

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Richard Robert Woolcott v. Theodore Han-
cock, from the Supreme Court of the Colony
of Victoria ; delivered 29th June 1875.*

Present :

SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.
SIR HENRY S. KEATING.

Their Lordships think there is no ground for this Appeal.

The case arises upon a demurrer to a plea which sets out a submission to arbitration and an award. The submission contained a reference of all matters in difference between the two parties Woolcott and Hancock, and the arbitrator was to be at liberty to order and determine what should be done by either of the parties respecting the matters so referred. He was not merely empowered to decide the questions in difference, but to direct what in his discretion should be done. His award directs that Woolcott should pay to Hancock a sum of 1,285*l.* 15*s.* There is no objection made to the validity of that part of the award.

The first objection is that the direction as to costs is uncertain, because it is said one of the directions is inconsistent with the other. The first direction as to costs is "that the costs of
" this my award amounting to the sum of
" 195*l.* 15*s.* shall be paid in the following
" proportions by the said Theodore Hancock and
" Richard Robert Woolcott, namely, one third of
" the said sum of 195*l.* 15*s.* by the said Theodore

“ Hancock, and two thirds by the said Richard
 “ Robert Woolcott.” These are the arbitrator’s
 own costs of the award. Then at the end of the
 award this direction is found:—“ And I further
 “ award and order that the said Theodore Han-
 “ cock and Richard Robert Woolcott do each
 “ bear his own costs of this my award, and costs
 “ of and incidental to the reference back, and of
 “ all other costs whatsoever.” It is said that
 this is a direction which also relates to the
 costs of the award, but reading it with the
 context, it is plain that what is there referred to
 is the costs of the parties to the arbitration.
 The arbitrator uses words which are perfectly
 apt to describe the costs of the parties, except
 that he uses the word “award” instead of “arbi-
 tration.” No real difficulty arises in discovering
 what is the true meaning of the language,
 which is a direction that each party shall bear
 his own costs of the reference, and is entirely
 distinct from the direction which the arbitrator
 had made respecting his own costs of the award.

The next objection is to the direction to deliver
 up certain title deeds. The arbitrator awards
 “ that the title deeds deposited with me the said
 “ Thomas Dickson, arbitrator by the said
 “ Richard Robert Woolcott, shall be forthwith
 “ delivered by the said Richard Robert Wool-
 “ cott to the said Theodore Hancock.” It is
 said that there is an uncertainty as to the deeds
 which should be delivered under that part of the
 award, but the ordinary maxim “*Id certum*
est quod certum reddi potest” applies, and it
 must be presumed that the deeds deposited with
 the arbitrator are capable of identification.

Another objection is that the direction that
 Hancock shall “indemnify and keep harmless
 “ the said Richard Robert Woolcott from and
 “ against all debts, demands, liabilities, charges,
 “ and all claims whatsoever of the late firm of

“ ‘Hancock and Duffet,’ and of the late firm of
“ ‘Hancock, Duffet, and Grant,’ against him the
“ said Richard Robert Woolcott,” is uncertain,
because the nature of the indemnity is not
specified; and is beyond the scope of the arbi-
trator’s authority, because it deals with the claims
of persons who are not parties to the reference.
But the direction to indemnify against the claims
of specified firms is sufficiently certain, and if
such claims should hereafter arise, Hancock will
be bound to indemnify Woolcott against them.
No excess of authority is shown or averred.
The award is made concerning the matters
referred. The arbitrator directs that Woolcott
shall pay Hancock the sum of money awarded,
and that Hancock shall indemnify Woolcott
against these contingent claims. It does not
appear on the face of the award, nor is it averred,
that these claims were not included in the
matters in difference between the parties, and it
must therefore be assumed that they were inclu-
ded in them. It is also to be observed that the
arbitrator had power to direct what he should
think fit to be done by the parties respecting
the matters referred.

Another question was raised regarding the
interest, but their Lordships think that by the
order which is recited in the judgment, the
question of interest was left to the Court, by the
consent of the parties, to decide finally and
without appeal.

In the result their Lordships will humbly
advise Her Majesty to affirm the judgment
appealed from, and to dismiss this Appeal, with
costs.

