of the premises might be indefinitely postponed by a series of sub-lettings. We think the rule must be made absolute and the suit decreed against the 2nd defendant also with costs in the trial Court and in this Court.

Rule made absolute.

J. G. R.

APPELLATE CIVIL.

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

JIVANCHAND GAMBHIRMAL REPRESENTING THE FIRM OF SURAJMAL GAMBHIRMAL (ORIGINAL PLAINTIFF), APPELLANT *v.* LAXMINARAYAN GANESHRAM, MANAGER OF THE FIRM OF GANESHRAM NARAYAN (ORIGINAL DEFENDANT), RESPONDENT*.

Indian Contract Act (IX of 1872), section 30—Agreement by way of wager—Cross-contract—Validity—The Act for Avoiding Wagers (Bom. Act III of 1865), section 1.

Where a forward contract for the purchase and sale of goods is void on the ground of wagering, under section 30 of the Indian Contract Act, a subsequent cross-contract, as a result of which the differences payable under the original wagering contract are settled, would be void under section 1 of Bom. Act III of 1865.

SECOND appeal against the decision of J. Scotson, Acting District Judge, Khandesh, confirming the decree passed by V. R. Chaubal, Joint Subordinate Judge, Dhulia.

Suit to recover money.

The defendant agreed to purchase from plaintiffs, five bales of Fancy Border Dhotees of Amalner Mills, weighing 1,250 lbs. at the rate of Rs. 2-12-9 per lb. for delivery on November 18, 1918. As the market rate of goods

* Second Appeal No. 649 of 1923.

1925.

JIVANCHAND GAMBHIRMAL v. LAXMINARAYAN.

began to decrease, the defendant fearing a steady fall in the rate and consequent loss therefrom, entered into a cross-contract to sell the said goods to the plaintiffs at the rate of Rs. 2-1-3 per lb. The plaintiffs as a result stood to gain Rs. 742-3-0, payment whereof was due on November 18, 1918. The defendant failing to pay, the plaintiffs sued to recover the amount.

The defendant admitted the agreement in suit, but contended that no actual delivery of the goods was intended on either side, that the agreements were by way of wager and were illegal and void.

The Subordinate Judge held that the parties had no intention of making any actual delivery and intended to settle the transactions by payment of differences on the date of delivery; that the agreements were by way of wager and void under section 30 of the Indian Contract Act. The suit was, therefore, dismissed.

On appeal, the District Judge confirmed the decree on the ground that the original contract by the plaintiffs to deliver bales to the defendant was a wagering contract.

The plaintiffs appealed to the High Court.

K. H. Kelkar, for the appellant.

P. B. Shingne, for the respondent.

MACLEOD, C. J.:—The plaintiffs sued to recover Rs. 756-3-0 and the costs of the suit alleging that the defendant agreed to purchase from plaintiffs five bales of Fancy Border Dhotees of Amalner Mill, weighing 1,250 lbs. at the rate of Rs. 2-12-9 per lb., that the delivery was to be made on November 18, 1918, that the market rate of the said goods began to decrease, that the defendant, fearing a steady fall in the rate and consequent loss therefrom, agreed to sell the goods to plaintiffs at the rate of Rs. 2-1-3 per lb., and that plaintiffs thus stood to gain a profit of Rs. 742-3-0 on the

bargain, and that the payment of the said profit amount by the defendant to plaintiffs became due on November 18, 1918, the due date for delivery.

The defendant admitted the agreements in suit but contended that no actual delivery of the goods was intended on either side, that the agreements were by way of wager and were illegal and void.

The trial Court found that the transactions in suit were wagering transactions and dismissed the suit. The District Judge came to the conclusion that the original contract by the plaintiffs to deliver five bales to the defendant was a wagering contract, that there was no intention on either side to give or take delivery and therefore agreed with the judgment of the Court below dismissing the plaintiffs' suit.

The learned Judge does not seem to have considered the point whether the agreement whereby the goods were sold back to the plaintiffs was also a wagering contract. The plaintiffs sought to avoid the consequences of section 30 of the Indian Contract Act by stating that the cause of action was a claim for a specific amount of money agreed upon before the due date between the parties as the profit due to the plaintiffs on the original transaction. Although there must be a very large number of cases between merchants and others in which forward transactions are settled and differences paid according to such settlement, there does not appear to have been any case reported in which the defendant has disputed his liability to pay the amount settled by a cross-contract on the ground that both transactions came within section 30 of the Indian Contract Act. It seems to us, even if it can be said, as in this case, that the plaintiffs and defendant agreed when the settlement of the contract for sale was entered into, that differences would be paid on the due date as profits to the plaintiffs on that contract, so that such an

1925.

JIVANCHAND GAMDHIRMAL v. LAXMI-NARAYAN.

agreement would not come within section 30 of the Indian Contract Act, it would certainly come within the provisions of section 1 of Bom. Act III of 1865. The real nature of the transaction was as follows :—The plaintiffs sold five bales to the defendant for forward delivery. At the time of the contract it was not intended by either party that delivery should be given by the plaintiffs and taken by the defendant. It was the intention that differences only should be paid or received according to the market rate at the due date. That contract then was a wagering contract. Before the due date arrived the defendant perceived that the price of the goods was rapidly falling and he thought it advisable to sell the goods back to the plaintiffs at the rate then prevailing. The only result was that the loss on the original contract was fixed as from that date instead of remaining uncertain till the due date arrived. There was then an agreement to pay differences arising out of the original wagering contract. Section 1 of Bom. Act III of 1865 is as follows :—

"All contracts, whether by speaking, writing or otherwise, knowingly made to further or assist the entering into, effecting or carrying out agreements by way of gaming or wagering, and all contracts by way of security or guarantee for the performance of such agreements or contracts, shall be null and void ; and no suit shall be allowed in any Court of Justice for recovering any sum of money paid or payable in respect of any such contract or contracts, or any such agreement or agreements as aforesaid."

The defendant then agreed by the second contract to pay the plaintiffs a certain sum as the plaintiffs' profit on the wagering contract and that clearly comes within that section. We think then that the plaintiffs' suit was rightly dismissed and this appeal should be dismissed with costs.

Decree confirmed.

J. G. R.