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 v.
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share in the ancestral property which he now claims, and, so far as it is valid, it will be effective against him. Under the provisions of cl. 1, Sec. x. of Reg. XVIII. of 1827, it requires a stamp; and under cl. 2 of Sec. XII. of the same Regulation, as it is a writing not for a specific sum, it might have been executed on a stamp of the value of eight rupees, or, if written on a stamp of less value, may be made effective only up to the utmost sum covered by such stamp, under the rule contained in the previous clause of the same section. It was originally written on plain paper, and contains an agreement for subsequent stamping, which was permitted by Sec. 13 of the same Regulation. A stamp of two annas has since been impressed on it, and by this, under the clause previously referred to, and Appendix B to the same Regulation, the highest sum or value that can be secured is Rs. 64. To this extent only the exhibit No. 10 is valid, and to this extent, it operates to reduce the plaintiff's claim.

For these reasons the Court reverses the decree of the District Judge, and orders that the plaintiff, Basvantáppá, do recover the share of the *watans* claimed by him to the extent of Rs. 503-8-0, with costs in proportion.*

TAYLOR v. BROOKE.

Ship—Shipping Order—Words "Ready to receive Cargo."

The words "ready to receive cargo" inserted in a shipping order mean that the ship, on the day named in the shipping order, shall be ready to receive a full cargo, by whomsoever offered, and not merely ready to receive the *quantum* of cargo mentioned in the shipping order.

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THIS suit was brought by the master of the ship *Fleur-de-Lis* to recover Rs. 1,925 for damage sustained by him by reason of the defendants failing to ship 1,000 bales of cotton according to contract.

The contract was in the form of a shipping order, dated March 12th, 1863, and was granted to the defendant by the

*Note.—Judgment was delivered orally by the late Mr. Justice Forbes in this case, and no written judgment was recorded. The grounds of the Court's decree were subsequently embodied in the above form by Mr. Justice Newton, to whom the Editor is indebted for the report.

agents of the ship, Messrs. Remington and Co. The shipping order ran thus:—

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“To the Commanding Officer on board the Ship *Fleur-de-Lis*, Captain Taylor, for Liverpool.

“Please to receive on board from H. Brooke, Esq., 1,000 patent bales of cotton, £3 17s. 6d. per ton, to be completed within twenty-two working days after the vessel is ready to take in. If not ready to receive cargo on the 5th May, shipper to have the option of cancelling. And grant a receipt for the same.”

The facts and arguments sufficiently appear from the judgment of the Court.

White and Dunbar for the plaintiff.

Anstey and Marriott for the defendant.

The only issue raised was, whether or not the ship was ready on the 5th of May 1863 to receive cargo within the meaning of the shipping order. Evidence was given upon both sides, and on the 7th of June 1864 judgment was delivered by

ARNOULD, J.:—The question in this case was whether the ship *Fleur-de-Lis* was on the 5th of May 1863 ready to receive cargo under a shipping order in these terms (His Lordship here read the order).

The material facts as to the ship were these: The *Fleur-de-Lis* was 996 tons register, and she had on board on arrival about 1,200 tons of inward cargo. She arrived in Bombay harbour at midnight on Saturday the 2nd of May. On Monday the 4th the Captain obtained his entrance outwards at the Custom House, although it was notified to the officer in charge that the ship had only that same day been entered inwards, and that not a single package of her inward cargo had then been discharged. At 8 A.M. on the 5th of May she was brought to her discharging berth, at 9 A.M. her main hatch was opened, and at 3 P.M. she began to discharge her inward cargo. Before any inward cargo was discharged, she had, on the morning of the 5th of May, a clear space in the forepart of her 'tween-decks in which about 400 bales of cotton might have been permanently stowed: room for about 400 or 500 bales more might, by a few hours' exertion, have been cleared in the midpart of the 'tween decks; but if this latter space had been filled up with cotton at the rate of 200 bales a day (the

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maximum rate per diem which, by the rules of the port, the captain can be required to take), the discharge of the inward cargo would, upon the defendant's evidence, have been interfered with and delayed—the ship, to use the expression of one of his witnesses, would have been blocked up. The plaintiff's evidence, on the contrary, was, that the ship, without delay or inconvenience, could have taken in and stowed cotton at the rate of 200 bales per day. On this point the defendant's evidence, according to the best judgment I can form, appears the most reasonable. The defendant, who had ordered 80 bales to be sent on board on the 4th, visited the ship on the 6th, and, from what he then saw, exercised his option under the shipping order, treated the contract as cancelled, and sent no more cotton. In the event the whole of the inward cargo was discharged by the evening of the 18th of May. The ship ultimately sailed with a full outward cargo of about 1,600 tons on the 4th of July.

Such were the material facts as to the position and state of the ship on the 5th of May. As to the shipping order the question now arises what is the true mercantile construction to be put on the words "ready to receive cargo". Upon this point a great deal of conflicting evidence was given at the trial by several of the most eminent European merchants of Bombay. The conclusions I have arrived at, after an attentive consideration of the whole of the evidence, are these. The object of the shipper in introducing such a stipulation as that contained in this shipping order is the prompt despatch of the goods. That is the consideration which regulates the amount of freight he is willing to pay, which in this case was at the top rate of the day. In order to ensure this prompt despatch, it is requisite that the ship, on the day named in the order, should be ready to receive, that is, not only to take on board, but to take in and stow away cargo, meaning thereby not only the particular quantum of cargo mentioned in the shipping order, but a full cargo, from whomsoever offered: she must, moreover, be in a position to continue doing this from day to day expeditiously, and without delay or interruption arising from the cotemporaneous discharge of her inward cargo. In order to this end, a ship arriving with a fair inward cargo (as was the case with the *Fleur-de-Lis*) must, before or by the day named in the order, have discharged some reasonable portion of her inward cargo. What this reasonable portion

is it may be difficult precisely to define. The best practical rule seems to be that which was suggested in the clear and able evidence of the Honorable Mr. Scott, Mr. Walter Cassels, and Mr. Brooke, the defendant, viz., that a ship arriving with a fair inward cargo, before she can be properly said to be ready to receive outward cargo under such a shipping order as this, must have discharged all her inward cargo except the quantity required to stiffen her. To use Mr. Scott's words, "she should be either clear of her inward cargo, or so far clear as she can be without danger." This seems to furnish a sufficiently clear practical rule: it appears to be very generally understood and acted on in Bombay; and it would, in my opinion, be desirable to establish it as the recognised test of a ship's being ready or not ready to receive cargo, under a shipping order in this form. For the decision of the present case, however, it is not necessary to adopt this test to its full extent; for in any view of the word "reasonable" it would seem clear that the *Fleur-de-Lis*, on the 5th of May, had not discharged a reasonable portion of her inward cargo—in fact, she had only begun to discharge her inward cargo at 3 P. M. on that day, and at its close had only discharged a very inconsiderable portion of it. Looking at all the circumstances of the case, and on a full consideration of the whole of the evidence, I am clearly of opinion that on the 5th of May the *Fleur-de-Lis* was not "ready to receive cargo," within the true meaning of the shipping order, and that consequently the shipper rightfully exercised his option of cancelling the order. The decree, therefore, will be for the defendant, with costs.

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In the late Supreme Court, Equity Side.

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RA'MLA'L THAKURSIDA'S.....*Plaintiff.*

LAKHMICHAND MUNIRA'M, GOVINDA'S MUNI-

RA'M, and RAGHUNA'THDA'S LAKMICHAND *Defendants.*

Partners—Compromise between copartners in absence of the representative of a deceased partner—Hindá law—Ancestral trade—Power of manager to bind minor partner members of family.

Where the surviving partners of a firm, in the absence of a representative of a deceased partner, adjusted the partnership accounts and agreed to hand over a portion of the partnership property to one of the