A

D. P. CHAUHAN BROS.

v.

YORKSHIRE INSURANCE CO. LTD.

[SUPREME COURT, 1962 (Hammett P.J.), 28th May, 25th July]

B

Civil Jurisdiction

Arbitration—insurance policy—damage by fire—reinstatement in wood not permitted by local authority—award limited to cost of reinstatement in wood—award not bad in law on face of it—Public Health (Building) Regulations 1959, reg. 21 (b)—Rules of the Supreme Court 1883 (Imperial) 0.52 r.4.

C *Insurance—fire policy—reinstatement in original material not permitted by local authority—insurer not liable for additional cost of reinstatement in approved materials.*

An insurance policy provided that in the event of loss or damage occasioned by fire the insurance company agreed to "pay, reinstate or make good to the insured . . . such loss or damage to the property . . . insured but not exceeding . . . the sum herein specified". The
D amount of the policy was £2,500. Damage caused to the insured building by fire could have been reinstated in wood (the original material) for £600 but the Ba Township Board refused the insured's application to repair in wood. The use of permitted materials would have involved expenditure exceeding the full amount of the policy. The arbitrator held that the liability of the insurance company was
E limited to £600, on the ground that any loss in excess of that amount was occasioned, not by the fire, but by the refusal of the Ba Township Board to allow reinstatement in wood.

Held : The decision of the arbitrator was correct and the award was not bad in law on the face of it.

Application to set aside award for error in law on the face of it.

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R. I. Kapadia for the applicant.

H. A. L. Marquardt-Gray for the respondent company.

The facts sufficiently appear from the judgment.

HAMMETT P.J.: [25th July, 1962]—

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This is an application to set aside an award made by an Arbitrator, on the ground that it is bad in law on the face of it, under the provisions of Order 52 Rule 4 and Order 64 Rule 14 of the Rules of the Supreme Court. Counsel for the Applicant also relies on the general provisions of the law on this subject set out in *Halsbury's Laws of England* 3rd Edition Vol. 2 at paragraph 127 on page 60.

H

The facts are not in dispute and I set out a summary of them taken from the award of the Arbitrator dated 24th March, 1962.

Messrs. D. P. Chauhan Brothers owned premises at Ba built of wood and iron which at the material time they had insured against loss or damage by fire with the Yorkshire Insurance Co. Ltd. in the sum of £2,500. On 2nd January, 1961, a fire from an adjoining building destroyed a part of the insured's building. It would have cost £600 to reinstate the building by repair in wood.

On 18th April, 1961, the Ba Township Board refused the insured's application for permission to repair the building by using wood and materials similar to those used in its original construction. This refusal was made under the Public Health (Building) Regulations 1959, Regulation 21 (b). This Regulation empowers a Local Authority by resolution to refuse the issue of a permit for the execution of repairs or alterations to any building if in its opinion the age, state or general condition or degree of non conformity with the current Regulations is such that a permit for repairs or alterations should not be granted. Neither the insured nor the insurers have questioned the propriety of the refusal by the Ba Township Board of permission to reinstate the insured's building in wood.

The value of the building in its damaged condition, based on the price that would be obtained on a sale for removal, is £300.

It is agreed that to reinstate the building by the use of building materials which would be permitted by the Ba Township Board far exceeds £2,500, the full amount of loss covered by the policy.

The insured contended that since it has not been permitted to reinstate the building in wood its loss as a result of the damage caused by the fire is £2,200, being £2,500, the total sum insured, less £300, the salvage value of the rest of the building.

The insurers contended that they are only liable to reimburse the insured with the actual cost that would be incurred if the building was reinstated in wood or similar materials used in its original construction.

The Arbitrator held that upon a proper construction of the policy the insurers were only liable to pay the insured the cost of reinstatement of the building in wod or similar materials used in its original construction, namely £600, notwithstanding the fact that permission to do so has been lawfully refused by the Ba Township Board.

The material parts of the Insurance Policy in question read as follows:

> "The Company hereby agrees (subject to the conditions . . . contained herein . . . .) that in the event of loss or damage as shall be occasioned by Fire . . . . happening . . . . the Company will pay, reinstate or make good to the Insured . . . . such loss or damage to the property herein mentioned and hereby insured but not exceeding . . . the sum herein . . . . specified."

Condition 14 endorsed on the Policy reads:

> "14. The Company may at its option reinstate or replace the property damaged or destroyed, or any part thereof, instead of paying the amount of the loss or damage, or may join with any other Company or Insurers in so doing, but the Company shall

not be bound to reinstate exactly or completely, but only as circumstances permit and in reasonably sufficient manner, and in no case shall the Company be bound to expend more in reinstatement than it would have cost to reinstate such property as it was at the time of the occurrence of such loss or damage, nor more than the sum insured by the Company thereon.

If the Company so elect to reinstate or replace any property the Insured shall, at his own expense, furnish the Company with such plans, specifications, measurements, quantities, and such other particulars as the Company may require, and no acts done, or caused to be done by the Company with a view to reinstatement or replacement shall be deemed an election by the Company to reinstate or replace.

If in any case the Company shall be unable to reinstate or repair the property hereby insured because of any municipal or other regulations in force affecting the alignment of streets or the construction of buildings, or otherwise, the Company shall, in every such case, only be liable to pay such sum as would be requisite to reinstate or repair such property if the same could lawfully be reinstated to its former condition."

The reason given by the learned Arbitrator for making his award, which is recorded with admirable clarity, may briefly be stated to be that he considered that any loss suffered by the insured in excess of £600 in the particular circumstances of this case were occasioned not by the damage caused by the fire but by the refusal of the Ba Township Board to allow reinstatement of the building in wood. Such loss was in the nature of consequential loss or damage which was not covered by the terms of this policy. With his reasoning and conclusions on this matter I agree and I do not consider it necessary to repeat them in this judgment.

The latter part of the award deals with the construction of the last paragraph of Clause 14 of the Policy, which, for convenience, I will repeat :

" If in any case the Company shall be unable to reinstate or repair the property hereby insured because of any municipal or other regulations in force affecting the alignment of streets or the construction of buildings, or otherwise, the Company shall, in every such case, only be liable to pay such sums as would be requisite to reinstate or repair such property if the same could lawfully be reinstated to its former condition."

It is clear that the limitation of the insurance liability provided in this part of Clause 14 is either —

(a) of limited application arising only after the insurers have exercised their option to reinstate; or

(b) of general application in all cases whether or not the insurers have exercised their option to reinstate.

The Arbitrator was of the opinion that it was of limited application and only arose in cases where the insurers had exercised their option to reinstate. Since, in this case, it was agreed by both sides that they had not so opted he considered it was of no effect and he gave no effect to it in making his award.

I am not entirely satisfied that this is the correct construction of this clause. If however the correct construction were to be that it is of general, as opposed to limited, application, such a construction would not operate in favour of the insured. It would merely serve to reinforce the determination of the Arbitrator on the construction of this policy of insurance as a whole, that the insurers were only liable for the actual amount that it would cost to reinstate the building to its pre-fire condition, notwithstanding the fact that the Local Authority concerned would not permit this to be done.

Anything further I might have to say on the construction of this part of Clause 14 would merely be obiter, and since the point was not argued before me I do not consider it necessary for me to deal more fully with it.

In my view the award of the learned Arbitrator was not bad in law on the face of it and this application is, therefore, dismissed with costs.

Application dismissed.