

KHUDA BAKSH v. KING-EMPEROR.

1923.

*Majid*, appeared for the petitioner, and was stopped in his argument.

RUSTOM  
v.  
KING-  
EMPEROR.

*Kenworthy Brown*, for the Crown.

1924.

LORD BUCKMASTER :—That has nothing to do with the ground on which we proceed.

TABA SINGH  
v.  
KING-  
EMPEROR.

*Majid* :—If your Lordships take that view it would be impossible for me to argue it.

LORD BUCKMASTER :—I take that view, and on behalf of the Board I assert it now, in order that it may not be thought that the Board will depart from its principles, that we deprecate the presentation of such a petition as this and the last one we have just heard.

I desire to repeat with emphasis the statements I made just now, and to regret greatly that the necessities and troubles of the relations and friends of a man under sentence in India should be used by careless or ignorant legal practitioners for the purpose of extorting from them money for a hopeless appeal.

*Leave refused.*

K. McI. K.

---

PRIVY COUNCIL.

---

RAMJIWAN NIVETIA (DEPENDANT), APPELLANT v. H. BHIKAJI & Co.  
(PLAINTIFFS), RESPONDENTS<sup>o</sup>.

J. C.<sup>o</sup>

1924.

[On Appeal from the High Court of Judicature at Bombay.]

February 1.

---

*Sale of goods—Bales of cloth bearing certain numbers—Tender of bales bearing different numbers—Significance of numbers as regards quality or description.*

---

<sup>o</sup> Present :—Lord Atkinson, Lord Wrenbury and Lord Phillimore.

1924.

RAMJIWAN  
v.  
H. BHIKAJI  
& Co.

The defendants contracted to purchase from the plaintiffs 92 bales of long cloth under a Gujrati contract the material portion of the translation whereof was as follows:—

“ Bales 15 Pieces No. 732, lbs. 5-14.

Bales 29 Pieces No. 736, lbs. 6-11.

Bales 10 Pieces No. 139, lbs. 7-4.

Bales 38 Pieces No. 141, lbs. 7-10.

Total bales 92, ninety-two, of the Hinganghat Rekchand Mills under manufacture. Delivery thereof is to be taken from August to October 1918 as the same may arrive manufactured. These goods are sold to you on the terms of the contract of the merchant from whom we have purchased. No objection shall be taken if these goods arrive late or early by a month. Rate thereof per lb. is Rs. 2-3-0, in words rupees two and three annas.

‘Shahi’ (allowance) is at Re. 1 per bale.”

In respect of the bales numbered in the contract 139 and 141, delivery-orders were tendered by the plaintiffs in which the bales appeared numbered 739 and 741, the plaintiffs explaining, in answer to the defendant’s objections, that the figures inserted in the contract were so inserted by reason of a clerical error and that the goods tendered were in fact the contract goods. The defendants, however, refused to accept the goods.

On the plaintiffs eventually suing for damages for breach, the trial Court dismissed the suit on the ground that the goods tendered were not the contract goods, but the appeal Court reversed this decision and decreed damages, holding, on the evidence, that the numbers in question had been put on the bales by the Mills at the request of the original purchaser therefrom, had acquired no reputation in the market and conveyed no information to subsequent purchasers, and that in fact the defendants had attached no importance thereto.

Per MACLEOD C. J.:—“I think, therefore, that it was not an essential part of the contract in suit that these bales should bear numbers 139 and 141, that the defendants were entitled to an explanation when bales numbered 739 and 741 were tendered and that the plaintiffs have given a satisfactory explanation by showing that the goods tendered were the goods contracted for.”

On appeal by the defendants to the Privy Council,

*Held*, affirming the decision of the High Court, and agreeing with the reasons given in the judgment thereof, that the evidence showed that the numbers on the bales gave no warranty or indication of quality or description.

Judgment of the High Court affirmed.

SUIT for damages for breach of a contract for the purchase of certain bales of long cloth. The facts of the case appear sufficiently from the judgment of the Chief Justice, printed below.

The trial Court (Kajiji, J.) dismissed the suit, and the plaintiffs appealed. The appeal came before Macleod C. J. and Shah J. and the following judgment was delivered:—

MACLEOD, C. J. :—This is an appeal from the decision of Kajiji J. dismissing the plaintiffs' suit which was filed to recover damages for breach of contract.

On August 1, 1918 the defendants entered into a contract with the plaintiffs for the purchase of ninety-two bales of the Hinganghat Rekchand Mills, under manufacture. The description of the goods as entered in the contract Exhibit A is as follows :—

Bales 15 Pieces No. 732, lbs. 5-14.

Bales 29 Pieces No. 736, lbs. 6-11.

Bales 10 Pieces No. 139, lbs. 7-4.

Bales 38 Pieces No. 141, lbs. 7-10.

It was stated in the contract as follows :—

"Delivery thereof is to be taken from August to October 1918 as the same may arrive manufactured. These goods are sold to you on the terms of the contract of the merchant from whom we have purchased. No objection shall be taken if these goods arrive late or early by a month. Rate thereof per lb. is Rs. 2-3-0. Shahi (allowance) is at Re. 1-0-0 per bale."

The broker who negotiated the contract was Ratansey.

From time to time the plaintiffs sent delivery orders under the contract for eleven bales No. 732, twenty-nine bales No. 736 and one bale numbered 741 and the defendants took delivery of these bales and paid for them. On November 9, plaintiffs sent a further delivery order for thirty-four bales but the defendants delayed taking delivery. On November 28, the plaintiffs sent another delivery order for seventeen bales being the balance of the contract goods. On November 29, the defendants wrote that out of the bales tendered

1924.

RAMJIWAN  
D.  
H. BHIKAJI  
& Co.

1924.

RAMJIWAN  
v.  
H. BHIKAJI  
& Co.

for delivery only four bales bearing the No. 732 were contract goods, of the remaining bales ten bore the No. 739 and thirty-seven the No. 741 and they declined to take delivery of those bales. They also asked for a refund of the price of one bale No. 741 taken delivery of. The plaintiffs replied that there was a clerical error in the contract, the numbers 139 and 141 having been entered in mistake for 739 and 741. On December 5, the defendants wrote cancelling the contract in regard to forty-seven bales. The plaintiffs thereafter sold the bales at a loss and they claimed the difference between the contract price and the price realised, Rs. 11,746-1-9.

The issues raised at the hearing were :—

- (1) Whether the defendants were bound to take delivery of ten bales bearing No. 739 and thirty-seven bales No. 741 referred to in para. 8 of the plaint?
- (2) Whether the plaintiffs were entitled to any and, if so, what damages?

The defendants in their written statement counter-claimed for damages owing to the plaintiffs having failed to deliver four bales No. 732, ten bales No. 739 and thirty-seven bales No. 141 and also for the price of the one bale No. 741 which they had paid for through inadvertence.

The counter-claim does not seem to have been pressed and was dismissed. The defendants have not appealed against this dismissal.

The plaintiffs alleged that when the defendants took delivery of one bale numbered 741 under the delivery order of October 22, they made inquiries regarding the number as the contract number was 141 and it was explained to them that there had been a clerical error, that the defendants were satisfied with the explanation and thereafter took delivery of the bale.

The learned Judge has disbelieved the plaintiffs' evidence on this point, but if the defendants attached much importance to numbers it is difficult to think

that they would not at once have taken objection to No. 741. I shall consider this hereafter. But the learned Judge said :—

“To my mind there must be some importance attached to these numbers. They are not there merely to signify to the original purchasers from the mill Messrs. Ghiya & Co. that 739 has reference only to the width of the long cloth and that the last two digits have no (*sic*) reference to the width or length. None of these witnesses could say what they were there for?...To my mind it is really too absurd if I may be allowed to say so that these numbers have no bearing in the market. They do have some bearing perhaps very little. It is after all really descriptive of the goods and to a certain extent of the quality of the goods because it is admitted that long cloth of this very mill of the same size in width and length but bearing different numbers could be of the same quality and *vice versa* and it could also be of different quality. If that is so then Nos. 139 and 141 and any other number would be really descriptive of the goods.”

With all due respect I should have thought that the logical conclusion from the above premises would be that the numbers were not descriptive.

It seems to me that the real question at issue is whether the defendants were entitled under the terms of their contract to have each bale and the pieces therein stamped with its particular number according to the numbers mentioned in the contract and to decline to take delivery of any bale not so numbered.

The particulars in the contract are very meagre. The words “92 bales of Hinganghat Mills” do not convey the description of the goods. But the goods are sold by the pound so it may be presumed that the goods were all of the same quality. The fact that for each number a different weight (which must have meant weight per piece) was assigned would show that the pieces in the bales varied in dimensions. To a layman these figures might not convey much information but it must be presumed that they were sufficient to those engaged in the trade to let them know what goods were being dealt in.

1924.

---

RAMJIWAN  
v.  
H. BHIKAJI  
& Co.

1924

RAMJIWAN  
v.  
H. BHIKAJI  
& Co.

The contract stated: "These goods are sold to you on the terms of the contract of the merchant from whom we have purchased." The defendants, therefore, were entitled to have inspection of that contract, and if they did not take inspection they must be considered as having constructive notice of it.

It is necessary, therefore, to consider the previous contracts relating to these goods. On July 31, the plaintiffs had purchased them from Chhaganlal Bhaidas. The contract is Exhibit N. It was effected through the same broker Ratansey. The particulars are the same only the Nos. 739 and 741 appear instead of 139 and 141. The weight of pieces in bales numbered 732 is stated to be lbs.  $3\frac{3}{4}$ ,  $2/16$  but this is clearly an error for lbs.  $5\frac{3}{4}$ ,  $2/16$ . The contract states "we have sold the said goods on the conditions contained in the statement of account of the merchant from whom we have purchased the said goods". The price was Rs. 2-2-0 per lb. Chaganlal Bhaidas had bought these goods through the same broker from Mathuradas Dwarkadas on July 26. The contract is Exhibit M. The price was Rs.  $2\frac{3}{4}$  annas per lb. The goods were sold on the conditions stated in H. Bhikaji's contract.

Mathuradas Dwarkadas had bought these 92 bales together with twenty-nine more bales, making in all 121, from the plaintiffs in this case on July 9 through the same broker at Rs. 1-15-3 a lb. The contract is Exhibit I. The particulars are more complete. The goods are described as "New Cloth". The number of pieces in each lot of bales is mentioned and after the bale number certain figures appear which admittedly represent the width and length of each piece.

The last clause of the contract is "These goods are sold to you by our purchasing the same from Messrs. Ghya & Co., in accordance with the terms of their contract".

The plaintiffs had bought these goods from Ghya & Co., on June 26 together with forty more bales through the same broker at Rs. 1-13-6 per lb. under a contract Exhibit H. The particulars are the same except that the goods are described as "Long cloth". Messrs. Ghya & Co. had purchased 201 bales from the mills on June 22 under a contract which is Exhibit L. The goods are described as "Cloth of your mills". Particulars are given of the goods, number, length in yards, the breadth in inches, the rate per piece, the number of pieces in each bale, the weight per piece and the rate per pound which was Rs. 1-11-0.

It may be noted in passing that in six weeks the price had been raised on the consumer by eight annas a pound which would be distributed between these various middlemen. The defendants themselves sold the ninety-two bales on August 13 to Gopaldas Virji through the same broker Ratansey and another broker Bhuramal. The error in the numbers was repeated, and it was because Gopaldas refused to take delivery of the bales numbered 739 and 741 when tendered to him in November that the defendants cancelled their contract with the plaintiffs. I do not think, however, we are concerned with Gopaldas' refusal to take delivery from the defendants.

The terms and conditions referred to in Exhibit A must refer to the terms relating to rebate, brokerage, and the payment of interest which appear in Exhibit N.

Now if the defendants had called for Exhibit N, they would at once have noticed the discrepancy in the numbers, though the particulars would have given them no further information beyond what was afforded by the particulars in their own contract. But the defendants, as far as I can gather, do not ask us to believe that the Nos. 139 and 141 described the quality of the goods, and could not have done so,

1924

RAMJIWAN  
v.  
H. BHIKANE  
& Co.

1924

---

RAMJIWAN  
v.  
H. BHIKAJI  
& Co.

because it is obvious on the face of the contracts that the goods were all of the same quality whatever number might appear on the bales. Nor for the same reasons can it be suggested that these goods were sold in the bazaar by their numbers. There was no evidence that these numbers had acquired a particular reputation in the bazaar so that a purchaser would ask for No. 732 or No. 139 in order to secure cloth of a particular description. As a matter of fact the numbers mentioned in all these contracts had no reputation and contained no information for purchasers in the market. The goods were long cloth, a very general description. To those engaged in the trade the weight per piece and the price would convey all the information which was required. But it was contended that the defendants having purchased bales numbered 139 and 141 if they wanted all the particulars regarding width and length and pieces per bale would have to go to the mills, and therefore, the number was an essential part of the contract. But this argument can be of little weight because if they had gone to the Mills they would have ascertained that the bales tendered bearing Nos. 739 and 741 contained the cloth they had contracted to buy.

The defendants, therefore, must be thrown back upon the case set up by them in their written statement that they had contracted for bales bearing particular numbers and any bales tendered bearing different numbers were not contract goods.

I will now deal with the evidence given by the witnesses with regard to the numbers placed on these bales. To begin with it is obvious that the plaintiffs' Mehta who wrote out Exhibit A wrote 139 and 141 by mistake for 739 and 741. If the Mehta had been available he would have been called, but his present whereabouts could not be traced. However Ratansey was the broker in all the previous contracts and



1924.

---

 RAMJIWAN  
 v.  
 H. BHIKAJI  
 & Co.

whether he negotiated for their sale by their numbers or not, it cannot be denied that the same goods were being passed from one buyer to another. The plaintiffs were selling these goods and no others, and the particulars for Exhibit A must have been taken from Exhibit M.

[The learned Chief Justice, after dealing in detail with a portion of the evidence, proceeded :]

Now it is clear from the evidence of these two witnesses that the numbers put by the Mills on the bales at the request of the original purchasers would convey no meaning to an outsider. To Ghya & Co., they indicated the width of the pieces in each bale. When the bales passed out of their hands they were merely reference numbers. It would have been just the same if the numbers had been 501 and 502. There was no evidence that it was recognised in the market that the last two digits in the number of a bale would indicate the width of each piece.

[The learned Chief Justice, after a further discussion of the evidence, continued :]

The same confusion is apparent. Of course if number indicates quality then goods bearing No. 732 cannot be of the same quality as those bearing No. 842. Again if No. 5009 represents certain goods well-known by that number they can be bought by that number and goods bearing another number will not be the same. But this answer is significant :

“ If only number is given I would understand nothing in country goods.”

That is clear because the mills put any numbers on the goods which the purchaser from them asks them to put on. It is only occasionally that goods with a particular number acquire a reputation and thus come to be known by that number.

The only outside witness called by the defendants was a partner in the firm of Gopal Virji and no questions were put to him with regard to the numbers.

1924.

RAMSIWAN  
v.  
H. BUKARI  
& Co.

Now it seems obvious to me that what the defendants thought they were buying when they signed the contract, whether the brokers mentioned the numbers or not, was so many bales of long cloth of the Hinganghat Mills, in four lots the weight per piece in the bales of the respective lots varying, and as the price was uniform that would indicate that in each lot the dimensions of the pieces varied. They would know that bales of country goods always had some sort of number and it may also be conceded that they may have known that in some cases numbers are of importance. But in this particular contract they must have known that the numbers would mean nothing. If they had really wished for further information as to the contents of the bales they would have got it at once from the purchasers. But evidently having bought to sell again they did not trouble to obtain that information. It was only after the panic in the market in October 1918 when Gopal raised the objection about the numbers and refused to take delivery that they were forced to raise the same objection against the plaintiffs.

The defendants then can only succeed on the case set up by them in their written statement that they had contracted to buy bales with a particular number on them and that a tender of bales bearing a different number would not be a good tender under the contract. If the number is an essential part of the contract then it does not matter what it indicates. If A agrees to buy from B a bale of certain goods stipulating it must have a particular number on it then he is entitled to refuse a bale bearing a different number. It is no answer for B to say, in all other respects, the bale is according to the contract. It may be difficult to ascertain the dividing line in the case of contracts like the one in suit. In the contract different numbers are assigned to each lot; at any rate that indicates that the

contents of the bales in each lot differ in some respects, though how they differ is not indicated. Ghya & Co. alone held the key to that. If the Mills had put different numbers on the bales to those ordered they might have raised objections. But these considerations would not apply when the goods passed out of their hands.

On the best consideration I can give to the evidence I have come to the conclusion that the defendants attached no importance to the numbers mentioned in the contract. At the most they were entitled to point out to the plaintiffs that the numbers in the delivery order did not correspond with the numbers in the contract which might well indicate that the goods tendered were not contract goods. The onus would thus lie on the plaintiffs to show that the goods tendered were contract goods. This is exactly what the plaintiffs say did happen when the defendants first discovered a wrong number in the delivery order of October 22.

[After considering the judgment of the trial Judge on this point, the learned Chief Justice proceeded :]

There is nothing inconceivable therefore in the defendants making inquiries and being satisfied on October 22 on reference to the plaintiffs that there was a clerical error in the contract and that they really had got the goods they had contracted to purchase. By the end of November it is common knowledge that prices had fallen by a very large amount and it was quite impossible for Gopal to realise except at a considerable sacrifice. It was not unnatural that he should take advantage of the mistake in the numbers to repudiate his contract with the defendants and defendants were forced to adopt the same course with regard to their contract with the plaintiffs. But we are not concerned in this case with the contract which the defendants entered into for the sale of these ninety-two bales and

1924.

---

RAMJIWAN  
v.  
H. BHIKAJI  
& Co.

1924.

RAMJIWAN  
v.  
H. BHIKAJI  
& Co.

any consequences which resulted from the defendants continuing the error in that contract would be too remote as between the plaintiffs and the defendants. I do not think the plaintiffs' liability could be extended beyond the obligation to assist the defendants if it were necessary in showing that the goods delivered were the goods contracted for in spite of the difference in the numbers, which was the extent of their liability in the suit contract.

I think, therefore, it was not an essential part of the contract in suit that these bales should bear numbers 139 and 141, that the defendants were entitled to an explanation when bales numbered 739 and 741 were tendered and that the plaintiffs have given a satisfactory explanation by showing that the goods tendered were the goods contracted for.

The appeal must be allowed and the plaintiffs held entitled to damages with regard to the forty-seven bales numbered 739 and 741 on the basis of the prices realised by their sale. The claim with regard to the four bales numbered 732 must be disallowed. The plaintiffs must get their costs in the Court below and in this Court.

The defendants thereafter appealed to the Privy Council.

*Dunne K. C.* and *Jardine* appeared for the appellants.

*Sir George Lowndes, K. C.* and *Raikes* appeared for the respondents, but were not called upon.

The judgment of their Lordships was delivered by

LORD ATKINSON:—Their Lordships have carefully considered this case during the adjournment, and they do not think it necessary to call upon counsel for the respondents. They think it is clear upon the facts that the first purchaser of these goods can get any number put upon them which he pleases; that is to say that

the owner of goods in the hands of a millowner can have this done. When the numbers are attached to the goods in that way, the view their Lordships entertain is correctly expressed in the judgment of the High Court printed at p. 45 of the record :—

“The numbers put by the mills on the bales at the request of the original purchasers would convey no meaning to an outsider. To Ghya & Coy. they indicated the width of the pieces in each bale. When the bales passed out of their hands, they were merely reference numbers. It would have been just the same if the numbers had been 501 and 502. There was no evidence that it was recognised in the market that the last two digits in the number of a bale would indicate the width of each piece.”

In their Lordships' view, the numbers, when so put on, indicate really nothing except the fact that the purchaser has purchased these particular goods. They do not give any warranty or indication of the quality or description.

Their Lordships will, therefore, humbly advise His Majesty that the appeal fails; that the decree of the High Court should be affirmed and this appeal dismissed with costs.

Solicitors for appellants : Messrs. *Hallowes & Carter*.

Solicitors for respondents : Messrs. *T. L. Wilson & Co.*

*Appeal dismissed.*

K. MEI. K.

---

## ORIGINAL CIVIL.

---

*Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.*

M. B. MEHTA & CO. (ORIGINAL DEFENDANTS), APPELLANTS v. JOSEPH HEUREUX (ORIGINAL PLAINTIFFS), RESPONDENTS<sup>o</sup>.

1924.

March 18.

---

*Sale of goods—c. i. f. contract—Passing of property—Intention of the parties—Consignee not bound to accept draft which includes sums not agreed upon—Suit cognizable by Small Cause Court instituted in High Court—Presidency Small Cause Courts Act (XV of 1882), sec. 22—Discretion of Appeal Court—Civil Procedure Code (Act V of 1908), sec. 35.*

<sup>o</sup>O. C. J. Appeal No. 90 of 1923; Suit No. 1372 of 1923.