

REVISIONAL CRIMINAL.

1918
June, 27.

Before Sir George Knox, Acting Chief Justice.

AZIZ-UR-RAHMAN v. HANSA.*

Act No. XIII of 1859 (Workmen's Breach of Contract Act)—Scope of the Act—Act applicable not merely to fraudulent breaches of contract.

The provisions of Act No. XIII of 1859, are not applicable merely to fraudulent breaches of contract, but can and must be enforced in respect of any breach of a contract within the scope of the Act. *Emperor v. Bakhtawar*, (1) followed.

THE parties lived in Agra, to which station the provisions of Act No. XIII of 1859, have been extended. The opposite party entered into a contract under this Act to do certain work for the applicant, and received an advance from him for this purpose. Subsequently, however, the opposite party refused to work according to his agreement. The applicant applied to the Joint Magistrate of Agra asking that the provisions of Act No. XIII of 1859 should be enforced against the opposite party. The Magistrate, however, holding that the Act in question only applied to *fraudulent* breaches of contract, refused to do more than direct the refund of the balance of the money advanced by the applicant. This the employer refused to accept upon the ground that he wanted performed the work which the opposite party had engaged to do, and he applied in revision to the High Court against the order of the Joint Magistrate and an order of the District Magistrate confirming the same.

The Hon'ble Munshi *Narayan Prasad Ashthana*, for the applicant.

The opposite party was not represented.

KNOX, A.C.J. :—This is an application for revision of an order passed by the Magistrate of Agra whereby an order of a first class Magistrate of Agra was confirmed. The first class Magistrate of Agra had before him an application asking him to enforce the provisions of sections 1 and 2 of Act No. XIII of 1859. All that appears before me on the record is an order in which the learned Magistrate arrives at the conclusion that the suit does not lie

* Criminal Revision No. 379 of 1918, from an order of W. H. Webb, District Magistrate of Agra, dated the 27th of February, 1918.

(1) (1918) I. L. R., 40 All., 282.

under Act No. XIII of 1859. No evidence appears to have been taken, and all that is on the record is the contract. Act No. XIII of 1859 is an Act which has been extended to the station of Agra. The contract is upon a stamp paper and it recites that it is a contract under Act No. XIII of 1859. The first class Magistrate sets out what he believes to be the obvious object of Act No. XIII of 1859. He says that "it was designed to prevent coolies or labour contractors fraudulently bolting with the advances necessary for obtaining work from them and it was not designed to secure the employer's enforcement of elaborate contracts with skilled artizans." I do not know from what source the learned Joint Magistrate obtains this. There is nothing in the Act to this effect. The learned Joint Magistrate will do well to consider the ruling by which he is bound, namely, *Queen-Empress v. Indarjit* (1). Having placed this interpretation upon the object of the Act the learned Joint Magistrate went on to pass an order for which there is no warrant that I know of. That order runs as follows:—"The accused should produce to-morrow the balance of money due to the complainant. If he does so and the complainant takes it, accused will be acquitted. If he does so and complainant refuses the money, the case will be dismissed. If he does not produce it, it will be a clear case of bad faith, and I shall proceed against him under Act No. XIII of 1859." The morrow came, and the accused produced the money required of him. The complainant refused to take it, saying that he wished to have the work done by the accused. The learned Joint Magistrate professed to act upon a ruling of the Bombay High Court, *Queen Empress v. Rajab* (2), to which he is not subordinate and which he should not follow when he has before him rulings of this Court. I cannot, moreover, sanction the unwarrantable language used by the Joint Magistrate regarding an Act in the statute-book. He says "it is altogether preposterous that this Act, designed to protect people who make cash advances in order to import or secure manual labour from people not worth powder and shot in the Civil Court, should be prostituted in this way by employers of skilled artizans." The learned Joint Magistrate had no right to use language of this kind regarding a

1918

AZIZ-UR
RAHMAN
v.
HANSRA

1) (1889) I. L. R., 11 A.L., 262 2) (1892) I. L. R., 16 Bom., 363.

1918

AZIZ-UR-
RAHMAN
v.
HANSA.

statute which is in force and which he is bound to respect. The Act is in full force in the station of Cawnpore for instance and for aught I know may be in full force in the station of Agra. I call the attention of the court below to the case of *C. J. Lucas v. Ramai Singh* and *Emperor v. Bakhtawar* (1), both to be found in I. L. R., 40 All. The learned Joint Magistrate says that he cannot compel Hansa to continue the work which he contracted to perform because it requires him to sit very near the fire. He is said to have been working in the same situation in another factory. This may or may not be true. But the matter should have been inquired into and evidence fully taken. This was not a case for summary disposal. I set aside the orders of both the courts below and I return the case in order that it may be dealt with strictly in accordance with the provisions of Act No. XIII of 1859.

Order set aside and case remanded.

APPELLATE CIVIL.

1918.
June, 28.

Before Mr. Justice Tudball and Mr. Justice Abdul Raof.

NAND LAL SINGH (PLAINTIFF) v. BENI MADHO SINGH AND OTHERS
(DEFENDANTS)*

Costs—Joint decree for costs against defendants claiming under separate titles, defendants being also wrong-doers—Suit for contribution—Suit not maintainable.

Two persons, each holding by a separate title a half share in certain property were arrayed as co-defendants to a suit for recovery of a share in the said property. The plaintiffs obtained a decree with costs, the order for costs being as against the defendants jointly. The plaintiffs decree-holders executed the decree for costs against one of the judgment-debtors, and he then sued the other judgment-debtor for contribution. *Held* that the suit would not lie. *Fakir v. Tasaddug Husain* (2) followed.

THE facts of this case are fully set forth in the judgment of the Court.

The Hon'ble Dr. *Tej Bahadur Sapru* (with him Mr. *Shamnath Mushran* and Pandit *Kailas Nath Katju*), for the appellant.

* Second Appeal No. 1246 of 1916, from decree of Murari Lal, Judge of the the Court of Small Causes, exercising the powers of a Subordinate Judge of Cawnpore, dated the 9th of May, 1916, reversing a decree of Muhammad Junaid, Munsif of Fatehpur, dated the 7th of February, 1916.

(1) (1913) I. L. R., 40 All., 282. (2) (1897) I. L. R., 19 All., 462.