

# ALLAHABAD HIGH COURT

Sardar Mal, Hardat Rai

Vs

Sheo Bakhsh Rai, Sri Narain on

(Piggott and Walsh, JJ.)

02.03.1922

## JUDGMENT

### **Piggott and Walsh, JJ.**

1. We have come to the conclusion that this appeal must be allowed.
2. We think the learned Judge has placed too narrow an interpretation upon the words of Clause 3 in the schedule.
3. We are of opinion that the provisions "entering on the reference "and" having been called upon to act by notice in writing" are alternative in this sense that where no reference is entered upon at all then the time runs from the notice calling upon the arbitrators to act. But, on the other hand, even although the arbitrators may be called upon to act by entering upon the reference, if they enter upon the reference, they have three months from that moment for making their award and for enlarging the time for making the award if the circumstances at the reference satisfy them that they cannot complete the award within three months. To hold otherwise would seem to strike out from Clause 3 the words "within three months after entering on the reference" in a case where one of the parties happened to call upon the arbitrators to act before they began the reference.
4. This clause was considered by the English Court of Appeal in *Baring-Gould v. Sharpington*<sup>1</sup> And the view which we take seems to be that which was laid down by the Master of the Rolls, the late Lord Lindley, in a passage contained in page 91 of the report.
5. In addition to that, under the old clause in England, which was slightly different in form, an equally strong court came to the conclusion in *Baker v. Stephens* (1867) L.R.2 Q.B. 523 that "entering upon the reference" means "not when an arbitrator accepts the office, or takes upon himself the duty, but when he actually enters upon the matter of the reference, when the parties are before him, or under some peremptory order compelling him to conclude the hearing ex parte."

6. The result is that the appeal is allowed and the award is ordered to be filed. The appellant will get his costs here and below.

7. This order as to costs does not include the respondent Sri Kishan. We direct that there should be no order as against him for costs.

Cases Referred.

1(1899) 2 Ch. 80