(2) that it might interfere with the duty of the Court to maintain the Receiver's possession. Neither of these considerations affects the jurisdiction of the Court. They are matters which the Court can deal with after the suit is filed; and the Court could order the suit to be stayed until it was satisfied that there was no encroachment upon its authority, nor attempt to interfere with the Receiver's possession.

Therefore it seems clear that leave may be granted after the filing of the suit, and Mr. Desai with his customary fairness does not dispute this proposition.

Accordingly, I make the summons absolute but direct that plaintiff pay the costs of the summons. Counsel certified.

Solicitors for the plaintiff: Messrs. *Unwalla Pherojshaw & Pappa.*

Solicitors for defendants Nos. 1 and 2: Messrs. *Payne & Co.*

Summons made absolute.

G. G. N.

ORIGINAL CIVIL.

Before Mr. Justice Heaton and Mr. Justice Marten.

HARNANDRAI FULCHAND, APPELLANTS AND PLAINTIFFS *v.* PRAGDAS BUDHSEN, RESPONDENTS AND DEFENDANTS.*

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November 17.

Contract—Sale and purchase of goods to be manufactured by a Mill—Vendor agreeing to give delivery as and when the goods are received from the Mill—Contract conditional and not absolute—Vendor not bound to deliver goods on failure of the Mill to supply goods—No implied warranty that the Mill would manufacture and supply goods—Implied condition that the Mill would supply goods—Condition failing both parties released from contract—Buyer not entitled to damages.

* Appeal No. 52 of 1919: Suit No. 273 of 1919.

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On the 26th November 1917, the plaintiffs entered into a contract with the defendants for the purchase of 864 bales of Dhoties manufactured by a particular Mill. The contract which was in Gujarati provided: "Delivery by the 31st December 1918. Goods to be manufactured (*bunto*) are sold. The same are to be taken delivery of as and when the same may be received from the Mill". The plaintiffs obtained delivery of 360 bales only from the defendants who failed to deliver the balance of 504 bales. The plaintiffs accordingly sued to recover Rs. 70,216-12-9 as damages, contending that the contract was absolute and that the defendants had committed a breach in not supplying the full number of bales contracted for. The defendants pleaded that the contract was conditional, the condition being that the goods were to be delivered to the plaintiffs if they were supplied by the Mill and not otherwise. The defendants also submitted that they had done everything in their power to get delivery of the remaining bales from the Mill, but the Mill failed to supply the same to the defendants. The trial Court held that the contract was not absolute but conditional only and that the plaintiffs were not entitled to claim damages except with regard to 23 bales which the defendants in the circumstances of the case were bound to deliver to the plaintiffs. The plaintiffs were accordingly awarded Rs. 2,875 as damages, but the rest of their claim was disallowed. The plaintiffs appealed:—

Held, by *Heaton J.*, confirming the decision of the trial Court, that the basis or the foundation of the contract was the anticipation common to both the parties to the contract that the Mill would supply the goods to be manufactured to the vendor, and that if that anticipation was disappointed the foundation of the contract disappeared and neither party had any claim against the other for damages.

Held, by *Marten J.*, concurring, that on the true construction of the contract the vendor did not warrant the manufacture and supply by the Mill of the goods in question, but that there was an implied condition that the goods were to be manufactured and supplied by the Mill; and that if that condition was not fulfilled both parties were released *quoad* those unmanufactured goods.

Taylor v. *Caldwell*[1]; *F. A. Tamplin Steamship Company, Limited* v. *Anglo-Mexican Petroleum Products Company*[2] and *Tribhovandas* v. *Nagindas*[3], referred to.

APPEAL from the decision of Macleod C. J. in a commercial cause, substantially disallowing the plaintiffs' claim for damages for breach of contract.

(1) (1863) 3 B. & S. 826; 122 Eng. Rep. 309.

(2) [1916] 2 A. C. 397.

(3) (1919) 21 Bom. L. R. 1137.

The plaintiffs and the defendants were firms in Bombay carrying or business as merchants and commission agents in cloth and cotton.

On the 26th of November 1917, the defendants agreed to sell to the plaintiffs 864 bales of Dhoties of various numbers, lengths and widths manufactured by the Bradbury Mills in Bombay. The material portion of the agreement signed by the plaintiffs and handed over to the defendants was as follows :—

Bales 864 in words eight hundred and sixty-four. If 5 or 10 bales are received more or less, no objection is to be raised. "Sahi" (allowance) Re. 1 one per bale. (The goods) under manufacture are sold. The same are to be taken delivery of as and when the same may be received from the Mills. (Delivery) is to be caused to be given in full by the 31st of December in the year 1918. If you delay taking delivery, interest, insurance (charges) and go-down rents will be charged according to the Bazar Practice.

The defendants allowed the plaintiffs to keep with them what purported to be a counterpart which ran as follows :—

Bales 864 bales in words eight hundred and sixty-four. No objection should be taken if 5 or 10 bales less or more are given. Sahi (allowance) Re. 1, i.e., one Rupee per bale.

Delivery by the 31st of December in the year 1918. Bales (goods) to be manufactured are sold. The same are to be taken delivery of as and when the same may be received from the Mills. If you delay taking delivery, interest, insurance (charges) and go-down rent will be charged according to the Bazar Practice.

The defendants delivered to the plaintiffs 360 bales only out of the said 864 bales.

The plaintiffs alleged that from time to time they pressed the defendants to expedite delivery of the balance of 504 bales, but the defendants faild to do so, and that by reason of the breach of the said contract by the defendants the plaintiffs sustained loss and damage amounting to Rs. 70,216-12-9. The plaintiffs

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claimed that amount with interest and costs from the defendants.

The defendants contended in paras. 2, 3 and 4 of their written statement that they were under no obligation to deliver any goods to the plaintiffs save what the defendants received from the Mills by the 31st December 1918; that if the plaintiffs believed or intended that the defendants should be under any such obligation, the parties were not *ad idem* and no contract was formed between them; that they in fact did their best to get delivery of the full quantity of goods from the Mills, but in spite of their endeavours they were unable to get delivery of more than 360 bales by the 31st December; that they had not committed any breach of the contract; and that the plaintiffs did not sustain any loss as they could have purchased in Bombay on 1st January 1919 goods of practically the same quality as those referred to in the agreement at a price equal to or lower than that they had agreed to pay.

Macleod, C. J., before whom the suit was tried as a commercial cause held that the contract between the parties was not absolute but conditional only, the words of the contract admitting of only one construction, viz., that if the seller did not get the goods from the Mills he could not give delivery to the buyer. The learned Chief Justice further held that the defendants had done everything in their power to get the goods which they contracted to sell to the plaintiffs from the Mills. His Lordship, however, awarded Rs. 2,875 as damages to the plaintiffs on the ground that the defendants ought to have supplied twenty-three bales more to the plaintiffs, that being the proportionate share to which they were entitled on a proper distribution being made by the defendants among the several purchasers after receiving goods from the Mill. The rest of the

plaintiffs' claim was disallowed. His Lordship delivered the following judgment :—

MACLEOD, C. J. :—On the 26th November 1917, the plaintiffs entered into a contract with the defendants for the purchase of 864 bales of Dhoties of the Bradbury Mills of various numbers, length and width. The plaintiffs signed the contract and a counterpart was kept by them. The contract signed by the plaintiffs states as follows :—

"(The goods) under manufacture are sold. The same are to be taken delivery of as and when the same may be received from the mill. (Delivery) is to be completed on or before the 31st December in the year 1918. If you delay taking delivery, interest, insurance charges and godown rent will be charged according to the bazar practice."

The counterpart runs as follows :—

"Delivery by the 31st December in the year 1918. (Goods) to be manufactured are sold. The same are to be taken delivery of as and when the same may be received from the Mills. If you delay taking delivery, interest, insurance (charges) and go-down rent will be charged according to the Bazar Practice."

There may be a little difference in the words but the terms of these two documents are in effect the same. It is urged by the plaintiffs that this is an absolute contract for the sale of 864 bales which had to be delivered by the defendants up to the 31st December 1918 whether as a matter of fact they were manufactured by the Mills or not. On the other hand the defendants say that it is a conditional contract and if they can show that they contracted with the Mills for the purchase of these bales and did everything in their power to get delivery of these bales and failed to get delivery owing to the default of the Mills, then they are under no obligation to deliver to the plaintiffs any more of the bales than those of which they actually got delivery. The words are very similar to those in another contract I had to construe in a recent case with reference to goods to arrive from Europe, and to me it is perfectly clear that this contract is conditional.

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It is open to the parties to contract absolutely and it is open to the defendants to bind themselves to deliver the goods whether they got them or not. But it is difficult to suppose that any prudent man contracting for delivery of goods to be manufactured at the date of the contract in the future by a third party would contract to sell those goods absolutely. In my opinion the words in this contract admit of only one possible construction. The goods are stated to be under manufacture and delivery is to be taken by the purchasers as and when they are received from the Mills. It follows that if the seller does not get the goods from the Mills he cannot possibly give delivery, and it would require very plain words in the contract to bind him to pay damages to his purchaser on account of non-delivery if he had done everything in his power to get the goods.

It was urged by Sir Chimanlal that the defendants might be able under the terms of their contract with the Mills to get damages for the default of the mills in delivering the goods and that it would seem inequitable that the defendants might get damages from the mills and yet be exempt from performing their contract with the plaintiffs. That is a matter which is quite irrelevant to the issue I have to decide. I have only to decide what was the contract between the plaintiffs and the defendants. They could contract in any way they chose. The plaintiffs have nothing whatever to do with the terms on which the defendants have contracted with the mills. Supposing the defendants had bought unconditionally and themselves sold conditionally they could not be likely to admit that they could not recover damages from their seller because they had not to pay damages themselves.

In my opinion, therefore, the defendants will succeed if they can show that they have done everything in

their power to get the goods which they contracted to sell to the plaintiffs from the mills. Therefore, their contract with the mills which Sir Chimanlal argued was relevant is in my opinion clearly irrelevant to the question I have to try.

It has now been proved that the defendants got delivery from the mills of 401 bales. They delivered to their other purchasers in full. If they had delivered the proper proportion to each purchaser as they got the bales from the mills, the plaintiffs would have got 23 bales more. Therefore, there was a breach of contract as regards 23 bales. I take the difference on the 31st of December to be annas four pies six. That comes roughly to Rs. 2,875 for the 23 bales. Mr. Desai argued that the defendants had not proved that they had done everything they could to get the contract goods from the mills. But I cannot see that there was any default on the part of the defendants. Delivery under the contracts went on in a normal fashion until April 1918 when the mills employed over 300 looms on Government work. Whether the defendants could have sued the mills for breach of contract is a question which I do not think is relevant in this case. The defendants asked for delivery and were told that the looms were engaged on Government work and the Weaving Master has shown that the remaining looms could not be employed in weaving Dhoties of the contract description. The defendants, therefore, were in default and they will only have to pay damages to the plaintiffs on 23 bales which I have already fixed at Rs. 2,875.

As to costs, I think the fairest order to make is that there will be no order as to costs. The costs payable by the plaintiffs would be found on an examination to correspond roughly with the costs payable by the defendants.

The plaintiffs appealed.

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Jinnah and *Desai*, for the appellants.

Kanga and *Campbell*, for the respondents.

HEATON, J. :—In this case the plaintiffs sued to recover damages for the breach of a contract. The contract was an undertaking by the defendants to supply a certain number of bales of Dhoties manufactured by the Bradbury Mills on or before the 31st December of the year 1918. The defendants supplied a certain number but they did not supply the number contracted for. The plaintiffs, therefore, sued for damages for failure of the defendants to supply the full number.

The trial Court gave them a certain amount of damages on the ground that the defendants had failed to supply a certain number of bales which they ought to have supplied ; but it refused a part of the damages claimed on the ground that in the circumstances of the case the contract was not to be interpreted as an absolute undertaking to supply the whole number contracted for.

On this the plaintiffs have appealed and they claim the full amount of the damages which they claimed in their plaint. They say the contract was an absolute contract to sell them the goods described.

The defendants, who are respondents, maintain that it became or was a conditional contract.

The appeal turns really on that point. If the contract was conditional, as the defendants maintain, the decree of the trial Court is correct. If it was an absolute contract, as the appellants maintain, then they are entitled to the full amount of damages.

The contract is in writing. It sets out all the details ; the number of bales and so forth ; and then it proceeds to say :

"The goods under manufacture are sold. The same are to be taken delivery of as and when the same may be received from the Mills. Delivery

is to be caused to be given in full by the 31st of December in the year 1918."

The question really resolves itself into this: Was this a contract by which the defendants undertook to supply the goods whether they received them from the Mills or not, or was it a contract which both the parties to it understood was based on the assumption that the goods would be supplied by the Mills, the foundation of the contract being that the goods if supplied by the Mills were to be delivered by the defendants to the plaintiffs? The trial Court has taken the latter view. There is no doubt that the goods sold were goods to be manufactured or in process of being manufactured by the Bradbury Mills, a mill in Bombay. This is not the case of a vendor who undertakes absolutely to supply goods which he will obtain somehow or somewhere in the open market. It is a contract to supply goods of a particular kind which he has to obtain from a particular mill.

Now, one way of looking at the case is to ask oneself whether it was probable that a business man would absolutely contract to deliver these goods of a particular kind made by a particular Mill whether he could obtain them from the mill or not. Looked at from that point of view, I think the probabilities are that a sensible business man would not undertake to deliver goods of that kind whether he was able to obtain them from the mill or not. That way of looking at the case inclines one to the view taken by the trial Judge.

Another way of looking at it is to take the words of the contract themselves and see how the subject-matter of the contract is described. The word used to describe the goods is the word "*bunto*" which may be translated in a variety of ways; but it is admitted that it means "goods that have not yet at any rate fully come

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into existence," "goods that remain to be manufactured or which are only partly manufactured". That is what is the subject-matter of this contract. The underlying idea, seeing that the goods are so described, is quite clearly to my mind this : that the goods sold are goods which the vendor will receive from the Bradbury Mills. And I should describe the basis or foundation of the contract as the anticipation—an anticipation common to both the parties to the contract—that the Mills would supply the goods to the vendor. So regarded, it follows that if the goods are not supplied to the vendor, the foundation of the contract disappears. Neither party, therefore, has any claim against the other for damages.

I may mention here that it was not argued in appeal that the plaintiffs had any claim against the defendants on account of negligence. Their claim in appeal was not based on an allegation that the defendants, had they been more active or more careful, could have obtained more goods from the Mills than they did obtain. The finding of the lower Court was that the defendants were not in default in that particular. That is to say, they had obtained from the Mills such goods as they could reasonably obtain and their failure to deliver the goods to the plaintiffs was due to the fact that the Mills had not supplied them to the vendors, the defendants ; and that conclusion was not attacked by counsel who appeared for the appellants in his opening address.

Now, having arrived at this conclusion, as a matter of fact it seems to me that on that set of facts the law is comparatively simple. We have been referred to a number of cases and they take us back to an early case, that of *Taylor* v. *Caldwell*[1]. The judgment in that

[1] (1863) 3 B. & S. 826.

case deals as a matter of principle with the question of implied conditions, and contingent as contrasted with absolute contracts. In the judgment there occur these words :

"In none of these cases (i.e., certain cases which had been referred to) is the promise in words other than positive, nor is there any express stipulation that the destruction of the person or thing shall excuse the performance : but that excuse is by law implied, because from the nature of the contract it is apparent that the parties contracted on the basis of the continued existence of the particular person or chattel. In the present case, looking at the whole contract, we find that the parties contracted on the basis of the continued existence of the Music Hall at the time when the concerts were to be given ; that being essential to their performance."

That case dealt with a contract which could not be performed because a Music Hall had been destroyed by fire. The underlying idea, however, is that if the basis or foundation of the contract has disappeared neither party can claim performance from the other. And this principle has been re-stated in very much those words in a number of later cases. I think I cannot do better than quote another sentence from the same case of *Taylor* v. *Caldwell*[1] :

"There seems little doubt that this implication tends to further the great object of making the legal construction such as to fulfil the intention of those who entered into the contract. For in the course of affairs men in making such contracts in general would, if it were brought to their minds, say that there should be such a condition."

I do not myself doubt for a moment that business men in Bombay, if they were called upon to express an opinion on this particular contract with which we are dealing, would say that the contract is based on the anticipation that the Mills would deliver the goods to the vendors; and that, if the anticipation was disappointed, the vendors were not bound to give the goods to the purchasers.

[1] (1863) 3 B. & S. 826.

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I think, therefore, that the decision of the trial Court is correct and that the appeal should be dismissed with costs.

The cross-objections have not been pressed, and they also should be dismissed with costs.

MARTEN, J. :—The question in this appeal is whether the suit contract was an absolute contract of sale by the defendants, or whether it was contingent on the goods in question being manufactured and supplied by the Mills. The more material words are : "Delivery by the 31st December 1918. Goods to be manufactured (*bunto*) are sold. The same are to be taken delivery of as and when the same may be received from the Mills. Another translation of the word "*bunto*" is "goods under manufacture". The parties themselves have not expressly provided for the event which has happened, viz., non-manufacture by the Mills of the greater portion of the goods.

Now, dealing with the matter generally as to what one would expect from reasonable business men, the learned trial Judge says :—

"But it is difficult to suppose that any prudent man contracting for the delivery of goods to be manufactured at the date of the contract in the future by a third party would contract to sell those goods absolutely."

And when one considers the nature of the contract which the defendants had with the Mills, one finds that it was not an absolute but a determinable contract. Under clause 4 of their contract, (Exhibit 1), the Mills were entitled to cancel the contract or the remaining portion if the Mills met with any accident or obstruction or if for any other reason the Mills could not give in full the goods mentioned in the contract or any portion thereof, and in that event the defendants were not to get any compensation whatever. Then, there was another clause that in the case of strike, stoppage

of machinery, or such unforeseen circumstance (*sic*) the Mills did not undertake to give regular deliveries in terms of the contract.

Now, that being so, why should the defendants, who had not got an absolute contract themselves, contract to sell the goods absolutely? On the other hand, from the purchaser's point of view, and for the matter of that from the vendors' too, the third parties who were to manufacture the goods were well-known Mills in Bombay. Both parties might, therefore, reasonably consider that the Mills would carry out their obligations honourably, and that if those obligations were not carried out it would be for some good and valid reason and not from any improper motive, and that accordingly a conditional contract would be fair to both the plaintiffs and defendants. Further, the mill contract, (Exhibit 1), is mainly a printed form. There is not any direct evidence that the plaintiffs were familiar with it, but I think it a reasonable inference under section 114 of the Indian Evidence Act that large buyers like the plaintiffs of 864 bales would know the usual selling conditions of the Mills, or at any rate know that the Mills did not guarantee delivery in all events. The probabilities, therefore, seem to me that the parties to the suit contract would contract on the basis of its being conditional on the manufacture of the goods, and not on the basis that the vendor would warrant the manufacture by the Mills. I think this particularly applies in time of war with its numerous uncertainties, and, as regards this, there may be noticed the very long time for delivery which was allowed in the suit contract.

But we must decide this case not on probabilities, but on the contract the parties have actually entered into, for it was open to them to contract as they pleased. Before I pass on, there are some words in the

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contract which perhaps I should notice here. Exhibit 3 and Exhibit B are different translations of the same contract, viz., that handed by the defendants as vendors to the plaintiffs as purchasers. The words are: "Delivery is to be caused to be given in full by the 31st of December" in Exhibit 2 and "Delivery is to be completed on or before the 31st December" in Exhibit B. Then in the counterpart, Exhibit A, signed by the plaintiffs the words are: "Delivery by the 31st of December." Now, standing by themselves, there may be different shades of meaning between the words "delivery to be caused to be given in full by..." and "delivery is to be completed on or before..." and "delivery by...", but I think these words have to be read with the rest of the contract. That being so, their meaning is "delivery of goods which are to be manufactured or are under manufacture."

Now taking the words "goods to be manufactured" they indicate that the parties are dealing with something which is to be brought into existence in the future by a third party. That seems to me more consistent with the contract being conditional on that expectation being realised, rather than on one party warranting it shall be realised. Similarly, the expression "goods under manufacture" implies that the goods are not yet manufactured—at any rate wholly. So, too, the stipulation that the goods are to be taken delivery of "as and when the same may be received from the Mills" would rather point to the contract being conditional on that receipt.

We have been referred to no authority either in the Contract Act or in any decided case which is precisely in point on the facts; but I think useful analogies may be drawn from other typical cases. One class of case is referred to by the learned trial Judge, viz., the "goods

to arrive" cases, which were dealt with by this Court quite recently in *Tribhovandas* v. *Nagindas*[1]. I will not repeat what is said there by my learned brother and myself; but the authorities there cited tend to show that speaking generally in the case of goods to arrive from a third party there is no warranty implied by the vendor that the goods will arrive: see Halsbury's Laws of England, Vol. XXV, p. 144, note (*y*) and Benjamin on Sale, 5th Edn., p. 586. Why, then, in the case of goods to be manufactured by a third party, should there be a warranty by the vendor that the goods will be manufactured?

Then we were referred to *Taylor* v. *Caldwell*[2] which was frequently cited in the Coronation Procession cases. As regards that case Vaughan Williams L. J. in *Krell* v. *Henry*[3] says at p. 754:

"It is not essential to the application of the principle of *Taylor* v. *Caldwell*[2] that the direct subject of the contract should perish or fail to be in existence at the date of performance of the contract. It is sufficient if a state of things or condition expressed in the contract and essential to its performance perishes or fails to be in existence at that time."

In the present case I think any body would say that the existence of the "manufactured goods" was essential to the performance of the suit contract.

Then in *F. A. Tamplin Steamship Company, Limited* v. *Anglo-Mexican Petroleum Products Company, Limited*[4] Lord Loreburn dealt with the case of *Horlock* v. *Beal*[5] in which *Taylor* v. *Caldwell*[2] was cited with approval, and he says at p. 403:

"An examination of those decisions confirms me in the view that, when our Courts have held innocent contracting parties absolved from further performance of their promises, it has been upon the ground that there was an

(1) (1919) 21 Bom. L. R. 1137.
(2) (1863) 3 B. & S. 826; 122 Eng. Rep. 309.
(3) [1903] 2 K. B. 740 at 754.
(4) [1916] 2 A. C. 397 at p. 403.
(5) [1916] 1 A. C. 486.

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implied term in the contract which entitled them to be absolved. Sometimes it is put that performance has become impossible and that the party concerned did not promise to perform an impossibility. Sometimes it is put that the parties contemplated a certain state of things which fell out otherwise. In most of the cases it is said that there was an implied condition in the contract which operated to release the parties from performing it, and in all of them I think that was at bottom the principle upon which the Court proceeded. It is in my opinion the true principle, for no Court has an absolving power, but it can infer from the nature of the contract and the surrounding circumstances that a condition which is not expressed was a foundation on which the parties contracted."

Lower down he says :

"That seems to me another way of saying that from the nature of the contract it cannot be supposed the parties, as reasonable men, intended it to be binding on them under such altered conditions. Were the altered conditions such that, had they thought of them, they would have taken their chance of them, or such that as sensible men they would have said 'if that happens, of course, it is all over between us'? What, in fact, was the true meaning of the contract? Since the parties have not provided for the contingency, ought a Court to say it is obvious they would have treated the thing as at an end?"

If it is necessary so to do, I think one may fairly imply a condition here that the goods were to be manufactured and supplied by the Mills : and that if that condition was not fulfilled, both parties were to be released *quoad* those unmanufactured goods.

It is argued for the plaintiffs that the only object of stating that the goods were to be manufactured was to distinguish them from ready goods, and to entitle the vendor to deliver the goods by instalments as received from the Mills, which but for this stipulation he would not be entitled to do. This may have been one object, but in my opinion it was not the only object. This still leaves one with this, viz., that both parties contemplated that the goods would be received from the Mills—an event which in fact did not happen. There is, therefore, some resemblance between the present case and *Howell* v. *Coupland*[a] where both parties

[a] (1876) 1 Q. B. D. 258 at p. 262.

anticipated that a crop of potatoes would be grown on defendant's land, but in fact most of it perished from disease without default on the part of the defendant. There the defendant was held excused by reason of his being prevented by causes for which he was not answerable (per James L. J. at p. 262).

In the result, I am of opinion that on the true construction of the suit contract, and having regard to the surrounding circumstances, the vendor did not warrant the manufacture and supply by the Mills of the goods in question, and that accordingly the decision of the Court below is correct.

I should add that there is no question here of the vendor being in default with the Mills, or having put it out of his power to give delivery of the suit goods. It is unnecessary, therefore, to consider whether an obligation on his part should be implied not at any rate wilfully to prevent fulfilment of the suit contract: see *Hamlyn & Co.* v. *Wood & Co.*[1]. We are not dealing with the case of a dishonest vendor who deliberately breaks his contract with the Mills. If any body is in default it is the Mills and not the vendor. But the fact appears to be that the Mills could not give delivery, because a large proportion of their looms were engaged on Government contracts.

Accordingly, I agree that the appeal should be dismissed and that the cross-objections should be dismissed, in both cases with costs.

Solicitors for the appellants: Messrs. *Malvi, Mody, Ranchhoddas & Co.*

Solicitors for the respondents: Messrs. *Wacha & Co.*

Appeal dismissed.

G. G. N.

[1] [1891] 2 Q. B. 488.