

1891
January 5.

FULL BENCH.

Before Sir John Edge, Kt., Chief Justice, Mr. Justice Straight, Mr. Justice Tyrrell and Mr. Justice Mahmood.

THE SECRETARY OF STATE FOR INDIA IN COUNCIL (PLAINTIFF) v.
MADARI LAL AND ANOTHER (DEPENDANTS).

Practice—Set-off—Suit for balance of account—Civil Procedure Code, s. 111.

The defendant was lessee from Government of a bridge of boats over the Ganges under a lease for five years, the consideration for which was payable by instalments extending over the term of the lease. The lease contained, amongst other provisions, one to the effect, that the Government, if it saw fit at the expiration of the lease to farm the bridge to any other contractor, should be bound to take over the lessee's plant at a fair valuation to be determined by arbitration; and another clause provided that "should the Government, however, see fit to cancel the lease during its currency with a view to substitute a pontoon bridge, or for any other cause for which the lessee is not responsible he well be entitled to compensation from Government for all losses." The lessee died before the expiration of the lease, and the Magistrate of the District, acting on behalf of the Government, proceeded to deprive his representatives of the use of the bridge and to seize the stock and materials. The Magistrate then directed two persons to assess the value of the stock, which was ultimately fixed at Rs. 10,000. The Magistrate added a percentage, bringing the total amount up to Rs. 12,100; and a suit was filed on behalf of Government against the representatives of the deceased lessee giving credit to the defendants for such amount, and claiming the balance due in respect of the last two instalments under the contract.

Held that the sum of Rs. 12,100 assessed in the manner above described could not strictly be regarded as a set-off. The suit was one for balance of account and the defendants were entitled to dispute the correctness of the plaintiff's estimate of the item allowed in their favor.

THIS was a reference to the Full Bench made by Straight and Mahmood, JJ., (by their order of the 10th February 1890), as to whether, under the circumstances detailed in the judgment of Edge, C.J., the defendants were entitled to dispute the correctness of the item given credit for to them by the plaintiff.

The facts of this case are fully given in the judgment of Edge, C.J.

Munshi Ram Prasad, for the appellant.

Pandit Ajudhia Nath and Pandit Sundar Lal, for the respondents.

EDGE, C.J.—This is a suit by the Secretary of State for India in Council to recover a balance of money alleged to be due under a lease, dated the 24th October 1873. The lease related to a bridge of boats over the Ganges in this neighbourhood. The lease provided that the lessee should pay the sum of Rs. 65,000 by certain instalments. The last instalment was to be paid off on the 30th September 1878, and the lease, which was for five years, would terminate on the 1st October 1878. That Rs. 65,000 was to represent the value of the plant which belonged to the Government, and by clause 4 of the lease it was provided that although the lessee might renew any portion of the plant which was unfit for work in order to keep the stock in good repair, “he should have no right whatsoever to transfer or dispose of it or any portion thereof until he has paid up the sale price in full, the Government retaining a lien on the stock so long as any portion of the sale price is due. Clause 17 of the lease provides that the Government if it saw fit at the expiration of the lease to farm this bridge to any other contractor should be bound to take over the lessee’s plant at a fair valuation to be determined by arbitration. Clause 18 provides for a different event. It is as follows:—“Should Government, however, see fit to cancel the lease during its currency with a view to substitute a pontoon bridge, or for any other cause for which the lessee is not responsible, he will be entitled to full compensation from Government for all losses.”

On the 24th June 1878, Kalka Prasad, the lessee, died. In the following July, the Magistrate of Allahabad, acting for the Secretary of State for India, deprived Kalka Prasad’s representatives of the use of the bridge and seized all the stock and materials. On the 23rd August 1878, the Magistrate directed two gentlemen to assess the value of the stock. Those gentlemen assessed the value of the stock at Rs. 10,700. It was subsequently ascertained that there was a portion of the stock which was not included in that valuation. That omitted portion was valued at Rs. 200, increasing the valuation of these gentlemen to Rs. 10,900. The Magistrate added a percentage to that valuation and fixed the value of the

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entire stock and boats at Rs. 12,100. Neither the fifth instalment of Rs. 6,500 nor the final instalment ever was paid. The time never came to pay the final instalment, because, without any reason, so far as I can see, and during the currency of the lease, the Magistrate of Allahabad took it on himself to determine the lease and to deprive the lessee's representatives of such possession of the stock as they were entitled to under the lease. The Secretary of State for India in Council has brought this suit to recover a balance alleged to be due to him in respect of the final and penultimate instalments, after making an allowance for certain sums which he admits the defendants are entitled to take credit for. The eighth paragraph of the plaint is as follows:—"That on the expiry of the said lease the plaintiff saw fit not to renew the same, and hereupon, with a view to Government taking over the lessee's plant under the term of the said lease, the valuation of such plant was duly referred to arbitration and the value thereof determined by the arbitrators to Rs. 10,900." Now I have no hesitation in saying that the statements contained in that paragraph are the reverse of true. From beginning to end it is misleading statement. The taking of the plant out of the possession of the lessee's representatives took place in July 1878, the so-called arbitration, which was in truth no arbitration at all, took place in August 1878, and the Magistrate of Allahabad passed his order dealing with figures on the 17th September 1878. Looking to the plaint, particularly at paragraph 8, one would think this was a case falling under clause 17 of the lease, namely, the clause which provided that Government should take over the lessee's plant at a fair valuation to be determined by arbitration in case of its seeing fit on the expiration of the lease to farm the bridge to any other contractor. The defendants contended before the Divisional Bench that they were entitled to question the accuracy of the so-called valuation of Rs. 10,900 and to shew that the fair value of the stock and plant seized by the Government far exceeded that Rs. 10,900, which, according to the plaint, the Government were prepared to allow for it. On the other hand those who represented the Secretary of State here contended that the defendants were not entitled to show that the value of that stock and

plant exceeded the Rs. 10,900 mentioned in the tenth paragraph of the plaint. In my opinion this is not strictly a case of set-off or counter-claim. The Secretary of State for India in Council, if he is entitled to maintain this suit, as to which I have under these circumstances grave doubts, asked for a balance alleged to be due to him on account between him and the defendants. That balance was arrived at, so far as this point is concerned, by the plaintiff, by admitting that the defendants were to be credited in the account with the value of the stock and plant seized by the representative of the Secretary of State, but by an utterly erroneous paragraph, namely, the eighth of the plaint, he endeavours to tie down the defendants to a valuation of 10,900 rupees, as if that was a sum which could not be questioned. In my judgment the defendants are entitled to show what the value of the plant and stock in question was with the object of showing that balance claimed by the plaintiff is not the true balance of the accounts between the parties. This is my answer to the reference.

STRAIGHT, J.—I entirely concur in the answer of the learned Chief Justice to the reference, which is entirely in accordance with the view I entertained on the hearing of the appeal before my brother Mahmood and myself. As I said then so I repeat now, that it does not appear to me there is any difference between this case and a case in which, on a plaintiff coming into Court and seeking a balance of account from a defendant in which account certain amounts are credited to the defendant, the defendant, as part of his defence, says—"those credits which you have given in account are incorrectly stated."

TYRRELL, J.—I entirely concur with everything that has fallen from the learned Chief Justice.

MAHMOOD, J.—I also agree with the learned Chief Justice, but wish to add that the reference to the Full Bench was partly due to the doubt which I entertained as to the effect of s. 111 of the Code of Civil Procedure upon the pleadings of the parties and the facts of the case. I felt that the expression "an ascertained sum of money" which occurred in that section restricted its operation, as it

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undoubtedly does, to matters of set-off of a very limited kind, and excluding as it does counter claims as understood in the Judicature Acts in England it might preclude the defendant from proving in this action the value of the plant and boats which had been taken over by the Magistrate of Allahabad as stated by the learned Chief Justice. I am, however, now after having had the advantage of conferring with the learned Chief Justice and my learned brothers waived my doubt, and I have done so with special reference to the terms of paragraph 17 of the deed of the 24th October 1873, which, as the learned Chief Justice has explained, renders the dispute between the parties as to the value of the boats a question forming part and parcel of the claim, the matter being one which arises out of the same transaction as the claim. I think therefore that there is nothing in s. 111 of the Code of Civil Procedure to prevent our going into the question of the value of the plant. This is my answer to the reference.

PRIVY COUNCIL.

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January 27.

RÁJA HAR NARAIN SINGH (DEFENDANT) v. CHAUDHRAIN BHAGWANT
KUAR AND ANOTHER (PLAINTIFFS).

[On appeal from the High Court at Allahabad.]

Arbitration under the Civil Procedure Code—Invalidity of award when not made within the time fixed by the Court—Civil Procedure Code, ss. 508, 514, 521—Costs.

When once an award has been delivered it is no longer competent to the Court to grant further time, or to enlarge the period for the delivery of this award under section 514 of the Code of Civil Procedure.

Where an award was not made within the period fixed by the Court's order but was made after the date given in the last order extending the time for its delivery, *held*, that the award was invalid. The decree of the Court dealing with the award as if duly made within the time, could not be treated as enlarging it.

The judgment in *Chuka Mal v. Hari Ram* (1) approved.

Order to be that the suit should proceed. Neither party to be entitled to costs in either Court below after the first judgment with regard to the stage at which the objection was taken; and the costs prior to that to abide the issue.

Present: LORD WATSON, LORD MORRIS, and SIR R. COUCH.

(1) I. L. R. 8, ALL, 548.