APPELLATE CIVIL.

Before Mukerji and Guha JJ.

SINGARAN COAL SYNDICATE, LTD.

v.

BALMUKUND MARWARI.*

1930

Dec. 15, 22.

Arbitration—Stay of suit—Court, when should refer case to arbitration—Code of Civil Procedure (Act V of 1908), Sch. II, s. 18.

Where a suit for royalty and rent was brought upon a lease, which did not in itself contain a stipulation as to arbitration but referred to an earlier lease containing such a stipulation, by which it was intended that the parties were to be governed, and the claim, arising under the later lease, was but an insignificant one when compared to the total claim in the suit, and there could be no objection to that part of the claim being separated from the rest and retained in court for adjudication,

held that the claim could be split up and the suit stayed under section 18 of Schedule II of the Code of Civil Procedure, the parties being directed to refer the claim to arbitration.

Turnock v. *Sartoris* (1) distinguished.

Ives & Barker v. *Willans* (2) and *Rowe Brothers and Co., Limited* v. *Crossley Brothers, Limited* (3) referred to.

Wade-Grey v. *Morrison* (4) followed.

When parties had deliberately made contracts with an arbitration clause and thus had chosen to select their own *forum*, there is a *prima facie* duty upon the court to respect the agreement.

Scott v. *Avery* (5) followed.

But if difficult questions of law are likely to arise, such as would inevitably entail a special case being prepared and reference to the court made by an arbitrator, the court may, in the exercise of its discretion, refuse the stay.

Bristol Corporation v. *John Aird & Co.* (6) followed.

If a question of law would arise, which is clearly outside the purview of the arbitration clause and other questions, though within it are so intimately connected with the former question that a more convenient course would be to try the whole action in court, a stay may be refused.

Printing Machinery Company, Limited v. *Linotype and Machinery, Limited* (7) and *Metropolitan Tunnel and Public Works, Limited* v. *London Electric Railway Company* (8) followed.

*Appeal from Original Order, No. 315 of 1930, against the order of P. C. Ray, Subordinate Judge of Burdwan, dated June 16, 1930.

(1) (1889) 43 Ch. D. 150.
(2) [1894] 2 Ch. 478.
(3) (1912) 108 L. T. 11.
(4) (1877) 37 L. T. 270.
(5) (1856) 5 H. L. C. 811 ; 10 E. R. 1121.
(6) [1913] A. C. 241.
(7) [1912] 1 Ch. 566.
(8) [1926] 1 Ch. 371.

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APPEAL FROM ORIGINAL ORDER by the plaintiffs.

The facts of the case, out of which this appeal arose, appear fully in the judgment under report herein.

N. N. Sircar, Advocate-General and *Radhikaranjan Guha* for the appellants.

Ramaprasad Mukhopadhyaya for the respondents.

Cur. adv. vult.

MUKERJI AND GUHA JJ. The plaintiffs instituted the suit to recover minimum royalty and rent due under three leases, dated 1912, 1919 and 1914, in respect of three pieces of coal lands. The defendants, amongst other pleas, took the plea that, according to the terms of the contract between the parties, all disputes and differences between them were to be referred to arbitration and they prayed for an order under section 18 of Schedule II of the Code of Civil Procedure, staying the suit and directing the parties to refer the claim to arbitration. The Subordinate Judge has made that order and the plaintiffs have preferred this appeal.

The first contention urged in the appeal is that a part of the claim is based upon the lease of 1914, but that lease contains no stipulation as to arbitration, and, consequently, the order should not have been made. To this the respondents' answer is that the lease of 1914, properly construed, does contain a stipulation as to arbitration, referring, as it does, to the earlier lease of 1912, by which it was intended that the parties were to be governed, and further that, in any case, the claim arising under that lease is but an insignificant one, when compared to the total claim in the suit, and there could be no objection to that part of the claim being separated from the rest and retained in court for adjudication. The lease of 1914 has not been produced before us and we do not know its terms: it also appears that, in the objection, which the plaintiffs filed in answer to the defendants' application for stay, the court below was not invited

to construe the lease and hold that the claim arising under it could not be referred to arbitration. We are, therefore, not inclined to entertain this objection.

On the footing that the lease of 1914 bears the interpretation, that the plaintiffs seek to put on it, a question would arise as to whether the claim may be split up or not. The learned Advocate-General, appearing on behalf of the appellants, had relied on the case of *Turnock* v. *Sartoris* (1), in which Cotton L. J. observed thus: "Then it was contended that at "all events the question arising under the lease was "the principal matter in dispute, and that it ought "to be referred, leaving the action to proceed only as "to matters not arising under the lease. I think that "such a course would not be right. It cannot be right "to cut up this litigation into two actions, one to be "tried before the arbitrator, and the other to be tried "elsewhere." But the special features of the case, with reference to which these observations were made, have been pointed out in later decisions. In *Ives & Barker* v. *Willans* (2), it was held that the fact, that a small portion of the relief claimed is not within the scope of the arbitration clause, is not in itself a sufficient reason for refusing to stay proceedings where the main subject of the action is within the arbitration clause. In that case Lindley L. J. said: "The language is, 'The Court, if satisfied that there " 'is no sufficient reason why the matter should not " 'be referred, may make an order to stay proceedings.' "It is said that, inasmuch as you cannot refer the "whole action, there is no power to refer any part of "it. It is all or none, and the case which was referred "to of *Turnock* v. *Sartoris* (1), it is said, goes to "support that view. Now, the matters which are to "be referred under the 4th section" (the words of which have been quoted above) "are matters which "are agreed to be referred and, if matters, which are "agreed to be referred, are mixed up in an action with "matters not agreed to be referred, there is no reason

(1) (1889) 43 Ch. D. 150, 156. (2) [1894] 2 Ch. 478, 489.

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"why the 4th section should not be applied to those "matters which have been agreed to be referred, "leaving the action to go on as to the other matters. "But I quite see that if the matters agreed to be "referred were not the main matters in dispute, but "were of a subordinate and trifling nature, and if the "matters not agreed to be referred were the main "matters in dispute, it would be very inconvenient, "to say the least of it, to refer that small part and "let the action go on as to the large part. That was "the case in *Turnock* v. *Sartoris* (1)." In *Rowe Brothers and Co., Limited* v. *Crossley Brothers, Limited* (2), Hamilton L. J. observed: "*Turnock* v. "*Sartoris* (1), as I know by experience, is a case one "constantly quotes in the hope of preventing a case "being stayed on the ground that there is something "in it outside the arbitration clause, and the case "which is constantly quoted unsuccessfully, because of "the mere addition to any writ of a separate cause of "action is not of itself sufficient to prevent the rest of "the action being stayed, if it is within the arbitration "clause. You must within *Turnock* v. *Sartoris* (1) "and the case before Swinfen Eady J. of *Bonnin* v. "*Neame* (3), have a matter outside the arbitration "clause and yet substantially raising the same facts "and rights as would fall to be determined within the "arbitration clause. And then, of course, the fact "that some part of the action cannot be referred is "very good reason for saying, though it is a matter "for discretion, that the rest of the action which "would involve the same matter ought not to be "referred." The case of *Wade-Grey* v. *Morrison* (4) was one, in which there were two contemporaneous agreements, one of which contained and the other did not contain a stipulation to refer to arbitration. It was held in that case that the two agreements must be treated as together forming one agreement and that, therefore, the clause as to reference which was found only in one of the two parts of that agreement was to apply to matters arising under either of the

(1) (1889) 43 Ch. D. 150, 156.
(2) (1912) 108 L. T. 11, 17.
(3) [1910] 1 Ch. 732.
(4) (1877) 37 L. T. 270.

documents which, taken together, made up the agreement. If the appellants had put the lease of 1914 before the court below or before us and had shown that the claim arising under it was not covered by any submission clause, it would have been necessary for us to examine the question from the points of view of the decisions quoted above in order to see whether the claim should be allowed to be split up. But, as already observed, no such thing was done. It may be mentioned here that the claim under the lease of 1914 was for Rs. 35-13-6 only out of a total of Rs. 6,999-2-8.

The next contention urged is that, as a question of *res judicata* will arise, the court below should have, in the exercise of its discretion, refused the application for stay of the suit. On this question, there is a long course of judicial authority and it has been repeatedly held that, when parties had deliberately made contracts with an arbitration clause and thus had chosen to select their own *forum* there, is a *prima facie* duty upon the court to respect the agreement: *Scott* v. *Avery* (1), *Scott* v. *Mercantile Accident and Guarantee Insurance Company, Limited* (2), *Trainor* v. *Phoenix Fire Insurance Company* (3), *Spurrier* v. *La Cloche* (4), *Rowe Brothers and Co., Limited* v. *Crossley Brothers, Limited* (5), *Lock* v. *Army, Navy and General Assurance Association (Limited)* (6). It is true that if difficult questions of law are likely to arise, such as would inevitably entail a special case being prepared and reference to the court made by an arbitrator, the court may, in the exercise of its discretion, refuse the stay: *Bristol Corporation* v. *John Aird & Co.* (7), *Clough* v. *County Live Stock Insurance Association, Lim.* (8). So also if a question of law would arise, which is clearly outside the purview of the arbitration clause, and other

(1) (1856) 5 H. L. C. 811; 10 E. R. 1121.
(2) (1892) 66 L. T. 811.
(3) (1891) 8 T. L. R. 37.
(4) [1902] A. C. 446.
(5) (1912) 108 L. T. 11.
(6) (1915) 31 T. L. R. 297.
(7) [1913] A. C. 241.
(8) (1916) 85 L. J. (K. B.) 1185.

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questions, though within it, are so intimately connected with the former question that a more convenient course would be to try the whole action in court, a stay may be refused: *Printing Machinery Company, Limited* v. *Linotype and Machinery, Limited* (1). The question has been elaborately considered and the authorities bearing on it have been fully discussed in the case of *Metropolitan Tunnel and Public Works* v. *London Electric Railway* (2), in which the importance of upholding the bargain between the parties had been emphasised, Lord Hanworth M. R. relying on the following observations of Moulton L. J. in *Bristol Corporation* v. *John Aird & Co.* (3). "On the other hand for many years it has "been recognised that there are cases in which a well "selected domestic tribunal, in which the Judge is "one with a special acquaintance either with the facts "of the case or with the subjects to which the "litigation relates, may give more complete and "speedier justice than the more elaborate procedure "of the courts of law (based as it is on the principle "of complete independence of the tribunal from the "parties, and the case itself) is ever in a condition to "render." It should be noted that, in the case of *Metropolitan Tunnel and Public Works, Limited* v. *London Electric Railway Company* (2), the sole question, which arose, was a question of law. As observed by the Judicial Committee in the case of *Ghulam Khan* v. *Muhammad Hassan* (4), "arbitrators "may be judges of law as well as judges of fact and "an error in law certainly does not vitiate an award."

The result is that in our opinion the appellants have failed to make out a case for refusal to stay.

The appeal is dismissed with costs—5 gold mohurs.

Appeal dismissed.

G. S.

(1) [1912] 1 Ch. 566.
(2) [1926] 1 Ch. 371.
(3) [1913] A. C. 241, 256.
(4) (1901) I. L. R. 29 Calc. 167 (186); L. R. 29 I. A. 51 (60).