For these reasons, I concur with my learned colleague as we are assured that the arbitrators will gladly give effect to any expression of opinion from us.

The appellants must have their costs.

*Order reversed.*

B. N. L.

## ORIGINAL CIVIL.

*Before Mr. Justice Beaman.*

MULJI TEJSING *v.* RANSI DEVRAJ.*

1909.

*January* 25.

*Jurisdiction—Practice—Presidency Small Cause Courts Act (XV of 1882), section 22—Suit cognizable by Small Causes Court brought in High Court—Non-joinder—Contract of sale made subject to rules of Rice Merchants Association—Rule ousting jurisdiction of Court of law—Rule providing for fixing vaida rate of goods for purpose of ascertaining differences in case of non-fulfilment of contract—Suit by buyer for damages for non-delivery—Plea that no damages recoverable having regard to rate fixed—Allegation by plaintiff that rate fixed was not binding inasmuch as the rules were not observed—Construction of rules—Principal and agent—Agent's power to bind his principal to arbitration—Indian Contract Act (IX of 1872), section 93—Sale—Tender.*

The Bombay United Rice Merchants Association was a commercial body of which most of the principal rice merchants in Bombay were members. Its rules were printed and circulated and they prescribed a certain form of contract which was very generally used in Bombay. By these rules a Sub-Committee was nominated "to decide all disputes which may arise as to contracts and do all other business relating to contracts." It was also provided that the "exclusive authority" to decide all such disputes should be the said Sub-Committee and the Association and that no party should be at liberty to go to Court with respect to any matter connected with such contracts except to enforce the decision of the Sub-Committee and the Association. It was further provided that the Sub-Committee should keep a record of the daily rates and on the last day of the *vaida* should fix the *vaida* rate (*i. e.* the market rate of the day) on the basis of which differences should be calculated which became payable in cases in which contracts were not carried out. The plaintiffs who were rice merchants in Rangoon were not members of the Association, but they employed agents in

* Suit No. 172 of 1907.

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Bombay, who were members, to purchase rice for them and on the 24th November 1906 these agents bought from the defendants 1,340 bags of rice at Rs. 9 per bag deliverable at the *vaida* of Magshir Sud 1963 (*i. e.* from the 18th November 1906 to 30th November 1906). The contract which was in the printed form framed under the rules as above mentioned contained the following clause :—"This contract is made subject to the rules of the Bombay United Rice Merchants Association. Each party is bound to act in accordance with the same." For delivery at this *vaida* a large number of the members of the Association had made contracts of sale. The plaintiffs and a few others were purchasers and they were apprehensive that in settling the *vaida* rate the interests of the buyers would be disregarded in favour of those of the sellers. They accordingly wrote to the President of the Association calling upon him to see that no interested person was allowed to act on the Sub-Committee for fixing the *vaida* rate. In accordance with the practice a general meeting of the Association was held on the 30th November 1906 at which after discussion a special Sub-Committee was appointed to fix the rate consisting only of three persons one of whom was not a member of the standing Sub-Committee and another of whom had large contracts of sale due at this *vaida*. This Sub-Committee fixed the rate at Rs. 8-11-0 per bag. The plaintiffs alleged that it should have been fixed at Rs. 9-2-0 or Rs. 9-4-0 per bag which was the real market rate of the day; that the rate fixed was dishonestly fixed in the interest of sellers; that the Sub-Committee was not constituted according to the rules, two members of it being ineligible, one because he did not belong to the standing Sub-Committee and the other because he was interested in fixing a low rate, and they contended that for these reasons (*inter alia*) they were not bound by the rate fixed. They had duly demanded delivery of the rice contracted for and the defendants failed to give delivery and the plaintiffs now sued for the difference between the contract price (Rs. 9) and the market price on the 30th November 1906. The sum claimed as damages was less than Rs. 1,000.

The defendants pleaded—

1. That having regard to section 15 of the Civil Procedure Code (Act XIV of 1882) and section 18 of the Presidency Small Cause Courts Act (XV of 1882) the suit was not maintainable in the High Court.

2. That certain alleged partners of the plaintiffs not being parties to the suit it should be dismissed for non-joinder.

3. That having regard to the rules of the Association which provided a remedy in case of disputes among its members and forbade their going to law, the plaintiffs were precluded from suing at law at all events until they had exhausted the remedies provided by the rules.

4. That the plaintiffs were bound by the *vaida* rate fixed by the Sub-Committee appointed by the Association.

*Held*, (1) That the High Court had jurisdiction and that the suit should proceed subject to the provisions as to costs contained in section 22 of the Presidency Small Cause Courts Act (XV of 1882).

(2) That the alleged partnership was proved, but nevertheless the suit could not be dismissed for non-joinder.

(3) That the plaintiffs were entitled to sue at law notwithstanding the provisions contained in the rules of the Association requiring all disputes to be submitted for decision to the Association and restricting the right of members to sue each other.

(4) That at the meeting of the Association held on the 30th November 1906 the plaintiffs (through their agents) had consented to the appointment of a Sub-Committee of three persons to fix the *vaida* rate and that they were therefore bound by the rate then fixed.

Any stipulation that the award of an arbitrator shall be accepted as final restricts the rights of contracting parties to invoke the aid of the ordinary Courts and to that extent is void.

The effect of section 28 of the Indian Contract Act (IX of 1872), section 21 of the Specific Relief Act (I of 1877), read with the related sections of the Indian Arbitration Act (IX of 1899) and of the Civil Procedure Code dealing with arbitration is that a person may not contract himself out of his right to have recourse to Courts of law but that in the event of any party having made a lawful agreement to refer a matter of difference to arbitration as a condition precedent to going to law about it, the Courts will recognise the agreement and give effect to it by staying proceedings in the Courts.

THE plaintiffs filed this suit to recover from the defendants the sum of Rs. 710-6-8 as damages for breach of contract in failing to deliver certain bags of Rangoon rice which the plaintiffs had contracted to buy and take delivery of by two contracts, the first of which was dated the 22nd October 1906 and made between the defendants' firm of Gangi Narsi and the plaintiffs' firm of Mulji Dharsi, and the second of which was dated the 24th November 1906 and made between the defendants' firm of Gangi Narsi and the firm of Ravji Narsang who were the agents of the plaintiffs in making the contract. The two contracts were made subject to the rules of the Bombay United Rice Merchants Association.

The defendants denied that the firm of Ravji Narsang were the agents of the plaintiffs in making the second contract so that the plaintiffs had any right of action in respect thereof and they submitted that inasmuch as the sum claimed by the

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plaintiffs as damages in respect of the first contract did not exceed Rs. 1,000 the High Court had no jurisdiction to try this suit. They further alleged that the firm of Khoorpal Dungersey was a partner in the plaintiffs' firm of Mulji Dharsi and was therefore a necessary party to the suit.

Without prejudice to the above contentions the defendants also alleged that they were at all times ready and willing to deliver the said bags of rice to the plaintiffs, but that the plaintiffs never asked for delivery.

They denied that the plaintiffs had suffered any damage and they disputed the price of the rice on the due date.

The defendants further alleged that according to the rules of the Bombay United Rice Merchants Association subject to which the contracts in suit were made, the plaintiffs and defendants were bound by the rates fixed by the Association and that the rate so fixed for the *vaida* for which the said contracts were entered into was Rs. 8-11-0 per bag upon the footing of which the defendants had become entitled under the said rules to recover from the plaintiffs the sum of Rs. 481-9-0 in respect of the first contract referred to and the defendants counter-claimed accordingly. They further counter-claimed against the plaintiffs in respect of three contracts dated the 12th, 14th, 16th November 1906 under which the firm of Ravji Narsang purchased from the defendants for the same *vaida* 670, 1,340 and 1,340 bags of rice at the respective rates of Rs. 8-14-8, Rs. 9-0-2 and Rs. 8-15-11, and alleged that in respect of these three contracts and the second contract abovementioned they became entitled to recover from the firm of Ravji Narsang the sum of Rs. 1,381-14-0 by way of difference, no delivery having been taken by the said firm under any of the said contracts.

At the hearing the plaintiffs abandoned their claim on the first contract which amounted to Rs. 60.

*Bahadurji* (with him *Lowndes* and *Desai*) for the defendants :—

The firm of Khoorpal Dungersey is a partner with the plaintiffs and should have been joined as a co-plaintiff. The suit should therefore be dismissed. See *Kalidas Kevaldas* v. *Nathu*

*Bhagvan* (1); *Ramsebuk* v. *Ramlall Koondoo* (2); *Motilal Bechardass* v. *Ghellabhai Hariram* (3); *Aga Gulam Husain* v. *A. D. Sassoon* (4); *Ahinsa Bibi* v. *Abdul Kader Saheb* (5).

The plaintiffs cannot sue in a Court of law according to the rules of the United Rice Merchants Association until the Association has given its decision. See Rules 14, 29, 41, 46; Leake on Contract (5th edition), p. 675; *Scott* v. *Avery* (6); *Spurrier* v. *La Cloche* (7); *Trainor* v. *Phœnix Fire Assurance Co.* (8).

The plaintiffs never asked for delivery, they only demanded a delivery order. *Mulji Govindji* v. *Nathubhai Hirachand* (9).

Indian Contract Act (IX of 1872), section 93, Benjamin on Sales (5th edition), p. 595.

The plaintiffs are bound to accept the *vaida* rate fixed by the Association, this rate leaves a balance in favour of the defendants which we ask for in our counter-claim.

*Kirkpatrick* (*Inverarity* and *Jinnah* with him) for the plaintiffs:—

The onus of proving that Khoorpal Dungersey is a partner is on the defendants.

Even if proved the suit should not be dismissed. See Civil Procedure Code, Order I, Rule 9; *Mahabala Bhatta* v. *Kunhanna Bhatta* (10).

The cases cited by the other side do not apply. They were dismissed because at the date at which a necessary party was added they were barred by limitation.

The plaintiffs are entitled to bring this suit. That point was decided when the summons taken out by the defendants to stay these proceedings under section 19 of the Arbitration Act, was dismissed. The defendants did not appeal against that decision. We rely on the Indian Contract Act (IX of 1872), section 28;

(1) (1883) 7 Bom. 217.
(2) (1881) 6 Cal. 815.
(3) (1892) 17 Bom. 6.
(4) (1897) 21 Bom. 412.
(5) (1901) 25 Mad. 26.
(6) (1856) 5 H. L. C. 811.
(7) [1902] A. C. 446.
(8) (1892) 65 L. T. 825.
(9) (1890) 15 Bom. 1.
(10) (1898) 21 Mad. 373 at p. 383.

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Specific Relief Act (I of 1877), section 21; Arbitration Act (IX of 1899), section 19; *Koomud Chunder Dass* v. *Chunder Kant*[1]; *Crisp* v. *Adlard*[2].

The following rules of the Rice Merchants Association were mainly referred to in the argument as well as in the judgment:—

*Rule 14.*—All kinds of disputes relating to *vaidana soudas* (transactions) shall be decided only in the manner mentioned in these rules. And the exclusive authority to decide such disputes shall rest with the Committee and the Association only. And it is on this express condition that contract forms are supplied and every person signing such forms shall be taken to have knowledge of this express condition and to consent to and abide by all these rules. The Sub-Committee and the Association shall decide the matters placed before them as they think proper and each party to the contract shall be at liberty to go to Court in connection with the aforesaid transaction only for the purpose of enforcing the decision that is given in accordance with these rules. If any party does not respect such decision then whatever order the Sub-Committee or the Association shall make against him he shall have to submit to and if he does not submit his name shall be struck off from the records of this Association.

*Rule 29.*—For transacting all the above-mentioned business relating to *vaidana soudas* (transactions) this Sub-Committee shall meet daily in the rooms of the Association from 3 to 5 o'clock. It shall keep a note of the daily *vaida* rates and if the purchaser refuses to take the goods appertaining to a contract or if the vendor fails to give delivery of the goods sold or fails to give delivery in accordance with the terms of the contract or if any party to the contract commits any default whatever then as to any damages on account thereof which the Sub-Committee shall fix and award or any other kind of order which it may make each party shall have to abide by the same and as to any decision which the Sub-Committee or the Association will give in any matter relating to a contract each party to the contract shall be regarded as bound by the same.

*Rule 30.*—On the due date, that is on the last date mentioned in the contract, this Sub-Committee will settle the rate of that *vaida*. Even if that rate be less or higher than the rate of that day yet each of the parties to the contract shall consider himself bound by the said rate so fixed. And in accordance therewith each party shall have to finish receiving or making payments on account of his profit or loss within twenty-four hours after the due date. And if the contract goods shall have been sold legally then each party shall have to regard the difference between the rates realised by the sale and the contract rate as profit or loss and shall have to receive or make payments thereof immediately after the goods are sold. And in receiving or making such payments if any party to the contract make any default then whatever order the Sub-Committee will make he shall have to abide by.

*Rule 31.*—On any three gentlemen of the above Sub-Committee meeting at the Association rooms they can transact all the business of the Sub-Committee but with-

(1) (1879) 5 Cal. 498. (2) (1896) 23 Cal. 956.

out the sanction of the President or Vice-President and Secretary they shall not be able to give any decision and a decision given without such sanction shall be considered null and void.

*Rule 35.*—If there be any disputes or business relating to *vaidana soudas* (transactions) which have connection with any member or members of this Sub-Committee or in which he or they are in any way concerned or interested then the decisions thereof or any business whatever in connection therewith shall not be given or done until other independent appointments are made in place of such member or members. But on such occasions arising this Sub Committee shall at once call a meeting of the Managing Committee of the Association and from out of them shall get the necessary number of independent gentlemen appointed in the places aforesaid and after that the new Committee formed as aforesaid including these new gentlemen shall transact in accordance with what is written above all business relating to the aforesaid disputes and their decisions shall be regarded as the decisions of the Sub-Committee and such decisions shall be regarded as having been given in pursuance of these rules.

*Rule 37.*—All powers to make changes (and) alterations in the appointments of the gentlemen appointed on the Sub-Committee and to fill up their vacancies and also to make alterations or amendments (or) additions in (or to) these rules, rest with the "Rice Merchants Association."

*Rule 46.*—Of these rules, if any rule be found defective or uncertain in meaning or should it happen that on any occasion the Sub-Committee is unable to do its work or is unable to do its work in a satisfactory manner in conformity with these rules then on all such occasions as a last resource, a meeting of the Association shall be called and whatever decision may be passed thereat with regard to such matters, all persons concerned shall be bound thereby. But in connection with the contracts made in pursuance of these rules or in connection with any kind of business relating thereto no party to a contract shall be at liberty to go to Court in any way with regard to the said contract so long as he may be able to get all kinds of lawful decisions from the Sub-Committee or the Association; in other words, it is to be understood that every person entering into contracts in accordance with what is written above appoints by these rules, the Sub-Committee and the Association as arbitrator and final umpire and as to the decision which will be given in accordance with these rules the same shall be regarded as the arbitrators' award. Such being the case, every person entering into a contract shall have to go before the Sub-Committee or the Association for getting any matter relating to the contract decided and if he may not have been able to enforce the decision given by them in accordance with these rules then in that case he can go to Court only to enforce such decision and it shall be considered that every party to the contract and every party concerned therewith agrees with the rule made to this effect.

BEAMAN, J.:—The first point requiring decision is whether the firm of Khoorpal Dungersey is a necessary party to the suit? The answer to that question plainly depends upon the determination of a further question of fact, whether the firm of

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Khoorpal Dungersey is a partner of the plaintiff? That is a matter which must have been in the plaintiff's knowledge. Both he and Khoorpal Dungersey know and knew throughout the suit whether a partnership existed between them.

The defendant contends that the result of finding that Khoorpal Dungersey is plaintiff's partner must be the dismissal of the suit. To this the answer is that Rule 9, Order I of the Civil Procedure Code, forbids any suit to be defeated for misjoinder or non-joinder. Under the old Civil Procedure Code, section 31, it was enacted that no suit should be defeated for misjoinder. But as in England where the Rule of the Supreme Court first stood in the same language, the Courts inclined to include non-joinder. Yet there is more than one obvious difference both in the nature and the results flowing from the two defects, misjoinder, and non-joinder. Misjoinder can do the defendant no real harm, and remedying the mistake at any time, could not, as far as I can see, prejudicially affect in any particular, the course of the defence or attack. But non-joinder is altogether a different thing. Withholding a plaintiff and making him a witness, which is what the defendant alleges has been done in this case, might give the plaintiff an unfair advantage throughout the trial. Many questions which might be put to a plaintiff could not be put to a witness; and the whole effect of statements made by an interested party, must be, when the Court comes to weigh and appreciate the evidence tested and judged by other standards than those which would apply to the same statements made by a disinterested witness. If then a plaintiff has designedly, with the object of strengthening his case and evading awkward questions kept back a co-plaintiff, by a denial of facts which if proved would have entitled his opponent to insist upon having that person added at once as a co-plaintiff; and has thus throughout the trial secured exactly the advantages he had in view; it does seem that merely adding that person as a co-plaintiff or a co-defendant formally at the time of judgment is, from the defendant's point of view, no remedy at all of the wrong which has been done. Taking a case like this, if the Court finds when the trial is over, upon a painstaking analysis of much evidence and long consideration of many arguments,

that the fact which the plaintiff denied, is proved against him; that the man he said was not, really was his partner; then considering that if the fact had been admitted, that person must have been and would have been made a co-plaintiff or co-defendant from the beginning, it is a serious question whether the plaintiff should be allowed to turn round and say, 'well, it does not matter now; the Court may if it pleases add the man. For that amounts to this, that the plaintiff is permitted to make the fullest use of deliberate perjury; is allowed to lead evidence, as of a certain quality, while it really is not of that quality; is enabled to evade many questions that might otherwise have been put: to escape the effect of what might have turned out damaging admissions, all with complete impunity.

The cases cited under the old law, while they appear to recognise the defendant's right to have partners joined in the suit, are distinguishable, in this respect, that the suits were dismissed because by the time that the Court had found on the facts that other persons were partners and were necessary parties, the claim had against them become time-barred. *Kalidas Kevaldas* v. *Nathu Bhagvan*[1] and *Ramsebuk* v. *Ramlall Koondoo*[2]. The principle I have in mind is essentially the same, resting on it the right as a right of the defendant to have partners made parties to any partnership suit brought against him; but its application, in the way I have suggested above, would go further, and on a divergent line, from the authorities on which defendant relied. Nor do I see any way of getting over the plain language of the Code.

Defendant has contended that this is not a matter of procedure, and therefore that the decision ought to be given under the old Code. He relies on section 45 of the Contract Act. But waiving the first part of that argument, it appears that while the English Rule was so worded as only directly to cover cases of misjoinder it was in practice extended to cases of non-joinder; and presumably the Courts in India would follow the English Judges. Nor am I able to accede to the argument that this is a matter of substantive right rather than procedure.

(1) (1883) 7 Bom. 217. (2) (1881) 6 Cal. 815.

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Certainly it is the defendant's right, if he can show that a person is plaintiff's partner to have that person made a party to the suit; but it is matter of procedure how that person is to be made a party, and also what the effect of his not having originally been made a party is to have on the course of the suit. All this is specifically provided for in O. 1, r. 10. True, the words of that rule appear to contemplate cases where the misjoinder or non-joinder are attributable to *bonâ fide* mistakes, whereas here there can be no question of a *bonâ fide* or any other mistake at all. Still the fact remains that the law says that no suit shall be defeated for non-joinder, and as non-joinder is all that the defendant alleges, I do not see how he can succeed in his further contention that if it is proved, the Court must dismiss the suit. I should be only too glad to take that view if I felt able to do so. But as I am quite unable to read any such qualification as would be needful to validate the defendant's plea, into the words of the law, it follows that even, should I on the question of fact find against the plaintiff, I could not for that reason dismiss the suit. And merely adding Khoorpal Dungersey as plaintiff or defendant would not, as far as I can see help the defendant now in any way, or assist the Court in more thoroughly and satisfactorily disposing of what is in issue between the parties. So far as the defendants might stand in need of protection against another suit in respect of this claim by Khoorpal Dungersey, it is sufficient to note that that firm has on oath denied that it has any interest in this contract, so that it would not be in a position afterwards to advance any claim upon it.

Thus it becomes of comparatively little importance to decide now whether Khoorpal Dungersey is or is not the plaintiff's partner. But as a great deal of evidence has been led on the point and a good deal of argument addressed to it, as in various ways it has run through the whole case, colouring many parts of it, I think it as well briefly to resume the evidence, and state my conclusion upon it. [His Lordship then discussed the evidence upon the question of partnership and continued.]

I hold that there was a non-joinder, and that Khoorpal Dungersey ought to have been a party plaintiff. But I do not

think in view of what I said in beginning to deal with this preliminary point, and upon a careful consideration of the scope and intent of O. I, r. 10, that I need not make any order adding Khoorpal Dungersey as plaintiff or defendant or that on account of the non-joinder I can dismiss the suit. I must proceed to dispose of it as it stands, limiting myself to the parties already on the array and the matters in issue between them.

The next point which is likewise of a preliminary nature arises on issue 11. Shortly it comes to this, whether the plaintiff is precluded from coming into Court until he has exhausted the remedies provided for any member of the Association dissatisfied with a decision of the Sub-Committee? It might be put in other ways but that is the real meaning of it; and I may observe that it has been much blurred in argument by a failure to keep it wholly distinct from one or two other cognate questions which will need to be separately dealt with and answered. The rules, as I understand them, provide that the Sub-Committee shall fix the *vaida* rate. That is one thing. Next, that all disputes arising between members of the Association shall be referred to the Sub-Committee. That is another thing. Then further, that no member of the Association shall go to law about any such dispute until he has obtained the final decision of the Association and then only to the extent of enforcing that decision. That is still another thing, and the thing with which I am at present concerned. I do not think that the point presents any difficulty. The statute law on this subject is contained in section 28 of the Contract Act, and section 21 of the Specific Relief Act. The effect of those sections read with the related sections in the Indian Arbitration Act, and in the Code of Civil Procedure dealing with arbitration, is that a person may not contract himself out of his right to have recourse to Courts of law; but that in the event of any party having made a lawful agreement to refer the matter in difference to arbitration, as a condition precedent to going to law about it, the Courts will recognize the agreement and give effect to it by staying proceedings in the Courts. The principles underlying this branch of the law have I think long been clearly settled. The series of decisions starting with *Scott* v. *Avery*[1] lay down the rule to

(1) (1856) 5 H. L. C. 811.

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which statutory enactment has been given in section 28 of the Contract Act. And the question is whether the defendants' contention, if found to be correct, brings this case within the rule.

First, it is to be observed that the contract in suit was made on a printed form supplied by the Association. That form sets forth the terms and conditions upon and under which the contract is made. It has been argued for the plaintiff more than once that he is not a member of the Association, and it is therefore suggested, I would say, rather than contended, that in working out his liabilities under the contract form, he is entitled to be treated with more liberality than a member of the Association. I do not think that that need be seriously considered. The contract was made for him by an agent who is a member of the Association, with another person who is also a member of the Association. The plaintiff was an undisclosed principal. The defendant knew nothing about him; he made his contract with a member of the Association, on an Association form, binding both parties to the contract to abide by the rules of the Association. It cannot be, and I do not think it has been directly contended that the plaintiff is not as much bound as his agent would have been bound had he been in reality, what he appeared to be, *viz.*, a principal. This is not an isolated dealing; the plaintiff in employing Ravji Narsang knew quite well what sort of contracts he was empowering him to make; and what he did, what the agent did I mean, in the exercise of his delegated power, appears to have been entirely within the scope of his ordinary and legitimate authority as plaintiff's agent. Moreover for one part at least of his case the plaintiff himself strongly relies upon a rule of the Association imported by reference into this contract. It does not therefore lie in his mouth to repudiate other rules similarly imported.

Exhibit A is the contract in suit; it contains these words:—

"This contract is made subject to the rules framed by the Bombay United Rice Merchants Association. Each party is bound to act in accordance with the same." "All other conditions relating to the *kabala*, are in accordance with the aforesaid rules. Each party admits that he is fully aware of the same."

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Rule 14 says:—

"All kinds of disputes relating to *vaidana soudas* shall be decided only in the manner mentioned in these rules, and the exclusive authority in all respects to decide such disputes, shall according to these rules rest with the Sub-Committee and the Association. . . The Sub-Committee and the Association as mentioned in these rules bring an end to or decide the matters placed before them, as they may think proper and each party to the *kabala* shall be deemed as bound to accept the same as final decision."

Now I may observe on that at once that it goes beyond the principle. It does amount to excluding the jurisdiction of the Courts altogether: see *Coringa Oil Company, Limited* v. *Koegler* (1). Any stipulation that the award of an arbitrator shall be accepted as final does restrict the rights of the contracting parties to invoke the aid of the ordinary Courts, and to that extent appears to me to be void: see *Ranga* v. *Sithaya* (2).

Then the rule goes on—

"And any party to the *kabalas* shall be at liberty to go to a Court in connection with the aforesaid *soudas*, only for the purpose of enforcing the decision that is given in accordance with what is written in these rules."

That again appears to me to go a long way beyond the principle.

The rule concludes with a penal clause providing that if any member does not abide by what has been quoted his name shall be struck off from the Association. That, I think, is within its powers, but it is not a matter into which I have now to inquire.

Then comes rule 46 which is of a very sweeping character. First, it vests a general meeting of the Association in the last resort with plenary powers to supply all deficiencies in the rules themselves and all disabilities on the part of the Sub-Committee. And it says that all persons concerned shall be bound by whatever decision may be arrived at by that body in regard to such matters. It continues—

"But in connection with the *kabalas* made in pursuance of these rules, or in connection with any kind of business relating thereto no party to a *kabala* shall be at liberty to go to Court in any way with regard to the said *kabalas*

(1) (1876) 1 Cal. 466. (2) (1883) 6 Mad. 368.

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so long as he may be able to get all kinds of lawful decisions from the Sub-Committee or the Rice Merchants Association. In other words, it is to be understood that every person or persons entering into the *kabalas* in accordance with what is written above appoints by these rules the Sub-Committee and the Association as its arbitrators and final umpire, and as to the decision which will be given in accordance with what is written in these rules, the same shall be regarded as the arbitrator's award."

I pause to remark the ambiguity of such words as "all sorts of lawful decisions." That of course leaves a very wide door open. Any one may say, as the plaintiff now says, that he could not obtain any sort, let alone all sorts, of lawful decision out of the Sub-Committee or the general assembly of the Association.

The rule goes on—

"Such being the case every person entering into a *kabala* shall have to go before the Sub-Committee or to the Association for getting any matter relating to the *kabala* decided; and if he may not have been able to enforce the decision given by them in accordance with these rules, then in that case, he can go to Court only for enforcing such decision."

That is the rule upon which the defendant chiefly relies. It is of peculiar importance as constituting the Sub-Committee arbitrators, and the Association the final umpire of all matters in disputes over *vaida soudas*. And the question of course is whether to that extent it is not quite a lawful agreement which the Courts would enforce. So much of it as compels members to accept any decision as final, I have already said, is in my opinion unlawful, and would not be recognized to the extent of shutting any member of the Association out of the regular Courts.

Now although the plaintiff did not submit his grievance in person to the general assembly of the Association, he lost no time in protesting against the rate fixed at the meeting of the 30th November 1906, and as a matter of fact a general meeting was called, and all that is in contemplation in Rule 46 seems to have been done. It is true that the plaintiff was not present. But that was his own choice. He refused to attend any more meetings of the Association after the 30th November, because what had happened there had, he says, convinced him that he could not hope for fair treatment. But he sent in lawyer's letters, and therefore made it plain that he had a grievance of the

kind contemplated. Then the Association called a meeting and we must suppose that all that the plaintiff had advanced in his letters was duly considered, with the result that the proceedings of the meeting of the 30th November and the rate fixed at it were confirmed. So that really the only question open is whether the plaintiff can come into Court to question the finality of that decision. I am quite clear that he can. To hold otherwise would put a practically unlimited power in the hands of men who, judging from what I have seen of them in this case, are certainly not fit to be entrusted with it. Suppose that when the rate had been fixed on the 30th November the plaintiff had immediately filed a suit; then it would have been open to the defendants to move the Court under section 19 of the Indian Arbitration Act to stay proceedings till such submission as is contemplated in Rule 46 had been duly made; and the Court would then have considered whether this was the proper course. In fact this was actually done by the defendants although as far as I can see all that the rules required had been done, and all arbitration proceedings properly or improperly so called under the rules of the Association, had ended. That application was heard by my learned brother Davar in chambers. It was apparently argued at length, and Davar, J., refused to stay this suit under section 19 of the Indian Arbitration Act. In those circumstances especially having regard to the fact that the general body of the Association did meet and decide the points upon which the plaintiff now craves the judgment of the Court, the question narrows down to this, is the plaintiff shut out by any term of his contract from coming into Court and challenging the finality of the decision made against him by the Rice Merchants Association? If he is, then he is most certainly deprived of his ordinary common law right. For there is no decision in his favour, which he could, according to the rules, come into Court to enforce. So that his position would be this. He had a serious controversy with members of the body, involving charges of partiality and misconduct but he is wholly precluded from agitating those matters in a Court of law in the terms of the rules to which he is a subscribing member. The absurdity of this contention is that it shuts every dissatisfied

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party out of Court. It is only those in whose favour the assembly of the Association has pronounced that may go to Court to enforce that decision. Those against whom it has decided have no remedy. That I think is a proposition which needs only to be stated to carry on its face its own refutation. Doubtless the Association may expel, if so advised, any of its members who break this rule and insist upon bringing their grievances to trial in a Court of law.

But assuming for the purposes of this discussion that the procedure provided for the settlement of disputes by the rules of the Association is really procedure by arbitration, then at most it might be contended that until any dissatisfied member had tried his chances in the way provided by the rules he could not be heard in a Court of law. And that brings us back to this point, that if there is anything at all in this contention it is exactly what would be material in any contention of the same kind advanced under section 19 of the Indian Arbitration Act. And that again is always preliminary, and is to be decided *in limine* as it was decided in this suit. Supposing that Davar, J., decided it wrongly, and I should be very slow to think that he did, what is the result? Only what might always happen, *viz.*, that a reference to arbitration had proved abortive. Courts are not infallible, and as long as they have to decide in each case brought before them whether a suit ought or ought not to be stayed for the reason given now by the defendant there is always an equal chance that it will not be stayed. To go beyond that and, at the close of the trial, to contend that the plaintiff cannot have the benefit of the litigation at all (if he should prove successful), because a reference to arbitration was not carried out in whole or in part, seems to me an extremely strange proposition. Indeed, I do not really know how the defendant would work it out. If the Court were to hold that Rule 46 required reference of the particular matters now in suit to the arbitration of the Sub-Committee and after them to a general meeting of the Association, does the defendant say that the Court should dismiss the suit and remit the plaintiff to where he stood in December 1906? What would be the result of that? Only that the plaintiff would have to go through the

form (if he could get anyone now to listen to him) of appealing to the Sub-Committee and again to a general meeting to rescind all the resolutions and acts done and passed in November and December 1906, failing which I presume he would have to re-open this suit and pursue his remedy once more through exactly the same tedious and expensive litigation. If the defendant was dissatisfied with Davar J.'s chamber order why did he not then appeal? I am not aware of any law or principle which could be vouched for the extraordinary proposition that a suit which has after a long hearing come to an end should be stayed for the purpose of sending one of the parties back to an already pre-judged arbitration. I must therefore overrule that objection and find upon the eleventh issue, that the plaintiff can have the judgment of the Court on the matter put in issue before it, notwithstanding anything in Rules 14 and 46 of the Rice Merchants Association to the contrary.

Seemingly connected with and referable to the same principles as the question just dealt with is another, namely, whether the plaintiff in this suit is bound by the rate fixed by the Sub-Committee or its delegates at the meeting of the 30th November 1906. Whether the fixing of the *vaida* rate, under Rule 30 of the Association, is, when all the rules are read together, to be regarded as the award of arbitrators, the result of a reference to arbitration, or only so by a loose analogy, it is plain that this is an altogether different question from that which disputes the plaintiff's right under the rules to come into Court at all. For assuming that this is an arbitration award, it has been given. It is finished; the arbitrators are *functi officio*. And the plaintiff, as far as that award is concerned, and that only, has undoubtedly the right to come to Court and challenge it on the ground that the arbitration itself was improperly procured, or that the arbitrators were partial or were guilty of misconduct. It is only when we read Rule 14 with Rule 46 that the preliminary question takes definite form.

It may very well be doubted whether when we read Rules 14, 37 and 46 together, the Association meant to leave anything open for subsequent challenge or dispute touching the rate

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fixed under Rule 30. All the disputes which are contemplated seem to be disputes between member and member about *vaida* and other contracts, not a dispute about the correctness of the rate decided upon to be the standard of settlement. In that connection it is important to pay careful attention to the wording of Rule 30. The rule says nothing about "impartial" persons. It only says that the Sub-Committee shall fix the rate; and all members of the Association shall be bound by that rate; and shall pay or receive differences on the basis of it, and that should any member make default in settling on the said basis, he shall be subject to any orders which the Sub-Committee may make in that matter. Now it looks as though the concluding clause contemplated possible disputes to arise after the rate has been fixed, and Rule 37 provides *inter alia*, as I understand it, for the settlemet of such disputes. Then no doubt it would be necessary that the persons entrusted with making the settlement should not be the parties to the dispute, and should in that sense be impartial. But considering the nature of the Association and its composition, it might very well be that no *quorum* of "impartial" men, in the sense of men having no contracts for the *vaida*, could be found; and so I suppose the Association would not insist upon that special qualification. And as a matter of fact when we look into what has been done it is clear that the Sub-Commitee has comprised men who had *vaida* contracts. If, as the plaintiff now contends, it should have consisted of at least ten or elven members, it is obvious that it might frequently have been impossible to find so many or anything like so many out of a body of, say, forty or fifty, all rice dealers who had no forward contracts. So that while no doubt, under the general language I have already quoted from Rule 46, all these proceedings are declared to partake of the nature of arbitration proceedings, the only proceedings which might be thought to bear a close analogy to, and be governed by the principles applicable to what the law understands by arbitration, are those which would be called for when a dispute had arisen *after* the fixing of the *vaida* rate, between members of the Association upon *other points* of settlement. And it is only when a member has failed to have recourse to those proceedings

before coming into Court that the preliminary objection could properly be taken, and then, it appears to me, only in a particular way, by motion to stay the suit till the agreement to submit to arbitration had been fulfilled.

That is of course an entirely different thing from the contention I now have to examine, that the plaintiff is bound by the *vaida* rate fixed on the 30th November 1906. For rightly or wrongly that was fixed. If the plaintiff be held to have agreed to submit that qestion to arbitration, *nolens volens* he has submitted it to arbitration. He says he did not want to; that he was dissatisfied with the arbitrators, and still more dissatisfied with their award; but at any rate the award was made. The resultant question is the common question whether or not the plaintiff is entitled to have that award set aside as far as he is concerned on the grounds of misconduct, partiality, and so forth. And as to that of course there can be no preliminary bar at all. So that we must keep it distinct from the former question, which is of a preliminary kind, and if answered in the defendant's favour, would result in the suit being stayed, and the parties remitted to the contemplated arbitration.

Now though by analogy, and really too in the last analysis, this fixing of the *vaida* rate was an act of arbitration (for what else could it be?), looking to the scope and character of all the rules together it can hardly be treated from the same legal standpoint as quite normal arbitrations. The first principles of ordinary arbitration require that the parties should be heard before the arbitrators, and that the arbitrators should be impartial (I speak now quite generally). But under Rule 30 it is plain that no hearing was contemplated or ever in fact took place since the founding of the Association. Nor, as I have already pointed out, is it likely that in view of the restricted field from which the arbitrating body had to be chosen, impartiality in the strict sense was made, or was ever intended to be made, an indispensable qualification. In the history of the Association there can be no doubt that before the 30th November 1906 many members who had *vaida* contracts sat on the Sub-Committee appointed to fix the *vaida* rate. And it would appear

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from the tenor of the plaintiff's concluding arguments that he does admit that under the terms of his contract he would have been bound by a rate fixed in accordance with the rules. Practically no doubt he would, though for the sake of consistency I must again point out that any contract, not only to refer to arbitration, but to accept the award as absolutely final, goes beyond the true principle. That is to say, even if the rate had been fixed strictly according to the rules, I doubt whether any member who was dissatisfied might not come to Court and try to get the rate set aside on such grounds as fraud or misconduct. I say the practical result would be much the same as though no such course were open to him, because, if all the rules had been followed it is hard to believe that any Court would interfere in favour of a dissatisfied member. But I do not doubt at all that the Court would have the power to do so for sufficient reason.

And in this connection I may take up an argument which properly belongs to the consideration of the preliminary objection, namely, that even if the rules are rightly construed to mean that it is only for the settlement of other disputes, not for the settlement of disputes about the actual fixing of the *vaida* rate, that a scheme of arbitrators was framed, still where in fixing the rate under Rule 30 there has been such a wide departure from what the rules enjoined as to make the whole of that proceeding invalid, a dissatisfied member would be absolved by that initial illegality from all further duty of obedience to the rest of the rules. If, however, I am right in keeping these two matters separate, I do not think that it would necessarily follow that a member of the Association who was dissatisfied with the manner in which the rate was fixed would necessarily be at liberty to ignore all other provisions in the Rules, sending him before other bodies of the Association for redress, and come at once into Court. The fixing of this *vaida* rate is a matter in which presumably all or a majority of the Association would always be interested, and in respect of which there would be a recurring dispute (potential at any rate) between those to whose interest it was to have a high, and those to whose interest it was to have a low, rate fixed. And therefore the absoluteness with which the rule lays down the procedure, as well as the

manner in which it compels obedience in the immediate results of the procedure, seems to me to indicate that when the Association framed their rules, they intentionally put the fixing of the *vaida* rate on a different footing from ordinary accidental personal disputes and did not contemplate any exception being taken to it. That view, however, I must admit is weakened by what has happened in the present case, for after the plaintiff's party had seceded and sent in lawyer's letters, it appears that the Association did reconsider the question and (in the absence of the plaintiff who refused to attend) reaffirmed the *vaida* rate.

But the really important question which arises as soon as we have more or less sucessfully cleared the way to it through the intricacies of these Rules, seems to be whether in the particular instance any member of the Association is bound by the *vaida* rate fixed on the 30th November 1906? The plaintiff says no, for the following among other reasons:—

1. That the whole proceeding went on in violation of the rules.

2. That one at least of those who served on the Sub-Committee to fix this *vaida* rate was not a member of the Sub-Committee at all.

I admit, says the plaintiff, that I was bound to accept the rate fixed for the *vaida*, in accordance with the rules but I was not bound because I never contracted to accept a rate which was fixed, not according to the rules, but in a manner which certainly I had never contemplated, and did not assent to. And it was added that what happened at the meeting when looked at in the light of this contention was immaterial, the point being not whether protests were or were not made, but the fact that the rules did not authorize what was done.

There is however a way of looking at this question which would, or at least might, make the plaintiff's conduct at the meeting material. For, if although owing to differences of opinion the original intention of appointing a committee of twelve in accordance with the rules could not be carried out, yet the plaintiff and all others present did consent to a substitution of another

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tribunal for the tribunal provided by the rules, then to that extent it might be reasonably contended that they made Ransi Devraj, Amarchand and Morarji their arbitrators for the purpose of fixing the rate, and would in consequence be bound by the award given, unless it could be shown that it was procured in such a way that a Court of Justice would set it aside for that or some other sufficient reaon inhering in the composition or conduct of the arbitrating body.

Now let me look a little more closely into the materials upon which the rival contentions are based. When the Association was founded, or at any rate when the rules were drawn up, in March 1902, rule 2 appointed the Sub-Committee. It consisted of four *ex officio* and eight appointed members. The rule does not say that the Committee shall consist of twelve persons. It merely names twelve persons, and constitutes them to be the first Sub-Committee. But it does appear to mean that four at least (the *ex officio* members) shall *always* be members of the Sub-Committee, and the implication of course is that the total number would exceed four. On the other hand, I do not find anything to lend colour to the contention that twelve was the minimum number or that there was (unless we take the four *ex officio* members to be an irreducible minimum) any minimum number. And looking to the course of business in the Association and what we know has been done and passed unquestioned, I doubt whether there is as much force as the plaintiff thinks in his argument that the Sub-Committee of November 30th was incompetent because it consisted of only three members. All sorts of business is entrusted to this Sub-Committee, which is no doubt a standing Sub-Committee. And rule 30 certainly says, this Sub-Committee shall fix the *vaida* rate. But I am not prepared to go the length of saying that that means necessarily the whole of this Sub-Committee. We must remember that the rules are very loosely, often very badly, worded. They appear to have been drafted by the Rice Merchants themselves without legal assistance. And I look upon them as intended to give a general, rather than an absolutely and rigidly accurate description, of the manner in which the internal business of this Association was to be conducted, and

its disputes were to be composed. Some elasticity of construction ought I think to be permitted. And it is shown that on one previous occasion at any rate the *vaida* rate was fixed by four members only. No exception appears to have been taken by anyone to that departure from the ordinary procedure. The ordinary procedure, I may add, appears to have been to nominate some twenty members or so and then to select twelve from them at the meeting called to fix the *vaida*. Now that again shows how difficult it is to keep to any literal interpretation of the rules. For as far as this record goes, unless I am mistaken, the Court has not been told that the number of the Sub-Committee was so much enlarged as to make the naming of twenty persons, all members of it, possible. And yet naming others who were not members of the Sub-Committee as eligible for selection to fix the *vaida* seems to imply that the literal application of Rule 30 had ceased to be insisted on. If in that important particular, a particular be it noted on which the plaintiff much relies when he objects to the inclusion of Morarji in this Sub-Committee, then why not in other particulars which are not even prescribed *totidem verbis* by the rules, such as the minimum number, and so forth.

However that may be, the material facts are that the Association, as all such Associations naturally would, includes buyers and sellers, or as we may call them for convenience Bulls and Bears. The Bulls want a high rate fixed; the Bears want a low rate fixed. And underlying all this is of course a suspicion, to put it no higher, that a considerable number at any rate of these so-called *vaida* contracts are purely speculative, even gambling. The Bulls mean to force a high rate and so profit by the differences; in the same way the Bears want to force a low rate and in their turn make their profit out of differences. In such contracts it may very well be doubted whether the parties have in contemplation anything more than the differences upon their speculative dealings which will be determined by the *vaida* rate. Plaintiff was a Bull and the defendant was a Bear for this *vaida*. A few days before due date, plaintiff seems to have got wind, or suspected an intention on the part of the Bears to force an unfairly low rate on the Association. Theore-

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tically of course the due date rate should correspond with the actual market rate. Rule 30 provides that the mere fact that it does not exactly correspond with the market rate, is not to be a ground of objection. But it clearly means no more than that the Sub-Committee is not infallible, and indicates that the object in view is to fix a fair market rate of the day. It appears from the accounts which the plaintiff and his witness give of the meeting that the Bears were in the majority. And there were rumours flying about a day or two previous that an unfairly low rate would be fixed. On the 24th a preliminary meeting had been summoned at which twenty names had been put forward, and according to the summons the meeting of the 30th was to select from them twelve to form the Sub-Committee to fix the *vaida*. Alarmed at what was going forward the Bulls went to their Solicitors and got letters written to the Association protesting against any unfairly low rate being fixed. These letters were read at the meeting of the 30th and gave rise to all the trouble which has followed. Instead of proceeding at once to business and choosing twelve men to serve on the Sub-Committee, Morarji appears to have asked the plaintiff (when I say the plaintiff I mean of course his representative) what his objection stated in the letters really was. To this the plaintiff and his friends replied by nominating on behalf of their party, five men, including Morarji himself. Then one of these was rejected, and Morarji said that if they took up that attitude for the Bulls it would be necessary to nominate four men from among the Bears. Then a member, Karamsi, rose and said that at this rate they would never get to business, and he would name three men who would command the full confidence of all to fix the rate. He accordingly named Amarchand, the President of the Association, and one of the plaintiff's own men, Morarji, whom the plaintiff had himself first named, and Ransi Devraj who is a defendant. This was seconded by Bhara and according to the defendant and the minutes was carried by a show of hands *nemine dissentiente*. Bhimsey Bhanji and Fateh Mahomed, who were all Bulls, swear that so far from this proposition being carried unanimously they vehemently protested, but no attention was paid to them.

Now suppose, for the sake of argument, that the defendant's version is true, what would be the position? Surely an informal, but not the less quite a reasonable, submission to arbitration on lines somewhat analogous to, although no doubt different from, the ordinary lines laid down by the rules. If knowing, as they all then did, that Ransi Devraj was a Bear, and even supposing that they had lurking doubts about Morarji, yet as far as I can see having no more reason then than now to know that he was against them, while they were quite sure that the most influential man of the three (Amarchand) was on their side, they did accept these three men to fix the rate, taking their chance of one certainty *plus* one doubtful factor, against one adverse certainty, how could it be said that they did not submit the question to the decision of these three men, or that when they found that that decision was unfavorable they could repudiate it for that and that reason alone? Bhimsey, who is a very bad witness I may remark, says that he did not object to the men but to the proceedings. Immediately after he makes it plain that he did object to the men. But what seems to me more important is that he waited to see what rate they would fix. He was still taking his chance. So, though Bhimsey Bhanji and Fateh Mahomed say they protested against the constitution of the Sub-Committee it appears that they both waited for the announcement of the rate. I should have said perhaps that although Morarji evidently took the names mentioned by Bhimsey Bhanji to be those of Bulls, the witnesses themselves say that they only wanted impartial men, neither Bulls nor Bears, and that the names they gave, were those of men who to the best of their belief had no contracts for that *vaida*. Fateh Mahomed says that he went to tea after lodging his protest through Dhanji and Bhimsey, but it is clear that he waited to hear the rate, because he says he accompanied the other two, when the meeting broke up, to their solicitors to lodge another protest.

Now the defendant contends that Rule 46 is wide enough to give the Association power to deal in a difficulty like this, with the emergent question of settling the rate and to authorise the

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settlement to be made in a way which is not apparently the ordinary way or the way in which the Rules meant that it should be fixed. I do not attach much importance to that. I apprehend, though I confess that I construe these verbose and intricate rules with a good deal of diffidence, that the intention was where necessary to call a special meeting of the Association for any special emergency. No emergency was in contemplation when the meeting of the 30th November was summoned. It had been preceded by the meeting of the 24th and there was no reason to foresee any hitch or need to depart from the recognized procedure. The meeting of the 30th was a large meeting and a fairly representative meeting. That cannot be denied. But it was not summoned as a special general meeting to deal with a particular difficulty, nor when the difficulty did arise was any attempt made to meet it in that way. Unless indeed it can be argued that putting a proposition before the meeting and getting it carried in supersession of the ordinary rule went so far, I doubt it. I doubt whether if the plaintiff's party really protested, as they swear they did, and went on protesting, it could be held in any Court of law that merely by reason of their formal contract term to accept a rate fixed in accordance with the rules, any one of them upon the premises so far assumed would be bound to accept this rate. If I am so far right, it will be seen that the sustainability of this objection may really turn very largely upon what plaintiff considered relatively immaterial, namely, whether in fact he did object and persist in his objection when the departure from the rules was made. Upon this point there is a great conflict of evidence: man for man the defendant's witnesses are immeasurably better than the plaintiff's. But no Judge of experience cares to be too much influenced by demeanour and demeanour alone. The cool and hardy liar often makes an infinitely better witness to all outward appearance than the nervous, excitable, irritable man who is easily drawn by counsel, and while really speaking the truth or more of it than the other, makes a very poor show in the witness box; so that I will not press too hardly on the witnesses for the plaintiff merely because they impressed me most unfavourably. And if it were merely a question of weighing the evidence given by the witnesses them-

selves on both sides, I should not hesitate to accept the story of the witnesses for the defence. But before doing that, I cannot shut my eyes to other considerations affecting the probabilities of these rival versions of what took place at the meeting. Considering that the plaintiff had protested in advance, that he admittedly opened the discussion, by insisting upon having impartial men or at least men whom he declared or thought to be impartial on the Committee, considering further that when this proposal fell through, one at least of the three men named was a known seller on a large scale and that immediately after the rate was published the plaintiff went straight off to his solicitors to protest again, and that his party published in the papers a contradiction of the authorized version of the meeting to which the Association had at once given publicity, I must allow that there is, as plaintiff alleges, a considerable antecedent improbability that he would have assented unconditionally to the nomination and appointment of the three men to fix the rate. The point is how far that antecedent probability ought to be allowed to outweigh the positive and, as far as I can see the strong and good evidence of defendant's witnesses supported by the minute book of the proceedings? It is after all a qualified probability to this extent, that while no doubt it is most unlikely that the plaintiff and his friends were really pleased with what was being done, it by no means follows that they were so dissatisfied as to carry their early protests to the length of setting the authority of the Association openly at defiance and refusing to accept a majority vote.

Some light too is thrown upon the conflicting accounts of what really did take place at the meeting by the subsequent correspondence. Exhibit Q is the letter which the plaintiff's solicitors were instructed to write immediately after the meeting while every fact was fresh in the minds of the persons instructing them. Then too, if ever, the plaintiff's party must have been smarting under a sense of their recent injuries and defeat. If everything had been carried in a high-handed way, as the plaintiff now alleges, surely they would have made that an additional ground of protest. But do they? Not at all. Their objection is restricted to the disqualification they urge against two of the

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members. It turns upon their allegation that both Ransi Devraj and Morarji were interested, as sellers for that *vaida* and they deliberately pin it down to the words of Rule 35. It might be replied that the Court would be hasty in assuming that the solicitor's letter necessarily contains everything that has been poured into his ears by two or three indignant clients. My own short experience on this side of the Court has shown me that as a rule attorneys do not err on the side of brevity or conciseness. But I will not lay too much stress on that. I will allow that a wise attorney might exercise his own discrimination in selecting from too abundant materials those which he thought would best serve the interests and the purpose of his clients. And therefore it is of course possible that the plaintiff's solicitors thought that the strongest feature in his case was what appeared to them to be the infraction of Rules 30 and 35; while the supplementary points arising out of the conduct of the meeting and the manner in which the Sub-Committee was appointed were deemed to be comparatively unimportant and negligible. But it is a little strange in view of Bhimsey's statement that it was the procedure and not the men he objected to, to find that he there and then goes off to his legal advisers and instructs them to complain of the men and not of the procedure. Nor does this letter stand alone. On the 10th December after the aggrieved parties had had ample time to deliberate and arrange their complaints, they again instruct their solicitors to write to the Association. The letter is Exhibit S. And here again we find no specific complaint of procedure though the letter certainly does seem to be to contain instructions that the instructing persons were not satisfied with it. But there is something in it which is more important, lending colour as it does to the conjecture I have hinted at, that while the plaintiff's party opposed the nomination of the three men who were appointed by a majority to fix the rate, they did not carry their opposition further than the initial stage. One at least of the dissentient members appears to have instructed the solicitors to say that finding further opposition hopeless he allowed the majority to have their way. Now that is precisely what I should have thought from the fact that Bhimsey Bhanji and Fateh Mahomed

all waited for the announcement of the rate, most probably did happen in the case of all of them. When they found that their own idea of getting a composite committee containing four at least of their own nominees appointed impracticable, and the sense of the meeting so plainly against them, it is natural that they should have acquiesced, sullenly perhaps, but still acquiesced in the motion put by Karamsi. For that at any rate gave them on the whole much better chances than, according to their views, they were likely to have if the committee had consisted of any twelve men picked up from that meeting. Observe that they say there were only three or four Bulls present. In such a committee their nominees would have been outnumbered, and owing to the undisguised manner and motives of election, they could have expected but little consideration from their opponents. Whereas in this select committee of three they had a very reasonable prospect of securing a majority. It is therefore less improbable than at first sight it appeared, that the plaintiff should have acquiesced in the appointment of Amarchand, Morarji and Ransi Devraj to fix the rate and if the plaintiff did so consent, although only tacitly, I think it would be difficult to say that he was not bound by the award, unless he could get it set aside on any of the grounds upon which awards, otherwise lawful and regular in inception, may be set aside.

Thus far of the probabilities. Now I turn to the evidence. As I have already said I regard that of the defendants as much better and more trustworthy than that of the plaintiffs. And not only this, but we have the minutes of the meeting, and these minutes positively corroborate the defendants. A great deal has been made, and very naturally made in argument out of the interlineation. This interlineation consists of precisely the passage which according to the plaintiff the defendant would have inserted had he had in mind a planned scheme to defeat the plaintiffs' present case. It says that after the nomination of the three as a special committee, full liberty was accorded to every member to speak and urge objections, but "every member present at the meeting very willingly agreed to accept whatever rate the said three persons would unanimously fix." Without the

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interlineation the minutes would have gone on "therefore as no body opposed the proposition the abovenamed three gentlemen met for nearly half an hour, etc." And it appears to me that really that passage was quite enough to serve the purposes of the defendants. It formed an undisputed part of the minutes, and it states the cardinal fact that there was no opposition. Whether anything is really gained by the amplification contained in the interlineation, may be doubted. But even supposing it was an after-thought it was a speedy after-thought. For it is certain that the words were put in the press communique which must have been sent off that evening. The evidence, leaving mere guess work aside for a moment, is that the words which now appear as an interlineation were in the Secretary's rough notes. And it certainly seems that they must have been, or they could hardly have got into the papers the next morning. The evidence is that when the minute book was written up from the rough notes, these words were omitted, and when the book was submitted to Ransi Devraj, and compared with the rough notes, he noticed the omission and ordered the Secretary to write the missing passage in. It is contended for the plaintiff that this is, on the face of it, improbable, since the minute book as originally written runs on grammatically and consistently. But surely that might account for the omission. If there had been a break in construction, the copyist must have noticed it at once. But where, if the whole interlineation be omitted the sense remains substantially the same and there is nothing wrong with the construction, it might well be that the words had been left out through a *bonâ fidê* mistake. Another point taken by the plaintiff is that the rough notes are lost. But I think nothing of that. Rather I should have thought it singular had they been preserved. When a Secretary takes down rough notes of what occurs at a meeting and afterwards writes them into the permanent minute book I believe that it is commoner for him to throw away or destroy the rough notes than to keep them. This interlineation is initialled by Amarchand the President, showing that he accepted its correctness and he is, if not actually a plaintiff himself, one of the plaintiff's men. At the subsequent meeting

of the 29th December these minutes were put to the meeting in the usual way and carried and signed by the President (see Exhibit 22). Thus the official record which I see no reason to doubt bears out the testimony of Ransi Devraj and Morarji. And upon a careful consideration of all these materials I must hold that the plaintiff did consent to the appointment of Ransi Devraj, Morarji and Amarchand to fix the rate.

Doubtless a further question might arise on that whether doing so was within the scope of his authority as an agent, so as to bind the real plaintiff, who was not present at the time, and that again would lead up to a consideration of the very difficult question how far in mercantile dealings of this general and more or less stereotyped character an agent has authority to bind his principal to submit to arbitration. For it might be said that while the plaintiff does not contest the authority of his agent Ravji Narsang to sign the contract form and so to bind him to abide by all its conditions, that authority does not go the length of making him the plaintiff's representative for selecting a wholly new body of arbitrators not contemplated by the Rules. And this in turn raises another question, namely whether assuming that the rate fixed was binding upon all who were present at the meeting, and must therefore constructively at any rate be taken to have assented to the constitution of a new tribunal of arbitration, it would have the like effect upon other members who were not present. To answer that, which is really the practical question raised, it is necessary to consider I think not only from the strictly theoretical legal, but from practical mercantile side, what commonly happens in the conduct of such affairs. Where a body like the Rice Merchants Association meet to select a Committee and then empower that Committee to fix a rate, I suppose that the procedure is very much like that of any other club or lay Association. Probably it was the intention of all to abide by the rules, assuming for a moment that the rules made a particular procedure imperative. But when it was found that owing to unexpected obstruction strict adherence to the rules would lead to an *impasse*, the sense of the meeting might override the technical difficulty, and suggest a short cut to the

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desired solution. Thus a new proposition like that of Karamsi, might be put, and then if the meeting which was essentially a general meeting carried this proposition unanimously, which is what the evidence shows happened on the 30th November, I do not see why a Court should stickle too much over the terms of particular rules. The general meeting is in the last resort the legislature of all such bodies, and the sense of a general meeting ought to be enough, I should think, to warrant a formal departure from the ordinary procedure. I say a formal departure, because after all what was carried at this meeting and then done, does not appear to me inconsistent with the spirit of the Rules. Nor was it after all such a very startling innovation. On a previous occasion, as I have said, a very small Sub-Committee fixed the rates. It was not quite so small as this, and I do not think it laboured under the one special defect upon which the plaintiff insists, that all its members were not members of the standing Sub-Committee. But the object of the Association in procedure under Rule 30 is to get a rate fixed to be the standard of differences. And if a general meeting chose to say, "For this *raida* we are content to take a rate fixed by three of our leading men, I do not think that this really constitutes any great deviation in principle from what Rule 30 intended. A good deal has been made out of the plain advantage that was to be secured by maintaining the members of the Sub-Committee at a high figure, say ten or twelve. But is this really so great an advantage as it is made to appear? If the Committee consisted of ten Bears and only two Bulls, which might well happen, the Bulls would be in a far worse position than if it consisted of one Bull and one Bear, and one doubtful member. For what do we find that the procedure in fixing the rates has ordinarily been? All the members apparently write down what they consider the *vaida* rate should be. It appears that first a rough measure is agreed upon, and all are bound not to vary more than four annas above or below it. Then when all the members have stated the figure each has chosen, an average is struck and that average is accepted as the *vaida* rate. Whether the body consists of three or ten, there is not likely to be much practical difference, unless the

whole body be of one mind, when no doubt an unfair rate might easily be announced. Now if we turn again to Rule 46 we find that the Association clearly contemplated cases of difficulty and emergency, and that it provided that in all such cases a general meeting of the Association should be called, and the decision is to bind all persons. Difficulties arising out of the Sub-Committee being unable to do the work are specially contemplated. And though, as I have said, there is a difference between calling a general meeting as a last resort to surmount some unforeseen difficulty of that kind, and dealing with it at a general meeting at which it has arisen, the difference is less real than nominal. Of course it might be contended that as soon as it was known that a general meeting was to be convened for the purpose of acting under Rule 46 every member who was interested in the point in dispute would attend, and insist upon having a hearing; while if that were not known, anything might be rushed through an ordinary general meeting which might prove highly detrimental to absentees. I allow that there is a good deal of force in that. But we have to remember that in this instance there was a subsequent general meeting convened, with the object of allowing the malcontents to be heard. They would not attend, and in the result a general meeting did ratify what had been done at the previous general meeting. And this introduces the principle of ratification upon which the defendant relies. The rule in *In Re London and New York Investment Corporation*[1] and *In Re Portuguese Consolidated Copper Mines Limited*,[2] might with little straining be extended to cover the present case. But I am not quite sure that I ought to rest too confidently on those cases. In the first case the Memorandum of Association provided that preference shares might be issued on such terms as the Company should by special resolution determine. Preference shares were issued without any such special resolution. But at meetings subsequently held and attended by all classes of shareholders, resolutions were unanimously passed, adopting the terms under which the preference shares were issued. It

(1) [1895] 2 Ch. 860. (2) (1890) 45 Ch. D. 16.

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was held that the imperfect issue of preference shares was capable of ratification and had been ratified. In the second case the Articles of Association of the Company provided that the shares should be allotted by the directors, and that the first directors should be appointed by the subscribers to the Memorandum of Association. An allotment was made at a meeting which the Courts subsequently held was irregular and the allotments were consequently invalid. Notice of the allotments was sent on the following day to A. B. A. refused to pay the allotment money on his shares, B. paid his to the Bankers under protest, but the evidence failed to prove that either of them revoked his application, or repudiated his shares, on the ground of the allotment being invalid. Later the Company brought an action against A. for the allotment money and recovered judgment. Later another meeting of directors was held at which only two attended and they passed a resolution, that the certificates of the shares allotted should be sealed and issued to the allottees. B. refused to accept the certificate of his shares, but did not distinctly repudiate the allotment. Another meeting of directors was held at which all four in number attended, and the chairman signed the minutes of the last meeting. At a later duly constituted meeting of the directors a resolution was passed formally confirming the allotment of shares made at the previous meeting of the 24th October. A. B. then moved for a rectification of the register by striking out their names. It was held that although the original allotment of shares was invalid, it had been ratified by the Company and was binding on the allottees. It is, I think, plain that there are points which might distinguish that from the present case. The former appears to be more directly in point. But there too there appears to have been no dissent or repudiation by any member of the Company at any time: just as in the latter case the allottees did not repudiate till long after the ratification. Here however we have to reckon with an immediate protest made before (according to the view of the plaintiff) the general meeting of the 29th December had ratified what was done at the meeting of the 30th November. And on the whole I am very doubtful whether if there was any departure from the Rules at the meeting of the 30th what was

done as a consequence of that departure could be made binding on any one who protested and refused to accept it before ratification, by a subsequent ratification on the 29th December.

But it is first important to be sure that there was any real violation of the Rule regulating the fixing of the *vaida* rate. That Rule says that the Sub-Committee shall fix the rate. It does not say how many of the Sub-Committee, and though surely the natural reading of the rule would give by implication a command that no one who was not on the standing Sub-Committee could be associated with members who were on it, for the purpose of fixing the *vaida*, that conclusion seems to me to be somewhat shaken by the proved fact that some twenty names at least were submitted, from whom the Sub-Committee to fix the rate was to be chosen. Turn now to Rule 31. That provides that any three gentlemen of the above Sub-Committee may meet at Association's room, and transact all the business of the Sub-Committee, but that without the sanction of the President or the Vice President and the Secretary, they shall not be able to give any decision, and a decision given without such sanction shall be considered as null and void. Now that rule, while to a certain extent it may be thought to help the defendant as showing that three form a quoram of the Sub-Committee for the purpose of giving provisional decisions, yet on the other hand it favours the plaintiff inasmuch as it seems clearly to confine this kind of authority to members of the Sub-Committee. I do not think that the Rules anywhere provide for the election of new members to the Sub-Committee. And it might therefore be open to the defendants to contend that when business had to be done by the Sub-Committee and the Sub-Committee only, a vote at a general meeting including, for the purposes of doing that business, a member who was not a member of the Sub-Committee was tantamount to appointing him a member of the Sub-Committee for that special purpose. But I doubt whether that would not be going too far in the way of construction. And on the whole I gravely doubt whether looking to the words of Rule 30, and to the fact that Morarji was not a member of the standing Sub-Committee the fixing of the rate at the meeting of the 30th could bind anyone who was not present at that meeting and a consenting party to

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the appointment of the three arbitrators, and who did protest before the proceedings of the meeting were ratified.

I must observe here that I do not think that there is any force in the objection which the plaintiff took from the first and has chiefly insisted upon ever since, namely, that these Arbitrators were not impartial within the meaning of Rule 35. That Rule, as I have I hope, made plain in the earlier part of this judgment was framed in my opinion to meet altogether different disputes, than such as might be permanent and recurrent over the fixing of the *vaida* rate. I do not read that rule in the sense in which the plaintiff has read it from the first. Nor do I think that the Association ever intended to exclude from the Sub-Committee entrusted with the fixing of the *vaida* rate, every member of the Association who might have contracts for that *vaida*. So that, if as I find, the plaintiffs' representative, whom I have loosely called the plaintiff, was present at this meeting of the 30th and himself took part in the proceedings and acquiesced in the appointment of the three men as arbitrators to fix the rate under Rule 30, I do not think that he could evade liability under the rate fixed for no better reason than that one of the men had contracts on a large scale for that *vaida*. *Ellis* v. *Hopper*[1] seems to me to be a strong authority for this proposition, nor do I think that plaintiff was at all successful in his attempts to distinguish it. Such cases as he cited upon the broad general principle that no man interested may be a Judge seem to me to turn on wholly different considerations. Thus if the plaintiff himself had stood in the shoes of his agent at this meeting I think that he would have been bound by the rate which was then fixed, unless he could have shown that over and above what he now puts forward as the principal ground, namely the disability under which he knew at the time that one of the chosen arbitrators was labouring, there was some fraud or dishonesty against which the Court would on general principles relieve him.

Is the case altered because the plaintiff in person was not at the meetings? I doubt it. It is true that I do doubt very seriously whether as the law stands an agent may bind his

(1) (1 58) 3 H. & N. 766,

principal to arbitration. But here the principal admits that he had allowed his agent to bind him to one kind of arbitration, and it would be stretching the legal principle which has already occasioned grave inconveniences in the larger mercantile communities of this country, further than is either necessary or desirable to say that an agent empowered to pledge his principal to one kind of arbitration is not empowered to pledge him to another, which is, in essence, after all, precisely the same. In my opinion the plaintiff is bound by the *vaida* rate which was fixed at the meeting of the 30th November, although I am not prepared to say that that *vaida* rate would bind members who were not at the meeting and protested before the proceedings of that meeting were ratified in the meeting of the 29th December.

So far then as this point goes, namely, whether the plaintiff is bound by the rate fixed nothing remains to be considered but this, whether being first bound to the submission and consequent award fixing the rate, he is freed from that obligation by any misconduct or fraud or disability, on the part of or in, any of the persons conducting the arbitration. And to that I must give a short answer in the negative. As to the mere fact that one at least of these three was himself interested in contracts for that *vaida*, I have said enough to show, that in my opinion and having regard to the constitution of the Rice Merchants Association, and the usual course of business here, the fact alone would not be and had never been thought to be a disqualification. And as to what was done by the specially appointed Committee, I do not find any trace anywhere of so markedly an improper bias, or partiality or misconduct, as would justify a Court in setting aside their award. True no parties were heard before them; but then, for this particular business, no parties ever are, and that must be taken to be a known and implied condition of the submission. We know exactly what did happen at this meeting. We know that Ransi Devraj suggested the lowest rate; that was to be expected and if we look at the records of other meetings of this Sub-Committee we shall find that while some members suggest a high, others suggest a low rate. But the entire difference in

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this meeting between the highest and the lowest rate suggested was inconsiderable. A mere matter of two annas and a half. Bearing in mind that Amarchand was quite as interested in getting a high rate fixed, as Ransi Devraj was in getting a low rate fixed, while apparently Morarji was impartial. I would not say that Ransi Devraj's suggestion to fix the rate 8-10-0 indicates any dishonest bias or partiality. It is much more important to note that Amarchand himself who is the plaintiff's man did not put the rate higher than 8-12-6, while Morarji thought it ought to be 8-11-0. I am not therefore able to accede to the plaintiff's contention that the award of this body ought now to be set aside as having been improperly procured or infected with fraud or partiality.

Before dealing with the last material question, what was the true market rate for the big mill Rangoon rice on the 30th November 1906 I must say a few words about one or two incidental points. The plaintiff sues on a contract. He alleges therefore a breach on the part of the defendant. The defendant in his turn sues on the same contract by way of counterclaim; and it is contended that he cannot prefer any such claim because he does not even allege that there was any breach on the part of the plaintiff. The ordinary law on this subject is contained in section 93 of the Indian Contract Act. "In the absence of any special promise the seller of goods is not bound to deliver them until the buyer applies for delivery." Primarily, then, the initiative rests with the buyer, and if the buyer makes no demand in the absence of a special promise, no obligation lies on the seller to tender. But in this case the contract in suit was made subject to all the Rules of the Association, and condition 4 on the back of the contract, (which is a compendious reproduction of Rule 17 of the Association), runs as follows: "Excepting the *kabalas* made, in the name of an incoming steamer, in connexion with other *vaida kabalas*, during the *vaida* period, whenever before the last five days of the *vaida*; the party selling may give to the party purchasing the delivery order in respect of the *vaida* goods in accordance with the aforesaid rules, the party purchasing is bound to take the same, then, and

thereafter he is bound to take the goods appertaining to such order in accordance with these rules. The party selling is bound to send to the party purchasing the delivery order five days before the last day of the *vaida* period." I confess that the first part of that rule does not convey a very clear meaning to my mind. But the upshot of it all seems to be that the seller must send a delivery order to the buyer five clear days before due date. I now turn to Rule 17. It provides in plain English that a seller may send a delivery order any time within the *vaida* period five clear days before the due date. Then "the purchaser shall have to take that delivery order and the goods mentioned therein in pursuance of these Rules. The vendor shall have to send to the purchaser the delivery order at least five clear days before the last day of the period mentioned in the contract—a purchaser will not be considered bound to accept any delivery order that is received after that time, but both the parties shall be bound to receive and pay the profit and loss according to the difference between the rate fixed or settled on the due date, and the rate mentioned in the *kabala* and the receipt and payment in respect thereof shall be made immediately after the due date." This again is by no means as explicit as might be wished. But it seems to me to mean, that if a delivery order is sent five clear days or more before the *vaida*, the purchaser must accept the goods; if it is not, then the parties are to settle on the differences only, measured according to the *vaida* rate fixed for due date and the same meaning appears to me to be deducible from the language of Rule 30.

That Rule has two possible applications. First, it may be contended that a member of the Association is bound by the rate fixed under it to this extent, that in any difference which may arise over non-fulfilment of a *vaida* contract, that rate is to be taken as the measure of the differences. Second, it may be contended that the latter part of the rule goes further and really provides that where a *vaida* contract has been made, the parties to it, whether either or both are guilty of breach, are in the same position with regard to the settlement, that is to say, that the party guilty of, as well as the party innocent of, the breach may equally claim profits on the *vaida* rate. And

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that means of course that all parties so agreeing to be bound by that rule, are contemplating gambling contracts. Because the law would certainly not consider the claim of any party for damages calculated on such a basis if he himself were the party who had committed the breach. No doubt what the framers of that rule might have had in view, is that by implication no party, benefiting by the *vaida* rate, would have committed a breach, and therefore it is merely a short way of avoiding intermediate steps; or possibly it might be more correct to say that the framers of the rule did not contemplate any party who, if he had literally fulfilled his contract would have made a profit, wilfully committing a breach of it. And so it was broadly laid down, that whether the contract was fulfilled or not, and irrespective of all enquiry as to whose fault it was that it was not carried out, it would be enough to produce the *kabala*, compare the rate with the *vaida* rate fixed on the due date and then make the contracting parties settle differences accordingly. It does not necessarily follow that if that is a correct interpretation of the intention of the framers of this Rule, it was meant to regulate gambling contracts only. Many perfectly *bonâ fide* contracts which, with the best intention in the world to fulfil them, one of the parties had been unable to do so, although if he had, he would have made a profit, would likewise fall to be included in it. However that may be, it certainly does seem to me that while a person might be bound by the *vaida* rate, that is to say, has to take that as the measure of his damages, when he came into Court to claim them, he might very well contend that he certainly was not bound by the rest of the rule which ignores a fundamental legal principle that only the party who is innocent of the breach can claim damages. It is also I think clear that under these rules the seller has to send a delivery order five clear days before due date. Admittedly the defendant did not do so. The plaintiff called upon him for a delivery order; but the defendant contends, setting the rules aside as far as I understand him, that that was not a demand for fulfilment, it was not a demand for delivery but merely for a delivery order, and as he was always ready and willing to deliver the breach was due to the plaintiff. I may observe in this connexion that Rule 17

cannot be meant to be always strictly enforced. For we have it in evidence that these *vaida* contracts are not infrequently made with in less than five days of the due date. In such cases it is obvious that the condition prescribed by Rule 17 becomes impossible of fulfilment. Still, where contracts are made under the Rules, in time for the seller to comply with them, I think it is enough, if he fails to do so, to give the buyer a cause of action for breach. To this extent, the plaintiff is, in my opinion, right.

What the defendant's position is, in respect of his counter-claim, is not so easy to determine. Except upon the hypothesis that it was never the intention of either party to do more than pay and receive differences, it is difficult to understand how a man who admits that he did not send the delivery order which he was bound to send as a condition precedent to the completion of the contract can claim any damages because it was not completed. I have very little doubt in my own mind that this and a good many other *vaida* contracts made and settled under the rules of the Association are purely gambling contracts. The parties have no intention of buying or selling anything, and in such circumstances it is natural that they should consider themselves under mutual obligations, when the *vaida* rate is declared to pay or lose on the figure at which they had respectively elected to sell or buy. But I do not see how a Court of law could be asked to enforce any such understanding even though the contract may be made under the Rules of the Association, and those Rules may contemplate that peculiar kind of dealing. On that point too, I think, the plaintiff is right.

I will now give my decision upon the question of fact, what was the market rate on the 30th November 1906? [His Lordship then examined the evidence given as to market rate on the 30th November 1906 and concluded—]

Still taking the evidence as a whole, and allowing that it is far from good evidence, the Court must do the best it can with it. And after carefully considering it, testing it by the ordinary tests, and looking at it too in the light of surrounding circumstances, and general probabilities, I must conclude that the *vaida* rate of 8-11-0 fixed at the Association Meeting of the 30th November fairly represents the market rate of that day.

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On that finding, apart from the former finding that he is bound by the rate fixed on the 30th November, the plaintiff would again fail on the merits.

But I must add that I do not see my way to allowing the defendant's counter-claim. I have already given my reasons and need add nothing to them.

It was urged on behalf of the plaintiff that because this suit occupied many days in trial, and because the judgment took two hours to read, it must have been a proper suit to bring in the High Court. I do not see any force in that argument. The case was deplorably protracted, but not on the only points upon which it could properly be said that there was any reason at all to withdraw it from the ordinary tribunal. Almost all the time was spent upon two points, the alleged partnership of Khoorpal Dungersey with the plaintiff, and proving what the true market rate was. Certainly there was also a good deal of evidence about what occurred at the meeting of the 30th. But that evidence, confined to that point only might as well have been sifted in the Small Cause Court. I am most strongly opposed on principle to encouraging parties who might have their differences settled cheaply and expeditiously in the Small Cause Court to come into this Court. After giving this matter long and careful consideration I have come to the conclusion, that in all the circumstances of the case, I ought not to give the plaintiff the certificate he wants under section 22 of the Small Cause Court Act.

As to the failure of the defendant on his counter-claim, I should find it hard to say that any appreciable time was spent over that, certainly not enough to give the basis of any fair fractional calculation. I must, therefore, dismiss the suit, and refusing the certificate under section 22 direct that the plaintiff do pay the defendant's attorney and the client costs. Two Counsel certified for.

*Suit dismissed.*

Attorneys for plaintiffs: Messrs. *Bhaishankar, Kanga and Girdharlal.*

Attorneys for defendants: Messrs. *Wadia, Ghandi and Co.*

B. N. L.