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IN THE MATTER OF UPENDRO LALL BOSE.

The discussion which has taken place upon these points has raised a question of very general importance as to what should be the form of verification. We have taken occasion to consult some of the other Judges upon it, and we think that it may probably be found necessary to frame a rule or rules upon that subject. Meanwhile, we think that, in all cases, whether the plaint is verified by the plaintiff or by some other person, the party verifying should state shortly what paragraphs he verifies of his own knowledge and what paragraphs he believes to be true from the information of others.

This is the form of verification used in affidavits for the purpose of interlocutory applications (see s. 196 of the Code of Civil Procedure). There is no inconvenience, so far as we are aware, in adopting it, and it is really the only means of securing anything like truthful statements in the plaint.

The rule against Upendro Lall Bose will, of course, be discharged, and he is entirely acquitted of all blame which can affect his character.

SMALL CAUSE COURT REFERENCE.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Pontifex.

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Feb. 8.

BUDDREE DOSS AND OTHERS *v.* RALLI AND ANOTHER.*

Contract—Breach of Contract—Time for Performance.

A contract for the sale of seed contained the following provision:—"Refraction guaranteed at four per cent., with usual allowance up to six per cent., exceeding which the seller is to reclean the seed at his expense within a week; failing which buyers to have the option of cancelling that portion of the contract tendered, or of buying against the seller, or of taking the parcel as it stands, with usual allowance for excess refraction. Delivery from seller's godown in pile up to the 15th of July next." On the 10th July, the vendor tendered the seed. On examination the refraction was found to be above the contract rate. It was agreed that the vendor should reclean the seed; and on

* Case stated for the opinion of the High Court under the provisions of Act XXVI of 1864 by H. Millett, Esq., First Judge of the Calcutta Court of Small Causes.

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the 13th July, the purchasers went to take delivery of the seed, which was found still to be not sufficiently cleaned. On the 15th July, the vendor said that he should require a week longer for that purpose. The purchasers then cancelled the contract. In a suit by the vendor for damages for breach of contract,—

Held—(1), that the breach of the contract was with the plaintiff:

(2), that the week allowed for recleaning commenced from the 10th July; and that as the plaintiff had not succeeded in reducing the rate of refraction to the contract rate, the defendants had a right to reject the seed; and that the plaintiff was not entitled to further time to reclean it again.

THIS was a suit to recover damages for the breach of a contract dated the 8th June 1880 for the purchase of a hundred tons of teel seed. The contract contained the following provision:—"Refraction guaranteed at four per cent., with usual allowance up to six per cent., exceeding which the seller is to reclean the seed at his expense within a week; failing which buyers to have the option of cancelling that portion of the contract tendered, or of buying against the seller, or of taking the parcel as it stands, with usual allowance for excess refraction. Delivery from seller's godown in pile up to the 15th of July next." On the 10th July, the defendants went to take delivery, and found that the refraction of the seed tendered was over the contract rate. It was then agreed that the seed should be recleaned. On the 13th July, the defendants went again to take delivery, and found that the refraction was still over the contract rate. On the same day the plaintiffs wrote to the defendants asking them to take delivery. On the 14th July, one of the plaintiffs had an interview with the broker who had negotiated the contract, when he said that he would require another week to clean the seed. A meeting at the defendants' office was arranged for the next day. At this meeting, Buddree Doss, who represented the plaintiffs, asked for another week's time to reclean. This was refused. On the same day the defendants made an attempt to tender the price, but it was not successful. In the evening the plaintiffs' attorney wrote to the defendants requiring them to take delivery, and the defendants wrote to the plaintiffs tendering the price of the goods and asking for delivery, and notifying that if the delivery was not completed

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they would consider the contract as cancelled. The plaintiffs now sued for the difference between the market-rate and the contract price, and contended that as they had one week within which to perform the contract, they had up to the 22nd July within which to deliver the goods, if previous to the 15th they turned out to be above the stipulated refraction. The learned First Judge of the Small Cause Court, however, held, that the meaning of the contract was, that the plaintiffs were entitled only to one week from the time when the refraction was ascertained to be above the rate mentioned in the contract, and that they were not entitled to reclean as often as they liked, and then to take the week over and above the due date of the contract; and, contingent upon the opinion of the High Court on the following questions, gave judgment for the defendants :—

(1.) Whether the breach of the contract on the evidence before the Court was not clearly with the defendants, the contract providing one week for recleaning, and the evidence being that the plaintiffs were willing, on the 15th July, to reclean within one week?

(2.) Whether the one week for recleaning the seed provided in the contract is to commence from the 16th July, or from any prior date according to the construction of the contract?

Mr. *T. A. Apcar* for the plaintiffs.

Mr. *Agnew* for the defendants.

The opinion of the Court (GARTH, C. J., and PONTIFEX, J.) was delivered by

GARTH, C. J.—We think that the first question should be answered in the negative.

As to the second question, we think that the week allowed for recleaning the seed commenced from the 10th July, when the refraction was found to be thirteen per cent. The time occupied by the plaintiffs in recleaning was only two days; but as they did not succeed in reducing the refraction to the rate of six per cent., the defendants had a right to reject the seed.

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It is clear that the plaintiffs were not entitled by the terms of the contract to any further time to reclean it again.

The defendants are entitled to the costs of this reference.

Attorney for the plaintiffs: Mr. *Camell.*

Attorneys for the defendants: Messrs. *Sanderson & Co.*

ORIGINAL CIVIL.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Pontifex.

JUGGERNATH KHAN AND OTHERS (DEFENDANTS) *v.* J. E. MACLACHLAN (PLAINTIFF).

1881 *Jan.* 11.

Contract, Construction of—"Delivery in whole of November on seven days' notice from Buyer"—Breach of Contract.

A contract for delivery by the defendants to the plaintiff of 1,000 bags of ginger, stated that "delivery was to be taken and given in the whole of November on seven days' notice from the buyer." On the 5th November, the plaintiff gave notice to the defendants requiring delivery to be given "within seven days;" and again on the 11th, that he was prepared to take delivery on the following day. On the 12th, the defendants wrote to the plaintiff, stating that they would give delivery on the 28th, 29th, and 30th November. On the 15th, the plaintiff gave notice that he considered the contract at an end. In a suit for damages for non-delivery,—*Held* (affirming the decision of the Court below), that the words "on seven days' notice from the buyer" were intended to give the buyer the right of fixing the particular time in November at which the delivery was to commence, and that the defendants were therefore bound to commence delivery on the expiration of the seven days' notice.

APPEAL from a decision of BROUGHTON, J., dated the 29th June 1880.

The suit was brought for damages for non-delivery of 1,000 bags of dry ginger under a contract dated the 11th October 1879, which stated that the defendants agreed with the plaintiff for the sale by them to him of 1,000 bags of dry ginger at the