

ORIGINAL CIVIL.

Before Mr. Justice Handley.

MACKENZIE AND OTHERS (PLAINTIFFS),

v.

STRIRAMIAH (DEFENDANT).^{*}*Contract Act, s. 27—Restraint of trade.*

One having a license for the manufacture of salt entered into a contract with a firm of merchants, whereby it was provided that he should not manufacture salt in excess of the quantity which the firm at the commencement of each manufacturing season should require him to manufacture; and that all salt manufactured by him should be sold to the firm for a fixed price. The agreement was to be in force for a period of five years. In a suit by the merchants for an injunction restraining the licensee from selling his salt to others:

Held, that whether or not the first of these clauses was invalid under s. 27 of the Contract Act, it was separable from the second clause which was not bad as being in restraint of trade.

Sure by the members of the firm of Messrs. Arbuthnot & Company for an injunction restraining the defendant from selling salt manufactured by him under a license to others.

The defendant was the holder of a license for the manufacture of salt and had entered into an agreement with the plaintiffs for the sale to them of all the salt manufactured by him. The material parts of the agreement which was executed in counterpart are set out in a judgment of the Court.

Krishnasami Ayyar for the defendant objected that the contract was void as being in restraint of trade. Reliance was placed on the judgment of *Muttusami Ayyar, J.*, which is printed at the end of this report, and upon *Oakes v. Jackson*(1), *Brahmaputra Tea Company v. Scarth*(2), *Madhub Chunder Poramanick v. Rajcoomar Doss*(3), *Auchterlonie v. Bill*(4), *Pollock on Contracts*, p. 301. *Vaithelingu v. Saminada*(5), *Catt v. Towle*(6), *Allsopp v. Wheatcroft*(7).

* Civil Suit No. 144 of 1888.

(2) I.L.R., 11 Cal., 545.

(4) 4 M.H.C.R., 77.

(6) L.R., 4 Ch. App., 654.

(1) I.L.R., 1 Mad., 134.

(3) 14 B.L.R., 76.

(5) I.L.R., 2 Mad., 44.

(7) L.R., 15 Eq., 59.

Mr. *K. Brown* for the plaintiffs referred to *Donnell v. Bennett*(1), *Montague v. Flockton*(2), *Wolverhampton and Walsall Railway Company v. London and North-Western Railway Company*(3), *Brahmaputra Tea Company v. Scarth*(4), *Prem Sook v. Dhurum Chand*(5) and to the illustrations to section 57 of the Specific Relief Act and section 87 of the Contract Act. He argued that the decision of *Muttusami Ayyar, J.*, could not be regarded as governing the present case as it proceeded upon the terms of a contract which was not now available for reference and which appeared to have been very wide in its provisions for its duration. It was also contended that the construction put on section 27 on behalf of the defendant involved the substitution of the words "restrained *in* exercising," &c., for the words "restrained *from* exercising," &c.

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Judgment having been reserved was delivered as follows :—

HANDLEY, J.—“Additional issue. Is the contract evidenced “by agreements of 23rd April 1887 in paragraphs 1 and 2 of “the plaint mentioned void as being in restraint of trade?” I thought it convenient to decide this point at once, as the objection goes to the root of the plaintiffs’ case, and, if I found the issue in defendant’s favor, it would dispose of the case. But on consideration of the arguments and the authorities quoted on both sides, I am satisfied that there is nothing in the objection. The defendant’s *vakil* relies on the judgment of *Muttusami Ayyar, J.*, in *Ragavayya v. Subbaya*(6). The point decided in that case following the decisions in *Oakes v. Jackson*(7), *Brahmaputra Tea Company v. Scarth*(4), and *Madhub Chunder Poramanick v. Raj coomar Doss*(8) is that section 27 of Indian Contract Act does away with the distinction observed in English cases following upon *Mitchel v. Reynolds*(9) between partial and total restraint of trade and makes all contracts falling within the terms of the section void, unless they fall within the exceptions. I was quite prepared to follow the decision upon this point, but I am asked to follow it still further and to hold that because the contract in question in that case appears (as far as one can tell from the judgment) to have been a salt contract similar to the one in

(1) L.R., 22 Ch. D., 835.

(2) L.R., 16 Eq., 189.

(3) L.R., 16 Eq., 433.

(4) I.L.R., 11 Cal., 545.

(5) I.L.R., 17 Cal., 320.

(6) Civil Revision Petitions, Nos. 3 to 16 of 1889, *vide* below.

(7) I.L.R., 1 Mad., 134.

(8) 14 B.L.R., 76.

(9) 1 Sm. L.C., 406.

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question in this suit, therefore the contract, the subject of this suit, is void. This, I think, I am not bound to do. Whether a contract is in restraint of trade within the meaning of section 27 of the Contract Act is a question to be determined on construction of the contract in each case. I have no copy of the contract in question in the case before Mr. Justice Muttusami Ayyar, and, I think, I cannot safely take that decision as any guide in deciding whether the contract in this suit is in restraint of trade or not, and I do not consider that it is. The clauses in the contract, which are said to be void, are as follows :—

Clause 6.—The licensee shall not manufacture any salt in excess of the quantity which the said firm of Arbutnot & Company shall, from time to time, at the commencement of each manufacturing season, require the licensee to manufacture.

Clause 12.—All salt manufactured and stored by the licensee under the said license, and, in accordance with these presents, shall be sold by the licensee to the said firm of Arbutnot & Company at, and for the price or sum of, Rs. 11-8-0 for each and every garce of 120 maunds of the said salt measured and taken delivery of by them at Madras, and the licensee shall and will accept such sum of Rs. 11-8-0 for every such garce of salt in full payment and satisfaction for the same.

I think these clauses may be separated and that it does not follow that because one is bad the whole contract is void. Clause 6 may be bad: it is not necessary to pronounce an opinion upon that; it is not in question in this suit and is not sought to be enforced. Clause 12 does not, in my opinion, purport to restrain defendant from exercising his trade or business within the meaning of section 27 of the Contract Act. It is merely an agreement to sell all the salt he manufactures during a certain period to plaintiffs at a certain price. No doubt a negative covenant not to sell to anybody else may be implied, but that is not such a restraint from exercising his trade or business as the section contemplates. In one sense, every agreement for sale of goods whether *in esse* or *in posse* is a contract in restraint of trade for, if *A. B.* agrees to sell goods to *C. D.*, he precludes himself from selling them to anybody else. But a reasonable construction must be put upon the section and not one which would render void the most common form of mercantile contract.

I understand the section to aim at contracts, by which a person precludes himself altogether either for a limited time or over a limited area from exercising his profession, trade or business, not contracts by which, in the exercise of his profession, trade or business, he enters into ordinary agreements, with persons dealing with him which are really necessary for the carrying on of his business. I think I am supported in this decision by the Calcutta cases of *Carlisles Nephews & Company v. Ricknauth Bucklearmull*(1) *Prem Sook v. Dhurum Chand*(2) and by the principles which govern the English decisions upon the subject.

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I find the additional issue for plaintiffs as far as clause 12 of the contract is concerned. The case must proceed.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar.

RAGAVAYYA AND OTHERS (PLAINTIFFS), PETITIONERS,

v.

SUBBAYYA AND OTHERS (DEFENDANTS), RESPONDENTS.*

1889.
Aug. 7.
Sept. 3.

This was a petition under Provincial Small Cause Court Act of 1887, s. 25, praying for the revision of the proceedings of T. Ramachendru Row, District Munsif of Nellore, in small cause suit No. 664 of 1887. The plaint, as summarised by the District Munsif, was as follows:—

The plaint sets forth that in 1883 defendant No. 1 obtained a license to sell salt in the Salt Factory at Krishnapatam: that, on 15th July 1884, he executed an agreement, along with some others, to Messrs. Mulam Krishnayya and Company providing (1) that defendant No. 1 should manufacture salt in the said factory as long as the excise system would be in force and deliver the same to plaintiffs for sale; (2) that plaintiffs should pay him at 12 rupees per garce for kudivaram, &c.; (3) that defendant No. 1 should receive 4 rupees per garce in advance for manufacturing expenses; (4) that, after delivery of salt defendant No. 1 should receive from plaintiffs the balance of money due as kudivaram, after deducting the advances made; (5) that plaintiffs should execute all the necessary repairs in the said factory, except those for salt pans; and (6) that plaintiffs should be responsible for any loss that might result from failure to execute the repairing; that, relying on the said agreement, plaintiffs executed, at great cost, permanent, as well as temporary repairs; that defendant No. 1 delivered to plaintiffs the salt manufactured by him in 1885, and received all his dues; that defendant No. 1 received advances from

(1) I.L.R., 8 Cal., 809.

(2) I.L.R., 17 Cal., 320.

* Civil Revision Petitions, Nos. 3 to 16 of 1889.