

1924

FREDERICK
BENJAMIN
SPAETH
v.
ARTHUR
HERBERT
HALLEN.

defendant it was stated by Mr. Crompton having either neglected or refused to file any) under buildings, "1 small coolie lines" was valued at £75, whereas in the award the umpire had allowed £108; and on that item he moved to have the award set aside. I am not aware of any authority for setting aside an award on any such ground, nor was any cited in support of the submission, nor do I gather from the principles laid down that the Courts would remit back again an award on the ground of mistake, unless the umpire admitted he had made a mistake, and came to the Court to enable him to rectify it. It may seem a harsh finding, but on the other hand the total award is £1,362 5s. less than the claim; and in this respect there has been no substantial or intentional injustice or error apparent on the face of the award.

The learned counsel for the defendant stated that the alternative grounds on which it was sought to remit the award for reconsideration were practically the same as those he had argued, there will be no need therefore for me to examine them seriatim, but to find generally that they fail for the reasons set out in this decision.

The Motion is therefore dismissed with costs.

[CIVIL JURISDICTION.]

[ACTION No. 89, 1922.]

FREDERICK BENJAMIN SPAETH v. ARTHUR
HERBERT HALLEN.

Award. Leave to enforce motion for award did not find that the plaintiff was entitled to recover from the defendant any specific amount nor was there any direction for payment by the defendant to the plaintiff: it went no further than a valuation.

Held, award cannot be enforced against defendant on motion—award affords right of action only.

Sir ALFRED YOUNG, C.J. This is a motion by the plaintiff for a declaration that the Award dated the 11th day of March, 1924, and filed on the 22nd day of April, 1924, has the same force and effect for all purposes as a judgment in the action, and for leave to enforce the said award in the same manner as a judgment or order and for an order that the defendant pay to the plaintiff the sum of £4,200 5s. 0d., the amount of the award with costs of the application.

Under the provisions of Rule 363 of the Rules of the Supreme Court, 1876, either party may file an Award in Court, and, the award shall thereupon have the same force and effect for all purposes as a judgment. The plaintiff has filed an Award and approached the defendant with a view of payment, the defendant in reply alleges that the Award is only a finding of the valuation of the buildings, &c., at the date of the termination of the lease, and does not decide that he has to pay any sum of money and that the Award although filed does not operate as a judgment in the action for the amount of the valuation (see correspondence annexed to affidavit of the 6th May, 1924).

In consequence of this correspondence the plaintiff now moves the Court for an order in terms of the motion. The question to my mind is, if the filing of the Award pursuant to Rule 363 is not adequate authority to enforce the award against the defendant, can the plaintiff do so in the manner he now seeks.

The provisions of the rule seem to me to take the place of the procedure necessary under the Common Law Procedure Act 1854 and under the Arbitration Act 1889. Under those acts the authority of a Judge or the leave of the Court is a condition precedent to enforcing an award; or in certain circumstances under section 17 of the Common Law Procedure Act a rule of Court is required; such a step is not necessary under our Rule 363.

The award is contained in clause 8 of the award; it reads:—

I award that the valuation of the buildings growing crops and stock and implements which were upon the land demised by the lease registered in the Register of Lease Book 34, folio 34, on the first day of July, 1922, and were agreed to be purchased by the said Arthur Herbert Hallen from the said Frederick Benjamin Spaeth in the sum of £4,200 5s. 0d.

The details then follow as to how that sum is arrived at.

In this case the Award does not find that the plaintiff is entitled to recover from the defendant any amount, nor is there any direction for payment by the defendant to the plaintiff: it goes no further than a valuation of the buildings, crops, implements, and stock which were agreed to be purchased by the defendant from the plaintiff on the termination of the lease.

Mr. Ellis of counsel for the plaintiff in support of the motion cites the case of *Bowen v. Bowen*, 31 L.J., Q.B., p. 193, in that case the Award found that the plaintiff was entitled to recover a certain sum from the defendant; and although it

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contained no direction to the defendant to pay the plaintiff the amount, the Court on motion for a rule to pay money pursuant to the Award made the rule absolute on the ground that although the Award contained no express direction to pay the Award found that the plaintiff in the case was entitled to recover a certain sum from the defendant, and that assumpsit debt might be brought upon it.

Mr. Mann of counsel submits that the Court cannot on this application alter or amend the Award; and here I am in agreement with him, if the award cannot be enforced under Rule 363, the Court has no power on motion to order judgment to be entered on the Award, nor to turn an Award into a judgment (see per *Fletcher Moulton*, L.J., re a Bankruptcy Notice, 1907, 1 K.B. 478).

Now, apart from the foregoing examination of the arguments on the motion, and the conclusions I have come to, did not their Lordships of the Privy Council in their judgment indicate that the submission to arbitration should be no more than a valuation? I think so. The part of their judgment to which I refer reads as follows:—

The lease provides that the purchase is to take place on valuation, and that if the parties cannot agree on the valuation all matters in difference thereto are to be referred to arbitration, the arbitration to be subject to the provisions of the Common Law Procedure Act, 1854. Their Lordships interpret this as meaning that the amount of the valuation is to be such as may be determined in an arbitration. For then and not until then does a sum, which has to be ascertained in that fashion, become due and capable of affording a right of action. The determination of this sum is not a matter of independent right for which a claimant can go to the Courts. He is entitled only to what the arbitrators award. If this construction be the true one it brings the case within the principle of *Scott v. Avery* (5 H.L.C. 811), which decided that while by the Common Law parties could not contract validly to oust the Courts of their jurisdiction, they could contract that no right of action should accrue until a third person had decided the amount to which there was to be a right. This is a principle from which there is no derogation in the Common Law Procedure Act.

The amount of the valuation has now been determined by arbitration, and the sum so ascertained becomes in their Lordships words "due and capable of affording a right of action."

The motion is dismissed with costs.
