APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Parsons.

1896. *February* 4.

TRIKAMLAL JAMNADAS (ORIGINAL DEFENDANT), APPLICANT, *v.* KALIDAS DALPATRAM (ORIGINAL PLAINTIFF), OPPONENT.*

Contract—Sale of goods—Contract to supply goods at fixed price—Duty imposed on material subsequently to date of contract—Liability to supply goods—Indian Tariff Act (VIII of 1894), Sec. 10(1).

On 2nd November, 1894, the defendant contracted to supply the plaintiff with a certain quantity of dhotars made of European or Egyptian yarn No. 80 at the rate of 225 pairs each month for a period of one year. In January, 1895, an import duty of five per cent. was imposed by Government on the yarn. The defendant thereupon declined to supply the dhotars unless the plaintiff paid the duty in addition to the contract price.

Held that under section 10 of Act VIII of 1894 the defendant could call on the plaintiff to pay the duty which he had paid on the yarn, that is, he could add so much to the contract price as would be equivalent to the duty which he himself had paid. The question was whether the dhotars supplied to the plaintiff were actually made out of yarn on which duty had been paid by the defendant.

APPLICATION under section 25 of the Provincial Small Cause Courts Act (IX of 1887) against the order of Rao Bahádur Krishnamukhram A. Mehta, Judge of the Court of Small Causes at Ahmedabad.

On the 2nd November, 1894, the plaintiff and the defendant entered into a contract, under which the defendant agreed to supply to the plaintiff dhotars for one year at the rate of 225 pairs per month. The dhotars were to be made of European or Egyptian yarn woven in the defendant's mill.

In January, 1895, an import duty of five per cent. was levied on the yarn under article 44, Schedule IV, of the Indian Tariff

* Application under Extraordinary Jurisdiction, No. 216 of 1895.

(1) Section 10, Act VIII of 1894:—"In the event of any duty of customs or excise on any article being imposed, increased or decreased or remitted after the making of any contract for the sale of such article without stipulation as to the payment of duty where duty was not chargeable at the time of the making the contract, or for the sale of such article duty-paid where duty was chargeable at that time,—

"(*a*) If such imposition or increase so takes effect that the duty or increased duty, as the case may be, is paid, the seller may add so much to the contract price as will be equivalent to the duty or increase of duty and he shall be entitled to be paid and to sue for and recover such addition, and

"(*b*) If such decrease or remission so takes effect that the decreased duty only or no duty, as the case may be, is paid, the purchaser may deduct so much from the contract price as will be equivalent to the decrease of duty or remitted duty, and he shall not be liable to pay or be sued for or in respect of such deduction."

Act (VIII of 1894) as amended by the Cotton Duties Act (XVI of 1894). The defendant thereupon declined to supply dhotars unless the plaintiff paid an increased price. The plaintiff then brought this suit for Rs. 300, damages for breach of contract, alleging that for the four months from 2nd November, 1894, till the 2nd March, 1895, the defendant ought to have supplied 900 dhotars, but had only supplied 167 during that period.

The Judge found the defendant had committed a breach of the contract and was liable for damages. He, therefore, passed a decree in plaintiff's favour for Rs. 256-2-0. The following is an extract from his judgment :—

"The defendant admits in his deposition that on the date of the agreement with the plaintiff he had with him 1,000 lbs. of such yarn in his possession and that he ordered out 4,000 lbs. more for preparing the dhoties in his mill. He further stated that these 4,000 lbs. of yarn would be sufficient to prepare three thousand pairs of dhoties. At that rate the 1,000 lbs. of yarn were quite sufficient for 750 pairs. The plaintiff's pleader has examined the defendant's account and has found out that 1,948 lbs. of such yarn was received by the defendant before the date of plaintiff's agreement, and defendant's pleader admits this. It would thus appear that the defendant had with him sufficient quantity of European or Egyptian yarn for 1,500 pairs of dhoties on which he had to pay no duty. During the first four months of the contract the defendant had to supply to the plaintiff 900 pairs only, whilst he had yarn sufficient for 1,500 pairs, yarn for which no duty was paid. The plaintiff, therefore, is not liable to any duty so far as this claim is concerned.

"Supposing, however, that the defendant had had to pay an import duty on all the yarn that was required for the preparation of the dhoties agreed to be given to the plaintiff, still the plaintiff cannot be liable for that. The defendant's pleader relies on section 10 of the Tariff Act[1]. Here the contract was for the sale of dhoties and not for the sale of yarn. The article contracted to be sold was dhoty and not yarn, whilst the duty was leviable on yarn. The schedule does distinguish the yarn from the piece-goods, and I do not think the defendant can claim to recover from the plaintiff any duty that he might have to pay for the yarn."

The defendant applied to the High Court under the extraordinary jurisdiction, contending that the plaintiff was liable for the duty; that there was no understanding that the yarn in stock was to be used in manufacturing the dhotars to be supplied to the plaintiff; that the defendant was not bound at once to buy in at the date of the contract all yarn required for the plaintiff's dhotars, and that the defendant was entitled to buy in from time to time such yarn as might be required for the said dhotars. A

[1] See *ante*, p. 628.

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rule nisi was issued calling on the plaintiff to show cause why the decree should not be set aside.

Chimanlal H. Setalvad appeared for the applicant (defendant) in support of the rule.

Manekshah J. Taleyarkhan appeared for the opponent (plaintiff) to show cause.

FARRAN, C. J.:—The subject of the contract was Egyptian yarn made up into dhotars. Upon this article a duty was imposed by Act XVI of 1894, Schedule IV, article 44. Section 10, therefore, of Act VIII of 1894 would apply, and the applicant could call on the opponent to pay the duty paid, that is, he could add so much to the contract price as would be equivalent to the duty he had paid. We think that the lower Court has not properly considered the latter point. The question is not whether the applicant had yarn in stock out of which the dhotars could have been made, but whether the dhotars were actually made out of that yarn or out of yarn on which duty had been paid by the applicant. It is only in the last case that he could ask for an increased price.

We make absolute the rule, reverse the decree, and remand the case for a fresh trial with reference to the above remarks. Costs to be costs in the cause.

Rule made absolute.

APPELLATE CIVIL.

Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Parsons.

1896. *February* 5.

THE SURAT CITY MUNICIPALITY (ORIGINAL DEFENDANT), APPELLANT, *v.* OCHHAVARAM JAMNADAS (ORIGINAL PLAINTIFF), RESPONDENT.*

Municipality—District Municipal Act (Bombay Act VI of 1873), *Sec.* 21, *Cls.* 1 *and* 2—*Amendment Act (Bombay Act II of* 1884), *Sec.* 27, *Cl.* 7, *and Sec.* 32—*Tax imposed by Municipality.*

In 1891 the Municipality of Surat appointed a Committee to revise the taxation of the city, proposing to reduce some of the existing taxes and impose others with a view (*inter alia*) of obtaining a better water-supply for the city. A scheme of taxation drafted by the Committee was subsequently adopted by the Municipality, and it included a new house and property tax. The Municipality then issued a notice with regard to this last mentioned tax under the provisions of section 21 of Act VI of 1873 setting forth

* Appeal, No. 145 of 1895.