

In the High Court of Judicature at Bombay.

O. O. C. J.

Suit No 192 of 1908.

Lalbahai Chunilal a firm . . . . . Plaintiffs

vs.

Rapadia Brothers a firm . . . . . Defendants.

14<sup>th</sup> March 1908.

Coram: Russell J.

Judgment. - This suit arises out of 320 cases of stain-book which were to be delivered by the Defendants to the Plaintiffs

from

(2.)

from April to December 1907, and  
from what appears from the  
Plaintiff the Plaintiffs case is  
that the contract was cancelled  
as to 100 out of the 300 cases and  
it was agreed that 50 cases should  
be re-sold by the Defendants  
and a profit of one penny per  
pice should be paid to the  
Plaintiff, and 35 were cancelled  
by the Plaintiff and the dispute  
now is as to the quality of 109 cases  
of No. 1409 of which 75 have arrived  
and the remaining 34 are due.

The

The Plaintiffs say that they were ready and willing to take delivery of 26 cases, which were of quality of 1412, according to the custom of the market in convenient lots and they were also ready and willing to take delivery of 109 cases <sup>of No 1409.</sup> if surveyed.

It appears further that 50 cases were advertised for sale by the Defendants by public auction, 20 under of 1412 and 30 under of 1409.

Now the important document, as pointed out by Mr. Inverarity, to my mind is the Indent, a printed <sup>copy</sup> of which is annexed

(4.)

to the Defendant's Affidavit of the  
11<sup>th</sup> March 1908, and the 1<sup>st</sup> clause  
of that which is most material  
is as follows: - "We hereby request  
you to purchase the whole or part  
of the undermentioned goods on our  
account and risk at the limits  
and terms stated below, and for  
which we hereby agree to pay you  
within 30 days of arrival of goods  
notwithstanding any disputes we may  
have regarding the goods tendered  
agreeing that such disputes should  
be settled by arbitration as pro-  
vided for below." Then Clause 2  
is as follows: - "Should we fail

to

(3.)  
to pay at maturity or after maturity  
whenever called upon we hereby author-  
ize you to sell the goods by public  
auction or private sale without any  
notice when and where you like  
and we bind ourselves to make  
good to you any loss or deficiency  
sustained through our default, in-  
cluding all charges and interest  
we waiving all claim to profit should  
there be any." Clause 8 refers to  
no dispute being recognised if  
not made in writing within 30 days  
after arrival of the steamer. In the  
Defendants' affidavit they take up  
this point that the claim should  
have been made within 30 days, and

(b.)

their case is that the Plaintiffs have objected within time only to 11 cases under N<sup>o</sup>. 1409 and 16 cases under N<sup>o</sup>. 1412 and they have withdrawn the objection, and that there is no objection made within time as to the rest.

Now it has been proved that there has been a very heavy slump in the Nainsook market, and the value of these goods is very great. In addition to that the charges are very heavy. I am informed they come to Rs. 1000 per annum.

month?

In my opinion the conclusion

(17)  
I have, <sup>therefore</sup> come to is that the Defend-  
ants are within their rights in having  
these goods put up for sale. As they  
are within their rights, I think I  
must give effect to their rights.  
But by the order I am going to  
pass, I intend to protect the  
Plaintiffs as far as I can.

I order all the cases  
under Nos 1409 and 1412 in question  
be surveyed forthwith. My object  
in doing that is that the parties  
may mutually agree upon some  
surveyor, and his opinion under  
the circumstances will be binding  
upon them as to whether these

(8.)  
goods are or not up to the samples.

I have not touched here upon the argument addressed by Mr. Lowndes on behalf of the Plaintiff with regard to the alteration or manipulation of these samples because I do not think it really affects the case now, and I do not want to say anything now which might prejudice the case at the hearing.

The Plaintiffs are to be at liberty to take up and pay for at \$14.12 in lots of 5 cases during a period of six weeks

if

(7)  
if they so desire. In default of  
Plaintiffs taking the first five  
cases within the first fortnight,  
then the Defendants to sell  
the same forthwith by public  
auction.

The Defendants to be  
at liberty to sell forthwith  
all the cases under No. 1409.

Costs to be costs in  
the cause.

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W. S. Souza,  
Shorthand Writer, High  
Court, O. J.

21. 3. 08.

High Court, Bombay

O. O. C. J.

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a firm . . . . .

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Oral Judgment

delivered by Russell J

on the 14<sup>th</sup> March,

1908.

Witnesses L. C. K. 23.3.08.