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of infringing the sound principle discussed above. But the absence of the leave of the Court and of the necessary notice to the Receiver, makes all the difference between a valid and an illegal sale. The High Court has also relied upon the well-known rule of natural justice—*audi alteram partem*—as another reason for holding the sale to be illegal. It is not necessary for the purposes of this case to pronounce upon the difficult question of how far a principle of natural justice can override the specific provisions of a statute.

For the reasons given above, we agree with the High Court in its conclusion that the auction-sale impugned in this case, was illegal, and that the suit was not barred by the provisions of the Code. The appeal is, accordingly, dismissed with costs to the Receiver who alone has contested the appeal.

Appeal dismissed.

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GORDHANDAS PURSHOTTAMDAS SONAWALA AND ANOTHER

v.

THE EASTERN COTTON COMPANY

(BHAGWATI, J. L. KAPUR and GAJENDRAGADKAR JJ.)

Cotton Contracts—Cotton Association—Statute providing for cotton contracts to be in accordance with the by-laws of the Association—By-laws prescribing Forms of Contract—Substantial compliance with Form—Validity of the contracts—Bombay Cotton Contracts Act, 1932 (Bom. IV of 1932), s. 8(1).

Sub-section (1) of s. 8 of the Bombay Cotton Contracts Act, 1932, provides: "Save as hereinafter provided in this Act, any contract . . . . which is entered into after the date on which this Act comes into operation and which is not in accordance with the by-laws of any recognized cotton association shall be void".

In respect of the transactions in cotton entered into between the parties, the appellants had to pay the respondents a sum of money for failure to give delivery of the cotton bales under the

contracts, but the payment was made without prejudice to the rights and contentions of the parties. Subsequently, the appellants sued the respondents for recovery of the amount on the footing that the contracts were void under s. 8(1) of the Bombay Cotton Contracts Act, 1932, as being not in accordance with the by-laws of the East India Cotton Association Ltd., of which both the parties were members, inasmuch as the contract notes did not comply with the terms contained in the official contract form provided by the by-laws of Association, by reason of the omission to fill in the blanks relating to measurements and difference above or below the settlement rate. The respondents contended that the relevant provisions contained in the official contract form had either become obsolete or were suspended at all material times. The evidence showed that according to the practice of the trade the parties to the contract were not tied down to a literal compliance with the terms contained in the official contract form but were required to act according to the position as it then obtained and that it was sufficient if they substantially complied with the requirements of the contract form :

Held, that in the circumstances of the case the official contract form had to be filled in so far as it was practicable and that the omission to fill in the blanks in the contract notes did not spell any departure from an essential or a characteristic part of the contract form; consequently, the legal effect of the contracts was not in any manner changed so as to render the contracts void as not being in accordance with the by-laws of the Association, within the meaning of s. 8 of the Bombay Cotton Contracts Act, 1932.

Radhakisson Gopikisson v. *Balmukund Ramchandra,* (1932) L. R. 60 I. A. 63, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 398 of 1956.

Appeal from the judgment and order dated March 19, 1956, of the Bombay High Court in Appeal No. 45 of 1955, arising out of the judgment and order dated March 23, 1955, of the said High Court in its Ordinary Original Civil Jurisdiction in Suit No. 468 of 1951.

M. C. Setalvad, Attorney-General for India, N. P. Nathwani, J. B. Dadachanji, S. N. Andley and *Rameshwar Nath,* for the appellants.

Purshottam Tricumdas, K. K. Desai and *I. N. Shroff,* for the respondents.

1958. March 31. The Judgment of the Court was delivered by

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BHAGWATI J.—This appeal with a certificate of fitness is directed against the judgment and decree passed by the High Court of Judicature at Bombay in appeal from its ordinary Original Civil Jurisdiction confirming, though on different grounds, the judgment and decree passed by a single Judge of that High Court in Suit No. 468 of 1951 instituted by the appellants (Original Plaintiffs) to recover from the respondents (Original Defendants) a sum of Rs. 1,80,099-8-0 with interest and costs.

Since the year 1932 the first appellant has been a member of the East India Cotton Association Ltd., (hereinafter referred to as " the Association ") as the sole proprietor of the firm of Messrs. Narrondass Manordass (hereinafter referred to as "the member firm"). The first appellant along with other partners carried on business in partnership in Bombay *inter alia* as Cotton Merchants and Commission Agents in the name and style of Messrs. Narrondass Manordass, the 2nd appellant (hereinafter referred to as " the partnership firm "). The respondents are a partnership firm and also a member of the Association.

Between September 23, 1947, and December 10, 1947, the member firm sold to the respondents 2,300 bales of Broach Vijay Fine 3/4" Navsari and/or Bardoli 7/8" Cotton for March/April 1948 Delivery. Out of these 2,300 bales, 1,100 bales were disposed of by means of " Havalas " and in respect of 500, out of the remaining 1,200 bales, there were cross-contracts. In the result when the time for " Delivery " arrived, sales in respect of 700 bales remained outstanding and the member firm was liable to give delivery of 700 bales to the respondents. As however, the member firm failed to give delivery of the said 700 bales to the respondents, under the relevant by-laws of the Association, the respondents " Invoiced Back " these 700 bales to the member firm on May 3, 1948, and as a result of this " Invoicing Back " a sum of Rs. 1,07,530-8-0 became due and payable by the member firm to the respondents and with regard to the transactions of all the 2,300 bales taken together an aggregate sum of Rs. 1,79,749-8-0 became due and payable by the

member firm to the respondents. In respect of this sum of Rs. 1,79,749-8-0, the respondents sent to the member firm eight separate "Debit Notes" in respect of varying amounts and finally a consolidated debit note for Rs. 1,79,749-8-0.

It appears that the contract notes in respect of these transactions had been signed by one Ramanlal Nagindas who had been employed as a salesman in the Ready Cotton Department of the partnership firm. The appellants contended that the said Ramanlal Nagindas had no authority to enter into the said transactions or to sign contract notes in respect thereof on behalf of the appellants and also that the said contracts were not in accordance with the by-laws of the Association and they therefore denied their liability in respect of the said transactions. The partnership firm, however, as the beneficiary under the said contracts decided to pay the amounts claimed by the respondents without prejudice to the rights and contentions of both the parties. On May 7, 1948, the said sum of Rs. 1,79,748-8-0 was paid by the partnership firm and was received by the respondents in terms of the letter addressed by the respondents on the said date :—

"The payment is made by you and accepted by us without prejudice to the rights and contentions of both the parties in respect thereof."

A further sum of Rs. 350 being the amount of penalty for the alleged failure to tender the aforesaid 700 bales of the said contracts of Broach/Vijay March/April 1948 Delivery, was also paid by the partnership firm to the respondents on June 6, 1948, without prejudice to their aforesaid contentions.

The said Ramanlal Nagindas had entered into similar transactions with several other merchants and some of them claimed arbitration under by-law 38-A of the Association. Petitions were thereupon filed by the member firm in the High Court at Bombay being Petitions Nos. A/51, A/52, A/55 and A/56 of 1949 under s. 33 of the Indian Arbitration Act *inter alia* for a declaration that there existed no valid and enforceable arbitration agreement between the parties. Mr. Justice Shah delivered judgment in the said petitions

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on August 20, 1950, holding *inter alia* that the said contracts were void as being not in accordance with the by-laws of the Association and allowed those petitions. The respondents to the petitions thereupon filed petitions under Art. 136 of the Constitution for special leave to appeal to this Court against the said judgment of Mr. Justice Shah. These petitions were, however, dismissed by this Court on or about April 6, 1951.

The appellants thereafter by their attorney's letter dated May 2, 1951, called upon the respondents to return the said sum of Rs. 1,80,099-8-0 (being the aggregate of the said two sums of Rs. 1,79,749-8-0 and Rs. 350) with interest thereon at the rate of 6 per cent. per annum. The respondents failed and neglected to pay to the appellants the said sum or any part thereof with the result that on May 7, 1951, the appellants filed the suit against the respondents for repayment to them of the said sum with interest and costs.

In the plaint as filed the appellants averred that the said contracts were void under the Bombay Cotton Contracts Act, 1932, as being not in accordance with the by-laws of the Association *inter alia* in the following respects: (1) The contract notes produced by the respondents omitted to state the difference of Rs..... above or below the settlement rate of hedge contracts for the purpose of periodical settlements as required by by-laws 139 and 141; and (2) no provision was made in any of the aforesaid contract notes with regard to the measurement of bales as required by the official form for delivery contracts prescribed in by-law 80.

The respondents in their written statement contended that there was no by-law which required any person to agree upon any difference above or below the settlement rate of hedge contracts for the purpose of periodical settlements and to state the same. They further contended that the relative provisions contained in the official contract form had become obsolete as at all material times there were no hedge contracts bearing different numbers and in practice the said contracts were not put through periodical settlements.

They also contended that at all material times there was no by-law which required any person to agree upon any specific measurements in respect of the bales agreed to be purchased inasmuch as the operation of by-law 101 in regard thereto had been suspended by the Board since November 30, 1942.

After the suit reached hearing the appellants amended the plaint by averring that by reason of the said payments having been made by them and accepted by the respondents without prejudice to the rights and contentions of both the parties there was an implied agreement between them that in the event of the appellant's establishing that they were not bound to pay the said sums to the respondents and that the respondents were not entitled to the payment thereof the respondents would repay or return the same to the appellants. This plea was traversed by the respondents in the supplemental written statement which they filed.

The learned trial Judge followed the judgment of Mr. Justice Shah and held that the omission of the clause regarding measurement in the contract notes did not alter the character or legal effect of the contracts. He similarly held that the omission of any reference in the contracts to the amount of difference above or below the settlement rate of hedge contracts in the last term of the contract notes rendered the contracts void. He however was of the opinion that there was no implied agreement between the parties of the nature alleged by the appellants and that the payment made by appellants to the respondents was voluntary and therefore dismissed the appellants' suit with costs.

The appellants preferred an appeal against this decision and the appellate Court dismissed the appeal and confirmed the decree passed by the learned trial Judge, though on different grounds. The appellate Court agreed with the learned trial Judge that the omission of the term regarding measurement in the contract notes did not affect the character or legal effect of the contracts. In regard to the omission to fill-up the difference above or below the settlement rate

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fixed for the hedge contracts in the last clause of the contract notes, however, the appellate Court was of the opinion that there was no obligation on the parties to agree to add or deduct the difference above or below the settlement rate as contended by the appellants. If the parties did agree then the contract form provided that the agreement should be set out therein. If, however, they did not agree then the first part of cl. (2) of by-law 141 would come into play and the settlement of the delivery contract would go through on the basis of the settlement rate of the hedge contract. The omission to fill-up the difference was thus of no consequence and did not invalidate the contracts. The appellate Court also differed from the trial Judge on the question of the implied agreement and held that if the appellants succeeded in establishing that the respondents were not entitled to receive the payments the respondents were bound to repay the sums paid by the appellants to them. In view, however, of the conclusion reached that the contracts were not void, the appellate Court dismissed the appeal.

The provisions of the Bombay Cotton Contracts Act, 1932 (Bom. IV of 1932) and the by-laws of the Association which fall to be considered by us may now be referred to:—

Section 8(1) (Bombay Cotton Contracts Act, 1932):

"Save as hereinafter provided in this Act, any contract (whether either party thereto is a member of a recognized cotton association or not) which is entered into after the date on which this Act comes into operation and which is not in accordance with the by-laws of any recognized cotton association shall be void."

By-law 80 of the Association:—

"*Forward contracts between members how made*: Delivery Contracts between members shall be made on the official form given in the Appendix. Hedge contracts between members may be verbal or in writing and when in writting shall be in one or other of the forms given in the Appendix. Whether verbal or written all contracts shall be subject to the by-laws,

provided that in the case of Delivery Contracts By-laws 149 to 163 inclusive shall not apply.

The specimen of the official contracts form in triplicate as used in 1947-48 (Vide Exhibit " D ") contained the following terms amongst others :—

No. Contract Note	No. Contract Note
From Brokers	From Brokers
To Messrs.....	To Messrs.....
We have this day bought by your order and for your account subject to the By-laws of the East India Cotton Association, Ltd., From Messrs. .....(.....) bales of..... Cotton at Rs...per candy, delivered in Bombay in full pressed bales. *Measurement.....tons/per 100 bales.*	We have this day sold by your order and for your account subject to the By-laws of the East India Cotton Association Ltd. To Messrs...(...) bales of... Cotton...at Rs...per candy, delivered in Bombay in full pressed bales. *Measurement...tons/per 100 bales.*
.....	.....
(For delivery contracts only). For the purpose of periodical settlement of this contract we agree to a difference of Rs.....above/ below the settlement rate of hedge contract No.	*(For delivery contracts only). For the purpose of periodical settlement of this contract we agree to a difference of Rs...above/below the settlement rate of hedge contract No.*
Remarks...Bombay...194	Remarks...Bombay...194 .

The contract notes which are rendered between the member firm and the respondents, however, contained no term as to measurement and so far as the last clause was concerned the blanks in regard to the difference of Rs.....above or below the settlement rate of hedge contract No.....were not filled in.

The relevant by-laws in connection with these two terms contained in the official contract form were by-law 101, and by-laws 139 and 141 :—

By-law : 101.

Claims for excess measurement.

In respect of all Forward Contracts, measurement

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shall approximate 13½ tons per 50 bales provided that in respect of Forward Contracts, other than Hedge Contracts, the parties *may agree upon* any other measurement. In all Forward Contracts, for any port the rate or rates of freight for any excess measurement over 13½ tons per 50 bales shall be fixed by the Board from time to time and unless otherwise fixed the rate for such excess for all ports shall be Rs. 15 per ton in respect of each lot of 50 bales measuring more than 13½ tons but not more than 14½ tons and in respect of each lot of 50 bales measuring more than 14½ tons Rs. 35 per ton for any excess over 13½ tons.

No allowance for excess measurement shall be payable by the seller:—

(a) unless the buyer has given to the seller reasonable notice fixing an appointment for measurement, or

(b) unless the buyer submits a claim to the seller within 6 weeks after the complete lot has been weighed over.

The Board shall have power from time to time and at any time to suspend the operation of this By-law as regards measurements.

By-law: 139.

"*Settlement Days.* All Delivery Contracts other than those excepted under By-laws 136 and Hedge Contracts shall be subject to periodical settlements through the Clearing House and in every case the parties to the contract must be members of the Association. Settlements of differences due on open contracts and of other liabilities to be settled through the Clearing House shall be made once weekly on days which shall be fixed by the Board and notified in a calendar to be published annually.

The day on which Balance Sheets are required to be submitted to the Clearing House shall be known as Settlement Day."

By-law: 141.

Settlement rates.—(1) For the purpose of these settlements, settlement prices for all positions of the Hedge Contract shall be fixed by the Board on or about the third working day immediately preceding Settlement

Day. The prices so fixed shall be 1 P. M. prices on the day of fixation.

(2) In the case of Delivery Contracts, the settlement price of the Hedge Contract shall be the basis for the periodical settlement. Such allowances as shall be agreed upon by the parties in their contract to cover any difference, between the cotton contracted for and the cotton which is the basis of the Hedge Contract shall be added to or deducted from the said settlement price. In the case of contracts for descriptions which are not tenderable against the Hedge Contract the parties may either agree in their contract upon an allowance above or below the Hedge Contract for the purpose of their periodical settlement or may apply to the Board to fix settlement rates.

.....

The only question for our determination in this appeal is whether the contracts between the parties were not in accordance with the by-laws of the Association and therefore void. There is no doubt that all the contracts were subject to the by-laws of the Association. The question still remains whether they were in accordance with the by-laws because if they were not in accordance with those by-laws they would be void. The expression "not in accordance with" has been the subject of judicial interpretation in *Radhakisson Gopikisson* v. *Balmukund Ramchandra* (1). Their Lordships of the Privy Council there held that the form prescribed was not a stereotyped one and that literal compliance with it was not essential. The only thing required was that the contract notes must contain all the terms and conditions set out in the form in order to comply with it. Their Lordships were of the opinion that substantial compliance with the form would be enough and if such sufficient compliance with the by-laws was found in a particular case that would save the contracts from being declared void as not being in accordance with the by-laws.

It was, however, urged on behalf of the appellants that by-law 80 prescribes the form in which the contracts were to be entered into and all the terms and

(1) (1932) L.R. 60 I.A. 63.

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conditions incorporated in the official contract form had to be strictly complied with, that the omission of the term as to measurement as also the omission to fill in the blanks in regard to difference of Rs.....above or below the settlement rate of hedge contract No. .....were such departures from the form prescribed as would render the contracts void because it could not be then said that there was sufficient compliance with the statutory form. Reliance was placed in support of this contention on *Burchell* v. *Thompson* (1), *Ex parte Stanford, In re Barber* (2), *Thomas* v. *Kelly* (3) and *Parsons* v. *Brand & Couls* v. *Dickson* (4). The principle emerging from these decisions was enunciated to be that if the document executed by and between the parties departed from a characteristic part of the form prescribed or made a difference in the legal effect of the instrument, it would not be in accordance with the form and would therefore be void. It would all depend upon the materiality of the particular term which is incorporated in the form. If the non-compliance with the requirements of the form were such as to make the document something else by reason of a characteristic part of the form not being followed or the document would lose some legal effect which it would have had if the proper words had been inserted therein, it cannot be said that there is substantial compliance with the statutory form.

Considering the term as to measurement in this light, it appears that the same had its basis in the requirements of the trade in regard to the pressing of the bales. The bales which were the subject-matter of these forward delivery contracts were either meant for transport within the country or export outside the country. The bales were to be fully pressed so as to occupy the minimum space either in transport by rail or by steamer and initially they were bound with hoops. The baling hoops were however difficult to obtain from Japan and therefore the bales came to be bound with ropes made of cotton, jute coir and hemp. The bales thus bound otherwise than with hoops

(1) [1920] 2 K.B. 80.
(2) (1886) 17 Q.B.D. 259.
(3) (1888) 13 App. Cas. 506.
(4) (1890) 25 Q.B.D. 110.

occupied more space and difficulties were encountered by the merchants because of their being obliged to pay extra insurance and freight charges in respect of such bales. Not only did the railways charge more for the transport of such bales, the shipping companies also did so and the insurance companies charged higher rates for insurance because the bales were not pressed in a manner which would minimise the risks of insurance. All these factors brought about a situation creating difficulties between the purchasers and the sellers of cotton and these difficulties had to be resolved by the Association. By-law 101 had proceeded on the basis of cotton bales being bound with hoops, the approximate measurement in tons as agreed and understood in the trade being, 13½ tons per 50 bales. That was the standard measurement. It was open however to the parties to agree upon any other measurement. If any measurement other than the standard measurement was agreed to, an adjustment had to be made by reason of such difference in measurement and by-law 101 provided that certain amount therein specified had got to be paid by the seller to the purchaser as and by way of allowance for such excess measurement.

Towards October, 1942, the situation in regard to the baling hoops deteriorated so much that it was thought desirable that bales bound with ropes should be permitted to be tendered under the by-laws of the Association and that the operation of by-law 101 as regards measurements should be suspended. There were heavy fluctuations in the prices of the materials permitted to be used, and it was therefore thought advisable to fix certain allowances from time to time or before the beginning of the delivery periods taking into consideration the extra insurance and freight charges, if any, in respect of such bales. A sub-committee appointed by the Association made a report in this behalf on October 29, 1942, and on November 20, 1942, the Board of Directors of the Association passed a resolution approving the recommendations of the sub-committee with this modification that the allowance to be prescribed in the price of bales bound with ropes

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as against the price of bales bound with hoops as provided in by-laws 96 and 119, be fixed before the commencement of the season and not be altered from time to time. The Board of Directors issued a notice on November 30, 1942, suspending the operation of by-law 101 as regards the measurement until further notice.

The position as it obtained at the time when the suit contracts were entered into was that by-law 101 as regards measurement had been suspended and there was no necessity so far as the by-laws went to make any mention in the contracts in regard to the same. If the claim for excess measurement had not to be entertained, it was not at all necessary to mention the measurement in the contract forms and there would be substantial compliance with the contract form, even though no measurement was mentioned therein, the very basis for the mention of such measurement having disappeared.

It was, however, urged on behalf of the appellants that measurement was an essential part of the description of the goods sold and the suspension of by-law 101 made it all the more necessary that the measurement should be specified in the contract form itself. The standard measurement which had been mentioned in by-law 101 had disappeared and it would therefore be necessary to mention in the contract form what was the measurement on the basis of which the price of the contract had been fixed by and between the parties. If the bales actually tendered measured more in weight than what was actually agreed upon, the purchaser would be entitled to obtain from the seller an allowance for such excess measurement and that was the reason why it was necessary after the suspension of by-law 101 to mention the agreed measurement between the parties.

This argument however ignores the fact that simultaneously with the suspension of the operation of the by-law 101, by-laws 96 and 119 which referred to forward and hedge contracts respectively were altered and provision was made therein to incorporate measures consequent upon the tender of bales bound with ropes

in place of bales bound with hoops. The consequences of such tenders were worked out in the by-laws as thus amended and allowances in the price of bales bound with ropes as against the price of bales bound with hoops were also provided for. These allowances were in accordance with the resolution of the Board dated November 20, 1942, to be fixed before the commencement of the season and if such allowances were provided for there was nothing further to be done in regard to the difference in measurement, if any. If the situation which obtained after November 20, 1942, provided for a tender of bales bound with ropes instead of bales bound with hoops in fulfilment of the contracts entered into between the parties, that was well known to all the members of the Association and it was open to them while fixing the prices themselves to take count of the extra charges for insurance and freight which would be payable by the purchaser in the event of bales bound with ropes being tendered instead of bales bound with hoops. It, therefore, follows that the omission to mention the measurements in the contract notes did not render the contracts not in accordance with the by-laws. There was no such by-law in operation at the time and even otherwise there was no need whatever to incorporate in the contract notes any term as to measurement. It could not therefore be said that there was any departure from an essential or a characteristic part of the contract form or that the legal effect of the contracts was changed so as to invalidate the same.

When we come to the term in regard to the differences of Rs.....above or below the settlement rate of hedge contract No..... we find that that had reference to periodical settlements of contracts through the clearing house. In accordance with by-law 139 all delivery contracts other than those excepted under by-law 136 and hedge contracts were subject to periodical settlements through the Clearing House which settlements had to be made once weekly on days fixed by the Board. If the contracts had got to go through the clearing house in this manner it was necessary also that settlement rates should be fixed

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and by-law 141(1) provided that settlement prices for all positions of the hedge contract should be fixed by the Board. The settlement prices thus fixed were to be taken as the basis for the periodical settlement of delivery contracts and it was further provided in by-law 141(2) that such allowance as shall be agreed upon by the parties in their contracts to cover any difference between the cotton contracted for and the cotton which was the basis of the hedge contract shall be added to or deducted from the said settlement prices. This was the basis of the provision contained in the relevant term of the contract form. In the case of contracts for descriptions not tenderable against the hedge contract it was open to the parties either to agree upon an allowance above or below the hedge contract or they would make an application to the Board to fix the settlement rates. Whenever there was an agreement in this behalf the parties were to mention the difference thus agreed into the contract form and the periodical settlements of delivery contracts were to be effected on that basis.

The question arises as to whether the parties were bound to enter into any such agreement at the time they entered into the contracts. It was contended on behalf of the appellants that such an agreement was necessary because it would otherwise involve the parties into payment of large sums of money on the settlement day next after the day of the contract. The hedge contracts appertained to cotton of the lowest average and if the quality of cotton which was the subject-matter of the contract between the parties was, as was usual, of a higher variety, it would involve the payment of large amounts by way of differences on the next settlement day, which certainly would not be within the contemplation of the contracting parties. If that was so, the parties would agree to a difference between the rates of the cotton contracted for and the cotton which was the basis of the hedge contract and this difference above or below would serve to minimize the incidence of such payment on the next settlement day. It was, therefore, submitted that it was incumbent on the parties when entering into a contract to

fill-in this term as to differences. If they agreed upon such differences the blank had to be filled-in accordingly; but even though they did not agree upon any such differences, it was necessary for them to mention in the contract form that the difference above or below the rate of the hedge contract agreed upon by them was nil.

It was contended on the other hand on behalf of the respondent that there was no obligation on the parties entering into the contract to fill in that term. If they agreed upon the difference all well and good but if they did not agree upon the difference, the first part of by-law 141(2) stepped in and the consequences had to be worked out as if there was no agreement and the differences had to be paid on the settlement day next ensuing on the basis of the difference between the contract rates and rates of hedge contract, even though it may involve a payment of a substantial amount all at once. According to this submission, in the case of contracts for descriptions tenderable againt the hedge contract two positions arose: viz., (1) parties to the contract may not agree to any difference in which case it would not be necessary to fill in that term in the contract note or (2) they may agree to the difference in which event the difference would be mentioned in the contract note. In the case of contracts for descriptions which were not tenderable against the hedge contract three positions would arise, viz., (1) the parties may not agree upon any difference in which event it would not be necessary to fill in the term as to difference in the contract notes; (2) the parties may agree upon such difference and that would have to be mentioned in the contract notes or (3) the parties could apply to the Board to fix the settlement rates.

It appears that the contention urged on behalf of the appellants would be more in consonance with business ideas because no business man would think of immediately forking out a large sum of money on the next ensuing settlement day. It would be tantamount to paying the price of the goods or a substantial part thereof long before the due date of delivery ever

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arrived. While recognizing the necessity of arriving at an agreement in this manner we are, however, not impressed with the argument that in the event of no such agreement as to the difference having been reached it would even so be necessary to mention in the contract note that the difference agreed upon was nil. When the parties entered into the transactions all the terms and conditions of the contract would certainly be negotiated and agreed upon between them. It would be open to them, in view of the by-laws above referred to, to agree upon the difference above or below the settlement rate of hedge contracts for the purpose of facilitating the settlements through the clearing house. But if no such difference above or below the settlement rate of hedge contracts were agreed upon between the parties, it would not necessarily follow that the word nil had got to be mentioned in the contract notes. The very fact that no difference above or below the settlement rate of hedge contracts was agreed upon in the manner contemplated would be enough to spell out an agreement that no such difference was to be computed in arriving at the settlement rates in respect of these contracts. If that was the true position it would be superfluous to write the word "nil" as contended for by the appellants and the consequences, of such non-mention would be the same as if the difference agreed upon was nil. By-law 141 (2) could then be worked out without any difficulty and the settlement rates in the case of delivery contracts would be fixed on the basis of the settlement price of the hedge contracts taking into account the facts that there was either no difference which was agreed upon or that the difference agreed upon was a specific one which was mentioned in the contract notes.

It was however pointed out on behalf of the respondents that the official contract form contained the expression "above/below the settlement rate of hedge contract No.....". Even though this may have been in consonance with the position as it obtained when the hedge contracts of five different varieties were in vogue, involving the specification of hedge contracts as Nos. 1 to 5, that position substantially changed

when hedge contracts of these 5 varieties were abolished and in their place and stead was substituted a hedge contract called the I. C. C. The five varieties of hedge contracts were also for different deliveries which did not necessarily coincide one with the other and these contracts were not on the market all at one time, with the result that it would be necessary if the requirements of the contract form had to be complied with to fill in the blank not only by describing the hedge contract number, whether it was one or the other of the numbers 1 to 5 but also the particular hedge contract of a particular delivery. Even if it may be assumed that the blank to be filled in in this behalf required a mention not only of the hedge contract No.....but also of a particular delivery thereof, all that went by the board when the I. C. C. was substituted in place of the hedge contract Nos. 1 to 5. The old contract form which had been prescribed by by-law 80 was continued without any change being effected therein by virtue of such substitution and if at all the parties to a contract were to fulfill the requirements of the contract form, it would be necessary for them to strike out the words " hedge contract No....." and put in their place and stead the word "I. C. C." Even there the I. C. C. appertained to different deliveries which were not on the market all at one time. The months of delivery were nowhere required to be filled in in the contract form, whether the contract form required the parties to have regard to the hedge contract No.....or the I. C. C., and to that extent, it can be said that the parties were expected to rely upon their commonsense and the practice of the trade as to what particular delivery was contemplated when the contracts were entered into between them.

All this goes to show that the parties to the contract were not tied down to a literal compliance with the terms contained in the official contract form but were required to act according to the position as it then obtained and if they substantially complied with the requirements of the contract form that was enough. If the hedge contract No.....was not in vogue in the

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market they need not conform to that provision in the official contract form but could make the necessary changes in accordance with the type of hedge contract which was then in vogue. Similarly, they would have to record in the contract form the agreement reached between them in regard to the difference of Rs..... above or below the settlement rate of the hedge contract No.....if they came to a particular agreement in that behalf. if, however, no such agreement was reached between the parties—and here the effect of no agreement having been arrived at in regard to such difference would be the same as if the agreement between them was that the difference was to be nil—no mention need be made of such difference in the contract form. The result of either of the two latter positions would be that if the contracts were to pass through the Clearing House the settlement rates would be determined on the basis of the settlement price of the hedge contract fixed by the Board for those various settlements and the parties would have to pay to or receive from one another the differences calculated on the difference between the contract rates and those settlement rates.

The whole of this discussion, however, is academic by reason of the fact that in practice delivery contracts were not put through any periodical settlements and at all material times the operation of this term in the official contract form had become obsolete. This position was not disputed on behalf of the appellants and their counsel stated before the Court that he did not wish to dispute the fact that delivery contracts were at no time submitted to periodical settlements in the Association. The effect of this procedure being adopted in the Association was tacitly to suspend the operation of these by-laws as to periodical settlements in respect of delivery contracts and it would be superfluous, nay absurd, on the part of the business people entering into contracts subject to the by-laws of the Association to incorporate in the contract form provisions which had become obsolete. If the contracts were not to pass through the periodical settlements in the Clearing House no question would

ever arise of settlement rates requiring to be fixed, much less of the basis of such settlement rates being determined, or of the difference of Rs.....above or below the settlement rate of hedge contracts being ever agreed upon between the parties. If under those circumstances, the parties did not fill in those blanks which required to be filled in in the official contract form on the basis of by-laws 139 and 141 being in operation, it could not be said that they had failed to substantially comply with the requirements of the official contract form. The official contract form had to be filled in so far as it was practicable. The operation of these by-laws was in effect suspended and by the tacit understanding of the trade they were to be treated as if they did not exist. It could not therefore be urged that the parties were put to the necessity of agreeing to such differences, if having regard to the circumstances that prevailed, it was impracticable to do so and if these blanks were not filled in as originally contemplated the contract notes could certainly not be impeached as being not in accordance with the by-laws of the Association. 2.

It was, however, urged on behalf of the appellants that if the parties to the contracts intended not to comply with the requirements of by-laws 139 and 141 that would by itself vitiate the contracts because in that event the contracts would certainly be not in accordance with the by-laws of the Association. The parties in that event intended to perpetrate an illegality at the very inception of the contracts and the contracts were therefore void. There is considerable force in this argument; but we do not feel called upon to consider the same in view of the fact that that was not the ground on which the validity of the suit contract was challenged in the plaint. 3.

We are therefore of the opinion that the omission to fill in those blanks in the contract notes did not spell any departure from an essential or a characteristic part of the contract form nor was the legal effect of the contracts in any manner changed thereby rendering the contracts void within the meaning of s. 8 of the Bombay Cotton Contracts Act, 1932. 4.

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Both these grounds of attack against the validity of the contracts in question therefore fail and we are of the opinion that the contracts entered into between the appellants and the respondents were not void as alleged. The appellants were therefore not entitled to recover from the respondents the said sum of Rs. 1,80,099-8-0 or any part thereof as alleged or at all and we are of the opinion that the appellate Court was right in rejecting the appellants' claim.

We cannot part with this appeal without observing that the whole difficulty has been created by reason of the Association not having made the necessary alterations in the contract form in accordance with the situation as it obtained from time to time. When by-law 101 was suspended in operation the Association ought to have deleted the term as to measurement from the contract form. When the by-laws 139 and 141 were virtually abrogated by reason of the delivery contracts not being subjected to periodical settlements in the Clearing House, the Association ought to have similarly deleted the last clause from the official contract form which required the difference of Rs..... above or below the settlement rates of hedge contract No.....to be filled-in by the parties. Equally untenable was the retention of the expression "Hedge Contract No....." when the five different varieties of hedge contracts were abolished and one hedge contract named I. C. C. was substituted therefor. We fully endorse the observations made by the appellate Court in the course of its judgment :—

"We have had occasion to point out in the past how badly the by-laws of the East India Cotton Association are drafted and how clumsily the forms also settled, and the present form is an illustration of what we have had occasion to say in the past."

The manner in which the official contract form which had been settled when the by-laws of the Association came first to be promulgated has been retained in its pristine glory in spite of the various changes made in the operation of the by-laws and the practice of the trade only enhances the difficulties of the parties and enables the parties who are so minded to raise all

sorts of disputes tenable or otherwise in order to avoid their liability in respect of the transactions effected by them in the Association. It may be hoped that the Association will take effective steps to bring the official contract form in conformity with the by-laws in operation from time to time and the practice of the trade prevailing in the Association.

The result therefore is that this appeal fails and must stand dismissed with costs throughout.

Appeal dismissed.

BABULAL BHURAMAL AND ANOTHER

v.

NANDRAM SHIVRAM AND OTHERS

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March 31.

(B. P. SINHA, JAFER IMAM and SUBBA RAO JJ.)

Bombay City Civil Court, Jurisdiction of—Suit to establish status as tenants and sub-tenants for protection from eviction—Whether can be entertained—Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bom. LVII of 1947), ss. 28 and 29A.

A who was a tenant of N sub-let the premises to B and C. N filed a suit for ejectment against A, B and C in the Court of Small Causes, Bombay, on the ground of illegal sub-letting. The suit was decreed. Thereafter, A, B and C filed the present suit in the Bombay City Civil Court for a declaration that A was a tenant of N and was protected from eviction by the provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, and that B and C were lawful sub-tenants of A and were as such entitled to possession, use and occupation of the premises. The City Civil Court held that it had jurisdiction to entertain the suit but dismissed it on the ground that there was no lawful sub-letting. On appeal, the Bombay High Court held that the City Civil Court had no jurisdiction to entertain the suit and dismissed the appeal without going into the merits :

Held, that the High Court was right in holding that s. 28 of the Act barred the City Civil Court from entertaining the suit. Section 28 explicitly confers on courts specified therein jurisdiction to entertain a suit between a landlord and a tenant in respect of a claim which arose out of the Act or any of its provisions,