

[GRIFFITH WILLIAMS AND MELISSAS, JJ.]

(April 1, 1948)

1948
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 SALIH HAJI
 EMIN
 v.
 THE MUNI-
 CIPAL COR-
 PORATION
 OF LI-
 MASSOL.

SALIH HAJI EMIN,

Appellant,

v.

THE MUNICIPAL CORPORATION OF LIMASSOL,

*Respondents.**(Civil Appeal No. 3842.)*

Arbitration—Compulsory acquisition of land—Municipal Corporations Laws, 1930 to 1945, sections 118 to 125—Arbitration Law, 1944, sections 27 and 32—Ordering arbitrators to state case—"Order" in section 32 (1)—Right to begin.

An arbitration was directed by the District Court for the determination of the value of land belonging to the appellant which the Municipal Corporation of Limassol had decided to acquire under the provisions of the Municipal Corporations Laws, 1930 to 1945, sections 118 to 125, for the purpose of a housing scheme. At the outset the question arose as to who should call evidence first before the arbitrators. An application was then made by the appellant to the District Court, under section 27 of the Arbitration Law, 1944, and Order 49, rule 12, of the Rules of Court, 1938 to 1946, requesting that the arbitrators should be ordered to state a special case for the opinion of the District Court on the question "on whom the burden of proof lies." The Court dismissed the application on the ground that by clause 3 of the order of reference, upon the disagreement of the arbitrators being notified to the parties, the umpire was entitled to enter on the reference.

Held : (i) that this arbitration was what may be termed statutory compulsory arbitration by order of Court, and not under any provision of the Arbitration Law, 1944. But section 32 (1) of the Arbitration Law, 1944, expressly provided that that Law shall apply to any arbitration commenced after its coming into operation, under any agreement or order. The word "order" must include, if it does not exclusively mean, order of a competent Court.

(ii) although clause 3 of the order of reference did not preclude the District Court from directing the arbitrators to state a case, the power given to the Court by section 27 should be exercised with the utmost care to obviate procrastination of arbitration proceedings, and should be made use of only when so substantial a point of law is involved that it may have a material effect on the result of the arbitration.

(iii) the point of law involved in the present case was most unsubstantial. Each party set a value on the land, which it had to prove; and in fact whoever began first, it would not have affected the result of the arbitration at all.

Order of the District Court affirmed.

Appeal from an order of the District Court of Limassol dismissing an application (No. 1/48) made by appellant.

Z. Rossides for the appellant.

J. Potamitis for the respondent.

The facts of the case are set forth in the judgment of the Court which was delivered by :

·GRIFFITH WILLIAMS, J. : This is an appeal from the order of the District Court of Limassol, dismissing an application made by appellant under section 27 of the Arbitration Law, 1944, and Order 49, rule 12, of the Rules of Court, requesting that the arbitrators Raouf Denktash and Christakis Droushiotis be ordered to state a special case for the opinion of the District Court on the question "on whom the burden of proof lies."

This arbitration was directed by the District Court, Limassol, on 17th January, 1948, for the determination of the value of land belonging to the appellant which the Municipal Corporation of Limassol is acquiring under the provisions of the Municipal Corporations Laws, 1930 to 1945, sections 118-125, for the purpose of a housing scheme.

The order of reference directed the arbitrators to file their award with the Registrar, District Court, on or before the 23rd February, 1948, and that should they fail to do so or disagree as to the award, then the umpire, Euripides Themistos, should enter on the reference. The order of reference further directed that the proceedings—which were to be held by the arbitrators in the presence of the umpire—should be held on 17th, 18th, 19th and 20th February, with liberty to apply for further dates if necessary.

The arbitrators entered on the reference on the 17th February, and at the outset the question arose as to who should call evidence first. The appellant refusing the right to begin contended that the Municipal Corporation should call evidence first, and the Municipal Corporation argued to the contrary. This is what is termed in the application the question "on whom the burden of proof lies." The arbitrators and the respective counsel of the parties debated this question fruitlessly until the last day appointed by the Court for the close of the proceedings. This application was then made to the District Court, which dismissed it on the ground that by clause 3 of the order of reference, upon the disagreement of the arbitrators being notified to the parties, the umpire was entitled to

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enter on the reference. The District Court felt doubts as to whether section 27 of the Arbitration Law was applicable, but expressed the view that, if applicable, the power given thereby to the Court should only be exercised sparingly and cautiously to avoid the lengthening of arbitration proceedings.

This arbitration is what may be termed statutory compulsory arbitration by order of Court, and not under any provision of the Arbitration Law, 1944. But section 32 (1) of the Arbitration Law expressly provides that that Law shall apply to any arbitration commenced after its coming into operation, under any agreement or order. The word "order" must include, if it does not exclusively mean, order of a competent Court.

Although we cannot agree with the District Court that clause 3 of the order of reference precluded it from directing the arbitrators to state a case, we agree with its opinion that the power given to the Court by section 27 should be exercised with the utmost care to obviate procrastination of arbitration proceedings, and should be made use of only when so substantial a point of law is involved that it may have a material effect on the result of the arbitration. (See *Re The Kingswood*, special case stated by arbitrator. Decision of K.B.D. (1940) 2 ALL E.R. p. 46, affirmed by H.L. (1941) 2 ALL E.R. p. 165.)

In the present case the point of law involved was most unsubstantial. Each party set a value on this land, which it had to prove; and in fact whoever began first, it would not have affected the result of the arbitration at all.

We therefore affirm the order of the District Court and dismiss the appeal with costs.
