Page 01 - 12 **DOI:** *https://doij.org/10.10000/IJLMH.1111024*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 8 | Issue 6

2025

The Construction of Arbitration Clauses in Standard Form Contracts: Doctrinal and Judicial Perspectives

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ABSTRACT

The Arbitration and Conciliation Act, 1996, marks a pivotal reform in India's dispute resolution framework by providing a modern, unified, and efficient mechanism for arbitration. It reinforces party autonomy, procedural flexibility, and enforceability of arbitral awards, thereby strengthening confidence in alternative dispute resolution. However, in the realm of mass contracting, where standard form or adhesion contracts predominate, the traditional notion of freely negotiated consent becomes largely theoretical. Such contracts, common in sectors like banking, insurance, transport, and digital services, impose pre-drafted terms on consumers with little or no scope for negotiation, raising concerns of fairness and voluntariness.

The construction and enforceability of arbitration clauses in these contracts pose complex doctrinal and interpretative challenges. Courts are often called upon to determine whether an arbitration agreement embedded within a standard form contract truly reflects the consent of the parties or whether it is the result of unequal bargaining power. The judiciary has, therefore, developed interpretative principles to balance the efficiency of arbitration with the protection of weaker parties, scrutinizing clauses that are ambiguous, unconscionable, or contrary to public policy.

This article critically analyses the judicial approaches adopted in interpreting arbitration clauses within standard form contracts, drawing upon Indian precedents under the Arbitration and Conciliation Act, 1996. It examines how courts reconcile the tension between contractual autonomy and substantive fairness, particularly in light of the doctrines of unconscionability and reasonableness. The discussion highlights that a nuanced judicial construction, anchored in equity, transparency, and genuine consent, is essential to uphold the legitimacy of arbitration as a fair and voluntary dispute resolution mechanism in standardized contracting.

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I. INTRODUCTION

In the evolving landscape of dispute resolution, arbitration has emerged as a favoured alternative to traditional court litigation. It is prized for its efficiency, confidentiality, and flexibility. However, these very advantages of arbitration can be undermined when arbitration agreements are crafted in a manner that is fundamentally unfair or oppressive, rendering them **unconscionable.** The doctrine of unconscionability serves as a necessary safeguard against such abuse, ensuring that arbitration remains a tool of justice rather than a mechanism of exploitation. Unconscionable arbitration agreements are those that defy basic standards of fairness and equity. They are usually found in situations where one party has little or no bargaining power. At the same time the other, often the Government or a dominant institution, uses its superior position to impose unfavourable terms. Courts across jurisdictions have developed tests to assess such agreements, primarily by analysing factors such as bargaining power, voluntariness, and the substantive fairness of the terms. Indian courts have consistently affirmed that while arbitration may serve as an alternative to litigation, it cannot be structured to eliminate access to justice altogether. Any term that effectively denies a fair opportunity to be heard is viewed with deep judicial scepticism and risks being invalidated.

II. BINDING BY DEFAULT: STANDARD FORM CONTRACTS AND INCLUSION OF ARBITRATION CLAUSES

The term "*contract"* denotes an agreement resulting from the exchange of negotiated terms and the acceptance of those terms by the parties, with the intention of creating a legally binding relationship. Negotiation and individualization, therefore, are the characteristic features of traditional contracting. The principle of *freedom of contract* presupposes that the parties are free to prescribe their respective rights and obligations, and that consent is voluntarily and consciously given. Any element that vitiates free consent, such as coercion, undue influence, fraud, misrepresentation, or mistake, renders the contract voidable at the instance of the aggrieved party under the Indian Contract Act, 1872.[2] A contract concluded in accordance with the statutory requirements of the Act becomes enforceable by and against the parties, and in some cases, against persons claiming under them.[3] For the complete and effective execution of agreements, it may be necessary to enter into subcontracts. However, these subcontracts cannot transcend the terms of the principal contract, as they are subservient and ancillary to it.[4]

[2] *Indian Contract Act, 1872*, Act No.9 of 1872, ss 13–19.
[3] *Pollock & Mulla, Indian Contract and Specific Relief Acts* (15th ed., 2019), p. 89.
[4] *Kailash Nath Associates v. Delhi Development Authority*, (2015) 4 SCC 136.

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In the sphere of modern commerce, however, the ideal of individual negotiation is often impracticable. Where goods or services are supplied on a mass scale, such as in utilities, insurance, transport, and banking, it becomes impossible to form separate, individually negotiated contracts with each customer. In such cases, the party providing the goods or services formulates a set of pre-determined, standardized terms applicable to all transactions of a similar kind. The counterparty is invited to accept or reject these terms in their entirety, with minimal or no room for negotiation. Such agreements are commonly described as *standard form contracts*, *contracts of adhesion*, or *boilerplate contracts*.[5]

A standard form contract may be defined as a pre-printed collection of contractual terms drafted in advance for repeated use in similar transactions, presented to the other party as a condition for doing business.[6] These forms are prevalent in modern commercial practice, appearing as pre-contract documents such as purchase orders, post-contract documents like invoices and warranty manuals, or integration forms such as hire-purchase agreements and loan documentation. *"The process of mass production and distribution, which has largely supplemented, if it has not supplanted individual effort, has introduced the mass contract, uniform documents which must be accepted by all who deal with large-scale organizations. Such documents are not in themselves novelties; the classical lawyer of the mid-Victorian years found himself struggling to adjust his simple conceptions of contract to the demands of such powerful bodies as the railway companies. But in the present century, many corporations, public and private, have found it useful to adopt, as the basis of their transactions, a series of standard forms with which their customers can do little but comply."*[7]

The distinguishing feature of these contracts lies in the inequality of bargaining power between the parties. Typically, one party is an individual consumer, while the other is a powerful corporation or monopoly offering essential services.[8] For instance, when a consumer applies for an electricity connection, insurance policy, or banking facility, they are required to sign a pre-drafted agreement, leaving them with no meaningful choice other than to accept or reject the terms *in toto*. The apparent consent in such circumstances is formal rather than substantive, as the weaker party lacks both the opportunity to negotiate and the practical capacity to refuse.[9]

This displacement of free negotiation in standard form contracts raises fundamental concerns

[5] *Chitty on Contracts,* Vol. I, General Principles (34th ed., 2021), para 1-019.
[6] *Treitel, The Law of Contract* (15th ed., 2020), p. 46.
[7] Cheshire, Fifoot, and Furmston's Law of Contract, (Oxford University Press, London, 12thedn/1991). 'Use of standard form contracts' at page 21
[8] *Central Inland Water Transport Corp. Ltd. v. Brojo Nath Ganguly*, (1986) 3 SCC 156.
[9] *P.S. Atiyah, The Rise and Fall of Freedom of Contract* (Clarendon Press, 1979), p. 244.

regarding the validity of consent and the enforceability of terms contained in such contracts. Judicial authorities have recognized that where consent is not the product of genuine choice, the contract may fail to reflect a true meeting of minds. Thus, while standard form contracts are indispensable to the functioning of a mass-market economy, they also challenge the classical notions of consent, voluntariness, and fairness that underpin contractual relations. The judicial task, therefore, lies in reconciling the efficiency of standardization with the imperatives of equity and justice.

III. DECODING THE FINE PRINT: PRINCIPLES OF INTERPRETATION OF STANDARD FORM CONTRACTS

The general principles of contractual interpretation, which presume free negotiation and mutual assent, cannot be mechanically applied to *standard form contracts*, as they are deliberately drafted to govern a multitude of similar transactions, often leaving no room for individual bargaining. Their interpretation, therefore, raises distinct challenges, particularly when questions of unconscionability and fairness are invoked. Disputes regarding such contracts typically arise because (i) a particular term does not apply to the dispute in question; (ii) though the dispute falls within the contract, the impugned term cannot be applied by implication; (iii) the term is ambiguous; or (iv) it conflicts with other contractual provisions.[10]

Under common law, the enforceability of standard form contracts depends on a complex interplay of circumstances, such as the adequacy of notice given to the adhering party, the nature of the contractual document, the inclusion of exclusion or exemption clauses, and the application of doctrines such as *fundamental breach* and *contra proferentem*.[11] The extent to which standard form contracts are enforced under the common law can be summarized as a series of possibilities arising under different circumstances;

(1) A person who accepted an offer which is based on standard conditions, the terms of which were all specifically brought to his notice, is bound by these conditions, even if he expressed his objections to them.[12]

(2) If a person accepted an offer made subject to standard conditions, but was unaware of their contents, the first question to ask is whether he has signed the form containing the conditions or not:-

[10] *Chitty on Contracts*, Vol. I, General Principles (34th ed., 2021), para. 13-001.
[11] *Treitel, The Law of Contract* (15th ed., 2020), p. 245.
[12] *Eric Gnapp Ltd.* v. *Petroleum Board* , (1949) 1 All.ER 980. *Henry Kendall & Sons v. William Lillico & Sons Ltd.* [1969] 2 AC 31 (HL).

(I) If he has signed the form, he would be bound by these conditions, even if he did not know the language in which they were printed.[13]

(II) If he did not sign the form, the second question to ask is whether he knew of the existence of the conditions:-

(a) If no notice of the existence of the conditions was given, he will not be bound by them.[14]

(b) If notice of the existence of the conditions was given, the fourth question to ask is whether or not the document in which they were contained or referred to was a "common form" document.[15]

(i) If the document was a "common form" document, he would be bound by the conditions set out or referred to in it.[16]

(ii) If the document was not a "common form" document, the fifth question to ask is whether he knew there was writing on the document:-

(i) If he did not know that there was writing on the document, he would not be bound by the conditions.[17]

(ii) If he did know that there was writing on the document, the sixth question to ask is whether the notice given to him of the existence of conditions was reasonable notice.[18]

If it were, he would be bound.

If it was not, he would not be bound.

These guiding principles that are derived from common law, have significantly influenced the Indian jurisprudence for the development of principles governing the interpretation of standard form contracts, as the courts have aimed to safeguard weaker parties from oppressive contract terms. The interpretative framework for contracts, rooted in the Indian Contract Act, 1872, establishes *consent* and *free will* as the cornerstones of contractual validity. Section 13 defines consent as "two or more persons agreeing upon the same thing in the same sense," while Section

[13] *Canadian Pacific Rly* v. *Parent, (*1917) 116; *L'Estrange v. F. Graucob Ltd.* [1934] 2 KB 394.
[14] *Henderson* v.*Stevenson* (1875) 2 H .L SC APP. 470.
[15] *Watkins* v. *Rymill,* (1883) 10 Q. B. D 178*,* in which Stephen J. first drew the distinction between common form documents from others, although *Mellish L.J in Parker v South Eastern Railway,* (1887) 2 CPD 416*, 422* had also drawn a similar distinction without using the words 'common form".
[16] *Henderson v. Stevenson* (1875) LR 2 Sc & Div 470.
[17] *Parker* v. *South Eastern Rly.Co,* .(1877) 2 CPD 416.
[18] *Richardson* v. *Rowntre*e, (1894) AC 217.

14 stipulates that consent is *free* when it is not caused by coercion, undue influence, fraud, misrepresentation, or mistake. Contracts lacking free consent are voidable under Sections 19 and 19A.[19] While the Act does not explicitly address *standard form* or *adhesion contracts*, courts have interpreted Section 23, which renders void agreements opposed to public policy, as a repository for the principle of substantive fairness. Moreover, Section 28, which prohibits absolute restrictions on legal proceedings, has been invoked to examine arbitration clauses that operate to oust judicial jurisdiction unfairly or unreasonably.

The turning point in Indian law came with *Central Inland Water Transport Corporation Ltd.* v. *Brojo Nath Ganguly*,[20]where the Supreme Court struck down a clause allowing an employer to terminate employment "at will." The Court held;

"*The principle is that the Courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No Court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party, or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable, and unconscionable a cause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infra-structural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The Court must judge each case*

[19] *Indian Contract Act, 1872,* §§13–19.
[20] (1986) 3 SCC 156.

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on its own facts and circumstances."

The Court held such a clause to be "unconscionable, unfair and opposed to public policy," invoking Section 23 of the Contract Act. The judgment explicitly recognized inequality of bargaining power as a vitiating factor, effectively reading the notion of substantive fairness into Indian contract law. This progressive stance was reaffirmed in *LIC of India* v. *Consumer Education & Research Centre,*[21]where the Court declared that freedom of contract "is not a license to exploit."

"*If a contract or a clause in a contract is found unreasonable or unfair or irrational, one must look to the relative bargaining power of the contracting parties. In dotted line contracts there would be no occasion for a weaker party to bargain or to assume to have equal bargaining power. He has either to accept or leave the services or goods in terms of the dotted line contract. His option would be either to accept the unreasonable or unfair terms or forego the service forever. With a view to have the services of the goods, the party enters into a contract with unreasonable or unfair terms contained therein and he would be left with no option but to sign the contract."*[22]

The court emphasized that state instrumentalities and public corporations bear a duty to ensure fairness and reasonableness in their contractual dealings, particularly with consumers and employees. These decisions transformed the interpretative landscape, marking a shift from the formal consent model to a substantive justice model of contractual fairness.

However, the inherent inequality of bargaining power, coupled with the non-negotiated nature of these agreements, has long posed significant jurisprudential challenges. These challenges acquire heightened complexity when *arbitration clauses* are embedded within standard form contracts. Arbitration, being a creature of consent, presupposes mutual agreement to refer disputes to a private forum. However, when such clauses are imposed through standard form contracts, the voluntariness of consent becomes doubtful. Courts have therefore been compelled to examine the tension between contractual autonomy and procedural fairness, and to evolve doctrines that harmonize the principles of freedom of contract with those of justice and equity.

IV. PRINCIPLES OF INTERPRETATION APPLIED IN ARBITRATION AGREEMENTS

The defining feature of arbitration lies in its consensual nature. However, in standard form contracts, the arbitration clause is rarely the result of genuine negotiation; rather, it functions as a clause of adhesion imposed by one party. One of the most critical indicators of an

[21] (1995) 5 SCC 482.
[22] *Life Insurance Corporation of India v. Consumer Education and Research Centre,* 1995 AIR 1811.

unconscionable arbitration agreement is a stark disparity in bargaining power between contracting parties. The Supreme Court of India, beginning with its seminal decision in *Central Inland Water Transport Corporation Ltd.* v. *Brojo Nath Ganguly*,[23] recognised that when a stronger party imposes contractual terms upon a weaker party without providing a meaningful choice, such terms are liable to be struck down as unfair and unreasonable. These so-called "contracts of adhesion," where terms are pre-drafted and presented on a "take-it-or-leave-it" basis, have continued to trouble courts in modern contractual jurisprudence. This imbalance is particularly pronounced in employment contracts, where workers often face coercive pressure to accept onerous conditions in order to secure or retain employment. The Supreme Court in *LIC of India* v. *Consumer Education & Research Centre*[24]observed that such contracts, which deprive employees of bargaining autonomy, are inconsistent with fairness and justice.

Similarly, consumer contracts reveal an analogous asymmetry, wherein service providers dictate terms unilaterally. In *Aftab Singh* v. *Emaar MGF Land Ltd.*, the National Consumer Disputes Redressal Commission held that consumer disputes cannot be compulsorily referred to arbitration under adhesion clauses, a finding later affirmed by the Supreme Court.[25] The problem extends to digital and financial service contracts, where users routinely click "I Agree" to standard-form agreements without awareness of arbitration clauses embedded in fine print. Courts have increasingly scrutinized such clauses for lack of genuine consent, most notably when the Supreme Court dismissed the appeal in *Emaar MGF Land Ltd.* v. *Aftab Singh* and reaffirmed in *Vidya Drolia v. Durga Trading Corporation*[26]that arbitration cannot become a device to perpetuate unfairness. In all these contexts, the imbalance of power created a coercive contractual environment that undermined the voluntariness of consent. The Supreme Court has consistently affirmed that arbitration clauses that are unconscionable, oppressive, or contrary to public policy are liable to be invalidated.

When a question arises as to the legality of the arbitration agreement, the rules of interpretation play an important role. Interpretation of arbitration agreements are governed by two main principles: (1) whenever two interpretations are possible as to the arbitrability of the issues mentioned in the agreement, then the one favouring the arbitration should be adopted, (2) except in occasions where it is very clear that the agreement cannot be given effect, an order to arbitrate shall not be stayed. Since the arbitration clause is a written submission, it should be interpreted as any other written submission. But one of the most important elements to be considered while

[23] (1986) 3 SCC 156.
[24] (1995) 5 SCC 482.
[25] (2019) 12 SCC 751.
[26] (2020) 20 SCC 406.

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interpreting the arbitration clause is that clear language should be introduced into the contract, which should have the effect of ousting the jurisdiction of the Court and compelling the parties to have recourse to arbitration for the decision of the disputes.[27] However, the Supreme Court in *A. Ayyasamy* v. *A. Paramasivam*[28]reiterated that arbitration cannot be employed as an instrument to exclude legitimate judicial remedies when consent is tainted by coercion, undue influence, or unconscionability.

The time bar clause if any, incorporated into the agreement, should be construed strictly. The rule of *ejusdem generis* will be applied in circumstances where the words used form a genus and it is followed by specific words. This rule will not apply in cases where there is no genus or if the specific words belong to different genii. When two interpretations are possible, one providing for arbitration and the other against the same, then the one that will make the agreement reasonable rather than unreasonable should be adopted.[29]

When the arbitration agreement contains partly printed terms and partly written, the whole of the document should be construed together. But when there is an inconsistency between the two, the written terms will prevail over the printed forms. The above interpretation is based on the principle that 'written, stamped, typed additions, when inconsistent with the printed terms, would normally prevail over the printed terms.' The Supreme Court adopted and applied the same and laid down the following principles of construction in *M.K Abraham & Co.* v. *State of Kerala*,[30]

"In the event of an apparent or irreconcilable inconsistency between the cyclostyled amendments, typed additions and deletions, and handwritten corrections, the following rules of construction will normally apply:

(i) the cyclostyled amendments will prevail over the printed terms;

(ii) the typewritten additions will prevail over the printed terms and cyclostyled amendments; and

(iii) handwritten correction will prevail over the printed terms, cyclostyled amendments and typewritten additions."

The logical explanation for the application of this principle is that the printed form of agreement contains standardized terms to suit all contracts and occasions, irrespective of the nature of the

[27] *T. W. Thomas & Co.Ltd* v.*Portsea Steamship Co.Ltd, The Portsmouth*, (1912) AC 1.
[28] (2016) 10 SCC 386.
[29]*Ashoka Construction* v. *Union of India,* AIR 1969 Tri 19.
[30] (2009) 3 Arb L R 130.

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dispute. When such standard terms are applied to specific contracts, it becomes necessary to modify them to cope with the specific needs. Then such modification is done by making additions, alterations, deletions or by attaching annexures to the standard form, which is done by typing, cyclostyling, or hand.

"...the words super added in writing are entitled, nevertheless, if there should be any reasonable doubt on the sense and meaning of the whole, to have a greater effect attributed to them than to the printed words, in as much as the written words are the immediate language and terms selected by the parties themselves for the expression of their meaning and the printed words are a general formula adapted equally to their case and that of all other contracting parties on similar occasions and subjects."[31]

Another parallel principle which is equally relevant is that where the contract has several annexures/attachments, prepared at different points in time, unless a contrary intention is apparent, the later in point of time would normally prevail over the earlier in point of time. A critical aspect of the enforceability of arbitration clauses is whether they have been properly *incorporated* into the contract. In *M.R. Engineers & Contractors Pvt. Ltd.* v. *Som Datt Builders Ltd.*,[32] the Supreme Court held that a mere reference to another document containing an arbitration clause does not automatically incorporate that clause into the principal contract; such incorporation must be clear, specific, and intentional. The Court's reasoning mirrors the English principle of *reasonable notice* from *Parker* v. *South Eastern Railway Co*.,[33] a party cannot be bound by terms unless reasonable steps were taken to bring them to their attention before or at the time of contracting. Thus, where arbitration clauses are hidden in fine print, on tickets, invoices, or online click-wrap forms, courts have tended to construe them narrowly to protect the adhering party's right to be informed.

Verbafortiusaccipiuntur contra proferentum

Osborne defines this legal expression as "words must be construed against those who use them." If the words of a contract are ambiguous and if two equally possible meanings are available, then such words should be interpreted against the author, drafter, or writer of the contract and not against the other party. But this rule of interpretation can only be resorted to when all other rules of construction fail to enable the Court to ascertain the meaning of a document.

This principle of construction is also known as interpretation against the draftsman. When there

[31] *M.K Abraham &*Co v. *State of Kerala,* (2009) 3Arb L R 130.
[32] (2009) 7 SCC 696.
[33] (1877) 2 CPD 416.

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is any ambiguity in the terms used in an agreement, then the preferred meaning should work against the interests of the party that provided for the term in the agreement. The majority of the conditions used in the standard form contracts are designed to facilitate the enforcement of the contract. The party dictating the terms of the contract is both hard-headed and well advised and such contracts will always have the tendency to be interpreted in their favour. The party holding an upper hand in the contract always takes the advantage of such terms that he may insert in the agreement, which are not likely to be noticed and which a reasonable person would not expect to encounter. However, there are many obiter dicta which go to the effect that unreasonable conditions, which if brought to the notice of the party at the time of inception of the contract retract the party from making the contract, would not be binding.[34]It is not possible to enumerate exhaustively the means by which such irrelevant, unreasonable conditions are incorporated into the contract as new forms of services are being offered to meet the requirements of the changing society.

The judicial evolution surrounding arbitration clauses in standard form contracts reflects an on-going attempt to reconcile the ideals of contractual autonomy with the imperatives of fairness and justice. Arbitration, though founded on the principle of consent, loses its legitimacy when such consent is obtained through coercion, inequality, or deception. The modern law of arbitration, therefore, recognizes that procedural and substantive fairness are indispensable prerequisites for enforceability. Indian jurisprudence, drawing from both common law traditions and constitutional principles of equality and reasonableness, has steadily advanced towards a model of *substantive consent*, one that looks beyond mere formality to the realities of bargaining power and choice. Courts have repeatedly affirmed that arbitration cannot become an instrument to perpetuate imbalance or deny access to justice. The principles distilled from cases such as *Central Inland Water Transport Corporation Ltd. v. Brojo Nath Ganguly*,[35] *LIC of India v. Consumer Education & Research Centre*,[36] and *Vidya Drolia v. Durga Trading Corporation*[37]demonstrate a clear judicial intent to prevent arbitration from degenerating into a vehicle of oppression cloaked in legality. As standard form contracting becomes increasingly prevalent in digital and commercial spheres, the interpretative responsibility of courts assumes heightened significance. The ultimate objective must remain the preservation of fairness and equality in contractual relations, ensuring that arbitration continues to serve its true purpose as a fair, efficient, and voluntary mode of dispute resolution rather than as a tool for exclusion or

[34] *Van Toll* v. *South Eastern Rly,* (1862)12 C.B 75
[35] *Supra* note 22.
[36] *Supra* note 23.
[37] *Supra* note.25.

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