

(1928) 12 BOM CK 0020
In the Bombay High Court

Mahomed Ali Mamoojee

APPELLANT

Vs

William Stansfield Grosvenor Harvey

RESPONDENT

Date of Decision : 13-12-1928

Acts Referred:

Citation : (1929) 31 BOMLR 700

Hon'ble Judges : Warrington, J;Viscount Sumner, J;Blanesburgh, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Viscount Sumner, J.—In view of the concurrent findings of both Courts in India, upon evidence on which such findings were competent, it became necessary for the appellant to establish such errors in law as would justify his appeal. The objection which had been taken to the admissibility of any parol evidence as to the liability of these parties inter se, on the ground that it varied or contradicted the terms of the hoondies, was argued below and dismissed with a full statement of the Judges' reasons, Before their Lordships, though mentioned, it was not pressed, and it calls for no discussion now. It was also suggested that the agreement as to the security to be given was framed in such indefinite terms as to be incapable of amounting to a condition precedent. This suggestion is not easy to appreciate. It appears to be only an alternative form of the main contention, that the agreement as to this matter was no more than a term, the breach of which sounded in damages and in the circumstances only nominal damages, and could not be of such a character as to go to the root of the whole contract.

2. The rule as to concurrent findings is such that, unless some exceptional circumstances exist to warrant a departure from it, of which none can be suggested here, any discussion of the merits of those findings is inadmissible, since it can only be fruitless. Their Lordships therefore refrain from stating, still less weighing, a considerable part of the arguments, which counsel sought to press upon them, and as to the residue, may deal with them very shortly. [After

discussing facts the judgment proceeded:] On these facts a strong case of waiver of the term as a condition precedent and of reduction of it to a mere promise, sounding only in damages, might probably have been made out, if waiver had ever been pleaded or contended for, but if these subsequent occurrences are put forward as an answer to the agreement found, they amount only to reasons for disputing the concurrent findings.

3. Accordingly, the distinction between questions of law and questions of fact in this connection loses much of its importance, but, in their Lordships' opinion, the conclusions of both Courts, that the stipulation as to further security was a condition precedent to the liability of the respondent, are conclusions of fact and cannot be called matters of law as being a legal construction put upon agreed words. The case was not one in which it would have been possible to find as facts the precise words used. The agreement itself resulted from conversations in the way of business, of which no note was made, and the time which had elapsed between their date and the hearing in Court was so great as to make the recovery of the actual text of the bargain a hopeless task. In truth, all that was possible was to do as was done and to state the agreement arrived at in terms of its legal effect; and accordingly it must be taken from these concurrent findings that the words in which the parties agreed were such as would have the legal results, at which both Courts arrived. This is all the simpler because the plaintiff denied that there was any agreement at all, while on the part of Mr. Galstaun the business exigency of the situation pointed unequivocally in the direction of these findings. There are, therefore, no questions of law on the construction of the agreement found, but only concurrent findings of the fact, that the agreement was such as would have the legal effect, which was declared in the decree appealed against. It follows that the appeal must fail and their Lordships will humbly advise His Majesty that it should be dismissed with costs.