1913.

Present: Lascelles C.J. and Wood Renton J.

SOYSA *v.* RANASINGHE.

34—D. C. Kandy, 21,514.

Arbitration—Agreement to refer matters in dispute to arbitration—Action by one party for loss.

Under section 8 of Ordinance No. 15 of 1866 the Court has a discretion with regard to compelling the parties to an agreement to resort to arbitration, and the Court is not obliged to take this step if it is satisfied that there is sufficient reason why such matters cannot be referred to arbitration under the agreement.

Where fraud is charged, the Court will in general refuse to send the dispute to arbitration, if the party charged with fraud desires a public inquiry in regard to the allegations made against him.

LASCELLES C.J.—It may be that, in respect of the charges of fraud brought by the plaintiff himself, he had no right to object to these being referred to the arbitrators, inasmuch as he himself had made them. But with regard to the charges against the plaintiff, it is well settled that he is entitled to claim the benefit of a public inquiry according to law.

WOOD RENTON J.—The claims in the respondent's plaint for the appointment of a receiver and for the grant of an injunction deal with matters beyond the competence of arbitrators, and can only be satisfactorily disposed of by the ordinary tribunals.

THE facts appear from the judgment.

Bartholomeusz, for the defendant, appellant.—Where fraud is charged, the Court will in general refuse to send the matter in dispute to arbitration, if the party charged with the fraud desires a public inquiry. But when the objection to arbitration is by the

party charging the fraud, the Court will not necessarily accede to it, and will never do so unless a *primâ facie* case of fraud is proved. Plaintiff, who himself alleges fraud, cannot object to the reference to arbitration in terms of the clause of the agreement.

The Courts will be inclined to refer the matters in dispute to arbitration in terms of the agreement, and unless the plaintiff shows very clear reasons for not doing so. It is not enough to say that fraud is alleged unless a *primâ facie* case is made out.

In *Russell v. Russell* [1] there were distinct charges of fraud supported by affidavit. The Court held that no *primâ facie* case of fraud was proved.

Counsel cited *Biefield v. Brown,*[2] *Walmsly, v. White,*[3] *Russell on Arbitration 49 and 50.*

De Sampayo, K.C., for plaintiff, respondent.—The defendant himself charges the plaintiff with fraud in his answer. The plaintiff wants those charges to be inquired into in open Court. *Russell v. Russell* [1] is therefore a decision in plaintiff's favour. The arbitrator would not be in a position to grant the relief sought for; he cannot appoint a receiver or issue an injunction.

March 13, 1913. LASCELLES C.J.—

This is an appeal from an order of the District Judge on an application under section 8 of Ordinance No. 15 of 1866 to stay the proceedings under the action, and to compel a reference to arbitration clause in the partnership agreement. Under the section in question the Court has a discretion with regard to compelling the parties to resort to arbitration, and the Court is not obliged to take this step if it is satisfied that there is sufficient reason why such matters cannot be referred to arbitration under the agreement. On reading the plaint and the affidavits, it is clear that there are several reasons why the matter should not be referred to arbitration. The most important objection is to be found in the charges and counter-charges of fraud made by the two parties. Not only has the plaintiff brought serious charges of fraud against the defendant, but the defendant himself in his answer has charged the plaintiff with having submitted fictitious and false accounts. The plaintiff in his affidavit has claimed the right of having a public inquiry into these charges. It may be that, in respect of the charges of fraud brought by the plaintiff himself, he had no right to object to these being referred to the arbitrators, inasmuch as he himself had made them. But with regard to the charges against the plaintiff, it is well settled that he is entitled to claim the benefit of a public inquiry according to law. This, I think, is in itself a sufficient reason to support the order of the learned District Judge. But there are several other matters

[1] *(1880) 14 Ch. D. 471.* [2] *(1894) 1 Ch. D. 521.*
[3] *L. T. R. 67 (N. S.) 433.*

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alleged in the plaint with regard to which it seems to me at least doubtful whether they come within the purview of the arbitration clause. I think that the order made by the District Judge is sound in law, and I also think that it is the best that can be made in the interests of the parties. For I do not believe that the serious charges and counter-charges which had been made in these proceedings could be satisfactorily and finally determined by arbitration. I think the appeal should be dismissed with costs.

Wood Renton J.—

I am of the same opinion. The appellant's counter-charges of fraud against the respondent at once exclude the latter part of the rule affirmed by Sir George Jessel in the case of *Russell v. Russell*,[1] that, where the objection to arbitration is by a party charging the fraud, the Court will not necessarily accede to it, and bring the case within the former branch of that rule, viz., that, where fraud is charged, the Court will in general refuse to send the dispute to arbitration, if the party charged with fraud desires—as the respondent here does desire—a public inquiry in regard to the allegations made against him. It may be that the arbitration clause with which we have to deal is wide enough to cover a possible dissolution of the partnership. But the claim, in the respondent's plaint for the appointment of a receiver and for the grant of an injunction, deal with matters beyond the competence of arbitrators, and can only be satisfactorily disposed of by the ordinary tribunals.

Affirmed.

[1] *(1880) 14 Ch. D. 471.*