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to the Court to extend the time prescribed by that article.

It was argued, however, that the petitioner was deceived by the order of the Court. This appears to me to be of no consequence. The law is quite clear. Ten days was the proper period. That time could not be extended by the Court and it was for the plaintiff if he desired to present objections, to do so within the period prescribed by law.

The result is that this revision must fail and I dismiss the petition, but leave the parties to bear their own costs here as the point raised is a novel one.

A. N. C.

Revision dismissed.

APPELLATE CIVIL.

Before Mr. Justice Fforde and Mr. Justice Campbell.

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Jan. 18.

ISHAR DAS-DHARAM CHAND (DEFENDANTS) Appellants

versus

KHANNU MAL-GHAMMANDI LAL (PLAINTIFFS) Respondents.

Civil Appeal No. 1351 of 1922.

Contract—Goods delivered—Suit by buyer—for recovery of price paid—insufficient grounds—delay in institution of suit—Damage—burden of proof of.

The plaintiff agreed to buy, and on delivery at Karachi paid for, a shipment of five bales of piece-goods, but, having retained the goods for four months in his possession unopened, sued for recovery of the purchase price on the ground that the numbers on the bales were not those stated in the invoice and, secondly, that the goods had been booked *viâ* Bombay to Karachi instead of to Karachi direct.

Held, that the plaintiff's objections (as stated) were insufficient to entitle him to reject the goods, there being no term in the contract under which those grounds were conditions precedent to performance.

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Held further, that in the absence of evidence that the plaintiff had rejected the goods or of any notice to the defendants to that effect during the four months in question, the goods (having arrived on an appropriate date under the contract) must be deemed to have been accepted by the plaintiff and his suit for recovery of the price could not be entertained.

Held also, that as there was no evidence that the unopened bales did not contain goods of the nature, quality and description contracted for, nor proof of actual damage sustained, the suit could not be treated in the alternative as one for damages for breach of contract.

First appeal from the decree of Khawaja *Abdus Samad, Subordinate Judge, 1st class, Delhi, dated the 6th May 1922, directing the defendant to pay to the plaintiff the sum of Rs. 7,180-9-0.*

MOTI SAGAR and MEHR CHAND, MAHAJAN, for Appellants.

SARDHA RAM and BALWANT RAI, for Respondents.

JUDGMENT.

FFORDE J. FFORDE J.—By a contract in writing, dated the 27th of August, 1918, the defendants agreed to sell and the plaintiffs agreed to buy 15 bales of unbleached Japanese long cloth, 44 inches in width and 38 yards in length, described as quality No. 5151, at Rs. 28, goods to be shipped in three lots, with 60 days' grace, by February, 1919, shipment. It is conceded on both sides that by "February, 1919, shipment in three lots" is meant that the goods were to be shipped in the months of February, March and April, respectively, in lots of five bales in each shipment.

On the arrival of the first two lots the plaintiffs refused to accept them upon various grounds. The defendants then brought a suit for non-acceptance and got a decree in respect of these two consignments.

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The remaining five bales arrived on the 8th July, 1919, an appropriate date under the contract—and notice of arrival was duly sent to the plaintiffs upon that date. Some correspondence ensued and ultimately the plaintiffs took delivery of these five bales on the 3rd September, 1919. On delivery of these five bales the plaintiffs paid the agreed price. No further steps, so far as the evidence before us goes, were taken by either party to this contract until the 2nd of January, 1920, when the present suit was brought by the buyers for the recovery of the purchase price.

The case was tried by a Subordinate Judge of the 1st class, Delhi, who found in favour of the plaintiffs. The learned trial Judge took the view that the goods were not of the description contracted for inasmuch as the bale numbers, when the bales were produced in Court, did not correspond to the numbers placed upon the bales by the shippers, and on the further ground that the goods had been shipped *vid* Bombay to Karachi instead of direct to Karachi.

Mr. Moti Sagar's first objection to the decree of the learned trial Judge is that a suit for the recovery of the price of goods sold and delivered does not lie, inasmuch as the plaintiffs had accepted delivery, and, accordingly, could only sue for damages for breach of contract in the event of their being able to satisfy the Court that they had in fact sustained damages by reason of the goods not answering the description contracted for. Mr. Sardha Ram, who appears for the plaintiffs, contends that the goods were not finally accepted as his clients, after examination, definitely rejected them. But in support of this contention there is no evidence whatsoever. Mr. Sardha Ram relies upon some remarks made by Sundar Lal,

P. W. 16, in the course of his cross-examination. The statement in question is as follows:—

"When the goods were delivered, the purchasers complained that the goods were late and were purchased in the market in Bombay. Several settled and there is litigation going on with others. Gordhan, Makhan settled but cannot say how. Plaintiff also brought the same complaints. I did not write to the proprietors regarding these complaints. *Seth* Ram Ram Richpal came to Delhi and I informed him of the complaint and he said that he would himself see to it".

There is thus no evidence that, beyond making certain complaints about the mode in which these goods had been shipped, there was any rejection of the goods by the plaintiffs after they had been delivered. Though they were delivered on the 3rd of September, 1919, nothing was done by the plaintiffs—no letter was written, no notice sent—until the action was brought on the 2nd of January, 1920. The goods, therefore, remained in the plaintiffs' possession for four months, during which time they had every opportunity to examine them and ascertain whether or not they corresponded to the contract. They also had ample time in which to write a simple letter definitely stating that having examined the goods they refused to accept them. In the absence of any notice of such refusal the plaintiffs must be deemed to have accepted the goods.

I may further add, that even if it had been established that the numbers on the bales did not correspond to the numbers given in the invoice this in itself would not entitle the buyers to reject the goods. There is no term in the contract between the

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parties making it a condition precedent to the contract that the bales should bear any particular number. Similarly, the plaintiffs' contention that the goods were shipped first to Bombay, even if established by evidence, would not give them a right of rejection provided the goods were of February shipment and corresponded in quality, nature and description, to the goods contracted for. The contract merely provided that the goods should be available to the plaintiffs at the Karachi godown and they were so available. It follows that even on the plaintiffs' own case they had no right to reject the goods, and their only remedy was to sue for damages for breach of contract if they considered themselves to be in a position to prove that the goods were not in fact those which they agreed to buy.

Mr. Sardha Ram has argued in the alternative that this action should now be treated as one for damages for breach of contract. The objection to this suggestion is that there is no evidence whatsoever of any damages sustained by the plaintiffs. There is no evidence that the goods were not of the nature, quality and description contracted for. The plaintiffs did not even open the bales to see if they were the goods which they had bought. Their only contention is a purely technical one, that the numbers of the bales were not those supplied to them in the invoice, and secondly, that they were booked to Bombay instead of Karachi. The only evidence on the question of these bale numbers is that at the time, when they were produced in Court four months after they had been in possession of the plaintiffs, the bale numbers had been altered ; and so far as shipment to Bombay is concerned, it is conclusively proved that these goods were sent to Karachi and unloaded there.

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Under these circumstances it seems to me that the plaintiffs must wholly fail, and I would accordingly accept the appeal, set aside the judgment and decree of the Lower Court, and enter judgment for the defendants, dismissing the plaintiffs' suit with costs throughout.

CAMPBELL J.—I agree.

CAMPBELL J.

N. F. E.

Appeal accepted.

APPELLATE CIVIL.

Before Mr. Justice Fforde and Mr. Justice Campbell.

LABH SINGH AND OTHERS (PLAINTIFFS), Appellants

versus

Mst. MANGO AND ANOTHER (DEFENDANTS), Respondents.

1927

Jan. 4.

Civil Appeal No. 738 of 1922.

Custom—Succession—Self-acquired property—Handal—Jats—*Amritsar District—Alienation by widow to daughters—prohibition of—Suit by collaterals*—Riwaj-i-am—*entries in—value of.*

Held, that among the *Handal Jats* of the Amritsar District a special custom exists prohibiting the succession of daughters to the inheritance of their father, whether that inheritance consists of moveable or immoveable property or property acquired or ancestral.

Held further, that in view of the Judicial Committee's clear exposition of the law recorded in the case of *Beg* v. *Allah Ditta* (1), it cannot be said to be an established rule that a statement in a *Riwaj-i-am* opposed to general custom

(1) 45 P. R. 1917 (P.C.).