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But as no instalment of principal has been paid, the plaintiff is entitled to 2 per cent. per mensem on Rs. 4,550 due in January.

Decree, therefore, for the plaintiff for Rs. 900 interest at 2 per cent. per mensem on Rs. 4,550 from the 10th of January 1919 till judgment. Costs and interest on judgment at 6 per cent.

Solicitors for the plaintiffs: Messrs. *Khambatta & Co.*

The defendant did not appear.

Decree accordingly.

G. G. N.

ORIGINAL CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Heaton.

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JIVRAJ BALOO SPINNING AND WEAVING Co., LTD., PETITIONERS AND APPELLANTS *v.* CHAMPSEY BHARA & Co., RESPONDENTS.*

Award—Petition to set aside an award—Error of law patent on the face of the award—Contract of sale and purchase of cotton—The Bombay Cotton Trade Association, Rules 13 and 52—Seller committing breach of contract cannot claim damages against buyer—Arbitrators have no jurisdiction to award damages to defaulting seller—Illegality of the award.

The respondents agreed to sell to the appellants 200 bales of cotton of specified sample under two contracts which were subject to the Rules and Regulations of the Bombay Cotton Trade Association, Ltd. The respondents tendered cotton against the said contracts, and on surveys being held at the instance of the appellants the arbitrators held that the cotton tendered was inferior in quality and gave allowance of Rs. 10-8-0 per candy. The arbitrator's award was confirmed on appeal by the Appeal Committee. Rule 52 of the Association provided that if the final award for inferiority of quality be in excess of Rs. 5 per candy, "the buyer shall have the option either to take the cotton at the allowance fixed by the arbitrators or the Appeal Committee, or upon giving notice in writting to the seller and original tenderer to refuse the

* Appeal No. 29 of 1919.

same, in which latter case he may either buy in the market at a reasonable rate on account, risk and expense of the seller, or invoice it back to the seller at the market rate of the day upon which the final award shall have been made". The appellants accordingly gave the respondents notice that they refused the cotton tendered, but did not exercise either of the options mentioned in the rule as the market had considerably fallen. The respondents, thereupon claimed Rs. 25,000, being the difference between the contract rate and the market rate when the cotton was rejected. The appellants repudiated their liability as the breach was committed by the respondents. The respondents proposed to the appellants that the matter should be referred to the arbitration of the Association under Rule 13. The appellants protested that the matter could not be referred to arbitration, and in spite of this protest the Association appointed two arbitrators under the rules to decide the claim preferred by the respondents. The appellants submitted their contentions in writing to the arbitrators who, however, awarded the respondents' claim on the contracts and directed the appellants to pay Rs. 25,000 to the respondents. The award was confirmed by the Appeal Board. The appellants thereupon filed a petition to set aside the award contending that the arbitrators had no jurisdiction in the matter as the matter was not referable to arbitration under Rule 13 and that accordingly there was an error of law patent on the face of the award. The trial Judge dismissed the application holding that there was no error of law patent on the face of the award, and that the error if any was latent which could not vitiate the award. On appeal,

Held, reversing the decision of the trial Judge, (1) that the award of the arbitrators was based upon the erroneous construction of the terms of the contracts and Rule 52 of the Rules of the Association ;

(2) that upon the proper construction of Rule 52 the buyer would not be liable to pay any sum of money as damages or compensation to the seller after he has rightly rejected the cotton tendered, there being no compulsion upon him to invoice the cotton back to the seller if the market had fallen ;

(3) that the liability imposed on the appellants by the arbitrators in spite of the breach committed by the respondents was opposed to the general provisions of the Contract Act and to the Common Law ;

(4) that the award should be set aside as there was an error of law patent on the face of it.

Landauer v. *Asser*[1], referred to.

APPEAL from the decision of Pratt J. dismissing petition to set aside an award.

[1] [1905] 2 K. B. 184.

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The appellants, the Jivraj Baloo Spinning & Weaving Co., Ltd., the petitioners in the trial Court entered into two contracts with the respondents, Messrs. Champsey Bhara & Co., a firm of commission agents, to purchase under each of the said contracts 100 bales of New Machine Ginned Fully Good Mundra Cotton. The first contract which was negotiated through a broker was dated 17th August 1918 and was in the following form :—

Broker : Thakkar Sunderdas V. Ranchhoddas.

Sellers—Sha Champsey Bhara & Co.

Buyers—The Jivraj Baloo Spinning & Weaving Co., Ltd.

To wit : We have agreed to purchase from you new cotton of the crop of Samvat year 1974, class Mundra Machine Ginned Fully Good Good Staple pucca bales of 100 in words one hundred the rate of which per candy one is Rs. 905 in words nine hundred and five ; the period for which is from 1st October to 25th November 1918. According to the Rules and Regulations of the Bombay Cotton Association, the contract cannot be cancelled for any cause whatever. Measurement according to 27 tons per 100 bales. On these terms we are to carry it out. Samvat 1974, Shravan Sud 10th, Saturday.

Brokerage ½ per cent. from the seller.

Terms—Mill terms.

The Jivraj Baloo Spinning & Weaving Co.
(Sd.) A. G. LALJI & Co.
Agents.

The second contract, dated 4th September 1918 was also negotiated through a broker and was in the form of a Memo. of Sale, as following :—

From

Abhechand Pitambar,
Cotton Brokers.

Messrs, Champsey Bhara & Co.

We have this day sold by your order and for your account subject to the Rules and Regulations of the Bombay Cotton Trade Association, Ltd.

To Messrs., The Jivraj Baloo Spinning & Weaving Mills Co., Ltd. (100) one hundred only bales of New Machine Ginned Mundra Cotton at Rs. 950. per candy delivered in Bombay, fully pressed and lashed with hoops.

Delivery from 1st to 25th November 1918.

Classification Fully Good Good Staple.

Measurement 27 tons per 100 bales.

Contract not to be cancelled.

In D/O of 100 bales each.

Brokerage ½ per cent. paid by the seller.

Terms Mill.

Buyer's signature. Per pro Jivraj Baloo Spinning & Weaving Co., Ltd.

(Sd.) A. J. LALJI & Co.,
Agents.

On 6th November 1918, the respondents, Messrs. Champsey Bhara & Co. sent to the petitioners a delivery order comprising 100 bales and bearing No. 27 in respect of the second contract, dated 4th September 1918. A survey was held on the cotton comprised in the said delivery order on 11th of November 1918 and the arbitrators made an award giving an allowance of Rs. 10-8 per candy. The award was confirmed on appeal by the Appeal Committee on the 13th November 1918.

On the 19th November 1918, the respondents sent to the petitioners a delivery order comprising 100 bales in respect of the first contract, dated 17th August 1918 and on a survey being held on the cotton comprised in the order the arbitrators made an award giving an allowance of Rs. 10-8 per candy.

The award for inferiority of quality being in excess of Rs. 10 per candy, the petitioners contended that the tender of cotton to them was not a valid tender under the contracts and that by virtue of provisions of Rule 52 of the Rules of the Bombay Cotton Trade Association

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the petitioners became entitled to reject the goods. The petitioners wrote to the respondents that in consequence of the breach committed by the latter they rejected the cotton tendered.

Rule 52 of the Rules of the Bombay Cotton Trade Association, Ltd., provided as follows :—

"52—If the final award for inferiority of quality be in excess of Rs. 5 per candy (unless as provided for in the exception mentioned below), or if the lot tendered be found to be a full grade below the quality contracted for, or to be fraudulently packed or damaged, the buyer shall have the option either to take the cotton at the allowance fixed by the arbitrators or the Appeal Committee, or upon giving notice in writing to the seller and original tenderer to refuse the same, in which latter case he may either buy in the market at a reasonable rate on account, risk and expense of the seller, or invoice it back to the seller at the market rate of the day upon which the final award shall have been made, provided always that in the event of the buyer exercising the option of buying in the market, he shall do so not later than the day following that on which arbitration and (or) appeal (if any) is finally disposed of, and shall intimate his purchase to his immediate seller and to the original tenderer within 24 hours of such purchase. In the event of the buyer exercising his option of invoicing the cotton back to the seller at the market rate of the day upon which the final award has been made, he shall notify his immediate seller and the original tenderer within 24 hours of the arbitration and (or) appeal (if any) being finally disposed of.

The term "Full Grade" shall be understood to mean the difference between "fine" and "fully good" and other similar differences.

If, however, when a lot of cotton is tendered under jaitha terms before the due date of the contract, the quality of the cotton should be objected to by the buyer, the seller shall be allowed to withdraw the tender and make a new tender within the contract time, provided no arbitration has been held on the cotton ; but no withdrawal of any tender shall be allowed after an arbitration has been held. Cotton tendered by a Railway Receipt shall not be withdrawn except in the case of cotton not arriving within the time stipulated in the contract, in which case a fresh tender from the jaitha may be made on the due date.

Exception.—Where the difference between the market rates for the grade contracted for, and for the full grade next below exceeds Rs. 10, the cotton must be taken by the buyer unless more than half grade off."

On 29th November 1918, the respondents submitted a bill to the petitioners claiming Rs. 25,000 made up of two sums of Rs. 12,750 and Rs. 12,250, being calculated on the difference between the contract rate and the market rate on the date of the award of the arbitrators.

The petitioners replied on the 30th November 1918 that as the contracts were broken by the respondents they were not liable to pay any sum of money.

The respondents thereupon proposed on 4th December 1918 that as the dispute as to their alleged claim fell within the Rule 13 of the Association the parties should go to arbitration. The petitioners replied that they were not bound to refer the matter to arbitration.

The following was the material portion of Rule 13:—

"13. All questions in dispute (other than that of quality) arising out of or in relation to, contracts made subject to the Rules and Regulations of the Bombay Cotton Trade Association, Ltd., provided one of the parties to the contract is a member or Associate member of the Association, shall be referred to the arbitration of two disinterested persons being share-holders or directors of the Association, one to be chosen by each disputant; such arbitrators having the power to call in a third arbitrator who must also be a shareholder or director of the Association."

The award made by such arbitrators or any two of them shall be final and binding on both parties, subject only to the right of appeal to the Board within 15 days of the date of the arbitrators' award on payment of Rs. 100.

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If either party in a dispute put to arbitration under this Rule refuses to abide by the decision of the arbitrators and / or Board of Directors and the award has to be filed in the High Court he shall pay all costs in connection with the filing of the same.

At the request of the respondents the Association appointed Purshottamdas Thakardas and Vincent Alpe

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Grantham as two arbitrators under the rules to decide the alleged claim preferred by the respondents.

The petitioners submitted to the said arbitrators that there was no question which could be referred to the arbitrators under Rule 13 inasmuch as on account of the breaches of the contracts on the part of the respondents, the contracts came to an end and that there was no claim left to be preferred in law in respect of the said contracts by the party who had been guilty of the breaches.

On the 23rd December 1918, the arbitrators published their award directing the petitioners to pay Rs. 25,000 to the respondents.

The award of the arbitrators recited the two contracts, the rejection of cotton tendered, the reasons for such rejection, the claim of the respondents and the denial of liability by the petitioners before making the final order of payment against the petitioners. On the 9th January 1918, the award was confirmed by the Appeal Board.

The petitioners, thereupon, filed the present petition to set aside the award on 17th February 1919.

Paragraphs 10 and 11 of the petition which set forth the grounds on which the petitioners claimed relief, ran as follows :—

10. Your petitioners submit that the said award should be set aside first on the ground that there was no question which was referable to the arbitrators under the said Rule 13 of the Rules of the Bombay Cotton Trade Association, Ltd., and that, therefore, they had no jurisdiction to enter upon the alleged reference and make the alleged award and secondly on the ground that there is an obvious error of law on the face of the said award, in that the said Messrs. Champsey Bhara & Co. were guilty of breaches of the said contracts. Notwithstanding these breaches of the said contracts the said Messrs. Chamsey Bhara & Co.'s claim in respect of the said contracts against your petitioners has been allowed as against your petitioners who were ready and willing to fulfil their part of the said contracts.

11. Your petitioners therefore pray that the said award may be set aside on the following grounds, viz., that your petitioners submit that the said arbitrators acted without jurisdiction in making the said award and that they have misconducted themselves in awarding the said alleged claim to Messrs. Champsey Bhara & Co.

Rowji Kanji, one of the partners of the firm of Messrs. Champsey Bhara & Co., made an affidavit in reply on behalf of the respondents.

Paragraph 7 of the said affidavit which stated the main ground of defence ran as follows :—

7. Referring to the allegations made in paras. 10 and 11 of the said petition, I deny that the arbitrators acted without jurisdiction in making the said award. I also deny that the arbitrators misconducted themselves in awarding my firm's claim. I say that the denial of my firm's claim by the petitioners was a wrongful denial. In the whole history of the cotton trade of Bombay such a claim has never been disputed or denied and has always been recognised and paid. I also deny that there is an obvious error of law on the face of the said award. I also deny that it appears on the face of the award that my firm were guilty of breaches of the said contracts. There is no foundation whatsoever for the said allegations. The allegation made in the last sentence of the said petition is entirely incorrect and has no foundation or justification whatsoever.

His Lordship, Pratt J. dismissed the petition, delivering the following judgment :—

PRATT, J. :—This is a petition to set aside the award made in the arbitration under the Rules of the Bombay Cotton Trade Association.

The respondents had made two contracts to deliver cotton to the petitioners. The petitioners complained that the cotton was of an inferior quality and demanded a survey or arbitration under Rule 12 of the Rules of the Association. The surveyor or arbitrator found that the quality of the cotton tendered was Rs. 10-8-0 a candy inferior. This award was appealed against and was upheld on appeal by the tribunal appointed under the Association's Rules. The award so appealed against

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was under Rule 12 final and conclusive and Rule 52 gave the petitioners the right to reject the cotton, and they did so. The respondents then preferred a claim for damages contending that the contract should be settled at the market rate which was lower than the contract rate and claiming that the difference, Rs. 25,000, was payable to them. The petitioners refused to meet this claim. The dispute was referred to arbitration under Rule 13 and the arbitrators have awarded the respondents their claim. The petitioners appealed against the award which was confirmed by the appellate tribunal. It is this award, so confirmed, which is the subject of this petition.

The petitioners went to arbitration under protest contending that there was no dispute to arbitrate upon, and this is the first objection taken to the award. It is contended that there was no dispute which could form the subject-matter of the arbitration and that the arbitrators had, therefore, no jurisdiction. There is no substance in this objection. The respondents' claim was based on the contract and was for the difference between the contract rate and the market rate. There was thus clearly a question in dispute arising out of or in relation to the contract. This was a dispute which fell under Rule 13 of the Rules and one which the arbitrators had jurisdiction to adjudicate upon. It may be an altogether unjustifiable claim but that was a matter for the arbitrators to decide.

The next objection raised to the jurisdiction of the arbitrators is one raised by Mr. Inverarity, in the course of his reply, and that is that when the contract was broken by reason of the respondents' default the arbitration clause fell with it. But the cases cited do not support this proposition. In *Smith Coney & Barrett* v. *Becker Gray & Co.*[1], it was conceded that if the

[1] [1916] 2 Ch. 86.

whole contract was illegal by reason of the war the arbitration clause would also be void. In the case of *Jureidini* v. *National British and Irish Millers Insurance Company, Limited*[1], the Insurance Company having repudiated the whole contract on the ground of fraud were estopped from raising the arbitration clause as a defence to the suit on the doctrine that they could not both approbate and reprobate. There is here no question of legality or estoppel. The agreement to arbitrate is a collateral agreement. It does not fall when the main agreement is broken but in fact the breach of the main agreement is one of the factors which brings the agreement of the arbitration into operation.

The next and the only other objection taken is that there is an error patent on the face of the award, which is, therefore, liable to be set aside under the rule in *Hodgkinson* v. *Fernie*[2], followed in *Landauer* v. *Asser*[3], and *British Westinghouse Electric and Manufacturing Company, Limited* v. *Underground Electric Railways Company of London, Limited*[4]. It seems to me, however, impossible to impugn the award on this ground for the award gives no reasons. It merely states the dispute and then gives the arbitrators' decision on that dispute. The error of law pleaded by the petitioners is that the arbitrators have misconstrued Rule 52 of the Rules of the Association. This rule gives the buyer, in the case of a tender of inferior goods, when the inferiority of the quality is in excess of Rs. 5 a candy, the option of invoicing back at the market rate. This is an option which was admittedly not exercised and it is impossible that the petitioners could have exercised that option to their own detriment when the market rate was less than the contract

(1) [1915] A. C. 499.
(2) (1857) 3 C. B. N. S. 189.
(3) [1905] 2 K.B. 184.
(4) [1912] A. C. 673.

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rate. It may be that the arbitrators have misconstrued this rule as making the exercise of this option compulsory. But this is only a matter for speculation. It is equally possible that the arbitrators have proceeded on the terms in the contracts which provide that they cannot be cancelled for any cause whatever. The arbitrators may have construed this term of the contract as superseding the rule giving the petitioners the right of rejection and may also have erred in making no allowance for inferiority of quality. Again, it is also possible that the arbitrators have overlooked the final effect of the survey or award under Rule 12 and considering that the goods were of the contract quality have held that they were wrongly rejected by the petitioners. These seem to exhaust the possible errors which the arbitrators may have committed, but the very fact that there are several errors to choose from makes it clear that the error is one that is latent, and not one that is patent on the face of the award. The strongest of the cases cited is that of *Landauer* v. *Asser*[1] but there the award "expressly and implicitly founded its conclusions on the terms of the contract" (p. 193) which gave no warrant for these conclusions. But here it is impossible to trace the error. It may be an error of construction of the rules or of the contract, or of fact as to the quality of the goods tendered.

Arbitrators are Judges of law as well as of fact and an error of law does not vitiate an award: *Ghulam Jilani* v. *Muhammad Hussan*[2].

I accordingly dismiss the petition with costs and direct that the award shall stand filed.

The petitioners appealed.

Kanga and *Desai*, for the appellants.

(1) [1905] 2 K. B. 184. (2) (1901) L. R. 29. I. A. 51.

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Setalvad and *Captain*, for the respondents.

MACLEOD, C. J. :—This is an appeal from the decision of Pratt J.

The appellants, the Jivraj Baloo Spinning and Weaving Company, Limited, filed a petition to set aside an award in favour of the respondents Messrs. Champsey Bhara & Co., which had been made in the following circumstances :—

On the 17th Augst 1918 the respondents contracted to sell to the appellants 100 bales New Machine Ginned Fully Good Mundra Cotton at Rs. 905 a candy, delivery 1st October to 25th November.

On the 4th September 1918, a similar contract was made for the sale of 100 bales at Rs. 950 a candy. Both the said contracts were subject to the Rules and Regulations of the Bombay Cotton Trade Association, Ltd.

Against the said contracts the respondents tendered cotton. Surveys were held and in each case the arbitrators made awards giving an allowance of Rs. 10-8-0 per candy. These awards were confirmed on appeal by the Appeal Committee. Rule 52 of the Bombay Cotton Trade Association Rules lays down what are the buyer's rights if the tender is not approved. If the final award for inferiority of quality be in excess of Rs. 5 a candy the buyer shall have the option either to take the cotton at the allowance fixed by the arbitrators or the Appeal Committee, or upon giving notice in writing to the seller and original tenderer to refuse the same.

Accordingly, on the 25th November, the appellants gave the respondents notice that they refused the cotton tendered.

The rule then provides that if the buyer refuses the cotton he may either buy in the market at a reasonable rate on account, risk and expense of the seller or invoice

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it back to the seller at the market rate of the day upon which the final award shall have been made. In the event of the buyer exercising his option of invoicing the cotton back to the seller at the market rate of the day upon which the final award has been made, he shall notify his immediate seller and the original tenderer within twenty-four hours of the arbitration and / or appeal, if any, being finally disposed of.

The appellants did not exercise either of the options mentioned in the rule. The obvious reason was that the market had fallen.

On the 29th November the respondents wrote to the appellants claiming Rs. 25,000 being the difference between the contract rates and the room rates when the cotton was rejected. The appellants replied on the 30th November that the contracts were broken and therefore they were not liable to the respondents.

On the 4th December the respondents wrote that they proposed to refer the matter to arbitration under the provisions of Rule 13.

The appellants replied that they were not bound to refer the matter to arbitration.

At the request of the respondents the Association appointed two arbitrators under the rules to decide the alleged claim preferred by the respondents. The appellants submitted their contentions to the arbitrators in writing.

On the 23rd of December the arbitrators published their award.

After reciting the contracts above-mentioned, the rejection of the cotton tendered, the claim of the respondents, and the denial of liability by the appellants, the arbitrators awarded and directed that the appellants should pay to the respondents the sum of Rs. 25,000.

This award was confirmed by the Appeal Board on the 9th January. The appellants thereupon filed a petition to set aside the award. It was argued before the learned Judge (1) that there was no dispute which could be referred to arbitration, (2) that the arbitrators had no jurisdiction, (3) that there was an error of law patent on the face of the award. All these objections were held to be untenable and the petition was dismissed.

In the view I take of the proper construction of Rule 52 a dispute could only validly arise in the event of the buyer exercising one of the options mentioned in the rule. But I think that really the first two points are involved in the third, since, if the third cannot be found in the appellant's favour, it would follow that there was a dispute which it was within the jurisdiction of the arbitrators to decide. The question whether there was an error patent on the face of the award presents many difficulties.

The rule is clear, as laid down in *Landauer* v. *Asser*[1] that the Court will set aside an award if there is an error of law patent on the face of it. It was contended that the arbitrators having given no reasons for their award, the error of law which it is said they have committed is a matter of speculation only so that it cannot be patent on the face of the award.

But the arbitrators have recited the contracts which include the Rules of the Association, the rejection of the cotton tendered, and the reasons for such rejection, and the claim of the respondents, and it seems perfectly obvious that their award, allowing the claim made by the respondents in their letter of the 29th November, is based on their construction of the provisions of Rule 52.

(1) [1905] 2 K. B. 184 at p. 191.

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If then it is patent that the arbitrators have wrongly construed the contracts it seems on the authority of *Landauer* v. *Asser*[1] that we are entitled to set aside the award. Kennedy J. at p. 191, after reading the terms of the award, said :—

"The reasoning of the umpire, which he puts forward in the expression 'as the parties to the contract, &c., were by the terms thereof principals thereto,' is, as counsel for both parties seemed to agree, far from clear. I do not understand how in any case the facts help Messrs. Asser. But whatever this expression means it is, I think, quite clear that the umpire bases his decision that Messrs. Asser, the sellers, are, and Messrs. Landauer, the buyers, are not entitled to the sum in dispute, entirely upon the terms of the contract of November 3, 1903."

I think it may be said, to use the language of Kennedy J., that the arbitrators in this case have based their decision, that the respondents are entitled to the sum they claim, entirely upon the terms of the contract.

Now if it is clear that in no case under Rule 52 can the buyer be liable to pay a sum of money as damages or compensation, or whatever else it may be called, to the seller after he has rightly rejected the cotton, then it seems to me that an award directing him to pay in such a case a certain sum of money is bad on the face of it in point of law.

What are the buyer's rights if he rejects the cotton? (1) He may buy in the market at a reasonable rate on account, risk and expense of the seller. That is to say, if the market has gone up and he buys he can call upon the seller to pay the difference. If the market has gone down and he buys, it is obvious he has no claim against the seller, but the seller has certainly no claim on the buyer for the saving the buyer has effected. (2) The buyer may invoice the cotton back to the seller at the market rate of the day upon which the final award has been made. This he would only do if the market had risen. There is no compulsion upon him.

(1) [1905] 2 K. B. 184 at p. 191.

to invoice the cotton back to the seller if the market has fallen. These two options are the usual ones given to a buyer as a foundation for a claim against his seller for damages (compare Rules 37, 38 and 47) and no man in his senses would exercise either of them unless the market had risen. If the market falls, he has no claim against the seller and he can either buy or not as he chooses. The argument that the word "may" must be read "shall" is based on an obvious misreading of the Rule. The marginal note shows that paragraph 1 of the Rule deals only with the buyer's rights if the tender is not approved. It is entirely opposed to the general provisions of the Contract Act and to the Common Law that a buyer who has rightly rejected goods tendered under a contract of purchase and sale should be in any way liable to the seller. If the members of the Association think that there should be such a liability then they must provide for it by express conditions in the contract.

I am aware that my opinion is contrary to the view of the arbitrators and the members of the Board of Appeal, who were persons of great experience in the Cotton Trade, but as they have imposed, as I think they have done, a liability on the buyer which cannot possibly be said to have been provided for by the contract on a proper construction of its terms, I think there is an error of law patent upon the face of the award which entitles the Court to set it aside.

The appellants must have their costs in both Courts.

As the appellants have paid the sum awarded they will be entitled to a refund and interest at 6 per cent. from the date of payment.

HEATON, J.:—It is to me quite plain from the facts stated in the judgment of my Lord the Chief Justice

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that no Court of law would allow damages or compensation to the seller in this case. He broke the contract by tendering goods of a quality such that the buyer was entitled to reject them and did so. It is directly contrary to law that the person who breaks the contract should receive damages or compensation for the breach. Undoubtedly, therefore, there is an error of law and it is so startling, so fundamental, that it becomes plainly apparent as soon as the award and the papers recited in the award are read. This is so because from the admitted facts and the contract and the rules, both of which are recited in the award, it is apparent that the buyer rightly and not wrongly rejected the goods. I have added this brief statement to the judgment of my Lord the Chief Justice with which I agree because at first it seemed to me doubtful whether the error could be described as apparent on the face of the award. But as the award imports by reference the contract, the rules, and the correspondence between the parties, it may, I think, properly be said that the error of law is apparent on the face of the award.

I agree that the appeal should be allowed.

Solicitors for appellants: Messrs. *Edgelow, Gulabchand, Wadia & Co.*

Solicitors for respondents: Messrs. *Captain & Vaidya.*

Appeal allowed.

G. G. N.