

APPEAL FROM ORIGINAL CIVIL.

Before Mookerjee and Fletcher JJ.

MAHOMED KALIMUDDIN

v.

A. B. STEWART.*

1920

Jan. 14.

*Stock Exchange—Member—Expulsion, validity of—Interference
by the Court.*

The rules applicable to cases of expulsion of a member of the Stock Exchange are based on the principle that the committee empowered to expel a member must make a fair enquiry into the truth of the alleged facts, after giving notice to the member concerned that his conduct is about to be enquired into and giving him an opportunity of stating his case to them.

Labouchere v. Earl of Wharncliffe (1), *Russell v. Russell* (2), *Dawkins v. Antribus* (3) and *Cassel v. Inglis* (4) referred to.

In order to determine whether a tribunal, in the exercise of *quasi-judicial* powers, has given a decision which cannot be successfully challenged, the Court has to investigate whether they have observed the rules of natural justice and also the particular statutory or other rules, if any, prescribed for their guidance.

Andrews v. Mitchell (5) referred to

The rules of natural justice demand that a man is not to be removed from office or membership or otherwise dealt with to his disadvantage without having a fair and sufficient notice of what is alleged against him and an opportunity of making his defence; and that the decision whatever it is must be arrived at in good faith with a view to the common interest of the society or institution concerned. If these conditions are satisfied a Court of Justice will not interfere with the decision.

A broker and member of the Calcutta Stock Exchange Association failed to deliver certain shares within a specified time to the purchaser thereof. The Committee of the Association, to whom the conduct of the broker was reported, decided, after hearing both parties, at a meeting held for the purpose of dealing with the case, that the broker should deliver to the

* Appeal from Original Civil No. 3 of 1919 in suit No. 1116 of 1919.

(1) (1879) 13 Ch. D. 346.

(3) (1881) 17 Ch. D. 615.

(2) (1880) 14 Ch. D. 471.

(4) [1916] 2 Ch. 211.

(5) [1905] A. C. 78.

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purchasers the shares within a period of time specified by the committee. Upon the broker failing to deliver the said shares, the committee to whom the matter was again reported, further decided that the membership of the broker had ceased and he was warned not to enter the rooms of the Association.

Held, that the action of the committee could not be impugned on the ground that the committee really made a new contract between the parties and that the broker was expelled from the association, not because of his failure to carry out the original contract but because of his failure to carry out the order of the committee.

APPEAL by Mahomed Kalimuddin, the plaintiff, from the judgment of Rankin J.

On the 15th September, 1916, the firm of Ram Kissen Das Soorajmull sent a complaint in writing to the Honorary Secretary of the Calcutta Stock Exchange Association stating that one Mahomed Kalimuddin, a broker and member of the said Association, had failed to deliver to them, a certain number of ordinary Empire Jute Mills shares within a specified time under a verbal agreement entered into some few days prior to the above date for the sale of those shares. On the 27th September, 1916, the Managing Committee of the Association proceeded to investigate the said complaint in the usual manner. Rule 10 of the Association was as follows:—

“*Cessation of membership.*—A member shall cease to be such on the happening of any of the following events:—

(a) Subject to the present existing regulation regarding adjudication on time bargain contract, on the committee being of opinion that he has failed to pay in due course for securities delivered or to deliver in due course any difference in respect of any bargain or failed to pay any money due by him in any way arising from any stock exchange transaction, either directly or indirectly, or that he has become or been adjudicated a bankrupt.

(b) On his being found guilty, in the opinion of the committee, of conduct justifying his expulsion.”

After having heard both the parties on such evidence as they adduced, the committee of the said Association decided that there had been a verbal

contract between the parties as alleged by Ram Kissen Das Soorajmull and they notified to Mahomed Kalimuddin that he must perform his part of the contract within the period of time appointed by the Association. Notwithstanding the above decision Mahomed Kalimuddin failed to perform the contract. Upon the matter being again brought to the notice of the Association, the Committee on the 2nd December, 1916, decided that Mahomed Kalimuddin, who was present at the meeting, must be expelled. Thereafter, the committee received a further complaint from Ram Kissen Das Soorajmull against Mahomed Kalimuddin and on the 12th January, 1917, in a meeting of the Association the Honorary Secretary was instructed to notify Mahomed Kalimuddin that under the Rules of the Association his membership had ceased and he was warned not to enter the rooms of the committee. This intimation was duly communicated to him on the same day. On the 7th September, 1917, he instituted a suit against the members of the Committee of the Calcutta Stock Exchange Association for a declaration that the proceedings of the Committee, dated the 27th September, 1916 and 2nd December, 1916, were void and inoperative. At the hearing of the suit the only issue upon which the parties went to trial, and which was accepted by both parties, was:—

“ Whether the action of the committee on the 27th September, 1916 and 2nd December, 1916, or one or other of these dates, was contrary to natural justice in respect of the absence of an opportunity to the plaintiff to cross-examine or to call witnesses on his behalf ”

Mr. Justice Rankin dismissed the suit. The plaintiff, thereupon, appealed.

The Advocate-General (Mr. T. C. P. Gibbons, K.C.) (with him *Mr. S. M. Bose*), for the appellant, referred to *Cassel v. Inglis* (1), *Labouchere v. Earl of*

(1) [1916] 2 Ch. 211.

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Wharncliffe (1). *Russell v. Russell* (2) and *Dawkins v. Antrobus* (3). The rules of the association must be strictly obeyed and strictly carried out and nothing in them must be strained against the appellant; but rather it should be strained against the Committee. The Committee had no power under rule 10 (a) of their rules to expel the appellant for not complying with their decision. The original contract had ceased to exist and the Committee were not empowered to extend the time for the delivery of the shares. Such a time for extension of the date of performance of the contract was in effect a new contract and the decision of the Committee to expel the appellant was in respect to his failure to carry out that new contract.

Mr. Langford James and *Mr. Ameer Ali*, for the respondents, were not called upon.

MOOKERJEE J. This is an appeal by the plaintiff in a suit for declaration that the proceedings of the Committee of the Calcutta Stock Exchange Association expelling him from its membership were void and inoperative. Mr. Justice Rankin has dismissed the suit on the ground that the plaintiff has failed to establish that the proceedings were vitiated by illegality.

The tenth paragraph of the Rules and Regulations of the Association contains the following provisions: "*Cessation of membership* :—A member shall cease "to be such on the happening of any of the following "events :—(a) subject to the present existing regula- "tion regarding adjudication on time bargain contract, "on the Committee being of the opinion that he has "failed to pay in due course for securities delivered or "to deliver in due course any difference in respect of

(1) (1879) 13 Ch. D. 345.

(2) (1880) 14 Ch. D. 471.

(3) (1881) 17 Ch. D. 615.

“any bargain or failed to pay any money due by him
 “in any way arising from any stock exchange transac-
 “tion, either directly or indirectly, or that he has
 “become or been adjudicated a bankrupt; (b) on his
 “being found guilty, in the opinion of the Committee,
 “of conduct justifying his expulsion.”

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On the 15th September, 1916, Ram Kissen Das Soorajmull reported to the Honorary Secretary of the Calcutta Stock Exchange Association that on the 6th September they had purchased from Mahomed Kalimuddin (the present appellant) 100 ordinary Empire Jute Mills shares at Rs. 37-4 per share, delivery for one week's time from the date of sale, and that he had failed to deliver the shares due. As this was a matter which could be dealt with by the Committee under clause (a) of rule 10, a meeting of the Committee was held on the 27th September, 1916, when the following resolution was recorded: “Dealt
 “with a complaint of Ram Kissen Soorajmull against
 “Kalimuddin Khan with regard to an alleged transac-
 “tion; the Committee being of the opinion that the
 “transaction actually did take place, the Honorary
 “Secretary was instructed to inform Mahomed Kali-
 “muddin that he must deliver the shares to the
 “complainant within 6th October.” The matter was
 next considered at a meeting held on the 2nd Decem-
 ber, 1916, when the following resolution was recorded:
 “Further, a letter was received again from Ram
 “Kissen Das Soorajmull complaining against Maho-
 “med Kalimuddin. It was resolved that the decision
 “of the Committee arrived at on the 27th September
 “must be enforced or Mahomed Kalimuddin be
 “expelled.” Finally, on the 12th January, 1917, the
 Committee recorded the following resolution:
 “Received a further complaint from Ram Kissen Das
 “Soorajmull against Mahomed Kalimuddin, and it was

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“resolved that in view of the decision of the Committee
 “arrived at on the 27th September and again con-
 “firmed at a Committee meeting on December 2nd,
 “at both of which meetings the latter attended,
 “was duly informed of such decision, the Honorary
 “Secretary was instructed to notify him that under
 “the Rules of the Association his membership had
 “ceased and thereby warned not to enter the rooms
 of the Committee.” This decision was intimated to
 the plaintiff on the same day; and he thereafter
 instituted the present suit on the 7th September 1917.

Mr. Justice Rankin states in his judgment that
 when the case was opened by the plaintiff's counsel,
 the only issue offered by him was as follows and this
 was accepted by both sides:—“Whether the action of
 “the Committee on 27th September, 1916, and 2nd
 “December, 1916, or one or other of these dates was
 “contrary to natural justice in respect of the absence
 “of an opportunity to the plaintiff to cross-examine
 “or to call witnesses on his behalf.” At the trial,
 however, two further facts were stated as matters of
 complaint against the conduct of the Committee at
 both meetings, namely, *first*, that he had no notice
 or no sufficient notice of the meeting; and, *secondly*,
 that he never knew, until after the third meeting
 of the 12th January that the Committee had decided
 against him at the first meeting and ordered him to
 make delivery by the 6th October. The learned
 Judge held that if the plaintiff desired to rely upon
 these two grounds, the plaint must be amended and
 expressed his willingness to grant leave to amend
 on terms as to costs. The plaintiff, however, elected
 not to ask for such leave and to go on with the case
 as it was. Consequently, the substantial question in
 controversy which has been decided is that formulated
 in the case as opened by the counsel for the plaintiff.

The learned Judge has held that the story of the plaintiff cannot be accepted as true. We have considered the whole evidence which has been placed before us and commented upon by the learned Advocate-General and we have arrived at the conclusion that the decree made by the Court below should not be disturbed.

The rules applicable to cases of this character are well-settled and are based on the principle that the Committee empowered to expel a member must make a fair enquiry into the truth of the alleged facts, after giving notice to the member concerned that his conduct is about to be enquired into and giving him an opportunity of stating his case to them. The leading decisions on the subject are the judgments of Sir George Jessel in *Labouchere v. Earl of Wharncliffe* (1), *Russell v. Russell* (2) and *Dawkins v. Antrobus* (3). The first case emphasises the importance of fair enquiry after notice to the member concerned and opportunity given to him to meet the charge. In the second case, Sir George Jessel referred with approval to the decision of Kelly C. B. in *Wood v. Wood* (4) and observed as follows: "I must say it contains a very valuable statement by the Lord Chief Baron as to his view of the mode of administering justice by persons other than Judges who have judicial functions to perform.... The passage I mean is this, referring to a Committee: 'They are bound in the exercise of their functions, by the rule expressed in the maxim *audi alteram partem*, that no man shall be condemned to consequences resulting from alleged misconduct, unheard and without having the opportunity of making his defence. This rule is not confined to the conduct of strictly legal tribunals,

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(1) (1879) 13 Ch. D. 346, 350.

(3) (1881) 17 Ch. D. 615, 622.

(2) (1880) 14 Ch. D. 471, 478.

(4) (1874) L. R. 9 Ex. 190, 196.

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“ ‘ but is applicable to every tribunal or body of persons
“ ‘ invested with authority to adjudicate upon matters
“ ‘ involving civil consequences to individuals.’ ” In
the third case, stress was laid on the aspect that a
power of expulsion must be exercised *bonâ fide* and
not from any indirect or improper motive, and this
view was approved by the Court of Appeal. These
and other decisions were reviewed by Astbury J. in
Cassel v. Inglis (1) where the rule was stated to be
that tribunals which exercise a punitive jurisdiction
on an alleged charge of misconduct whereby a man
may be deprived of his property, must act in accord-
ance with the ordinary rules of justice and fair play
and fairly listen to both sides. The essence of the
matter thus is that, in order to determine whether a
tribunal of this character, in the exercise of *quasi-*
judicial powers, has given a decision which cannot be
successfully challenged, the Court has to investigate
whether they have observed the rules of natural
justice and also the particular statutory or other rules,
if any, prescribed for their guidance: *Andrews v.*
Mitchell (2). The rules of natural justice demand that
a man is not to be removed from office or membership
or otherwise dealt with to his disadvantage, with-
out having a fair and sufficient notice of what is
alleged against him and an opportunity of making
his defence; and that the decision whatever it is,
must be arrived at in good faith with a view to the
common interest of the society or institution con-
cerned. If these conditions are satisfied, a Court of
Justice will not interfere with the decision.

Now, in the case before us, the first meeting of the
Committee was held on the 27th September, 1916.
There is no doubt upon the evidence that the plaintiff
was present on that occasion, brought forward

(1) [1916] 2 Ch. 211, 229.

(2) [1905] A. C. 78.

witnesses, and cross-examined the witnesses who were produced by his opponent. An objection could have been raised by him that he had no notice or sufficient and precise notice; but that was not the position taken up by him. He did not complain that he had not such notice and was placed at a disadvantage because he did not know what was alleged against him. On the other hand, the evidence makes it clear that he knew what the case against him was; *viz.*, that the complainant alleged that there had been a breach of the contract entered into with him on the 6th September, 1916, for the sale of 100 Empire Jute Mills shares to be delivered within a week. He denied the existence of the contract. The Committee came to a different conclusion; and thereupon it was within the competence of the Committee to make an order forthwith for his expulsion. This, however, they did not do. They instructed their Honorary Secretary to inform the appellant that he must deliver the shares to the complainant within the 6th October. The Advocate General has contended that by this the Committee really made a new contract between the parties and that the plaintiff has been expelled from the Association, not because of his failure to carry out the original contract, but because of his failure to carry out the order of the Committee. We are of opinion that there is no force in this contention, and the action of the Committee cannot be successfully impugned on this ground. The order of the Committee recorded on the 12th January shows that the plaintiff had attended both the previous meetings and that he had been duly informed of their decision. The oral evidence also shows that the plaintiff was present at the meeting held on the 2nd December, 1916. It has been argued, however, that there is no satisfactory evidence to show that the decision of the

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Committee, dated the 22nd September, was ever communicated to the plaintiff. But the plaintiff did not take up this position on the 2nd December. He did not urge that he was willing to abide by the decision of the Committee and that he had failed to deliver the shares to the complainant on or before the 6th October, because he had no intimation of their order. On the other hand, the evidence shows that he took up a determined attitude not to abide by the decision of the Committee. Ultimately, on the 12th January 1917, the Committee came to the conclusion that the plaintiff must be expelled. This expulsion in substance was by reason of his failure to carry out his contract with the complainant, and the leniency which the Committee had shown to the plaintiff unquestionably did not vitiate the proceedings.

The result is that the judgment of Mr. Justice Rankin is affirmed and this appeal dismissed with costs.

FLETCHER J. I agree

O. M.

Appeal dismissed.

Attorney for the appellant: *Prabodh Chunder Mitter.*

Attorneys for the respondents: *Orr, Dignam & Co.*