1927

HOLMES WILSON & CO., LTD., v. BATA KRISTO DE.

PAGE J.

that they could make out of the transaction would be the difference between the indent price and the price at which they purchased the goods from the suppliers. As I have found that the defendant consented to the plaintiffs executing the indents by the difference in price method, in my opinion, there is no defence to the plaintiffs' claim.

The plaintiffs are entitled to recover the damages that they have suffered by reason of the failure of the defendant to accept delivery and pay for the balance of the goods ordered under the indents, and upon that basis a decree will be passed in favour of the plaintiffs.

Attorneys for the plaintiff Co: *Morgan & Co.*

Attorneys for the defendant: *H. N. Dutt & Co.*

B. M. S.

PRIVY COUNCIL.

P. C.* 1927

March 3.

SECRETARY OF STATE FOR INDIA

v.

TARAK CHANDRA SADHUKAN AND ANOTHER.

[ON APPEAL FROM THE HIGH COURT AT CALCUTTA.]

Land Acquisition—Land Acquisition Act (I of 1894), s. 3 (a)—"Land"—Machinery on Land—"Permanently Fastened".

In the expression "permanently fastened to any thing attached to the earth" used in the definition of "land" contained in s. 3 (*a*) of the Land Acquisition Act, 1894, the word "permanently" is used as an antithesis to "temporarily."

An oil-mill plant, which had been on premises for a long period, and consisted of a boiler standing on masonry and built round with masonry, and of an engine and other parts all bolted to foundations of masonry or

Present: VISCOUNT DUNEDIN, LORD DARLING, AND SIR JOHN WALLIS.

wood, are therefore "land" for which compensation is payable in proceedings subject to the Act, even if they can be moved for the purpose of repair or inspection.

Decree of the High Court affirmed.

CONSOLIDATED appeals (Nos. 35 and 36 of 1926) from two decrees of the High Court (December 5, 1924) affirming awards of the Tribunal constituted under the Calcutta Improvement Act (Beng. Act V of 1911), s. 70.

Under the Act abovementioned the Improvement Trustees have power, with the sanction of the local Government, to acquire land in Calcutta needed for the purposes of the Act, by proceedings under Land Acquisition Act, 1894. Proceedings were taken as to land of which the respondents were tenants, and upon which there was certain machinery.

By s. 2 (*q*) of the Act of 1911 "land" in the Act has the same meaning as in the Land Acquisition Act, 1894, which defines it by s. 3 (*a*) as follows: "The expression 'land' includes benefits to arise out "of land, and things attached to the earth, or perma- "nently fastened to anything attached to the "earth."

The machinery constituted an oil-mill plant which had been installed in the premises by a previous tenant about 25 years previously. It consisted of a boiler, an engine with water heater, 112 ghannies, a forge, and a lathe. The boiler stood on masonry and was built round almost to the top with masonry walls, having flues at the top and sides. The engine was fixed to a masonry foundation by bolts, plates and nuts. The heater was placed on a foundation, without bolts but was connected with the engine. Each ghanny consisted of a revolving mortar on an iron pedestal with a connected pestle; the pedestal was fixed by bolts to a foundation of wood embedded in masonry. The machinery could be removed for the

1927

SECRETARY OF STATE FOR INDIA v. TARAK CHANDRA SADHUKAN.

purpose of repairs, or in the case of the boiler, for statutory inspection.

The President of the Tribunal by his award, from which the above statement of the facts is extracted, held that the machinery was "land" within the definition as it was "permanently fastened to things "attached to the earth." He said that the decisions in Indian cases were in favour of the claimants. Undoubtedly the machinery, other than the boiler, would be in English law fixtures removable by a tenant, but that question stood upon a different footing. He accordingly excluded the value of the machinery from his award.

Leave to appeal to the High Court was granted under s. 3 of the Calcutta Improvement (Appeals) Act, 1911, but the appeals, which were heard by Chatterjea and Panton JJ., were dismissed.

The present appellant applied for a certificate, under s. 109 of the Code of Civil Procedure, that the case was a fit one for appeal to the Privy Council. The respondents opposed the application contending that no appeal lay. The application was heard by Sanderson C. J. and Walmsley J., and by a judgment delivered by the Chief Justice on May 29, 1925, was granted.

The present appeal originally came on for hearing by the Judicial Committee on February 17, 1927, when a preliminary point was taken on behalf of the respondents that ss. 1 and 2 of the Land Acquisition Amendment Act, 1921, were not applicable, and that no appeal lay to the Privy Council. Counsel were heard on both sides. Their Lordships reserved their judgment, but before judgment was delivered the appeal was heard on the merits.

March 3. *Dunne, K. C.* and *Kenworthy Brown*, for the appellant.

1927

SECRETARY OF STATE FOR INDIA v. TARAK CHANDRA SADHUKAN.

The true test whether the machinery was "permanently fastened" was not the nature of the fastening, but whether it was intended to make it part of the premises permanently. That view is supported by *Macleod* v. *Kikabhoy* (1), which dealt with a definition similarly worded. The evidence shows that the intention was that the machinery should be removable, and that it could be moved for repairs and inspection.

DeGruyther, *K. C.* and *Parikh*, for the respondents, were not called upon.

The judgment of their Lordships was delivered by

VISCOUNT DUNEDIN. This is really a most hopeless case for appeal. Their Lordships do not think it necessary to add anything to what was so very well said by the President of the Improvement Tribunal, who has examined the facts with great accuracy.

As far as the construction of the Act is concerned (and the construction of the Act is the only thing to be determined), their Lordships will only say that it seems to them that the epithet "permanently" is used as an antithesis to "temporarily", and that upon the facts as put by the learned President there can be no doubt that these attachments were anything but temporary, and fall absolutely within the word "permanently". Indeed, their Lordships can only add that they wonder that such a case was appealed on behalf of the Government.

Their Lordships will therefore humbly advise His Majesty that these appeals be dismissed with costs.

Solicitors for the appellant: *Solicitor, India Office.*

Solicitors for the respondent: *Downer & Johnson.*

A. M. T.

(1) (1901) I. L. R. 25 Bom. 659.