

The *Government Pleader* (Mr. Powell) for respondent.

JUDGMENT.—The petition of appeal was presented on 11th June in the recess, and the stamp was received and affixed on the 25th. The Court opened on 27th June.

Following the principle laid down in *Skinner v. Orde*(1), we must hold that the petition must be regarded as an appeal from the date on which it was presented and not from the date on which the stamp was received. The decree of the District Court must be reversed and the appeal remanded. The appellant is entitled to the costs of this appeal, and the cost in the Lower Appellate Court will abide and follow the result.

PATCHA
SAHEB
v.
SUB-
COLLECTOR
OF NORTH
ARCOT.

APPELLATE CIVIL.

*Before Sir Arthur J. H. Collins, Kt., Chief Justice,
and Mr. Justice Shephard.*

SADAGOPA RAMANJIAH AND OTHERS (DEFENDANT'S
REPRESENTATIVES), APPELLANTS,

v.

MACKENZIE AND OTHERS (PLAINTIFFS), RESPONDENTS.*

1891.
September
17, 18, 20.
November 2.

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 and for damages:

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

APPEAL against the decree of Mr. Justice Handley sitting on the Original Side of the High Court in civil suit No. 142 of 1888.

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

(1) L.R., 6 I.A., 126.

* Appeal No. 30 of 1889.

SADASOFA
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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 contained in two documents are as follows :—

Clause 6.—The licensee shall not manufacture any salt in excess of the quantity which the said firm of Arbuthnot and 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 Arbuthnot and 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.

Mr. Justice Handley passed a decree for the plaintiffs, against which defendant preferred this appeal on the ground (among others) that the agreement was void as being in restraint of trade.*

Rama Rau, Krishnasami Ohetti, and Sriramulu Sastri for appellants.

Mr. W. Grant and Mr. K Brown for respondents.

The Court delivered judgment on the above ground of appeal as follows :—

JUDGMENT.—Several points were raised by Mr. Rama Rau in this appeal, but the only one purporting to be a complete answer to the plaintiffs' claim and requiring any special notice is that the contract for breach of which damages have been decreed was invalid as being made in restraint of trade. The contract is expressed in two documents, dated the 13th May 1885, one of which was signed by the plaintiffs, and the other by the defendant. Shortly stated, the effect of it was on the one hand to oblige the defendant who had obtained a license under the Salt Commissioner to manufacture salt for a period of five years, and on the other hand to oblige the plaintiffs to take delivery of such salt at a

* See *Mackenzie v. Sriramaniah*, I.L.R., 13 Mad., 472, in which the same Judge, dealing with a precisely similar agreement, came to the same conclusion as that arrived at by their Lordships in the present appeal.

certain price. Another material provision in the contract was that the defendant should not manufacture any salt in excess of the quantity which the plaintiffs might, at the commencement of any season, require to be manufactured. It was argued on behalf of the appellant that, as the contract had by implication prohibited him from selling the salt to third persons, and also empowered the plaintiffs to limit the amount of salt which he should manufacture, section 27 of the Contract Act became applicable and there was no legal agreement. The section provides as follows :— “ Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.”

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The agreement, it is to be observed, is only void in so far as it restrains any one from exercising his trade. In the present case the breach complained of was that the defendant sold to third persons the salt manufactured by him, which he ought to have delivered to the plaintiffs. It is an ordinary case of a breach of contract to manufacture and sell goods, and it cannot possibly be said that by such a contract the manufacturer is restrained from exercising his trade. On the contrary he is encouraged to exercise it because he is assured of a certain market for the products of his labour.

It is true that there is a clause enabling the plaintiffs to limit the amount of salt which should be manufactured ; and if the plaintiffs had acted under that clause, and, notwithstanding the limit prescribed by them, the defendant had manufactured a larger quantity of salt, a question might have arisen as to the competency of the plaintiffs to restrain such manufacture in excess of the amount required by themselves. It may well be that to the extent to which the contract purported to empower the plaintiffs to restrict the defendant's manufacture of salt, the contract might be considered void. But this is not the question we have to consider. The plaintiffs are not seeking directly or indirectly to restrain the defendant from exercising his trade as manufacturer of salt. Section 27 of the Act has therefore no application and the contract for breach of which damages have been given is clearly legal. *Carlises Nephews & Company v. Ricknauth Bucktearmull*(1), *Donnell v. Bennett*(2).

Barclay, Morgan & Orr, attorneys for respondents.

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

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