

APPELLATE CIVIL.

1913
March, 19.*Before Mr. Justice Sir Harry Griffin and Mr. Justice Chamier.*

PHAGGU MAL (DEFENDANT) v. BABU LAL (PLAINTIFF).*

*Contract—Sale—Goods sent to purchaser not in accordance with terms of contract —
Purchaser not bound to return goods to vendor.*

When goods sent to a purchaser, professedly in execution of a contract of sale, are not of the kind which the vendor had agreed to supply, it is not the duty of the purchaser to see that such goods are returned to the vendor: it is enough if he gives notice to the vendor that the goods are lying at the place to which they were sent at the vendor's risk. *Grimoldby v. Wells* (1) followed

IN this case the plaintiff agreed to supply the defendant with stone for building purposes to be delivered at Karnal in the Punjab. The stone was sent to Karnal, but on examination it was found to be wholly unsuitable to the purposes for which it had been supplied. The defendant then brought a suit against the plaintiff in the Punjab and obtained a decree for a refund of the price of the stone and for damages. The plaintiff subsequently sued the defendant for the return of the stone. The court of first instance dismissed the suit, but this decree was reversed on appeal and a decree given in favour of the plaintiff. The defendant thereupon appealed to the High Court.

Babu *Sital Prasad Ghosh*, for the appellant.

The Hon'ble Dr. *Tej Bahadur Sapru*, for the respondent.

GRIFFIN and CHAMIER, JJ:—The plaintiff in this case, who is respondent here, agreed to supply the defendant with stone for building purposes. The stone was delivered at Karnal, but on examination it was found to be wholly unsuitable to the purposes for which it was supplied. The defendant then brought a suit against the plaintiff in the Punjab and obtained a decree for a refund of the price of the stone and for damages. The plaintiff has now brought this suit asserting that it was the duty of the defendant to return the stone to him. The defendant's plea is that he is not bound to put himself to the expense and trouble of returning the stone, and that it was the business of the plaintiff to take the stone

* Second Appeal No. 746 of 1912, from a decree of Girraj Kishore Datt, Judge, Small Cause Court, exercising the powers of a Subordinate Judge, of Agra, dated the 14th of May, 1912, reversing a decree of Raja Ram, Munsif of Agra, dated the 26th of October, 1911.

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away if he was so minded. The case appears to be covered by a decision of the Court of Common Pleas in England in the case of *Grimoldby v. Wells* (1). We hold that it was not the duty of the defendant to return the stone, and that the plaintiff has no cause of action against him. It was sufficient for the defendant to notify to the plaintiff that the stone was lying at Karnal at his risk. That, and more than that, has been done by the defendant in the present case. The decision of the lower appellate court cannot be supported. We allow this appeal, set aside the decree of the lower appellate court and dismiss the plaintiff's suit with costs in all courts.

Appeal allowed.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Tudball.

MEGHU RAI (DEFENDANT) v. RAM KHELAWAN RAI AND ANOTHER (PLAINTIFFS) AND MATA KUNWAR AND OTHERS (DEFENDANTS).*

Hindu law—Hindu widow—Suit for declaration that mortgage by widow did not affect plaintiff's reversionary rights—Plaintiff's not nearest reversioners.

Where plaintiffs sued as next reversioners for a declaration that a mortgage executed by a Hindu widow was not binding on them, and it was found that as a matter of fact even the nearest of the plaintiffs could only succeed to the estate if four males and one female died in his life-time; it was held that the plaintiffs ought not to have a decree.

THIS was an appeal under section 10 of the Letters Patent from a judgement of a single Judge of the Court. The facts of the case sufficiently appear from the judgement under appeal, which was as follows:—

“This was a suit brought by the reversioners to the estate of Ram Saran Rai, to set aside the mortgage made by his widow, Musammat Mata Kunwar, in favour of the second defendant. It has been found by the lower appellate court that Ram Saran Rai left a son, who predeceased him; that the defendant Musammat Taluqa Kunwar, who has some minor children, is his daughter, and that the defendant Mohendar Rai is Ram Saran Rai's grandson by another daughter who has died. The plaintiffs are admittedly the reversioners who would come in after the sons of Ram Saran Rai's daughters. It has been found that the mortgage in question was without justifying necessity. The court of first instance decreed the claim, but the lower appellate court has dismissed it on the ground that between the plaintiff and Musammat Mata Kunwar, who made the alienation, there intervene Taluqa Kunwar, her sons, and the defendant Mohendar Rai. It was alleged in the plaint that the persons who were next reversioners than the plaintiffs were in collusion with Musammat Mata Kunwar and the transferees from her. If this is so, the plaintiffs are entitled to

* Appeal No. 56 of 1912 under section 10 of the Letters Patent.

(1) (1878) L. R., 10 C. P. 891.