justice. It is hardly necessary to add that cl. 8 of s. 545 of the Bombay Police Manual can not be held to be bad as contravening the rules of natural justice.

This finding however does not dispose of the entire matter. It is the contention of the respondent that the Deputy Inspector General of police was not entitled in revision to enhance the punishment and this question has not been decided by the learned Judges. It is therefore necessary to remand this case for hearing on this and all other issues which might arise for decision. We accordingly set aside the order in appeal and remand the case for hearing on the other points in this case. Costs of this appeal will abide the result of the hearing in the Court below.

Case remanded.

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May 3.

(S. K. DAS, M. HIDAYATULLAH and J. C. SHAH, JJ.)

Arbitration—Revocation—Power of Court—Periodic fluctuation of price, if an emergency—Arbitration Act, 1940 (10 of 1940), ss. 5,34—Working Manual of the East India Jute and Hessian Exchange, Ch. IX. paras. 7(c), 11.

The appellants as sellers of raw jute entered into forward contracts with the respondent jute mills to sell such jute to them. The contracts being transferable specific delivery contracts, were entered into in the standard printed forms of the East India Jute & Hessian Exchange Ltd., which was an association recognised under the Forward Contracts (Regulation) Act, 1912, and thus were subject to the rules and bye-laws made by the Exchange which provided for arbitration of disputes by the tribunal of Arbitration of the

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Bengal Chamber of Commerce and Industry or the Indian Chamber of Commerce in Calcutta. The appellants failed to supply the stipulated jute within the time mentioned in the guarantee clauses. The respondents exercised their option under the rules aforesaid, cancelled the contracts and charged the appellants for the difference in price between the contract rate and the market rate prevailing on the dates of cancellation and on the appellants denying their liability applied for arbitration. The appellants thereupon applied to the High Court under s. 5 of the Arbitration Act, 1940, for revoking the authority of the arbitrator. There case in contemplated in Para 11, in Ch. IX of the Working Manual of the Exchange substance was that there was an emergency as due to scarcity of raw jute and speculation at the relevant time and the price of raw jute shot up abnormally, this placed the buyers and sellers of raw jute in two conflicting camp, and the majority of the arbitrators in the panel of arbitration of the Bengal Chamber of Commerce and Industry being connected with the buyers of raw jute, the jute mills, were disqualified from acting as impartial arbitrators. The High Court held that no such emergent condition had been proved as would justify revocation of the authority of an appointed arbitrator.

Held, that the normal periodical fluctuation in the price of raw jute could not constitute an emergency within the meaning of para. 11 in Ch. IX of the Manual since such fluctuations have been taken into consideration by those who entered into forward contracts. Such an emergency must be one which is abnormal and which none could foresee. It could not, therefore, be said that in the present case there was such a conflict of interest between sellers and buyers as would render the panel of arbitrators having a practical experience of the normal fluctuations of the market disqualified to act as impartial arbitrators.

The object of ss. 5 and 34 of the Arbitration Act was the same, namely, to prevent arbitration, with this difference that an application under s.5 would lie if proceedings had not yet been commenced in Court whereas under s. 34 an application lay when they had commenced.

But a Court would not lightly exercise its discretion to grant leave to revoke an arbitrator's authority. Before it would do so it must be satisfied that a substantial miscarriage of justice would otherwise take place. Parties would not be relieved from a tribunal of their own choice simply because they feared that its decision might go against them,

and the court had to base its decision on one or other of five grounds, namely, excess or refusal of jurisdiction by arbitrator, misconduct of arbitrator, disqualification of arbitrator, charges of fraud and lastly the existence of exceptional circumstances.

In the instant cases there were no exceptional circumstances to justify the conclusion that the arbitrator was disqualified by bias due to conflicting class interest.

Balabux Agarwala v. *Lachminarain Jute Mfg. Co. Ltd.* (1947) 51 C.W.N. 863, *Tolaram Nathmull* v. *Birla Jute Manufacturing Co. Ltd.* (1948) 2 Cal. 171, *Dwarkadas Co.* v. *Keshardeo Bubna*, (1948) 1 Cal. 190 and *Bhuwalka Bros. Ltd.* v. *Fetechand Murlidhar*, (1951) 2 Cal. 115, distinguished.

The extension of time given to the buyers by the contracts beyond a month specified by para. 7(c) in Ch. IX of the Working Manual for delivering letter of authority did not bring the contracts materially into conflict with that provision nor could the absence of the expression "without any difference on both sides", which occurred in the sold notes, from the bought notes make any difference to the rights of the parties.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 640 of 1961.

Appeal by special leave from the judgment and order dated September 14, 1961, of the Calcutta High Court in Matter No. 44 of 1961.

WITH

Civil Appeals Nos. 173 to 175 of 1962.

Appeal by special leave from the judgments and order dated September 14 and 21, 1961, of the Calcutta High Court in Matters Nos. 149, 258 and 162 of 1961.

M. C. Setalvad, Attorney General of India, B. Sen and *P. K. Bose*, for the appellants in C.A. No. 640 of 61.

Sachine Chaudhuri, Ellis Meyer, Subrota K. Chaudhuri and *I. N. Shroff*, for the respondent in C.A. No. 640/61.

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N. C. Chatterjee, B. L. Kanodia and *B. P. Maheswari*, for the appellants in C.A. No. 173 of 1962.

B. Sen, B. L. Kanodia and *B. P. Maheshwari*, for the appellants in C.As. No. 174 and 175 of 1962.

G. S. Pathak, M. G. Poddar and *D. N. Mukherjee* for the respondents in C.A. No. 173/62.

P. L. Khaitan, S. N. Andley and *Rameshwar Nath*, for the respondents in C A. No. 174/62.

A. C. Bhabra, M. G. Poddar, P. L. Khaitan and *D.N. Mukherjee* for the respondents in C. A. No. 175/62.

1962. May 3. The Judgment of the Court was delivered by

Das J.

S. K. DAS, J.—These four appeals, all with special leave of this Court, have been heard together because they raise common questions of law and fact. This judgment will govern them all.

In the High Court of Calcutta, in or about February—July, 1961, a series of applications numbering about 170 were filed by sellers of raw jute. The main relief asked for by those applications was the revocation of the authority of an arbitrator appointed under certain contracts which the applicants had entered into with the respondents in circumstances which we shall presently state. Except in two or three cases the respondents were all jute mill companies which purchase raw jute and manufacture finished goods therefrom. The main controversy which these applications gave rise to was dealt with by the High court in its judgment dated September 14, 1961, in the application entitled *Ram Kumar Chhotaria* v. *Titaghur Jute Factory Co. Ltd.* (Matter No. 20 of 1961 before the High Court).

Certain special points arising in some of the other applications were dealt with in separate judgments. The High Court stated in its judgment in *Ram Kumar Chhotaria* v. *Titaghur Jute Factory Co. Ltd.* that the only relief, among the many included in the petition, pressed at the hearing was leave to revoke the authority of the appointed arbitrator under the provisions of s. 5 of the Arbitration Act, 1940 (Act 10 of 1940) which provides that "the authority of an appointed arbitrator or umpire shall not be revocable except with the leave of the Court, unless a contrary intention is expressed in the arbitration agreement."

We shall now state the circumstances in which the applications were made for leave to revoke the authority of the appointed arbitrator and in doing so we shall state somewhat fully the facts alleged in the application of M/s. Amarchand Lalitkumar a firm registered under the Indian Partnership Act, and carrying on business in Calcutta, which, firm is the appellant before us in Civil Appeal No. 640 of 1961. The facts being similar we shall not repeat them with regard to the other three appeals, but refer to such special facts or points in those appeals as have been pressed before us.

On April 22, 1960, M/s. Amarchand Lalitkumar, whom we shall refer to as the appellant, entered into a contract being contract No. 1786 with Shree Ambica Jute Mills Ltd., respondent in Civil Appeal No. 640 of 1961, whereby the appellant agreed to sell and the respondent agreed to buy some 10,000 maunds of Middle and Bottom Jute at a particular price. The contract was negotiated by a firm of brokers M/s. A. M. Mair & Co. (Private) Ltd., and was entered into in the standard printed form prescribed by the East India Jute & Hessian Exchange Ltd. (hereinafter referred to as the

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Exchange) and was subject to the rules and bye-laws made by it. The contract was a forward contract being a transferable specific delivery contract in raw jute, the contract providing by a guarantee clause for "shipment or despatch during August/September, 1960". By the operation of the provisions of the Forward Contracts (Regulation) Act 1952 (Act 74 of 1952), and the notifications made by the Central Government thereunder, forward contracts for the sale or purchase of raw jute in the city of Calcutta which included the area within the municipal limits of Calcutta, the Port of Calcutta and the districts of 24 Parganas, Nadia, Howrah and Hooghly, could only be entered into between members of a recognised association or through or with any such member. The exchange was such a recognised association. The Act empowered recognised associations to make bye-laws for the regulation and control of forward contracts subject to the previous approval of the Central Government. The Exchange made such bye-laws relating to the transferable specific delivery contracts in raw jute which bye-laws will be found in Chapter IX of the Working Manual issued by the Exchange. Terms and conditions of transferable specific delivery contracts in raw jute as prescribed by the said bye-laws provided for arbitration of all claims and disputes arising out of or in relation to such contracts by the Tribunal of Arbitration of the Bengal Chamber of Commerce and Industry or the Indian Chamber of Commerce in Calcutta in accordance with the rules framed by the said Chambers. In some appeals before us the contracts provided for arbitration by the Bengal Chamber of Commerce and Industry and some by the Indian Chamber of Commerce in Calcutta. The rules of the two Chambers for constituting Tribunals of Arbitration are similar and such difference as is material for our purpose will be adverted to later in this judgment. Paragraph 11 in Ch. IX of the

Working Manual of the Exchange made certain provisions for unavoidable delay in the supply of goods by the sellers of jute. In order to appreciate the main controversy between the parties it is necessary to quote the relevant portion of that paragraph.

"11. (a) In the case of jute and in the event of seller being prevented or delayed in carrying out their obligations under the contract by the occurrence of fire, strikes, riots, political or communal disturbances, hartals and or civil commotions, breakdown of public transport services, suspension of bookings, they shall give immediate intimation thereof to buyers. The sellers' and buyers' rights shall thereupon be as follows : —

(i) On the sellers producing satisfactory evidence of the prevention or delay, they shall be granted an extension of time for delivering not exceeding thirty days from due date of all penalties.

(ii) If the contract be not implemented within the extended period referred to in clause (i) above buyers shall thereupon be entitled to exercise any one of the following option : —

(1) Of cancelling the contract,

(2) Of buying against sellers in the open market on the day on which the option is declared and charging them any difference,

(3) Of cancelling the contract and charging sellers the difference between contract and the market price on the day on which the option is declared.

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Sellers shall notify buyers that the goods will or will not be shipped within such extended period referred to in clause (i) and in the case of sellers intimating that they will be unable to ship within the extended time buyer shall exercise their option under clause (ii) on the fifth working day of receiving such notice and notify sellers. In the absence of any such notice from sellers it shall be deemed that the goods have not been shipped and buyers shall exercise their aforesaid option on the fifth working day after expiration of the extended date and notify sellers.

..... "

The case of the appellant was that at the relevant time certain emergent conditions arose in the raw jute trade and industry, which prevented the appellant from supplying the raw jute stipulated for in the contract within the time mentioned in the guarantee clause. By a letter dated October 10, 1960, the respondent exercised its option under para. 11 quoted earlier, cancelled the contract and charged the appellant for the difference in price between the contract rate and the market rate prevailing on the date of cancellation. The appellant denied that it had any liability to pay the difference. Thereupon the respondent applied for arbitration by the Tribunal of Arbitration constituted in accordance with the rules of the Bengal Chamber of Commerce and Industry. The Registrar of the Chamber wrote to the appellant that the arbitration case (No. 10 of 1961) would be heard by the Tribunal on a certain date. The date was then extended and before the Arbitration Tribunal could decide the matter the applications in the High Court were made for revoking the authority of the appointed arbitrator.

The facts and circumstances which according to the appellant situated the emergency were

stated in para 11 of the petition and the substance of the allegations was that owing to the two causes of scarcity of raw jute and speculation, the prices of raw jute shot up abnormally giving rise to an emergent condition in the jute trade and industry and especially in respect of trading in future contracts in raw jute. The appellant's case was that by reason of that emergency the buyers and sellers of raw jute were placed in two conflicting camps and the vast majority of the arbitrators in the panel of arbitration comprising the Tribunal of Arbitration of the Bengal Chamber of Commerce and Industry were either directly or indirectly connected with one or other of the jute mills which were all buyers of raw jute. In paras. 21, 22 and 23 of its petition the appellant stated that when the parties entered into the contract they never contemplated that there would happen such an exceptional situation as arose in the jute trade during the relevant period of September-October, 1960; that the arbitrators of the Tribunal of Arbitration of the Bengal Chamber of Commerce and Industry were disqualified from acting as arbitrators inasmuch as they were all connected with the buyers and there was every probability that they would be biased in favour of the buyers; therefore, the appellant reasonably apprehended that it would not be possible for the arbitrators to act as impartial or disinterested judges. In para 33 the appellant stated:

> "The interest of the sellers of raw jute are in conflict with the interest of the buyers of raw jute. In the events that have happened the sellers of raw jute have formed themselves into a group and the buyers of raw jute have formed another group. The Indian Jute Mills Association is dominated by the buyers. The Indian Jute Mills Association dominates the said Chamber and its Arbitrator. The Indian Jute Mills Association is committed

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to the view that the said contracts have not been frustrated. The said Association has also formed an opinion in respect of the disputes between the buyers and the sellers of raw jute."

These were the allegations on which the appellant prayed that the authority of the appointed arbitrator should be revoked under s. 5 of the Arbitration Act, 1940.

The application was opposed by the respondent which denied the allegations made by the appellant both as to the facts and circumstances which were said to constitute the emergency and as to the alleged reasonable apprehension of bias in the appointed Arbitration Tribunal.

We have stated earlier that in the High Court to main controversy between the parties centred round the question, (1) if there was such an emergent condition in the jute trade and industry at the relevant time as divided the sellers and buyers of raw jute into two opposing camps, and (2) if the existence of such opposing camps, provided such opposing camps were proved to exist, would justify the revocation of the authority of the appointed arbitrator. The learned Judge who heard the applications dealt first with the legal position in England and India, in the matter of revocation of the authority of an appointed arbitrator. Having dealt with the legal position, he went into the facts of the case and held that no such emergent condition has been proved as would justify the revocation of the authority of an appointed arbitrator. He expressed his final conclusion in these words:

"In my opinion, the allegations about the buyers and sellers in raw jute being thrown into conflicting camps by the operation of emergent circumstances or above

reasonable apprehension of bias in the minds of the sellers that they will not get justice from the persons whose names appear on the list of the panel of arbitrators of the Bengal Chamber of Commerce and Industry are unsubstantial."

He accordingly dismissed the applications with costs.

We consider that as a matter of logical sequence, we should deal with the question of fact first—whether there was any such emergent condition in the jute trade and industry at the relevant time as divided the sellers and buyers of raw jute into two conflicting camps so as to give rise to a reasonable apprehension in the minds of the sellers that they will not get a just decision from the appointed arbitrator. It is only when we answer the question of fact in favour of the appellants that a consideration of the legal position would be necessary.

What are the circumstances on which the appellants rely in support of their allegation of an emergent condition in the jute trade dividing the buyers and sellers of raw conflicting camps? It is pointed out that on October 18, 1960, the Exchange issued a press note in which it was stated *inter alia* that owing to emergent conditions prevailing in the jute trade, the Director of the Exchange had imposed from time to time various control measures in respect of trading in future contracts in raw jute and had taken up a review of the trading position in transferable specific delivery contracts. On October 31, 1960, a notice by the Exchange directed that trading in transferable specific delivery contracts in raw jute shall be registered with the Exchange. In their petitions for leave to revoke the authority of the arbitrator, the appellants also referred to reports made by reporters of

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certain newpapers as also news items published therein. We do not think that these newspapers reports establish anything beyond what the reporters heard from people whose identity is not disclosed, and they are not admissible in evidence to establish either that an emergency had arisen or the nature thereof. At best they show that there were reports in the market of a short-fall in jute production, a shortage of supply of raw jute from Pakistan, sealing of some of the looms in the mills, and a reduction in working hours. The affidavits filed on behalf of the appellants do not, however, establish that there had been any failure of the jute crop in Bengal, Bihar and Assam or that jute had become unavailable at its normal sources or that such a crisis had arisen as would divide the buyers and sellers into conflicting camps. It is worthy of note that like any other trade in goods in a short market, the jute trade, especially the trade in future contracts, is very sensitive and readily responds to any stimulus, including forces which affect supply and demand even temporarily. Such responses can even be said to be the normal feature of the jute trade like any other trade in commodities. As there was no evidence of the rise and fall in prices of raw jute during the relevant period except from what we could gather from the differences in price between the contract rate and the market rate claimed by the respondents, we allowed the parties to produce before us the rates quoted by authorised brokers for various kinds of jute from April 1960 to August 1961 These figures show that the market in raw jute almost always fluctuates; sometimes there is steady rise; sometimes a fall; sometimes there is a steep rise or a steep fall. Take for example, the period between August 1960 to January 1961—the period of delivery in most of the cases—in one of the varieties of jute viz. Assam Bottom Jute. In

August 1960 there was a steady rise from Rs.35/- to about Rs.40/- per maund. In September 1960 the rise continued and reached to about Rs. 43/-. It continued also in October and reached about Rs. 54/-. Towards the middle of November there was a fall. In January 1961 there was again a rise which continued till March. In April there was again a fall which continued till July 1961. We have taken only one example, but these ups and downs in price levels are noticable in other varieties of jute also, such as, Pakistan N. C. Cuttings etc. A person trading in future contracts must take these ups and downs into consideration when entering into contracts, and we fail to appreciate how these ups and downs can constitute an emergent condition which will divide the buyers and sellers into two conflicting camps. The question whether the seller was entitled to an extension of time in the circumstances then prevailing would undoubtedly arise for determination by the appointed arbitrator, who having practical experience of the fluctuations which the trade normally undergoes would be in a position to judge the validity of such a claim. But it is difficult to appreciate how this periodical rise or fall in prices can be called an emergency which made the contracts impossible of performance or divided the buyers and sellers into two conflicting camps at the relevant time.

Much was made of the fact that the Indian Jute Mills Association was a very influential body of jute mill owners, affiliated with the Bengal Chamber of Commerce and Industry. It was alleged that they were sister bodies having their offices at the same place and that they carried out a common policy in matters of trade. It was pointed out that the majority of arbitrators in the panel of arbitration of the Behgal Chamber of Commerce and Industry were either directly or indirectly connected with one or other of the jute

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mills. The relevant rules of Bengal Chamber of Commerce and Industry, it was pointed out, provided that "the Tribunal shall consist of such members or assistants to members and of such other persons who were from time to time on the panel of special Advisory Board to the Indian Jute Mills Association, as may from time to time be selected by the Registrar". In this respect there is a difference in the rules made by the Indian Chamber of Commerce, Calcutta. Those rules provide for an unrestricted selection and say that in making an appointment and nomination, the Registrar shall select, as far as possible, persons or a person having practical knowledge of the subject matter of the contract or contracts in question and the Registrar shall not appoint any person who for any reason within his knowledge would not be a proper person to act as Arbitrator etc. in the particular matter. The appellant in Civil Appeal No. 640 brought to our notice the circumstance that his solicitor wrote to the Registrar of the Bengal Chamber of Commerce and Industry for the names of the arbitrators and was told in reply that it was not the practice of the Tribunal to disclose the names of the arbitrators; but a classification of arbitrators of some of the cases was furnished and this showed that one of the arbitrators would be a mill representative and the other a jute broker or baler.

We have taken all these circumstances into our consideration and we are unable to agree with the appellants that they made out a case of a reasonable apprehension of bias on the basis alleged, namely, that of a clash of interests between buyers and sellers on the ground of a rise in prices. The High Court has rightly pointed out that it is not quite correct to say that the persons who made the applications were only sellers of raw jute and not buyers in their turn; they are people who carry

on business in Calcutta and some of them probably have buying agencies in the mofussil. They must be buying jute from others and selling them to shippers, balers, and jute mills. The jute mills usually buy raw jute and turn out manufactured products therefrom, which they sell. Balers and shippers buy raw jute and sell the same after pressing and baling. At one end of the chain there are jute growers who are only sellers while others are both buyers and sellers of jute or jute goods. This latter category of persons must be taking note of the trends in the market in entering into their contracts and unless there was an emergency of the kind which nobody could foresee, it is impossible to say that there was such a clash of interests between buyers and sellers that the appointed arbitrator having practical experience of normal fluctuations of the market would not be able to judge with fairness and impartiality the claim of the sellers that they were entitled to an extension of time or other relief. The High Court further pointed that though there were 170 applications, the number of applicants was only 42 and some only of the jute mills in West Bengal were involved. The High Court then said:

> "If one takes into consideration the number of jute mills situate in the district of 24 Parganas, Howarh, Hooghly and Nadia and considers further that there are thousands of persons who are engaged in the trade of raw jute it is significant that only a few dozen of them have come to this Court in between the period February, 1961, to the end of June, 1961. It appears to me that the difficulty, real or assumed, is confined to a very small number of persons, not brought about by any emergent conditions at all as alleged. There can be no denying the fact that the outturn of jute has been smaller

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than expected and that jute mills have had to reduce their working hours. Such a shortage in jute cannot be said to have brought about an upheaval in the trade throwing buyers and sellers into sharply divided conflicting camps."

We are in agreement with the view thus expressed by the High Court.

As to the arbitrators to be appointed by the Indian Chamber of Commerce, Calcutta, and in some of the appeals before us the arbitrators have to be so appointed, there can hardly be any ground for a reasonable apprehension. The names of the arbitrators are not known nor even their classification. The rules contemplate that the Registrar shall not appoint any person as arbitrator who for any reason within his knowledge would not be a proper person to act as arbitrator. What grounds can there be of a reasonable apprehension in such cases? We have held that there are no conflicting camps of buyers and sellers, and even if there are such camps, the Registrar can select persons who have practical experience of the subject matter of the contract and not otherwise improper persons to act as arbitrators. The difference between an application under s. 5 of the Arbitration Act and one under s. 34 is a difference as to the point of time when the application is made. If proceedings are commenced in Court, application is made under s. 34; if proceedings have not commenced in Court the application is made under s. 5. The object of both the section is the same, namely, to prevent arbitration. But different considerations would arise on an application to set aside an award on the ground that the arbitrator was biased. It is true that on an application under s. 5 itt is not necessary to show that the arbitra or is in fact biased and it is enough to show that

there is a reasonable ground for apprehension that the arbitrator will be biased. But the reasonable ground must be established to the satisfaction of the Court to which an application for leave to revoke the authority of an appointed arbitrator is made. No such reasonable ground is made out in the present appeals.

We now turn to the legal position which seems to us to be quite clear. Before the Court exercises its discretion to give leave to revoke an arbitrator's authority, it should be satisfied that a substantial miscarriage of justice will take place in the event of its refusal. In considering the exercise by the Court of the power of revocation it must not be forgotten that arbitration is a particular method for the settlement of disputes. Parties not wishing 'the law's delays' know, or ought to know, that in referring a dispute to arbitration they take arbitrator for better or wrose, and that his decision is final both as to fact and law. In many cases the parties prefer arbitration for these reasons. In exercising its discretion cautiously and sparingly, the Court has no doubt these circumstances in view, and considers that the parties should not be relieved from a tribunal they have chosen because they fear that the arbitrator's decision may go against them. (See Russel on Arbitration, 16th edition, page 54). The grounds on which leave to revoke may be given have been put under five heads :—

1. Excess or refusal of jurisdiction by arbitrator.
2. Misconduct of arbitrator.
3. Disqualification of arbitrator.
4. Charges of Fraud.
5. Exceptional cases.

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We have held that there were no such exceptional circumstances in these cases as would justify us to come to the conclusion that the appointed arbitrator would be disqualified as a result of bias by reason of a conflicting class interest. In view of this finding it is unnecessary to examine the decisions, English or Indian, as respects the principle that an interest of which the parties were fully aware at the date of the arbitrator's appointment will not in general disqualify him, nor will the fact that he stands in a particular relationship to the parties or to the matters in dispute, if it can be said that the parties selected him with knowledge that this was or must be so. Nor are we concerned with the exception to which the aforesaid rule is subject in relation to arbitrators appointed to determine future disputes, and the statutory changes made in English law relating thereto.

There are, however, four decisions of the Calcutta High Court which bear an apparent resemblance to the cases under our consideration and to those decisions we must now turn. In *Balabux Agarwala* v. *Lachminarain Jute Manufacturing Co. Ltd.* (1) the question was of a certain suits on applications under s. 34 of the Arbitration Act and one of the grounds taken was that persons interested in or connected with various jute mill companies were members of the Bengal Chamber of Commerce and were on the panel from which arbitrators were chosen; and a reference was made to a circular letter which showed that the arbitrators or the firms they represented were all buyers and as such interested in seeing that the points in issue were decided against the sellers. After scrutinising the allegations made in support of this ground, the Court said :

> "For all I know the tremendous rise in prices which, it is said, will prompt the

(1) (1947) 51 C.W.N. 869, 875.

arbitrators who are buyers to decide against the plaintiffs who are sellers so as to make huge profit for themselves, may well have induced the plaintiffs to make these allegations against the arbitrators or their firms so as to get out of their submission and to take their chance of winning the suit in Court and getting the benefit of that rise in prices. In my opinion the allegations in the affidavits are not such as I may act upon them. The Bengal Chamber of Commerce has gained a reputation for the excellence of their arbitration proceedings and I shall require much more specific averments of facts properly verified showing that in any particular case justice will be denied by the Bengal Chamber of Commerce to any party."

These observations do not help the appellants of the present cases. Rather they show that the Court must be fully satisfied before it exercises its discretion under s. 5 to revoke the authority of an appointed arbitrator.

The same learned Judge came to a contrary conclusion in *Tolaram Nathmull* v. *Birla Jute Manufacturing Co. Ltd.*(1). That was also a case of stay under s. 34, and one of the questions raised was whether there was sufficient reason why the matter should not be referred to arbitration. One of the points to be decided in that connexion was whether 'mesta' was jute within the meaning of the Jute (Price Control) Order and if the Jute Mills Association had issued a circular, while the arbitration was pending, stating or deciding that 'mesta' was not included in that Order. It was held that at a meeting of the representatives of five associations the view was expressed that 'mesta' did not come within the Order. In those circumstances the learned Judge said :

(1) (1948) 2 Cal. 171, 196.

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"In the light of these principles, the question I have to consider is whether, in the events that have happened, it will be fair to drive the plaintiff-firm to a tribunal both the members of which are members of associations which have expressed some definite views on the question in controversy. There is, to my mind, considerable justification for the apprehension expressed by the plaintiff-firm of probable bias of the arbitrators. I do not question the honesty and integrity of the two arbitrators, but, in the circumstances appearing in the evidence before me, it will be unfair alike to them and to plaintiff-firm to put them in a position of conflict with their own associations. On the whole I have come to the conclusion that this is a case where circumstances exist which are calculated to bias the minds of the arbitrators and where the plaintiff-firm may legitimately ask the Court to release it from its bargain to go to arbitration".

The decision rested on the facts established in that case and cannot help the appellants to prove their case on the present applications.

In fairness to learned Counsel for the respondents we must say that he submitted before us that the decision in *Tolaram Nathmull* v. *Birla Jute Manufacturing Co. Ltd.* (1) went much beyond what was accepted as the correct legal position in English decisions referred to by the learned Judge; but that is an aspect of the matters which we consider it unnecessary to decide. We hold that the facts which must be established to call in aid that decision have not been established in these cases. In *Dwarkadas Co.* v. *Keshardeo Bubna* (2) the same learned Judge explained the position succinctly by holding (see headnote, para, 4)—

(1) (1948) 2 Cal. 171, 196. (2) (1948) 1 Cal. 190.

"The fact that members of a committee of an association of commercial men dealing in a particular commodity are themselves the arbitrators and are also buyers and sellers of that commodity will not ordinary dispute between a particular buyer and a particular seller. But extraordinary circumstance may nevertheless arise, as in the case of a commercial crisis, when the members of the association may be sharply divided into two opposing groups as buyers in general and sellers in general as may make it improper for the committee, which may be packed with an overwhelming majority of buyers or sellers, as the case may be, to adjudicate upon a dispute between a buyer and a seller."

The pre-requisite condition for the application of the principle which he laid down is not fulfilled in the present cases.

The last decision is *Bhuwalka Brothers Ltd.* v. *Fatechand Murlidhar* (1). That was a case which proceeded on different grounds, viz. (1) frustration and (2) applicability of an Ordinance to the contract under consideration. On those two grounds, the learned Judge thought that he should give leave to the petitioner to revoke the authority of the appointed arbitrator. We say nothing as to the correctness of the decision, but merely point out that the facts of the cases under our consideration are entirely different.

We have, therefore, come to the conclusion that on the main point of controversy between the parties, the High Court came to a correct finding on facts and there are no grounds for interference.

It remains now to consider two special points taken on behalf of the appellants in Civil Appeals

(1) (1951) 2 Cal. 115.

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Nos. 174 and 175. The points taken were : (1) that the contracts were not in accordance with law, and (2) that the parties were not *ad idem* with regard to one of the clauses thereof. Both these points have been dealt with by the learned Judge of the High Court in his judgment dated September 21, 1961, in great detail and as we are in agreement with him it is not necessary to deal with these two points in detail. On point number (1) the argument before us was based on para. 7(c) of the bye-laws in Ch. IX of the Working Manual. That paragraph, so far as it is relevant here, reads as follows :

> "7(c) In the case of Pakistan Jute, buyers to deliver to sellers, or sellers' nominee, letter of authority to import the Pakistan Jute or open confirmed, irrevocable Letter of Credit in terms of paragraph 8(b)(ii) within 14 working days from the commencement of the delivery period of the contract failing which there shall be free extension for delivery equal to the period of delay occurring after the 14 working days but where stipulated quantities monthly are sold the free extension shall only be in respect of the delivery for the first month. If buyers do not deliver letter of authority or open confirmed irrevocable Letter of Credit within one month from the commencement of the delivery period of the contract, the sellers shall be entitled to exercise any one of the following options on the next working day following the expiry of the said month :—
>
> (i) Cancelling the contract.
>
> (ii) Cancelling the contract and charging buyers the difference (if any) between the contract price and the market price

on the date of cancellation of the contract.

....."

The clause in the bought note said :

"The buyers to give letter of authority to the sellers and the sellers to open letter of credit. If the buyers fail to furnish the license up to December 1960 the contract will be deemed as cancelled."

The corresponding clause in the sold note said :

"The buyers to give letter of authority to the sellers and the sellers to open letter of credit. If the buyers fail to furnish the license up to December 1960 the contract will be deemed as cancelled without any difference on the both sides."

The argument was that the clauses in the bought and sold notes were not in conformity with para. 7(c) and therefore the contracts were not in conformity with law. We do not see any material conflict between para. 7(c) of the bye-laws and the clauses in the bought and sold note. Instead of one month given to the buyers for delivery of letter of authority in para 7(c) the time given in the contracts was up to December 1960. We do not think that this extension of time brought the contracts into any material conflict with the provisions of para. 7(c). As to the second point the argument was that the expression "without any difference on both sides" occurred in the sold notes not in the bought notes, and therefore, the parties were not *ad idem* with regard to this clause. The learned Judge rightly pointed out that the expression "without any difference on both sides" made no real difference. Clearly the parties contemplated that in case the buyer failed to furnish the license to import Pakistan Jute within the period

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mentioned, the contract would be deemed to be cancelled which meant that the contract was to be treated as *non est* for all purposes. If the contract was deemed to be cancelled, it must mean that the right and obligations of the parties came to an end simultaneously. It was not really necessary to insert the words "with out any difference on both sides" in the bought notes and such addition in the sold notes did not make any difference to the rights of the parties.

For the reasons given above we hold that there is no merit in any of the appeals. The appeals are accordingly dismissed with costs ; one hearing fee.

Appeals dismissed.

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May 3.

THE COMMISSIONER OF INCOME-TAX

v.

THE MYSORE SUGAR CO., LTD.

(S. K. DAS, A. K. SARKAR, M. HIDAYATULLAH and RAGHUBAR DAYAL, JJ.)

Income Tax—Deduction—Expenditure by way of investmen and expenditure in the course of business—Distinction—Tests applicable—Indian Income-Tax Act, 1922 (11 of 1922), ss. 1 (1), (2) (xi), 2 (xv).

The assessee Company used to purchase sugarcane from the sugarcane growers to prepare sugar in its factory, in which a very large percentage of shares was owned by the Government of Mysore. As a part of its business operation it entered into written agreements with the sugarcane growers and advanced them seedlings, fertilizers, and also cash. The cane growers entered into these agreements known as "*oppige*" by which they agreed to sell sugarcane exclusively to the assessee company at current market rates and to have the