Sita Ram Jhunjhunwala

Vs

Bombay Bullion Association Ltd. & Ors.

Civil Appeal No. 56 of 1962

(A. K. Sarkar, N. Rajgopala Ayyangar, J. R. Mudholkar JJ)

25.11.1964

JUDGMENT

AYYANGAR, J. -

This appeal, by special leave, raises for consideration a very short point regarding the proper construction of bye-law 137-B of the Bombay Bullion Association Ltd., which will hereafter be referred to as the 'Association' and in particular whether on the facts established in this case the requirements of the said bye-law has been satisfied.

The appellant is a member of the first respondent - the Association and carries on business as a bullion merchant. By a notification dated March 14, 1949, the Government of Bombay in exercise of the powers conferred by section 6 of the Bombay Forward Contracts Control Act, 1947 (Bombay Act LXIV of 1947) sanctioned the bye-laws framed by the Association. Under the said Act the members of the Association were permitted to carry on forward dealings in bullion subject to the said bye-laws. The appeal is concerned with the regularity of a purchase effected by the Association purporting to act under its bye-laws, of a quantity of silver at the risk of the appellant, on the footing that he had defaulted in performing his contract as a seller on February 3, 1953 which was a settlement day. The Association made its purchase treating the appellant as a defaulter and claimed from him the difference which amounted to Rs. 1,37,880-12-0. The appellant paid this sum when demanded on the 5th February under protest but on the next day he filed the suit out of which the present appeal arises against the Association and its Directors for its refund on the ground that the purchase at his risk by the Association was invalid as contrary to the bye-laws and was, therefore, not binding on him. The appellant did not dispute that he defaulted in performing his obligation to tender the bullion of which he was the forward seller on the settlement day as he was bound to do under the relevant bye-laws but the point on which he attacked the purchase was that no purchase could be made unless the forward purchasers for that settlement had fulfilled the terms of their obligations under the bye-laws and that as they had failed to do so, the Association had no right to effect a purchase on behalf and for the benefit of such defaulting purchasers.

The suit was tried before Coyajee J. on the Original Side of the Bombay High Court. The learned Judge recorded a finding that there had been no default on the part of the purchasers and he, therefore, dismissed the suit. An appeal preferred by the appellant to a Division Bench also failed and it is the correctness of this decision of the High Court that is challenged in this appeal.

Though the evidence went into minute details as to the things that happened on the Vaida day - February 3, 1953 and in particular whether the several parties who figured as purchasers on the Vaida day had or had not paid in their cheques into the Clearing House of the Association on

February 3, 1953 as they were bound to do under the bye-laws, it is not necessary for us to go into this matter because there is a concurrent finding of fact of both the Courts that each one of the cheques of the several purchasers was paid into the Clearing House on February 3, 1953, though it is now clear from the evidence that entries in regard to some of these transactions which took place on February 3, 1953 were made by the receiving bank or by the Clearing House only on the 4th. It is on the basis of this finding which could not be and was not challenged before us that we propose to deal with the points urged before us in this appeal.

There is also one other matter which is referred to in the pleadings as well as in the judgments of the High Court which also we are putting aside. This relates to a plea by the appellant that the Directors of the Association had acted mala fide in permitting certain infractions of bye-laws on the 3rd February by purchasers who would otherwise be in default and treating them as if they had fulfilled their obligations. The suggestion was that some of the members of Board of Directors had, in their individual capacity, figured as purchasers at the said settlement and that it was this personal interest of theirs that led to their favouring the group of purchasers as against the sellers at this Vaida. There was nothing in the evidence in support of this plea and Coyajee, J. having negatived it, the same does not appear to have been pressed before the Division Bench. Mr. Purshotam - learned Counsel for the appellant did not seek to reagitate this matter, as indeed he could not, and hence this aspect also might be excluded from consideration.

This leads us to the main question which it would be apparent from the above narrative is whether those who made forward purchases for this Vaida had fulfilled their obligations under the bye-laws. Now, the first matter that requires to be noticed is that the settlement for the Maha Vaida was originally fixed to February 2, 1953. Bye-law 32 of the Association empowers the Board to fix the days of settlement in these terms :

> "32. (1) The settlement days shall be fixed by the Board or the Sub-Committee appointed by it keeping in mind the provisions of these Rules and bye-laws."

but cl. (3) of the same bye-law empowers the Board :

> "If of opinion that circumstances exist which require an alternation of days so fixed [by cl. (1)] the Board may postpone such settlement day for a period not exceeding 5 days."

It was in exercise of this power that the Vaida day was postponed from February 2, 1953 to February 3, 1953. No dispute was raised by the appellant regarding the competence of the Board to effect this change of date or to the validity of the change effected thereby.

Bye-law 120 makes provision for the establishment of a Clearing House for effecting a settlement on the Vaida days. This bye-law reads :

> "120. Clearing House :- A Clearing House shall be established under the jurisdiction of the Board to act as an ordinary agent of the members for settling forward transactions effected between members in gold, silver and sovereigns by exchanging delivery orders as also for making payment of the amounts of difference through the Clearing House."

Under the powers thus conferred the Bank of Baroda which opened a branch at the premises of the association were appointed as the Clearing House. Bye-law 125 provides for the appointment of a

Clearing House Committee by the Board of Directors of the Association. Bye-law 127 specifies the powers and duties of the Clearing House Committee and this runs :

> "127. Powers and duties of the Clearing House Committee :-
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> (1) The Clearing House Committee shall settle forms of clearing sheets, delivery forms, "Kaplis" (slips), relating to payment of differences and delivery of goods and other necessary documents for being used for the work relating to the Clearing House and every member shall have to use the said forms or other forms of the same size and with similar writing. The said Committee shall from time to time fix charges for the said forms.
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> (2) It shall issue instructions with regard to the work of the Clearing House and every member shall act according to the same.
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> (3) If any member does not act according to any such instructions or commits any error or mistake in filling in any form or other document or writes so illegibly that it cannot be deciphered or makes delay in submitting, any such form or document to the Clearing House, then in every such case, the Clearing House Committee can impose on any member a penalty not exceeding Rs. 500. Sub-Committee can be appointed for attending to the work relating to this sub-clause.
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> (4) It shall fix Havala rates in respect of outstanding transactions (transactions, which are not squared up) between two members and all members shall enter Havalas in respect of such outstanding transactions (which are not squared up) at these rates and also prepare statement of differences at those rates. Delivery orders also shall be issued at these very rates. The Havala rates in respect of transactions are given to facilitate the settlement. That does not in any way reduce the liability in respect of transactions.
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> (5) The Clearing House Committee may declare any member as a defaulter and for that purpose, it shall have power to pass such resolutions and orders as it deems proper and necessary.
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> (6) If, in connection with any forward settlement, the Clearing House finds, it difficult to make settlement on the days fixed for settlement, then the Clearing House Committee shall have power to make a change of 48 hours at the maximum in all or any settlement days relating to that forward settlement."

Bye-law 134(1) reads :

> "134. (1) The member who wants to have his transactions settled through the Clearing House shall have to send to the Clearing House a clearing sheet in the settled form (form No. 1) on the days fixed for that purpose (which day will hereafter be known as the Clearance Day)."

Bye-law 137 specifies the obligations of members of the Association who give delivery and it reads :

> "137. The member who has to give delivery shall have to submit to the clearing

House as many delivery orders signed by him as there would be, upon a calculation on the basis of every delivery order being either for five bars of silver or for 1,000 tolas of gold bar, or for 1,000 sovereigns. If any member has sent delivery orders without signing he shall attend the Clearing House at 10 A.M. in the morning on the date fixed for giving delivery orders by the Clearing House and shall sign the delivery orders. If the Clearing House finds it necessary it can call for further delivery orders from any member, and the member shall have to furnish the same forthwith but if the goods are with a bank he shall have to give delivery orders on the bank directly as mentioned above."

Bye-law 137-A(1) deals with the obligations of a member whose clearance sheet shows outstanding sales and it reads :

"137-A(1). A member whose Clearance Sheet shows outstanding sales shall submit to the Clearing House with his delivery orders a complete list of bars (gold or silver) in his possession or in the possession of his Banker in Bombay with their number and marks, to be delivered against such delivery orders."

As stated earlier, it is now common ground that the appellant did not carry out his obligations under this bye-law. Bye-law 137-B whose proper construction is raised by this appeal deals with the obligations of members whose Clearance Sheet shows outstanding purchases. It reads :

"137-B. A member whose Clearance Sheet shows outstanding purchases will submit to the Clearing House with his Clearance Sheet a cheque certified "good for payment" or a demand draft on a Bank or a Bank's payslip or cash for an amount sufficient to pay for all has outstanding purchases at the rate fixed by the Association. Failing payment as aforesaid the purchases outstanding in the Clearance Sheet or a part thereof will be auctioned at the purchaser's risk on the same day.

The cheques, demand drafts etc., so received by the Clearing House will be paid into the Clearing House Account in the Bank of Baroda Ltd., Bullion Hall Sub-branch, and crossed cheques payable to bearer or payslips of the said Bank in favour of the sellers whose delivery orders are given by the Clearing House to the purchasers will be handed over by the Clearing House to the said purchasers. The sellers shall give delivery of the goods covered by the delivery order to the said purchasers against such cheques or payslip issued by the said bank. Refusal by a seller to give delivery of goods covered by his delivery order to the purchaser against such a cheque or payslip during the time fixed for giving delivery, will amount to failure to give delivery and consequences in Bye-law 147 will ensue."

It was not contested that if by the transactions to which we shall refer presently, members whose Clearance Sheets showed outstanding purchases had fulfilled their obligations under Bye-law 137-B, the Association was entitled to effect the purchases at the risk and cost of the appellant under the succeeding bye-laws which confer upon the Association this power to effect purchases or sales to square the transactions of defaulting members.

An analysis of the bye-law 137-B would show that a member whose Clearance Sheet showed outstanding purchases had, on the Vaida day, to file his Clearance Sheet and to make a payment into the Clearing House of an amount sufficient to pay for all his outstanding purchases at the rate fixed

by the Association. This payment had to be made along with the Clearance Sheets and had to be in one of four forms : (a) a cheque certified good for payment, or (b) a Demand Draft on a bank, or (c) a bank's pay-in-slip, or (d) cash. The question raised in this appeal relates to whether certain of the purchasers had made payments into the Clearing House of the amounts payable by them in any of the permitted modes. Before proceeding further we might add that the Bank of Baroda which was the Clearing House admitted that the amounts required to be paid by the several purchaser-members had been received by it on the 3rd and the total amounts represented by these payments were credited to the Association.

Before setting out the matters in controversy as regards the form of payment adopted by certain purchasers under bye-law 137-B, it is necessary to premise the narrative by a few facts. As already stated, the Bank of Baroda Ltd., had been appointed as the Clearing House of the Association under bye-law 120 in or about 1949 and had been functioning as such ever since. To facilitate payments by and between members the Bank had opened a special branch called the 'Bullion Hall Sub-branch' in the premises of the Association itself. Bye-law 174(3) required every member to open an account in the Bank, so that it might be convenient to pay or draw cheques for effecting clearance. All the members had, in pursuance of and in obedience to this bye-law, opened such accounts.

The Bank issued special pay-in-slips for doing its business as a Clearing House. These slips were in triple foil, all of which had to be filed in by the member making the payment. When a member made a payment into the Bullion Exchange Branch of the Bank the extreme right of the three parts which recited the payment to the credit of the Clearing House of the Association by the member named and of the amount, also specifying the particulars of the payment would be signed or initialled by the Cashier and Ledger keeper and be retained with the Bank. The paying-in-slip consisting of the other two parts in which similar entries were made and bearing the signature or initials of the Bank authorities was handed over to the member making the payment. He had thereafter to present this slip to the Clearing House along with the Valan or the Clearance Sheet, and thereupon the Clearing House department would endorse receipt on the part to the extreme left which would be returned to the member - the other part being retained by the Clearing House.

The settlement for the Vaida on February 3, 1963 appears to have been an exceptionally heavy one on account of the very large volume of sales and purchases for that settlement and there was a total outstanding sale of 1897 bars of silver with, of course, corresponding purchases of the same number. Sellers of 1,004 bars gave delivery orders as required by bye-laws 137 and 137-A but the appellant who had an outstanding sale of 853 bars failed to submit to the Clearing House the necessary delivery orders. The purchasers of the 1,897 bars had, under the bye-laws, to submit their Clearance Sheets and make payments into the Clearing House in the manner provided by bye-law 137-B of a total sum of Rs. 88,31,050 by February 3, 1953. By reason of the extraordinary situation created by the heavy payments having to be made coupled with a strike of the Clerks of the members on the previous day, the Directors of the Association passed a resolution extending the time for payment and delivery of Clearance Sheets beyond the usual banking hours to 7 P.M. on the 3rd February.

The point in controversy in the appeal is whether this amount had been paid into the bank on the 3rd February to the credit of the Clearing House in the manner provided by bye-law 137-B. Out of the Rs. 88,31,050, some amount was paid in cash, Rs. 42,99,400 by cheques drawn by members on their respective accounts with the Bullion Hall Sub-branch of the Bank of Baroda Ltd. in favour of the Association's Clearing House account, Rs. 24,64,050 by four pay slips of other banks in favour of the Bank of Baroda Ltd., Rs. 15,30,150 by transfers by two members from their accounts with

the Jhaveri Bazar branch of the Bank of Baroda Ltd., to the Bullion Hall Sub-branch for payment to the Association, Rs. 4,65,000 was by a cheque drawn by a member on his account with the Fort Branch of the Bank of Baroda Ltd., in favour of the Association, Clearing House Account. Of these, the submission of the appellant was that only the cash payment was a proper one and that the rest were not made in accordance with bye-law 137-B. Before dealing with it, however, it might be stated that the Bank of Baroda Ltd. Clearing House submitted a statement on February 4, 1953 stating that all the payments totalling Rs. 88,31,050 had been received by it as a Clearing House and had been credited to the Association.

Now, taking first the amounts paid by cheques drawn by members on their accounts in the Bullion Hall Sub-branch, several points were urged in support of the contention. The first was this : On February 3, 1953 the banking hours ended at 2.30 P.M. and several of the payments into the Clearing House Account by cheques drawn on the Banking account at this branch were made after that hour. It was, therefore, contended that even if there was enough money in the accounts of the several members to meet the cheques drawn by them, still their cheques could not be treated as cash as the banking hours had passed. This was answered by the Division Bench by pointing out that there was nothing illegal in the bank functioning for the purpose of the members of the Clearing House after 2.30 P.M. that day. There was evidence before the Court that the ledgers and other books of account in the bank were available for being looked into to ascertain whether a member's account had sufficient funds to meet the cheques which had been drawn. There was also evidence that the state of the member's account was ascertained before the triplicate form was accepted by the bank and the two left side foils passed on to the depositing member for being handed over to the Clearing House and, as we stated earlier, on the next day the bank submitted a statement acknowledging receipt of the amount of the several cheques and showed their amounts to the credit of the Association. In these circumstances, the learned Judges of the High Court came to the conclusion that there had been a payment as required by the bye-law 137-B on February 3, 1953.

We entirely agree with the High Court as regards the alleged illegality said to have been caused by the Bank accepting cheques after the close of the usual Banking hours. It would be noticed that the extension of the banking hours from 2.30 P.M. to 7 P.M. that day was not in contravention of any statute and whatever the position might have been, if such extension acted to the detriment of a constituent of the bank, in the case on hand it was really for the benefit of the customer. In those circumstances, there was nothing illegal and, of course, nothing improper in the banking business having continued so long as the work of the bank as a Clearing House continued.

There were also other objections raised to support the argument that these payments were contrary to bye-law 137-B. To appreciate them it would be necessary to state a few more facts. From the analysis that we have made of payments that were made into the Clearing House by the purchasers in satisfaction of the amounts due by them for the settlement, Rs. 42,99,400 were by way of cheques drawn on the Bullion Hall Sub-branch of the bank. We have also stated that the staff of the bank to whom the cheques were presented had endorsed on the slips that there were sufficient funds in the account to enable the cheque to be cleared and that it was after this process that the pay-in-slips were presented to the Clearing House with the Clearance Sheets in fulfillment of their obligations under the bye-law. In regard to these payments by transfer entries to the credit of the Association it was urged :

> (1) That several of the members numbering about 17 or so, did not, in fact, have enough funds in their accounts before 7 P.M. that day to enable the cheques which they drew in favour of the Clearing House to be honoured and that in consequence

notwithstanding the acceptance of the cheques by the bank, such a payment could not be deemed within bye-law 137-B.

It was common ground that at 2.30 P.M. on the 3rd of February the amount to the credit of several of these members was not sufficient to enable the cheques which they issued later in the day to be cleared. But before the cheques were actually presented the purchaser-members paid into their accounts (a) refunds which they obtained of margin moneys which they had deposited with the Association and to which they were entitled under the bye-laws and (b) other cheques in favour of the Bank of Baroda. Taking up first the margin money refunds, purchasers had, under the bye-laws, to pay margin moneys on their purchases and these had to be refunded to them on fulfillment of certain conditions. The amounts originally paid as margin by the purchasers had been credited to the Association and when the amount had to be refunded payment orders were made out by the Association on the 3rd of February of the amounts due to be refunded and these refund orders were paid by the respective purchasers to the credit of their accounts and their accounts were so credited with the Bullion Hall Sub-branch. It was not the case of the appellant that the members were not entitled to the refund granted by the Association but what was objected to was that the refunds were really not due that day and had been improperly paid over by the Association in advance of the time when it was due. Bye-law 33-C(2) deals with the refund of margin money and it reads :

> "Where the conditions described in clause (a) or (b) as the case may be, cease to exist, the Association shall return the margin amount to the members concerned on the day following the next clearance day after making the necessary adjustment."

On this the appellant's case was that the margin money could have been returned only on the 4th and that the Association acted improperly in refunding the amounts to the purchasers on the 3rd itself to enable them to utilise that money for the purpose of making their payments towards the settlement. We do not see any substance in this complaint, nor do we see any relevance of this to the point now in controversy, viz., whether there had been a compliance with bye-law 137-B. As already pointed out, the Vaida was originally fixed for the 2nd of February and if that had stood the amount would have been refundable on the 3rd. It was, however, owing to a strike of the Gumashtas of the members that a situation had arisen by reason of which the Vaida had to be postponed by a day. Whether as urged by Mr. Purshottam, that upon the proper construction of bye-law 33-C that when a Vaida day is shifted the day fixed for the refund of the margin money also gets shifted or whether it would be payable on the day originally fixed, would, in our opinion, make no difference to the result. The bye-law imposes an obligation on the Association to refund the margin money on the day next after the Vaida. On its terms, however, if the conditions of clauses (a) and (b) cease to exist, and obviously they ceased to exist in the present case even on the 2nd, there is nothing in the bye-law to preclude the Association from refunding the margin money. Again, even if the margin money were returned before such refund could be legally enforced, the propriety or impropriety of the refund would have no bearing on the only point for consideration relevant to the question whether bye-law 137-B was complied with or not viz., whether the accounts of the members were in credit at the time the cheques were presented.

> (2) The next category of objection under this head was in relation to the bank having given credit to one of the members for the amount of a cheque of Rs. 2,00,000/- which was drawn on the Bank of India, Australia and China. Now, the evidence in the case was that this constituent - Khimji Poonja & Co., had to pay Rs. 4,65,000 as a purchaser. He had a credit balance at 2.30 P.M. on the 3rd of Rs. 1,93,215/13/5. To enable him to meet the cheque for Rs. 4,65,000/- which he drew on the Bullion Hall

> Sub-Branch he paid into his account Rs. 1,05,500/- as refund of margin money. Besides, he drew a cheque for Rs. 2,00,000/- on his account with the Bank of India, Australia & China in favour of the Bank of Baroda and paid this cheque to the credit of his account with the Head Office of the Bank of Baroda. The Head Office intimated this credit to the Bullion Exchange Branch and when he presented his cheque for Rs. 4,65,000/- to the Bullion Exchange Branch the same was honoured and the amount credited to the Association. The learned Judges accepted this evidence and the explanation and held that this constituent had enough funds with the bank to meet the cheque of Rs. 4,65,000/- which he drew. Mr. Purshottam challenged the credibility of this evidence. We do not, however, propose to go into it for the reason that if, as a matter of fact, the Bank of Baroda as a Banking Institution gave Khimji Poonja & Co. credit for Rs. 2 lakhs that was a matter between those two parties and is not a matter which bears upon the validity of the payment for Rs. 4,65,000/- which Khimji made. It is not disputed, or rather it cannot be disputed that the Head Office of the bank credited Khimji Poonja & Co. with the sum of Rs. 2,00,000/- and there is evidence as to the intimation of this credit by the head Office. Of course, the cheque by Khimji on the Chartered Bank was not certified "good for payment" but that was not a payment under bye-law 137-B. The Head Office accepted it and, therefore nothing follows from their not having insisted on that cheque being certified. The fact remains that the Head Office accepted that cheque; we shall take it in anticipation of being cleared, and as a fact it was cleared the next day. With the propriety of the Head Office of the Bank crediting the constituent with the amount of that cheque before actual realisation neither the Bullion Exchange Branch nor the Association to whose account the sum of Rs. 4,65,000/- represented by the cheque drawn in their favour was credited, nor the appellant are concerned. When once the Bank credited that sum into the account there was enough credit for meeting the cheque of Rs. 4,65,000/- which is the only point we are concerned with.

(3) The third head of objection that was raised, and this was the one which was the subject of strenuous contest in the High Court and before us, was whether the cheques on the Bullion Exchange Sub-branch which were paid in with the Clearance Sheets were "certified good for payment" within bye-law 137-B. It was urged that only four modes of payment were recognised and that a cheque even on the customer's account in the same bank was still a cheque and that unless it was certified good for payment it did not satisfy the requirement of a valid payment within bye-law 137-B. In this connection it was stressed that having regard to the consequences flowing from a payment or non-payment on the terms of the bye-laws a strict and literal construction of the bye-law was called for and that the Courts should so construe the bye-law and hold that a literal and not merely a substantial compliance with it in the sense of the Clearing House having received payment would satisfy the rule. In connection with the submission that cheques drawn against the customer's account in the same branch of the bank could not be "cheques certified good for payment" even though there were enough funds to meet the cheques, learned Counsel drew our attention to the fact that certification of a cheque was a well-known form of commercial procedure which bankers adopted for the purpose of clearance by which the certifying and the Clearing bank became bound to each other. Reliance was, in this connection, placed on the observations of the Privy Council in Gaden v. Newfoundland Savings Bank ([1899] A.C. 281 at p. 285.) where it is stated :

> "The only effect of the certifying is to give the cheque additional currency by showing on the face that it is drawn in good faith on funds sufficient to meet its payment, and by adding to the credit of the drawer that of the bank on which it is

drawn."

Reference was also made to the judgment of Lord Wright in Bank of Baroda v. Punjab National Bank (71 I.A. 124.) where the history of certification or marking of cheques in India is dealt with. We do not, however, derive any assistance from these decisions on the point now in controversy. The first thing to be noticed about this objection as to certification is that there is no question of certification where a cheque drawn on an account in a branch of a bank is paid into the same branch to the credit of another party who has an account in that branch. Certification is a method adopted when a bank on which a cheque is drawn verifies the customer's account on which it is drawn and indicates on the cheque that there are enough funds in his account to meet that cheque. It is obvious that there could be no question of such a certification by a bank of a cheque drawn on an account in a branch when the drawer pays it to the credit of a different account in the same branch. The verification of the account of the constituent for the purpose of ascertaining whether there is enough credit to meet the cheque which precedes a certification takes place at the very moment when the cheque is cleared. There is therefore no question then of two banks - a certifying bank on which the cheque is drawn and a clearing bank into which that cheque is paid. In such circumstances, we should consider that the proper view to take of the payment would be that it is really a payment in cash. The Privy Council had in Arsene A. Larocque v. Hyacinthe Beauchmin ([1897] A.C. 358.), to consider whether the payment by a company by receipts given by it on account of the purchase price of the property which they sold was a payment in cash. In dealing with this question Lord Macnaghten quoted with approval the following from the judgment of James L.J. in Spargo's (L.R. 8 Ch. 407.) case :

> "It was said by the Lord Chancellor, and we entirely concurred with him, that it could not be right to put any construction upon that section (section 25 of the Companies Act, 1867) which would lead to such an absurd and unjustifiable result as this, that an exchange of cheques would not be payment in cash, or that an order upon a banker to transfer money from the account of a company would not be a payment in cash."

and another passage from the judgment of Mellish, L.J. :-

> "It is a general rule of law that in every case where a transaction resolves itself into paying money by A to B and then handing it back again by B to A, if the parties meet together and agree to set one demand against the other, they need not go through the form and ceremony of handing the money backwards and forwards."

We consider these observations apposite and hold that where a payment was made by a cheque drawn on an account with the Bullion Exchange Sub-branch and the amount represented by that cheque was transferred to the Clearing House Account of the Association it is virtually a payment in cash, though in form a payment by cheque.

The next transaction to which objection was taken was a payment into the Bullion Hall Sub-branch of a sum of Rs. 4,65,000/- by one Sri Bansilal & Sons. The evidence was that the cheque was drawn not on his account on the Bullion Hall Sub-branch of the Bank of Baroda but with the branch of the Bank at the Fort, Bombay. The evidence with the Court accepted was that on the presentation of the cheque the staff ascertained that the constituent had enough funds in the bank for the cheque to be cleared and accepted it and credited the same to the account of the Bullion Exchange Association. The objection raised to the receipt of this payment was also founded on the cheque not being certified as good for payment. It will be noticed that the only point of difference between this

cheque and the cheques which were drawn on accounts of members with the Bullion Hall branch which we have dealt with just now is, that the cheque for Rs. 4,65,000/- was not drawn on the drawer's account with the Bullion Hall Sub-branch but on an account in the same bank at the Fort branch. For the purpose of considering this point it is not necessary to enter on any examination of the question as to what extent two of the branches of the same bank are separate entities. There is no doubt that a customer cannot claim to draw cheques except on the branch where his moneys are deposited and on the account in respect of which the cheque is issued. But that is not what is in controversy in the present case. Here a cheque drawn on the Fort Branch is paid into the Bullion Hall Sub-branch to the credit of the Association. The Bullion Hall Sub-branch of the bank accepts that cheque and credits it to the Association after ascertaining that the drawer of the cheque has enough funds at the Fort branch for meeting that cheque. The only question is whether the payment could be treated as by a cheque which is certified as good for payment. We consider that what wed have stated earlier as to the position in regard to a cheque drawn on an account in the same branch would also apply to the present case and that a certificate of the banker that is referred to in the bye-law is a certificate of a bank different from that into which the cheque is being paid. Even if there be any doubt in this matter we are satisfied that when once the staff at the Bullion Hall Sub-branch ascertained that the cheque was backed by sufficient funds to the credit of the customer in the account on which it is drawn, it satisfies the requirements of a cheque certified as good for payment within bye-law 137-B. The learned Judges of the High Court, therefore, rightly held that this payment was not outside the payments permitted by the said bye-law.

The last of the cases concerns a payment by one Jethalal Sangji Shah of a cheque for Rs. 1,16,250/-. The cheque was made in favour of the Bank of India Ltd. not certified good for payment and was paid into the Bullion Hall Sub-branch. The Clearing House received this cheque from Jethalal Sangji Shah after obtaining a declaration from him that he had enough credit in his account with the Bank of India for meeting that cheque. It was stated that the Directors of the Association were approached by the Bank as to whether this cheque could be received in payment and that it was on their advice that a declaration in the form specified was taken from the member and it was only thereafter that the payment was accepted as conforming to bye-law 137-B. Mr. Purshottam submitted that this payment could certainly not be within bye-law 137-B, and we consider that learned Counsel is right. This, however, does not help him because it concerns the price for 25 bars and, having regard to the quantity of silver with which we are concerned, Mr. Purshottam could not but concede that even if the payment by this constituent was irregular it would not affect the validity of the purchase at the risk of the appellant. We thus reach the conclusion that except the last payment which was not quite regular but whose irregularity is not material, all the other payments were substantially, if not literally, in accordance with the requirements of bye-law 137-B and in consequence the purchase made by the Directors at the risk of the appellant was legal and justified under the bye-laws.

Before concluding it is necessary to advert to the fact that both before the learned trial Judge as well as before the Division Bench a detailed analysis was made of the several payments made by about 17 members of the Association with a view to establish that those payments were not, even if they were made on the 3rd, in accordance with bye-law 137-B. The learned Judges considered the several objections which were formulated to the validity of these payments and after discussing some of the details of the individual cases which were placed before the Court, recorded their finding that the payments satisfied the requirements of the relevant bye-law. In view of the arguments addressed to us we have not examined in detail each one of the objections but have dealt only with those specifically urged before us and the tenability in general of the principles on which these objections were based.

The appeal accordingly fails and is dismissed with costs.

Appeal dismissed.

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