed this suit praying, *inter alia*, (1) that it might be declared there was a contract binding on the defendants in terms of the letter of the 12th September 1917 accepted by the plaintiffs, (2) that it might be declared that the defendants were not entitled to claim in the said proceedings before the Collector under the Land Acquisition Act any sum for compensation other than Rs. 1,45,517, or to proceed in the said proceedings on any other footing, (3) that it might be declared that the defendants were not entitled to any compensation in the said Land Acquisition Act beyond Rs. 1,45,517 after allowing thereout for deductions of the capitalised dues to the Collector and of the easements of the neighbouring properties if any, (4) that it might be declared that if the Collector awarded as compensation more than Rs. 1,45,517 the excess amount would belong to the plaintiffs and if he awarded less the plaintiffs were bound to pay Rs. 1,45,517, (5) that the defendants might be restrained by injunction from claiming before Collector in the Land Acquisition Act proceedings as compensation more than Rs. 1,45,517

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and from proceeding in the said proceedings otherwise than on that footing and (6) that the defendants might be restrained by injunction from committing any breach of their agreement aforesaid and from demanding or receiving more compensation from the Government and from the plaintiffs than Rs. 1,45,517 after deducting the claims allowed to other claimants thereout.

The defendants in their written statement denied that by the letter of 12th September 1917 they made to the plaintiffs the proposal alleged to be contained therein as to what they were willing to accept for their premises or any proposal at all, and alleged that the said letter was an invitation to the plaintiffs to make a proposal to the defendants and contained a general statement of the terms on which the defendants were minded to deal with the plaintiffs. The defendants also denied that they made any proposal or that the Municipal Commissioner approved of the acceptance of the proposal. They contended that the Municipal Commissioner's endorsement was neither an offer nor an acceptance of any offer, and without prejudice to this pleading, submitted that if they did make an offer the acceptance thereof was not communicated to them as Mr. Vakde was not their authorised agent to receive any communication of the acceptance of an offer. The defendants further contended that as there was no binding agreement between the parties they were entitled to claim Rs. 5,71,660 as compensation and to insist on the Collector proceeding with the enquiry under the Land Acquisition Act upon that basis. Lastly, the defendants pleaded in the alternative that if there was an agreement as alleged by the plaintiffs it was void and of no effect, that neither party was bound by it, and that neither the Directors nor the Secretary nor the defendant Company had any power to enter into an agreement for the sale of the said premises.

On these pleadings the following issues were raised :—

- (1) Whether the defendants' letter of the 12th September 1917 was an offer as alleged in para. 8 of the plaint?
- (2) Whether the said letter was not an invitation to plaintiffs to make a proposal to defendants?
- (3) Whether if the said letter contained an offer, the same was accepted by the plaintiffs?
- (4) Whether if the said letter was an offer which was accepted by the plaintiffs the acceptance was communicated to the defendants?
- (5) Whether Mr. Vakde was the authorised agent of the defendants to receive any communication of the acceptance?
- (6) Whether there was any concluded agreement between the parties?
- (7) Whether the agreement, if any, was not merely arrived at for the purpose of proceedings under the Land Acquisition Act, and if so, whether such agreement can be specifically enforced by the plaintiffs against the defendants?
- (8) Whether the Directors or the Secretary had any power to enter into the alleged agreement with the plaintiffs?

His Lordship, Macleod J. held that there was a concluded agreement that the defendants would accept Rs. 1,45,517 for their property, irrespective of the proceedings before the Collector, and that this agreement was not *ultra vires* the Directors as the land in question was not used for the purpose of the Company's business but was surplus assets of the Company invested in a particular way and that the nature of the investment could be changed without consulting the share-holders. The learned Judge accordingly found all the issues in favour of the plaintiffs and granted a declaration in terms of (1), (2) and 3 of the prayer in the plaint. The injunction prayed for was not granted but his Lordship provided for the very improbable contingency of the Collector awarding a higher or a lower amount than that agreed upon by declaring "that if a higher amount

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is awarded the excess shall belong to the plaintiffs and if a lower, the deficiency shall be paid by the plaintiffs to the defendants."

The following is the material portion of his Lordship's judgment :—

MACLEOD, J. :—It is necessary first to define the position of Government when an application has been made to them by a Company or a public body to acquire under the provisions of the Land Acquisition Act property which is required for a public purpose. Under section 7 of the Act after it has been notified that the property in question is required for a public purpose, the Local Government shall direct the Collector to take order for the acquisition of the land. Notices to the persons interested are then issued, and the Collector holds an inquiry under section 11.

The acquiring body has to pay all the expenses of the acquisition and though the Collector is entitled to make any inquiries he thinks necessary regarding the value of the land as a rule the claimants and the acquiring body appear before him as contestants. When the award is made the Collector may take possession of the land and thereupon it vests absolutely in the Government, while the award amounts to an offer on behalf of Government to pay the compensation awarded. The claimants can either accept the award or have the matter referred to the Court. It is not suggested that the Collector is in any way concerned with negotiations which may take place between the claimants and the acquiring body during the pendency of the proceedings before him, and it would be still open to him even if both parties appeared before him and stated they had agreed upon the compensation to be awarded, to award a higher amount. It is inconceivable however that the Collector in proceedings

under the Act would in those circumstances award a higher amount than that agreed upon.

But the question in the case is simply one of contract between the plaintiffs and the defendants. Has there been a concluded agreement? If so, what are its terms, and is it a contract of which the Court will order specific performance?

It has been argued that even if the parties came to terms regarding the amount of compensation and the Collector awarded the amount agreed upon that would not preclude the claimant from asking for a reference to the Court under section 18 of the Act. That depends entirely upon the facts in each case.

It is obvious that the parties might agree to ask the Collector to make an award for a particular amount reserving the right of the claimant to ask for a reference. Though again it is difficult to see what possible object either a claimant or an acquiring body could have in coming to such an agreement. It would be in the interests of both that if no final agreement could be arrived at, the inexpensive proceedings before the Collector should continue so that he should arrive at a decision on the merits as to the value of the land. It appears to me that if the parties come to an agreement as to the compensation without attaching any conditions thereto, they must be taken in the absence of special conditions as intending that the agreement as between themselves shall be final if either party intended that it should be conditional he should have said so. I may take it as common knowledge that the City of Bombay Improvement Trust, which has been constantly engaged in the compulsory acquisition of land for the last twenty years, in a very large number of cases come to terms with the owners of lands notified for acquisition and I have no doubt other acquiring bodies such as the present plaintiffs and the Railway

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Companies have also come to such agreements during all the years the Land Acquisition Act has been in force. It is certainly strange therefore that a similar question has never come up before the Courts for decision and it is not unreasonable to suppose that it has not occurred to any party to such an agreement that it was open to him to resile from it, by asking either the Collector or the Court to award a higher amount.

Mr. Kanga argued on the authority of a passage in an unreported judgment of the Appeal Court that such agreements were not final. The question in that appeal was as regards the market value of land, and certain agreements in other cases entered into between the claimants and the acquiring body were relied upon as instances for the purpose of fixing the market value. The Court rejected them as unreliable on the ground apparently that the amount fixed by agreement might be altered on reference to the Court. Admittedly the passage relied upon by Mr. Kanga was *obiter* and in any event could not possibly be an authority on the question I have to decide in this case, whether this particular contract which has been set up by the plaintiffs was concluded and binding upon the defendants.

Owing to the loose phraseology adopted in the documents from which the alleged agreement has to be extracted some confusion has arisen, but I may take it that the Executive Engineer and Vakde were the respective agents of the parties to conduct the negotiations, neither of them having authority to conclude an agreement.

On the 12th July, the Executive Engineer made an offer to Vakde of Rs. 1,44,517 excluding the chimney.

On the 31st August, after the property had been notified for acquisition, the defendants authorised Messrs. Vakde and Chinoy to accept the offer.

On the 5th September, an amendment was proposed making the offer over for Rs. 1,45,517 including the chimney.

On the 7th September, the Directors authorised their Secretary to accept this offer, and on the 12th September the Secretary wrote accepting the offer. How any one could possibly interpret that letter as an invitation to the plaintiffs to make a proposal is beyond my powers of imagination. The words "without prejudice" are peculiar. As a matter of fact Mr. Kanga admitted they could have no meaning. From curiosity I asked Mr. Maganlal what he did mean by them and he said "that was for guarding the interests of the Company", the acceptance was not binding until the words were withdrawn. Mr. Maganlal had no authority to use those words and in any event Mr. Vakde was perfectly correct when he told the Deputy Collector that as the Municipality had accepted the offer they no longer had any force. That letter of the 12th September may be read as in effect saying to the Executive Engineer, "the defendant Company is willing to accept Rs. 1,45,517, if you as agent for the Municipality have authority to offer Rs. 1,45,517", or "the defendant company is willing to accept Rs. 1,45,517 if the Municipal Commissioner is willing to pay that amount". The defendants were entitled to know whether the Municipal Commissioner had sanctioned the payment. When Mr. Crawford told Mr. Vakde that the Commissioner had sanctioned the agreement, the plaintiffs had done all that was required of them, and admittedly it was Mr. Vakde's duty, as the agent of the defendants authorised to act for them in the matter, to inform them of the Municipal Commissioner's sanction. I am satisfied Mr. Vakde did inform Mr. Maganlal. He has sworn, he did, he must have seen Mr. Maganlal on the 14th September or a day or two later when he told him

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the proceedings before the Collector were adjourned to the 10th October and it would certainly be most improbable that he did not then tell Maganlal that the amount of the compensation had been sanctioned. It is quite possible that Mr. Maganlal omitted to inform the Directors of this though he must have told them about the adjournment to the 10th October. And when he said he did not see Mr. Vakde between the 14th September and 23rd October I am sure his memory was at fault.

In my opinion therefore taking into consideration the previous negotiations and the correspondence in September, there was a concluded agreement that the defendants would accept Rs. 1,45,517 for the property in question, irrespective of the proceedings before the Collector, and I may safely assume that if on the 10th October the plaintiffs had announced that they were going to ask the Collector to award a lesser sum, the defendants would have at once denounced such conduct as a breach of the agreement.

Then it has been argued that such an agreement was *ultra vires* the Directors. It is quite possible that if the whole of the Company's property was to be acquired so that it would be no longer possible for them to continue the existing business of the Company without acquiring new premises the Directors might have to consult the share-holders, but this property in 1916 was not used for the purpose of the Company's business, it was surplus assets of the Company invested in a particular way and it would have been within the powers of the Directors, under clause 12 of the Articles of Association, to change the investment without consulting the share-holders. Of course they might be liable to the share-holders for the consequences of any negligent exercise of those powers. Therefore the Directors were acting within their powers in coming

to an agreement with the plaintiffs with respect to the compensation to be awarded for their property.

It is quite clear that from August 1916 until the 23rd October 1917 it never occurred to any of the Directors that they were acting in excess of their powers.

The last question is whether there is any reason why this agreement should not be specifically enforced in the manner asked for by the plaintiffs.

Mr. Kanga argued that even assuming there was an agreement it was only an agreement arrived at for the purpose of enabling the Collector to make an award, and that the award would only be a tender which the claimant was not obliged to accept. I have already dealt with this argument and I have said that there is nothing impossible in parties coming to such an agreement as was set out by Mr. Kanga. But I have no doubt in my own mind from the evidence in the case that this was not the agreement arrived at between the plaintiffs and defendants nor have I any doubt but that Mr. Kanga's argument was first thought of after it had been suggested to the Directors that the property was worth much more than the amount they had agreed to accept. It is a defence suggested by the defendants' legal advisers after the event without the slightest regard being paid to the facts of the case.

Then is there any reason why the Court should not decree specific performance of the contract? The only ground on which specific performance could be refused would be that this was a contract for the non-performance of which compensation in money is an adequate relief. But in this case the damages for the breach could not now be assessed. The amount would depend on whether the Collector made an award allowing as compensation a higher amount than that agreed upon.

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I find all the issues in favour of the plaintiffs. There will be a declaration in terms of paras. 1, 2 and 3 of the prayer of the plaint.

Then I must still provide for the very improbable contingency of the Collector awarding a higher or a lower amount than that agreed upon, so it will be declared that if a higher amount is awarded, the excess shall belong to the plaintiffs and if a lower, the deficiency shall be paid by the plaintiffs to the defendants.

The plaintiffs will have the costs of this action.

The defendants appealed.

*Desai* with *Kanga*, for appellants.

*Coltman* with *Campbell*, for respondents.

MARTEN, J. :—This is an appeal by the defendant Company from the judgment of Mr. Justice Macleod, dated the 24th February 1919, in favour of the plaintiffs, the Bombay Municipality. The case arises out of proceedings under the Land Acquisition Act, 1894, for the compulsory acquisition of the defendants' land by the Bombay Municipality for public purposes. The real points before us are whether in law a binding agreement as to the amount of the compensation can ever be made between the Municipality and a land-owner, before the Collector has made his award. If so, has such an agreement been made in the present case, and how is it to be enforced?

2. The agreement relied on by the Municipality is contained in two documents of the 12th September 1917, the first being what is alleged to be an offer on behalf of the defendant Company, and the second being an acceptance by the Municipality of that offer, which acceptance was subsequently communicated to the defendants at a Meeting before the Collector on the

14th September. The precise terms of these documents are, I think, material. The first document is a letter written by the Secretary of the defendant Company to the Executive Engineer of the Municipality, and omitting formal parts, is as follows :—

“Acquisition of Company’s property, Armenian Lane, Fort.

WITH reference to the interview our Engineer Mr. Vakde had with you, I have the honour to state that the Company is willing to accept without prejudice the sum of Rs. 1,45,517, inclusive of 15 per cent. for compulsory acquisition, and cost of the chimney. The amount will be subject to deductions of the capitalized dues to the Collector and of the easements of the neighbouring properties if any.”

The acceptance of the Municipal Commissioner is as follows :—

“DISCUSSED with E. E. Compared figures with the original estimate. I approve of the case being settled on the conditions stated in the last letter from the Fort Press Company for Rs. 1,45,517.”

3. The plaintiffs allege in para. 18 of the plaint that these documents amount to a contract between the plaintiffs and the defendants, “that the defendants shall not claim a sum more than Rs. 1,45,517 as compensation for their said premises in the said land acquisition proceedings, and that the plaintiffs shall pay to the defendants that amount for compensation only, whatever award is made in the said proceedings, and that the plaintiffs shall pay the said amount to the defendants even if the award awards a less sum for compensation.” The trial Judge has accepted this view, and has granted consequential declaratory relief, but has not granted any injunction.

4. I should explain that the words “without prejudice” in the letter of the 12th September 1917 were withdrawn before the Collector on the 14th September and may be disregarded : and that the reference to the cost of the chimney is made clear from previous correspondence and may also be disregarded. The reference to

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“deductions...of the easements” refers to the fact that any adjoining owner who could establish an easement over the property would, under the Land Acquisition Act, be entitled to be paid an appropriate sum out of the total compensation for the property. It would appear, however, from the Collector’s notes that all claims but one have been disposed of and that in that one case the adjoining owner would prefer to retain his easement of light rather than be compensated for its loss. The “15 per cent. for compulsory acquisition” refers to the amount payable under that heading, by virtue of section 23 (2) and section 15 of the Land Acquisition Act. The reference “E. E.” in the memo of the Municipal Commissioner is to the Executive Engineer.

5. At the Meeting before the Collector on the 14th September, 1917, both parties were represented, and the Collector’s notes shew that the solicitor for the Municipality put in as Exhibit C the above letter of the 12th September “shewing that the Company has agreed to receive Rs. 1,45,517 inclusive of the 15 per cent. for compulsory acquisition and the easement claim if any by the holder of adjoining properties.” Mr. Vakde (the Company’s Engineer) explains that the term “without prejudice” occurring in the letter has no longer any force as the Municipality has accepted the proposal.” At that point, therefore, the parties would seem to have been in complete agreement. The Company at any rate thought so, as their resolution of 22nd September speaks of the amount of Rs. 1,45,517 having been “fixed” in accordance with an arrangement made by their Engineer with the Executive Engineer and that “an official letter was written on the 12th September to the Executive Engineer conveying acceptance of the said offer on behalf of the Company. The same is hereby noted.”

6. It was not till the 23rd October that the Company by its solicitors sent the following letter of withdrawal :—

“Re : Acquisition of the property of the Fort Press Company, Ltd., situate at Armenian Lane.

With reference to the letter, dated the 12th September last from the Secretary of our client the Fort Press Company, Limited, to you, we are instructed by our clients to withdraw on their behalf the offer made by them in that letter for the sale to the Municipality of their property situate at Armenian Lane at Rs. 1,45,517 and accordingly beg to do so hereby.”

I regard this letter as very material in considering what view of the matter the Company took at the time as opposed to the various contentions which their counsel have since put forward.

7. Meanwhile, one other meeting before the Collector had been held on the 10th October and further meetings were held on the 31st October, 22nd and 29th November, and 17th December, apparently without formal repudiation by the Company of the alleged agreement. At the meeting, however, before the Collector of the 29th January 1918, the Company was represented by counsel and contended that no agreement had been arrived at : and that even if there had been, that was not the proper place to decide that matter ; and that they were entitled to lead evidence as to value. They also on the same day made a formal claim for Rs. 5,71,660 as compensation, and objected to the measurement made under section 8 of the Act. Thereupon, after some discussion, the proceedings were adjourned by the Collector.

8. On the 12th March 1918 the present suit was instituted by the Municipality. It will be noted that in para. 12 of the written statement, the defendants pleaded that the agreement, if any, “ is void and of no effect. Neither party is bound by such an agreement.” As to

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this, the learned trial Judge, in dealing with the issues, says :—

“ It will be noted that the defendants no longer contended that if there was an agreement it was void or that the agreement set up by the plaintiff was an agreement for the sale of the property in question.”

9. Out of the eight issues raised at the trial, the first six depended on whether there was an offer and an acceptance by the plaintiffs and the defendants or their duly authorized agents. Before us, Mr. Desai for the appellants only relied on issue No. 1. He admitted that if the Company's letter of the 12th September amounted to an offer, the remaining five issues Nos. 2 to 6 (inclusive) would be decided against him, as would also be issue No. 8. On this point, I entertain no doubt whatever that the Company's letter is an offer and not a mere invitation to make offers. The theory of an invitation is hopelessly inconsistent with, amongst other things, their own resolution of 22nd September and their own solicitor's letter of 23rd October. It accordingly follows that on this point I entirely agree with the judgment of the learned trial Judge, and that consequently the defendants fail on issues Nos. 1 to 6 and No. 8.

10. This leaves only issue No. 7, viz., whether the agreement if any was merely arrived at for the purpose of proceedings under the Land Acquisition Act, and, if so, whether such an agreement can be specifically enforced by the plaintiffs against the defendants. But before dealing with this issue, I will, by way of warning, add that one must dismiss from one's mind the practice and procedure in England under the Land Clauses Consolidation Act, 1845, with its ample facilities for landowners to come to binding agreements with the promoters both before and after notice to treat has been served. To an English lawyer familiar with that Act, the question which I have referred to could

have but one answer. But the Land Acquisition Act has been framed on such entirely different lines that it requires careful consideration before one determines what is and what is not permissible under it : and in particular whether the object of the Indian Legislature was not to keep all control in the hands of Government, and to prevent any financial agreements between a landowner and a local authority being arrived at unless the express consent of Government was obtained.

11. I think, therefore, it is material to consider what were the respective positions of the parties at the date of the agreement. Under the City of Bombay Municipal Act, 1888 (Act III of 1888), the Municipality have wide powers of acquiring land. Only section 517 was cited to us but, I think, other sections are material. Under section 61 (*m*) it is the duty of the Municipality to make adequate provision for (*inter alia*) the construction and improvement of public streets. This should be read with section 296 which gives wide powers to the Commissioner, subject to the provisions of sections 90 to 92, to acquire land for such purposes and to dispose of the same. Section 87 also gives a general power to the Corporation to acquire and hold land. In the present case, the defendants' land is required for what is usually known as the Church Gate Street Improvement. This as will be seen on looking at the plan, Exhibit H. to the plaint, involves the widening of Church Gate Street, and the construction of a new street between it and Meadows Street to relieve the great congestion of traffic in this locality.

12. Subject to certain restrictions, the entire executive power for the purpose of carrying out the provisions of the Act vests in the Municipal Commissioner (see section 64) and he enters into contracts on behalf of the Corporation (see section 69). Under section 90

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any land to be acquired for the purposes of the Act may be acquired by the Commissioner on behalf of the Corporation by agreement subject to the approval of the Standing Committee. In the present case, negotiations for that purpose began as long ago as August 1916, but no agreement was arrived at.

13. Section 91 (1) I will quote in full, viz. :—

“(1) Whenever the Commissioner is unable to acquire any immoveable property under the last preceding section by agreement, Government may, in their discretion, upon the application of the Commissioner, made with the approval of the Standing Committee, order proceedings to be taken for acquiring the same on behalf of the Corporation, as if such property were land needed for a public purpose] within the meaning of the Land Acquisition Act, 1870.”

[This reference is now to the Land Acquisition Act, 1894, see that Act, section 2 (3)]. That such an application was made by the Commissioner is pleaded in para. 3 of the plaint and not denied in the written statement.

Sub-section (2) of section 91 of the City of Bombay Municipal Act is as follows :—

“The amount of compensation awarded and all other charges incurred in the acquisition of such property shall, subject to all other provisions of this Act, be forthwith paid by the Commissioner and thereupon the said property shall vest in the Corporation.”

This sub-section does not say whether the Commissioner is to pay this sum to the Collector or to the landowner direct, but if the latter, it varies section 31 of the Land Acquisition Act under which the Collector is the person to pay the compensation, and in any event it would seem to vary section 16 of that Act which provides for the land vesting absolutely in Government free from all incumbrances.

14. Section 92 gives power to dispose of property. Section 517 (h) gives wide powers to compromise. The financial provisions will be found in Chapters VII

and VIII. Section 111 provides for the establishment of a municipal fund, and section 139 for certain taxes to be levied by the Corporation.

15. I think I have now stated enough to show that the Bombay Municipality have wide independent powers, as indeed one would expect in a Corporation of their importance : and that the intervention of Government is only necessary to enforce an acquisition, and even then it is the Municipality which pays and the Municipality which gets the land.

16. Turning next to the Land Acquisition Act, 1894, it is formally the Government which acquires the land [see sections 6 (3) and 7] and it vests in them (see section 16). Further, although the land is acquired at the expense of the Municipality (see section 10), still it is the Collector who pays the compensation directly (see section 31). As I have already indicated, the above provisions are or may be modified in the present case, having regard to section 91 of the City of Bombay Municipal Act. Then under section 11 of the Land Acquisition Act, it is the Collector who has to determine, in the first instance, the amount of compensation which in his opinion should be allowed for the land. Further, he has to apportion the compensation between the various persons entitled [see section 11 (3)] unless they agree amongst themselves as to how this shall be effected in which case he accepts such agreement (see section 29). He also may have power to make arrangements with landowners [see section 31 (3) and (4)].

17. Even when the Collector has made his award, that is not final. It only amounts to an offer by Government (see section 31 and *Ezra v. The Secretary of State*<sup>(1)</sup>). If that offer is not accepted, any person interested may require the matter to be referred to the

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(1) (1902) 30 Cal. 36; (1905) 32 Cal. 605.

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Court (see section 18). But the local authority is not entitled to demand this reference [see section 50 (2)]: and if the applicant has made a claim to compensation, the amount awarded to him by the Court is not to exceed the amount so claimed or be less than the amount awarded by the Collector (see section 25). Further, there is a very important power given by section 48 to Government to withdraw from the acquisition of any land of which possession has not been taken, subject to paying compensation for any damages thereby caused [see section 48 (2)].

18. The appellants say that this section 48 enables Government to withdraw from the compulsory acquisition altogether, should they find the award too expensive, and provided of course possession has not been taken. They further rely on this section as shewing a want of mutuality in the alleged agreement.

19. Under these circumstances, I think that at the date of the agreement in question, the position of the parties was as follows: The defendants had to part with their land having regard to the Government Notification of 23rd July 1917 for compulsory acquisition. The Municipality was to get the land and also to pay for it. The only questions were the amount of compensation, and the positions of third parties. Possibly an ordinary agreement for sale could have been arrived at, and the Government Notification withdrawn *qua* that land. But then the Municipality would not have got the benefit of the Land Acquisition Act and the clean title thereby obtained free from all incumbrances. It would, therefore, seem reasonable from a business point of view for the parties to complete the transaction through the medium of the Act and in that way deal with the claims of third parties: but that this method of completion should not as

between the Municipality and the Company affect the figures agreed on. Otherwise why trouble to agree the figures at all?

20. What then is the effect of the agreement? According to the present contention of the defendants, the agreement means nothing. It is a nullity. So, also, are the five resolutions of the Company, dated the 1st June, 14th July, 31st August, 7th and 22nd September 1917. This contention seems to me wholly inconsistent not only with their own solicitors' letter of the 23rd October 1917 but also with the desire of the law to give such business efficacy to business transactions, as both parties must have intended it should have. Thus in *The Moorcock*<sup>(1)</sup>, Lord Justice Bowen said as follows:—

“The implication which the law draws from what must obviously have been the intention of the parties, the law draws with the object of giving efficacy to the transaction and preventing such a failure of consideration as cannot have been within the contemplation of either side; and I believe if one were to take all the cases, and there are many, of implied warranties or covenants in law, it will be found that in all of them the law is raising an implication from the presumed intention of the parties with the object of giving to the transaction such efficacy as both parties must have intended that at all events it should have. In business transactions such as this, what the law desires to effect by the implication is to give such business efficacy to the transaction as must have been intended at all events by both parties who are business men; not to impose on one side all the perils of the transaction, or to emancipate one side from all the chances of failure, but to make each party promise in law as much, at all events, as it must have been in the contemplation of both parties that he should be responsible for in respect of those perils or chances.”

21. If then the agreement was not a nullity, it seems to me that it was either (1) an agreement to make mutual admissions as to value, but that nevertheless the Municipality should give and the Company should accept whatever sum the Collector or the Court might

<sup>(1)</sup> (1889) 14 P. D. 64 at p. 68.

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eventually award, or else, it was (2) an agreement definitely fixing the compensation as between the parties themselves whatever sum may ultimately be awarded by the Collector and with an obligation on either party to refund any excess or make good any deficiency as the case might be. In my judgment the latter is the true view. I think the intention of the parties was to arrive at a definite figure for better or for worse : and not to leave the matter open to the costs and uncertainty of future litigation before the Collector or the Court. Apart from the interests of possible third parties, this would present no difficulty, and in the present case the claim of the only third party seems to be mainly for an easement of light to some priyv windows.

22. Put, therefore, in another way, the agreement amounts in effect to a sale, as stated in the Company's letter of the 23rd October, but with this special feature, viz., that the purchase money was to be subject to a possible deduction for easements in favour of a third party, the amount of such deduction, if any, to be ascertained by the Collector or the Court under the Act. Or, again, if all this be written in full, the result is in substance what is pleaded in para. 18 of the plaint and asked for by way of declaration in prayers 2, 3 and 4.

23. It was urged that the terms so pleaded as being the effect of the agreement are not expressly stated in the agreement. It seems to me, however, that these terms may be fairly implied from the language actually used and the surrounding circumstances, and that they ought to be so implied. I have already referred to "*The Moorcock*"<sup>(1)</sup> as an illustration of an important implication being made. I may also refer to the *Butterley Company, Limited v. New Hucknall Colliery Company, Limited*<sup>(2)</sup>, where in a lease of a lower seam

<sup>(1)</sup> (1889) 14 P. D. 64 at p. 68.

<sup>(2)</sup> [1910] A. C. 381.

of coal the Court implied a license to cause subsidence to the upper seam as otherwise about seventy per cent. of the coal in the lower seam would have been left unworked, assuming the ordinary method of working, viz., the long wall system were adopted. There was no such express license in the lease, and the case was of the greatest importance in the coal mining industry as it governed many others and large sums depended on whether the implication could and ought to be made in favour of the mining lessees. In the present case, the implication we are asked to make is to prevent what the Company at one time called "an offer...for sale...Rs. 1,45,517" being turned into what they now say is a nullity or alternatively a non-binding admission as to value.

24. Then, again, if one tests the matter under the Indian Contract Act, I think we have a "contract" within the meaning of sections 2 and 10 of the Indian Contract Act. As I have already held, there is here a proposal and an acceptance. I think there is also consideration within the meaning of section 2 (d) and (e). For instance, I think there are reciprocal promises to admit that the true value is Rs. X. This, I think, relieves either party from the expense of calling evidence of value before the Collector at any rate so far as his opponent is concerned. In this connection, I may refer to section 50 (2) of the Land Acquisition Act, under which the local authority are entitled to appear before the Collector and adduce evidence for the purpose of determining the amount of compensation.

25. If a similar matter arose in a suit for damages and the parties agreed on the damages, the Court under Order XXIII, Rule 3, would record such agreement and pass a decree for damages in accordance with the agreement arrived at. No doubt the Collector is not a

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"Court", but on any appeal from him to this High Court, the provisions of the Civil Procedure Code would apply so far as not inconsistent (see section 53 of the Land Acquisition Act). Consequently, it seems to me, that if this agreement had been made after the award of the Collector and after a reference made to the Court under section 18, it might have been open to the Municipality to apply that the Court should record the agreement and act upon it in accordance with Order XXIX, Rule 3, provided of course the interests of the other parties were not prejudicially affected. What real difference in principle is there then between such an agreement after the award and one before it? No doubt, when the Collector makes his award, that fixes the minimum, though not the maximum under the Act. But that seems to me only a matter of degree.

26. As regards the consideration, so far as the Municipality is concerned, I see nothing unlawful in what they have agreed to do. It did occur to me whether if the award was less than the sum agreed on, it would be *ultra vires* for the Municipality to pay more than the sum which the Officer appointed by the Act had fixed as the appropriate sum payable under that Act. But having regard to the wide powers of the Municipality which I have referred to, it seems to me that this point cannot fairly be maintained. Under section 91 (2) the direction to pay the "compensation awarded" is to be "subject to all other provisions of this Act" and I think this preserves (*inter alia*) the power to compromise given by section 517. Be that as it may, the Company gave up in the Court below its contention that the agreement was void: and I see no express allegation that this agreement was *ultra vires* the Municipality. It seems to me, therefore, that in any event, the point is not open to them now.

27. Under the above circumstances, I think the agreement here was for a lawful consideration and for

a lawful object and was consequently a "contract" within the meaning of section 10 of the Indian Contract Act, provided it was enforceable at law.

28. Now, putting aside for a moment the question of specific relief, why should not this agreement, if necessary, be enforced in law by damages? If for instance the defendants proceed as they did, on the 29th January 1918, and in defiance of this agreement insist on a claim for some five and three-quarter lacs, and if they eventually succeed in that claim, why should not the Municipality be entitled to claim from them the difference between the compensation actually awarded and the amount which the defendants agreed with them to accept. I recognize that such an award might be due to other causes than the increased claim, but I will assume a case where it would be due to such a claim. I quite agree with the learned trial Judge that the question at the present moment is premature, because until the amount is finally fixed by the Collector or the Court under the Land Acquisition Act, the actual damages (if any) cannot be ascertained. But there is no difficulty in testing the matter now in that way in principle. It seems to me, therefore, that damages would in certain events be obtainable by the Municipality, and similarly, if the award was less than the sum agreed on, I think the defendants might recover the difference from the Municipality. It seems to me, therefore, that this contract is enforceable at law, namely, in damages.

29. It is, however, said that the power of withdrawal given by section 48 to Government might render the whole proceedings nugatory, and that consequently there is no mutuality. Counsel, however, for the Municipality, after due consideration, stated in Court that even if the Government withdrew, the Municipality would be obliged to pay the sum agreed on. It

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may be that the Municipality cannot now improve their position by this admission, if that was not the true legal position at the date of the agreement. But even supposing that the agreement is determinable in a certain event, that does not necessarily make it void now. One can, for instance, enter into a perfectly valid agreement for the sale or purchase of property, but with the proviso that the agreement should be void if the sanction of the High Court is not obtained within six months, or alternatively, if any land acquisition notice be issued within a specified time.

Accordingly, I do not think that section 48, even if it applies here, prevents the agreement being a good one.

30. As regards the unreported case—Appeal No. 32 of 1917—relied on by the appellants, I respectfully agree with the criticism of the learned trial Judge. The point there before the Court was entirely different and the observations quoted are *obiter*. The case is, I think, of no real assistance in the present dispute.

31. The next and last point brings us to the actual relief which the learned Judge has granted, namely, the declaratory relief set out in the decree under appeal. In one sense I think that the precise relief to be granted at the present moment—apart of course from the first declaration as to the existence of an agreement—is a matter of small importance. I should imagine that any tribunal required to assess a money value, would readily accept the sum arrived at by the parties after a year's hard bargaining. I should have thought also that it would be open to the Collector to say that, in view of the agreement arrived at and the admission thereby made, he would decline to allow the parties to adduce evidence in contradiction of that admission at any rate unless they could first show that

they had been misled by fraud or by some very extraordinary circumstances. But there is not a hint in the proceedings as to anything of that sort. Nor, indeed, is there any explanation offered of the Company's starting claim for nearly 5½ lacs as against the previous agreement for under 1½ lacs. Supposing, therefore, that no further declaratory relief is granted, the probabilities would seem to be that the Collector would base his award on the figures of the agreement, and that if any appeal was brought by the defendants from that award, it would be unlikely to succeed. But that is a matter of speculation. On the whole, therefore, I think it is right to provide for contingencies, however remote, and to define clearly the views of the Court as to what the rights of the parties are under the agreement. In that view of the case, I think the declaratory relief is substantially correct and that it is no objection that substantive relief is not also given (see *Dyson v. Attorney-Generat*<sup>(1)</sup>, and Specific Relief Act, section 42).

32. But to avoid any misunderstanding, I wish to say that the decree of the Court must not be understood as interfering in any way with the Collector. We are merely determining whether there was an agreement, and what are the rights of the parties under it. It is for the Collector to decide in his own way what the true compensation is and to be complete master of the proceedings before him. In this connection, it may be noticed that Mr. Justice Macleod expressly declined to grant an injunction, and I respectfully agree with the view he took in respect of that. Consequently, I think that we are not really infringing that very salutary general principle that where the Legislature has provided a special tribunal for determining a particular dispute, the parties shall resort to that tribunal and not

<sup>(1)</sup> [1911] 1 K. B. 410 at p. 417 ; [1912] 1 Ch. 158 at p. 166.

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bring the matter to the High Court, at any rate until the tribunal designated by the Legislature has given its decision (see *Grand Junction Waterworks Company v. Hampton Urban Council*<sup>(a)</sup>).

33. I think, however, that the decree as eventually drawn up is open to possible misconstruction as to the intention of this Court not to interfere with the proceedings before the Collector. I think, therefore, that the last three declarations should be varied and run as follows :—

“ And this Court doth further declare that upon the true construction of the said agreement and as between the parties thereto, (a) the defendants are not entitled to claim in the proceedings before the Collector under the Land Acquisition Act any sum for compensation other than Rs. 1,45,517 or to proceed in the said proceedings on any other footing, and (b) the defendants are not entitled to any compensation in the said Land Acquisition proceedings beyond Rs. 1,45,517 after allowing thereout for deductions of the capitalized dues to the Collector and of the easements of the neighbouring properties if any, and (c) that if the Collector awards as compensation a sum more or less than Rs. 1,45,517 the excess or deficiency will have to be adjusted as between the plaintiffs and defendants on the basis of the figures and terms agreed upon in the said contract and the sum found due as the result of such adjustment will have to be paid or made good to the defendants or the plaintiffs as the case may be.”

The rest of the decree should stand. I have suggested the variation of the original wording of the third declaration, as I am not satisfied that it is arithmetically correct in all contingencies, e. g., if the value of the easement varies with the value of the defendants' property.

34. In the result, I am of opinion that the decision of the learned trial Judge is right and, in the view I take and subject to the formal variations I have mentioned, this appeal should be dismissed with costs.

35. In conclusion I would add by way of warning that this case seems to me an exceptional one, and that,

(a) [1898] 2 Ch. 331 at p. 345.

in my opinion, it must not be taken as encouraging the parties to come to the High Court over disputes in matters pending before the Collector under this Act. Nor do I see any adequate reason why the Collector should necessarily adjourn this proceeding pending such a High Court suit. No doubt he has done so in the present case out of courtesy, but one can imagine cases where important works might be thereby delayed to the great detriment of the general public.

HEATON, J.:—I need not recapitulate the facts which are fully stated in my learned brother's judgment. Two explanations are possible to account for the real meaning and intent of the acts of the parties. The first is that accepted by my Lord the Chief Justice who heard the case, and by my brother Marten, that there was a binding contract. The second is that the parties agreed as to the value of the property and left everything else to be dealt with by the award of the Acquiring Officer. In other words that there was not a contract, but merely a mutual admission of the value of the property. My mind inclines to this latter view. But I do not press it. If the former view is accepted, then I think everything stated in the judgment of my brother Marten follows. I, therefore, assent to the dismissal of the appeal with the suggested modifications in the declarations, and with costs.

Attorneys for the appellants : Messrs. *Craigie, Blunt & Caroe.*

Attorneys for the respondents : Messrs. *Crawford, Bayley & Co.*

*Appeal dismissed.*

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