

LETTERS PATENT APPEAL.

Before Sir Ernest H. Goodman Roberts, Kt., Chief Justice, and
Mr. Justice Dunkley.

K. J. PATEL

v.

T.K.V.R.V. CHETTYAR AND ANOTHER.*

1939

Nov. 22.

Bailment—Adverse claims on bailee—Bailee's remedy of interpleader suit—Paddy sent to bailee for milling—Notice to bailee of sale of rice by bailor to third party—Property in rice—Claim by bailor on rice for price—Bailee's claim of hypothecation—Bailee's delivery of rice to bailor—Conversion—Damages.

Where the bailor of goods and a purchaser of the goods from him adversely claim the goods from the bailee, the remedy of the bailee is to file an interpleader suit against the rival claimants. If he refuses to do this and retains the goods for the bailor, he must stand or fall by the latter's title.

Wilson v. Anderton, 1. B. & Ad. 450, referred to.

Paddy was sent to the mill of the 1st respondent for milling, and when gunny bags were sent to him for the rice the 1st respondent was informed by the bailor that the rice had been sold to the appellant by the bailor and that it was to be appropriated to the contract. Thereafter the bailor gave notice to the 1st respondent that the rice was not to be delivered to the appellant on the ground that he was not paid his price. The 1st respondent set up a claim of his own that the rice was hypothecated to him for the payment of some other debts. He delivered the rice to the bailor to sell to some other person with a view to get the sale proceeds himself. The finding of the Court was that there was no substance in his claim.

Held, that the 1st respondent was liable in damages to the appellant for conversion of his goods.

P. K. Basu for the appellant.

Anklesaria for the 1st respondent.

ROBERTS, C.J.—The facts in the present appeal may be stated shortly as follows.

The appellant bought from U Toke Gyi certain rice by description and entered into a written contract for the purchase of it on the 30th April, 1938. And paddy

* Letters Patent Appeal No. 12 of 1939 from the judgment in Special Civil 2nd Appeal No. 138 of 1939 of this Court.

1939
PATEL
v.
T.K.V.R.V.
CHETTYAR.
ROBERTS,
C.J.

was brought to the mill of the first respondent by U Toke Gyi on diverse days before the 30th April and was milled between those days and the 5th May, when gunny bags were supplied for the rice so milled to be bagged : and at the time the rice was being packed into gunny bags the first respondent's agent, Arumugam Chettyar, was informed that the rice so bagged was to be appropriated unconditionally for the contract of sale by U Toke Gyi. His words are as follows :

"When Toke Gyi's paddy was milled the rice produced was bagged in the bags brought by Phutta. I did so because Toke Gyi asked me to put the rice in the bags brought by Phutta and at the time of bagging Toke Gyi told me that the rice had been sold to the Babu."

It is therefore perfectly plain that at that time the first respondent received notice of the sale and was well aware, having regard to the conditions which obtained in sales of this description, that the property in the rice, subject of course to the rights of the unpaid vendor to lien so long as he actually remained unpaid, had vested in the purchaser, the appellant.

On the 7th of May, we are informed (and it is not contradicted), the rice was all in the bags and was in a deliverable state and the price was, as has been found as a fact, actually paid on the 8th of May. Prior, however, to the demand of the appellant from the first respondent of the rice which had been appropriated to the contract of sale, the first respondent received a letter from U Toke Gyi saying that the price had not yet been paid. And therefore the position then was that the first respondent had had notice of the sale, but realized that adverse claims might be made to the rice by U Toke Gyi upon the one hand and the parties who were the purchasers of it upon the other. At that stage his obvious way of protecting himself was by interpleader

action. But he chose to take the risk of not following this course by reason of his desire to bring forward a claim that the rice in question had been hypothecated to him for the payment of other debts. It has been found as a fact by the learned Judge in second appeal—and we are bound by his finding—that there was no substance in that claim, and the first respondent having staked all upon making it and neglected to interplead, is now in the position which has been succinctly described by Lord Tenterden in the old case of *Wilson and others v. Anderton* (1). Lord Tenterden said :

1939
 PATEL
 v.
 T.K.V.R.V.
 CHETTYAR.
 ROBERTS,
 C.J.

“A bailee can never be in a better situation than the bailor. If the bailor has no title, the bailee can have none, for the bailor can give no better title than he has. The right to the property may, therefore, be tried in an action against the bailee, and a refusal like that stated in the case has always been considered evidence of a conversion. The situation of a bailee is not one without remedy. He is not bound to ascertain who has the right. He may file a bill of interpleader in a Court of Equity. But a bailee who forbears to adopt that mode of proceeding, and makes himself a party by retaining the goods for the bailor, must stand or fall by his title.”

There is, of course, no question, as Mr. Anklesaria has said, as to the original title of the bailor in the paddy taken to the mill, but the question of title arose as soon as U Toke Gyi had informed the first respondent of the sale which had taken place and had disclosed circumstances which would divest him of the title and put the bailment at an end.

The contention of Mr. Basu is, we think, well founded. What is abundantly clear is that the miller, faced with the difficulty of not knowing whether to believe U Toke Gyi or not, was at least not justified in

(1) 1 B. & Ad. 450.

1939
 PATEL
 v.
 T.K.V.R.V.
 CHETTYAR.
 ROBERTS,
 C.J.

re-delivering the rice to him in such circumstances that he might sell the same to a quite different party and that the first respondent should put the proceeds of that sale in his own pocket by reason of some claim which he had against U Toke Gyi. He had notice of the sale and of the purchaser's title, and not having chosen to adopt the precautions which were open to him, in my opinion he is liable in damages for what he has done.

Accordingly, the appeal must be allowed and the judgment of the District Court must be restored, costs here and in the Courts below, advocate's fee in this Court twelve gold mohurs.

DUNKLEY, J.—I agree.

The first respondent himself admitted that he had notice of the sale of this particular rice to the appellant on the 5th May, and on that date the rice was appropriated to the contract of the 30th April. Consequently, on that date, under the provisions of section 23 of the Sale of Goods Act, the property in this rice passed to the appellant and he became the owner of the rice. It is quite immaterial to this question whether the price of the rice due under the contract had been paid by the appellant to U Toke Gyi or not.

On the 8th May U Toke Gyi sent a notice to the first respondent requiring him not to deliver the rice to any person, on the ground that the price thereof had not been paid. U Toke Gyi never said that he had not sold the rice to the appellant. He merely said that he had not been paid therefor. Consequently, all that U Toke Gyi was setting up was that he had a vendor's lien. It may be that in consequence of this the first respondent would have been entitled to retain

possession of the rice and to refuse to deliver it to the appellant ; as to that I am not prepared to express an opinion. But the first respondent was certainly not entitled to do what he in actual fact did, and that was to deliver the rice which belonged to the appellant to U Toke Gyi, with the knowledge that U Toke Gyi was going to sell it to some other person and that ultimately the sale proceeds would find their way into his (first respondent's) hands. That was clearly a conversion and, consequently, the first respondent is responsible to the appellant for the damages which he sustained owing to his rice being sold to another person.

1939PATEL

v.

T.K.V.R.V.
CHETTYAR.DUNKLEY, J.