

LETTERS PATENT APPEAL.

*Before Sir Shadi Lal, Chief Justice and Mr. Justice
Broadway.*

ABDUL HAMID (PLAINTIFF) Appellant

versus

MUHAMMAD AFZAL (DEFENDANT) Respondent.

1927

Feb. 4.

Letters Patent Appeal No. 231 of 1925.

*Arbitration—Umpire—Misconduct—making local inquiry
behind the back of one of the parties.*

Arbitrators having differed, the matter was submitted to an umpire, who gave his award. The umpire admitted having made certain inquiries at *Mauza Dulla* in the absence of the defendant, but denied that he had recorded any evidence at the time.

Held, that in making these *ex-parte* inquiries the umpire was guilty of misconduct, whether he recorded evidence or not, as it was impossible to determine what impression the inquiries had made on the mind of the umpire and how far they affected his ultimate decision.

Appeal under clause 10 of the Letters Patent from the judgment of Mr. Justice Jai Lal, dated the 30th April 1925.

MUHAMMAD AMIN, for Appellant.

H. C. MITAL, for Respondent.

JUDGMENT.

BROADWAY J.—Certain disputes having arisen between one Muhammad Afzal and Abdul Hamid, they referred the same to arbitration. The agreement to refer contained a clause to the effect that in the event of the arbitrators named being unable to agree, one Muhammad Ashraf was to act as umpire. The arbitrators named having differed, Muhammad Ashraf, as umpire made an award. Abdul Hamid filed an application under paragraph 20, Schedule II of

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the Civil Procedure Code, praying that the award should be filed and a decree passed in accordance therewith. Muhammad Afzal raised various objections to the award charging the umpire with misconduct and pointing out that the award was defective owing to serious arithmetical errors.

The trial Judge found that no misconduct had been proved against the umpire, and held that he himself could correct the arithmetical errors. He accordingly directed the award to be filed and granted a decree in accordance with it as amended by him.

Against this Muhammad Afzal preferred an appeal to this Court which was heard by Mr. Justice Jai Lal who held that the award was vitiated owing to the misconduct of the umpire and owing to the fact that the arithmetical mistakes could not be rectified by the Court and were illegalities apparent on the face of it. He accordingly accepted the appeal and dismissed the application to file the award.

Abdul Hamid has preferred this appeal under clause X of the Letters Patent, and on his behalf Mr. Muhammad Amin has contended that the view taken by the learned Judge on the points raised before him was erroneous. A great deal of argument centred round the question whether the Court had the power to correct arithmetical errors in an award. I do not think it necessary to discuss this point, however, as in my opinion the appeal must be dismissed on the ground that the learned Judge is right in holding that the umpire was guilty of misconduct. The umpire when examined admitted that he made certain enquiries at *Mauza Dulla* in the absence of Muhammad Afzal, although he denied that he recorded any evidence at the time. He also stated that he had informed the defendant of this fact later on. It seems

to me that in making these enquiries behind Muhammad Afzal's back the umpire was clearly guilty of misconduct, whether he recorded evidence or not, as in my opinion such an *ex-parte* enquiry should not have been made. It is impossible to determine what impression this *ex-parte* enquiry made on the mind of the umpire and how far it affected his ultimate decision. I would therefore dismiss this appeal with costs.

SIR SHADI LAL C. J.—I concur.

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Appeal dismissed.

APPELLATE CRIMINAL.

Before Mr. Justice Fforde and Mr. Justice Addison.

THE CROWN—Appellant

versus

BHOLA (ACCUSED) Respondent

Criminal Appeal No. 875 of 1926.

Indian Penal Code, 1860, sections 441, 447—Criminal trespass—Forcibly rescuing cattle from the pound—and intimidating the Chaukidar.

One N. lawfully seized a cow belonging to the accused and had it impounded in the cattle-pound. The accused, the owner of the cow, proceeded to the cattle-pound, opened the lock, entered and drove off the cow after slightly injuring the *Chaukidar* who attempted to prevent him.

Held, that the accused was guilty of the offence of criminal trespass, as defined in section 441 of the Indian Penal Code, as his act amounted to an entry upon property in the possession of another person with intent (1) to commit an offence (*i.e.*, an act which is made an offence by the Cattle Trespass Act) and (2) to intimidate the *Chaukidar* in charge of the premises, and was therefore punishable under section 447.

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 Feb. 15.