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COLDSTREAM J.

manner as the appellate Court has done in this case, that is to say, by increasing the fine substantially and reducing the aggregate period of imprisonment to less than the aggregate period imposed by the trial Court.

Following the authority of the last three rulings cited I hold that the Sessions Judge has not enhanced the sentence, which is legal.

The petition must accordingly be dismissed.

A. N. C.

Petition dismissed.

APPELLATE CIVIL.

Before Shadi Lal C.J. and Agha Haidar J.

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Dec. 18.

NIKKU MAL-SARDARI MAL (DEFENDANTS) Appellants

versus

GUR PARSHAD AND BROTHERS (PLAINTIFFS) Respondents.

Civil Appeal No. 929 of 1926.

Indian Contract Act, IX of 1872, section 107—Contract of sale of goods—breach by buyer—seller's right of re-sale—Delay in selling—Measure of damages.

Held, that it is a well-settled rule that on breach by the buyer of a contract for the purchase of goods, if the vendor chooses to enforce his right to re-sell, he must do so within a reasonable time from the date of the breach. If the goods are re-sold within a reasonable time after the breach of the contract by the purchaser, the measure of damages is the difference between the contract price and the price realised on the re-sale, with the costs and expenses of the re-sale. But if the re-sale has been unreasonably delayed until the market has fallen, the price realised on re-sale will not afford a true criterion of the damages, and the measure of damages will then be the difference between the

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contract price and the market price on the date of the breach of the contract.

Held also, that in the present case the delay of more than a year was wholly unreasonable.

Second appeal from the decree of Mr. S. L. Sale, District Judge, Delhi, dated the 15th January 1926, reversing that of Lala *Parshotam Lal, Subordinate Judge, 2nd Class, Delhi, dated the 25th May 1925, and granting the plaintiff a decree.*

AJIT PRASADA, for Appellants.

KISHAN DIAL, for Respondents.

The judgment of the Court was delivered by—

SHADI LAL C.J.—On the 15th January 1920, the defendants offered to purchase from the plaintiffs two packages of dyed satin at 1 *sh.* and 9½*d.* per yard. The terms of the offer were embodied in a document called indent, which contained in *Hindi* characters an entry to the effect that commission at the rate of one per cent. would be deducted from the price to be paid by the buyers. The offer was accepted by the plaintiffs on that very day, but the document containing the acceptance omitted to make a reference to the commission; and there can be no doubt that it was a mere oversight.

SHADI LAL C.J.

The two packages ordered by the defendants arrived on the 1st February 1921 and the 19th February 1921, respectively, and the plaintiffs gave intimation of the arrival of the goods to the defendants and asked them to take delivery thereof after paying the price. The latter, however, took no notice of the demand made by the plaintiffs and maintained silence.

It appears that on the 27th April 1922 the defendants eventually took delivery of the goods con-

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tained in one package, which bore the number 222, as the plaintiffs had agreed to allow them a discount of 30 per cent. on the contract price. On the 27th July 1922, the plaintiffs asked the defendants to take delivery of the second package on receiving a discount of 38 *per cent.* but the defendants made no reply to the letter containing this concession. The plaintiffs ultimately resold the goods on the 28th December 1922, by a private treaty; and have brought the present action for the recovery of the loss sustained by them.

The learned District Judge has allowed their claim, and the first question raised by Mr. Ajit Prasada for the defendants is that there was no concluded contract between the parties which could sustain the action for damages This contention rests upon the circumstance that the letter of acceptance inadvertently made no reference to the commission of one per cent. which was mentioned in the indent. It appears that all the conditions of the contract were given in the indent, and the letter of the plaintiffs conveying the acceptance was no more than a summary of the indent. In a contract of this character, the terms are usually settled verbally between the parties, and are subsequently embodied in the indent. The learned District Judge has, upon a consideration of all the circumstances, reached the conclusion that there was an unqualified acceptance of the offer, and that both the parties understood that an allowance of one per cent., variously termed as *batta* or commission, would be granted to the buyers; and we see no valid ground for differing from that conclusion.

We do not, however, think that the sellers were entitled to wait for more than a year before re-

selling the goods. It appears that the delivery of the second package was to be made in March 1921, but the resale was not effected until December 1922. The learned District Judge holds that the defendants took delivery of the first package in pursuance of the original contract made between the parties, but this finding is based upon an erroneous view of the nature of the transaction leading to that delivery. As pointed out above, the plaintiffs in April 1922, reduced the price of the goods by 30 per cent; and it was on account of this reduction that the defendants accepted delivery of the package No. 222. It was obviously a new contract and cannot be treated as the performance of a part of the original contract. Nor does the fact that the memorandum of price prepared by the Bank at the time of the delivery made a reference to the original indent in order to identify the goods alter the nature of the transaction.

We must, therefore, hold that the defendants' acceptance of one package in April 1922 did not warrant the plaintiffs to delay the resale of the second package until December, 1922. It is a well-settled rule that if the vendor chooses to enforce his right to resell, he must do so within a reasonable time from the date of the breach, and that he should not allow the value of the goods to depreciate by making undue delay in reselling them. If the goods are resold within a reasonable time after the breach of the contract by the purchaser—the measure of damages is the difference between the contract price and the price realized on the resale, with the costs and expenses of the resale But if the resale has been unreasonably delayed until the market has fallen, the price realized on resale will not afford a true criterion of the damages.

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The delay of more than a year in the present case was wholly unreasonable, and the finding of the learned District Judge, proceeding as it does upon an erroneous view of the transaction which resulted in the sale of one package in April, 1922, cannot be sustained. The measure of damages must, therefore, be the difference between the contract price and the market price on the date of the breach of the contract.

We accordingly accept the appeal and remit the case to the learned District Judge for redecision with the direction that he should assess the damages after determining the date on which the contract was broken by the defendants, and the price prevailing in the market on that date. We leave the parties to bear their own costs in this Court.

Appeal accepted.

N. F. E.