parties involve a civil liability as well as possibly a criminal act, a promissory note given by the debtor and a third party as security for the debt is not void under section 23 of the Contract Act.

For these reasons, in my judgment, the decision of the Court below is correct and the appeal must be dismissed with costs.

N. G. *Appeal dismissed.*

ORIGINAL CIVIL.

Before Page J.

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June 29.

JOHN BATT & Co. (LONDON), LTD.

v.

KANOOLAL & Co.

(AND THE CROSS SUIT.)*

Arbitration—Whether submission to arbitration must be signed—Arbitration Act (IV of 1899), s. 4(b), interpretation of—Filing of English award in Indian Court, whether permissible.

It is essential alike under the English Arbitration Act and under the Indian Arbitration Act that the agreement to arbitrate should be contained in a written document signed by the parties to the submission, or by their agent or agents duly authorised in that behalf.

Ram Narain Gunga Bissen v. *Liladhur Lowjee* (1), *Caerleon Tinplate Co.* v *Hughes* (2), and other cases referred to, and followed.

An award duly made in England under the English Arbitration Act of 1889 can be enforced by a suit in an Indian Court, and cannot be set aside by an Indian Court on any ground of misconduct or irregularity on the part of the arbitrator.

Oppenheim & Co. v. *Mahomed Haneef* (3) followed.

* Original Civil Suits Nos. 2321 of 1923 and 446 of 1922.

(1) (1906) I. L. R. 33 Calc. 1237. (2) (1891) 60 L. J. Q. B. 640.
(3) (1922) I. L. R. 45 Mad. 496.

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An award made in England under the English Arbitration Act cannot be filed in an Indian Court. Only an award made pursuant to a submission under the Indian Arbitration Act can be filed in an Indian Court, for it is only over such an award that the Court has complete control, the provisions of the Act in many respects being inapplicable to awards made under any other Act, whether in England or elsewhere.

THIS was an action for recovery of a certain sum of money due under an award made in London. The plaintiffs, who carry on business in London, and the defendants in Calcutta had entered into contracts for the sale to the defendants of certain textile goods. There was an agreement between the parties to refer disputes arising under the contracts to arbitration in London. On November 25, 1919, the defendants bought from the plaintiffs certain textile goods, namely, 30 cases of Hercules cloth. A dispute having arisen in respect of 10 cases of this Hercules cloth the plaintiffs wrote to the defendants asking them either to accept their drafts without prejudice, or to appoint an arbitrator in London in accordance with the agreement for arbitration. The defendants refused to submit to any arbitration in London, but stated that the dispute was governed by the rules of the Bengal Chamber of Commerce in Calcutta. Thereupon the plaintiffs appointed a sole arbitrator in London who made an award in their favour. This award was filed in the High Court of Calcutta. The plaintiffs sued the defendants for a decree for the amount due under the award, or, in the alternative, for damages for breach of contract for non-delivery of the 10 cases of Hercules cloth. The defendants sued the plaintiffs in a cross-suit for an order that the said award might be removed from the file of the High Court.

Mr. S. M. Bose and *Mr. B. Bosu*, for the plaintiffs.

Mr. H. D. Bose, *Mr. A. K. Roy* and *Mr. B. C. Ghose*, for the defendants.

PAGE J. This case raises the question whether an agreement to submit differences to arbitration under section 4(*b*) of the Arbitration Act (IV of 1899) must be signed by both parties to the submission, or by their agent or agents duly authorised in that behalf.

By section 4 (*b*) it is provided that "submission" means "a written agreement to submit present or "future differences to arbitration whether an arbi- "trator is named therein or not".

The question has arisen in this way: On the 30th November 1916 the plaintiffs wrote to the defendants a letter in these terms:—

Messrs. Kanoolal and Co.,

Calcutta.

Dear Sirs,

Please favour us with information about your firm and indicate the contemplated transactions. We are only open for business on a large scale, and each party acting as principals.

We ship the articles specified by you and many others, for example, Copper, Y-Metal, German-silver, Aluminium, Building materials, Machinery, Cement, Sugar, etc. Are you interested in any of these?

If our selling terms are suitable, please return the formal confirmation. We shall then send the requested quotations and prepare codes and other preliminaries.

Yours faithfully,

For John Batt (London), Limited.

Enclo: Re terms and confirmation

Enclosed in the letter were the terms upon which the plaintiffs stated that they would transact business with the defendants. After stating that business would only be carried on with the defendants as principals, and setting out various selling conditions

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relating o the mode of payment, policies, loss caused by mistake, etc., it was provided that—

"Any disputes must be submitted to arbitration in the usual manner, "namely, each party nominates one arbitrator within two months of a "written notice; in default of such nomination the other party may "nominate a sole arbitrator; the two arbitrators to be merchants residing "in London; when two have been nominated they appoint an umpire; the "award states by whom the costs are to be paid."

On the 1st January 1917 the defendants replied to the said letter and memorandum in the following terms:—

Messrs. John Batt & Co. (London), Limited,
39, Old Broad Street, London, E. C.

Dear Sirs,

We (I) acknowledge your memorandum of conditions, dated 1st January 1915, and accept the same for all transactions between us until others have been substituted by mutual consent.

Yours faithfully,

Kanoolal & Co.

On the 1st May 1918, the plaintiffs wrote to the defendants:

Dear Sirs,

This serves to advise the following enclosures, which speak for themselves:—

Copies of last mail.
Cable translations (none).
Invoices as per list (none).
O/Report (none)
Memo.—Indian produce.
Quotations—Steel, Iron, Chemicals.
Reports—Steel, Sugar.
Textiles—Rules and conditions.
Memo.—Sugar conditions.

Yours faithfully,

John Batt & Co. (London), Limited.

(Sd.) A. Hoclam, Director.

Among the conditions relating to the sale of textiles set out in the memorandum enclosed in the said letter were the following :—

"Our sales of textile goods c.i.f. Indian conditions are subject to those "of the Indian Piece Goods Association, namely, complaints as to quality, "finish, colour, design or execution, must be notified within 30 days of "arrival. Any claims or disputes must be decided in accordance with the "Survey and Arbitration Rules of the Indian Piece Goods Association at "the place of destination or Port of Discharge. Failing such Association, "the Survey or Arbitration must be referred to the nearest Chamber of "Commerce. The decision of the Arbitrators or Surveyors or of the "Umpire shall be final ; in all other respects, the Indian Arbitration Act "(IX of 1899) shall apply."

For reasons which will appear hereafter it is unnecessary for me to consider the meaning and effect of this arbitration clause.

On the 5th July, the defendants wrote to the plaintiffs :—

Dear Sirs,

We have pleasure to own receipt of your valued favour of the 1st May with all the enclosures, for which we thank you and which are receiving our best attention.

We remain,
Dear Sirs,
Yours faithfully,
Kanoolal & Co.

On the 25th November 1919, the defendants bought from the plaintiffs certain textile goods, namely, 30 cases of Hercules cloth. Neither in the original contracts which were made by cablegram, nor in the bought and sold notes confirming the contracts was any mention made of an agreement to submit to arbitration disputes arising in respect of the said transactions. In the events that happened the contracts relating to 20 cases of Hercules cloth were cancelled by consent of both parties. The defendants, however, refused to take delivery of the remaining

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10 cases, and a dispute arose as to whether the contract with respect to these 10 cases also had been cancelled, or whether the plaintiffs were entitled to recover damages for the refusal of the defendants to take delivery of the same. On the 26th October 1920, the plaintiffs, in respect of the said dispute, cabled to the defendants :—

"Accept our drafts without prejudice, otherwise appoint arbitrator in "London in accordance with the agreement."

On the 4th November, the defendants wrote to the plaintiffs :—

"We have gone through all the rules and conditions of your textiles "department, dated 1st July 1913, sent to us at the commencement of "our business relations with you, and find that we are not in any way to be "held liable for these goods, as we are acting reasonably and legally and "are abiding by the rules of the Bengal Chamber of Commerce. We are "always ready and agreeable to put the matter before the Bengal Chamber "of Commerce but not before the arbitrators in London as desired by you "in your wire of the 26th ultimo. Any and all disputes regarding any "goods are settled by the Bengal Chamber of Commerce here, whose "decision is to be regarded as final and binding on both the parties."

On the 31st January 1921, the defendants up till that time not having appointed an arbitrator in London, the plaintiffs cabled :—

"We shall nominate sole arbitrator in accordance with your agreement "if you do not appoint as per our telegram 26th October"

On the 3rd February 1921, the defendants replied :—

"Reference your telegram 31st you cannot appoint : strongly object "see our letter 4th November."

On the 17th February, the plaintiffs wrote to the defendants :—

"Dear Sirs,

"In default of your nomination within the prescribed time we hereby "give you notice that we have appointed Mr. H. Slater of Messrs. Gilbert

"& Knolles, Ltd., 3 Union Court, E. C., as sole arbitrator in accordance "with the agreed conditions.

Yours faithfully,

John Batt & Co. (London), Limited."

On the 21st February 1921, Mr. Slater wrote to the defendants :—

"Dear Sirs,

"Re : Arbitration—John Batt & Co. (London), Ltd.

Against

Yourselves.

"Having been appointed sole arbitrator in the above dispute, I hereby "give you notice that I shall attend at the office of the British Chemical "Trade Association. No. 80, Fenchurch Street, London, E. C., on Monday, "the 9th May, at 2-30 in the afternoon, for the purpose of hearing the "parties or their representatives and taking their evidence.

Yours faithfully,

(Sd.) H. Slater."

The defendants took no part in the arbitration proceedings, and on the 10th May 1921, the arbitrator issued an award in favour of the plaintiffs for £1,744-13, *plus* bill stamp 18s, *plus* interest at Eastern Bank rate at the date of payment in exchange for the documents covering the goods in question, or, alternatively, if the goods had been disposed of, the proceeds on the realization of same to be deducted from the amount of the award, and further awarded that the costs of the reference should be borne and paid by the respondents. By consent of the parties the 10 cases of Hercules cloth in suit were sold for whomsoever it might concern, and realised Rs. 7,793-0-9, after deducting the costs and charges incidental to the sale.

On the 9th November 1923, the plaintiffs filed the present suit in this Court for the amount due under the award of 10th May 1921, or, in the alternative, for

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damages for the alleged failure of the defendants to accept and/or take delivery of the 10 cases.

Two preliminary issues fall for determination in this suit:—

(i) was there a valid submission for arbitration in London; and

(ii) if yea, was the said submission duly cancelled?

As regards the first question, I am clearly of opinion that there was a valid submission for arbitration in London contained in the memorandum and letter covering it, dated 30th November 1916, and the letter in reply thereto of 1st January 1917.

As regards the second question, a submission to arbitration is irrevocable unless a "different" (section 5. Arbitration Act, 1899) or a "contrary" (section 1, Arbitration Act, 1889) intention is expressed therein.

Now the intention of the parties as appears from the letters to which I have referred was that the conditions set out in the memorandum sent to the defendants on the 30th November 1916 (which included the submission to arbitration) should govern all transactions between the parties "until others have "been substituted by mutual consent". The defendants, however, contend that the terms of the arbitration clause contained in the textile conditions enclosed in the plaintiffs' letter of the 1st May 1918 were substituted for the terms of the earlier submission. Now an alteration, or an amendment, or a variation of the terms of a submission constitutes a fresh submission; *à fortiori*, where the terms of the earlier submission are to remain in force "until other terms have been "substituted by mutual consent of the parties". In my opinion it is an essential ingredient in a valid submission to arbitration, alike under the English Arbitration Act and under the Indian Arbitration Act, that the agreement to arbitrate should be contained in

a written document signed by the parties to the submission, or by their agent or agents duly authorised in that behalf. *Ram Narain Gunga Bissen* v. *Liladhur Lowjee* (1); *Sukhamal Bansidhar* v. *Babulal Kedia and Co.* (2).

In *Caerleon Tinplate Co.* v. *Hughes* (3), a Divisional Court of the King's Bench Division placed the same construction upon section 27 of the Arbitration Act, 1889, as I have placed upon the corresponding words in section 4(*b*) of the Arbitration Act of 1899: see also *Re Lewis, Ex parte Munro* (4); *Forder* v. *Whittle* (5) cited in Halsbury's Laws of England, volume 1, at page 441; and Annual Practice (1925), page 2231, where the rule is stated in similar terms.

The opinion which I have expressed as to the meaning and effect of section 4 (*b*) of the Arbitration Act is not only in consonance with the authorities in India, but is, I think, also sound in principle. The object of the Legislature in prescribing that a submission to arbitration should be contained in a written agreement was to provide clear and unmistakeable evidence of the submission to which the parties had agreed. The desired result, however, would not be obtained unless the parties or their agents signed the agreement to arbitrate, for the terms of an unsigned memorandum in themselves create neither a submission to arbitration nor any other agreement, and it is for this reason that I hold that a valid submission must be signed by both the parties, or by their agent or agents authorised in that behalf. No doubt a party to an unsigned submission may have so conducted himself that he is precluded from alleging that the submission has not duly been made,

(1) (1906) I. L. R. 33 Calc. 1237.
(2) (1920) I. L. R. 42 All. 525.
(3) (1891) 60 L. J. Q. B. 640.
(4) (1876) 1 Q. B. D 724.
(5) (1907) Unreported.

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as was the case in *Baker v. Yorkshire Fire and Life Assurance Company*(1), where the plaintiff who was suing on a policy of insurance was held to be estopped from asserting that he had not assented to an arbitration clause which was one of the terms of the policy. In that case the *ratio decidendi* was based upon estoppel: see also *Hickman v. Kent or Romney Mars' Sheep Breeders' Association* (2) and *Anglo-Newfoundland Development Co.* v. *The King* (3). The dicta to be found in the English cases are not always consistent, but in India, in my opinion, it must be taken as settled that the true construction of section 4 (*b*) is that which I have placed upon it, and that the general rule is that which I have stated.

Now it is plain,—indeed I do not understand that it was contended to the contrary—, that after the 1st January 1917 neither the parties to the earlier submission nor their authorised agents in any further written agreement "pursuant to the Arbitration Act" agreed to submit anew to arbitration their disputes in connection with the said contracts, and it was conceded that they did not in express terms agree in such manner or at all to cancel the earlier submission to arbitration; while in the circumstances of this case there is no room for the doctrine of estoppel to operate against the plaintiffs, nor was any issue in that behalf raised; on the contrary, by defending the suit as framed the defendants are not now entitled to claim that the disputes in question should be settled otherwise than in a Court of Law (section 19 of the Limitation Act, 1908). The result is that the submission to arbitration in London remained in force. The award in favour of the plaintiffs under the English Arbitration Act of 1889, which I find was

(1) [1892] 1 Q. B. 144. (2) [1915] 1 Ch. 881.
(3) [1920] 2 K. B. 214.

duly made in accordance with English Law, can be enforced by a suit in this Court, and could not be set aside by an Indian Court on any ground of misconduct or irregularity on the part of the arbitrator *Oppenheim & Co.'s case* (1).

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In these circumstances there must be a decree in favour of the plaintiffs, and it becomes unnecessary for me to consider what the position would have been if the award had not been made pursuant to a valid submission, or whether in that event the plaintiffs would have been entitled to recover damages for the alleged breach of contract by the defendants in refusing to take delivery of the goods in suit. There will be a decree for the sum agreed upon between the parties in favour of the plaintiffs.

[The following judgment was delivered by his Lordship in the cross-suit.]

PAGE J. I refer to the judgment which I have delivered in suit No. 2821 of 1923 *John Batt and Co. (London), Ltd.* v. *Kanoolal & Co.* An award under the English Arbitration Act (52 and 53 Vict. Ch. 49) was issued by the arbitrator on 10th May 1921. The award was in favour of the defendants. Pursuant to the provisions of section 11 of the Indian Arbitration Act (IX of 1899), the arbitrator at the request of the defendants filed the said award in this Court. In this suit the plaintiffs pray that an order may be made that the said award be removed from the file of this Court. In my opinion the Court should accede to the plaintiffs' application. Having regard to the provisions of the Arbitration Act (IX of 1899), I am clearly of opinion that only an award made pursuant to a submission under the Indian Arbitration Act can be filed in this Court, for it is only over such an award that the Court

(1) (1922) I. L. R. 45 Mad. 496.

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has complete control, the provisions of the Act in many respects being inapplicable to awards made under any other Act, whether in England or elsewhere: *Oppenheim's case* (1). There will, therefore, be a decree in this suit in favour of the plaintiffs.

Attorneys for the plaintiffs: *K. Gooding & Co.*
Attorney for the defendants: *C. C. Bose.*

B. M. S.

(1) (1922) I. L. R. 45 Mad. 496.

SPECIAL BENCH.

Before N. R. Chatterjea, C. C. Ghose and Cuming JJ.

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June 9.

EMPEROR

v.

ISABELLA COAL COMPANY.*

Income-Tax—Road cess and Public Works cess paid by a mine, whether to be deducted in computing the amount assessable to income-tax—Income Tax Act (XI of 1922), s. 10, cl. (viii).

A coal company is entitled to deduct the amount paid as Road and Public Works cess in computing their gains and profits assessable to income-tax under clause (*viii*) of section 10 (*2*) of the Indian Income Tax Act, 1922.

Surnomoyee Dabee v. *Koomar Purresh Narain Roy* (1), *Mahesh Narain* v. *Nowbat Pathak* (2), and *Manindra Chandra Nandy* v. *Secretary of State for India* (3), relied on.

In the matter of Raja Jyoti Prasad Singh Deo (4) and *In the matter of K. M. Selected Coal Co.* (5), distinguished.

*Special Bench. Reference No. 9 of 1924.

(1) (1878) I. L. R. 4 Calc. 576, 580.
(2) (1905) I. L. R. 32 Calc. 837, 849, 852.
(3) (1910) I. L. R. 38 Calc. 372, 376.
(4) (1921) 6 P. L. J. 62.
(5) (1923) I. L. R. 3 Pat. 295.