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Jan. 16.

Original Suit No, 840 *of* 1868.

Hodgson *et al*..... .....*Plaintiffs.*

Rupchand Hazarimal..... .....*Defenedant.*

Evidence—Account Sales.

Where goods are consigned to be disposed of in a foreign market, it is an implied term of the agreement by the consignor that the account sales furnished by the correspondents abroad shall be taken as *prima facie* evidence of what the goods raised.

Held, that this was so even though the consingor objected to the correctness of the account sales when furnished to him.

This was suit brought by K. D. Hodgson and others, composing the firm of Thomson, Finlay, and Co. of Liverpool, through their agents, Finlay, Scott, and Co., of Bombay. The defendant consigned to the plaintiffs two hundred bales of cotton for sale on his account, and drew upon the plaintiffs against the proceeds of the cotton to the amount of £ 1,900, the bills for which were in due course accepted and paid. At the time of consignment the defendant's *munim* signed a letter in which the following clause was contained:—"Should the net proceeds of the sale not cover the amount of the bills, I (defendant) authorise you to draw on me for the balance shown by your account-sales and account-current, which shall be absolute proof, in or out of Court, of sale and amount of loss; and I agree to pay any balance shown therein at the expiration of the usance of the draft or drafts for the same."

Upon the sale of the cotton there was a deficiency, as shown by the account-sales and account-current, of £ 478-8-0. The account-sales and account-current were furnished to the defendant, together with a bill of exchange for the equivalent in rupees of the amount of the deficiency. This bill the defendant refused to accept, and the *munim* of the defendant stated that he refused to accept it on the ground that the weight of the cotton was not correctly given in the account sales.

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There was a conflicting evidence given at the hearing as to whether the letter which the defendant's *munim* signed had been read over, translated, and explained to him.

The defendant, in his written statement, alleged that the letter had not been read over to him; that the price obtained for the cotton was less than the market price ruling at the time of sale; and that the weight of the cotton sold was less than the weight of the cotton consigned. The case was tried by Couch, C. J. on the 14th of January 1868.

Dunbar and *Macpherson*, for the plaintiffs, contended (1) that it was proved that the letter had been read over to the defendant's *munim*, and (2) supposing that not to be so, that the account-sales and account-current were, in the absence of proof to the contrary, sufficient for the Court to act upon, and cited 2 Ind. Jur, 5, and *Smith* v. *Blakey* (*a*).

Marriott and *Scoble* for the defendant.

Cur. adv. vult.

JAN. 16.—COUCH, C.J.:—This was a suit to recover the deficiency on a sale of cotton consigned by the defendant to the plaintiff's firm in Liverpool, and the issues raised were—

(1) Whether the defendant agreed that the account sales and account-current of the plaintiffs should be absolute proof, in or out of Court, of such sale and of the amount of loss thereon.

(2) Whether the plaintiffs are entitled to recover any, and what sum, from the defendant.

The witness who was called for the plaintiffs deposed distinctly that the letter from the defendant's firm to the plaintiffs, which contained the agreement was read over to the defendant's *munim* before he signed it.

On the other hand, the *munim*, who was called for the defendant, stated that the letter was not read over to him, and that he did not know that it contained this clause.

(*a*) Law Rep. 2 Q. B. 326.

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It is not necessary for me to determine that issue, as I am of opinion that the account-sales is *prima facie* evidence of what was realised by the sale of the cotton.

The law as to account-sales is, that where an account between merchants in different countries has been transmitted from one to the other, and no objection is made after several opportunities of writing have occurred, the account is deemed in a Court of Equity a stated account, only to be opened when some cause is shown for the interposition of the Court; and when the goods are consigned to be disposed of in a foreign market, I think it must be considered that the consignor impliedly agrees that the account-sales furnished by the correspondents abroad shall be taken as *prima facie* evidence of what the goods realised. It would cause great expense and inconvenience if the debtor, by merely objecting to the account, could compel the procuring evidence from abroad; and, seeing that in practice merchants are satisfied with the truth of the account-sales, and ask for no further evidence, I think there is a good ground for considering that there is such an implied agreement.

In this case the defendant's *munim* states that he did raise an objection when the account was first delivered to him; but, notwithstanding that, I think it is *prima facie* evidence on the ground I have stated. It showed the deficiency for which the suit is brought, and the defendant has not shown that it is incorrect.

With reference to the suggestion, on the part of the defendant, that the cotton was sold at less than the market price in England, Mr. Reid, a partner in Messrs. Finlay, Scott, & Co., gave evidence which is important. He stated that when the account-sales, &c., were received by his firm from England he saw them when they came to Bombay. They were at the market rate at that time. If they had not been so, he would have applied to the English firm for explanation. The defendant has not given any evidence that that was not the case. He has given some vague evidence as to the weight of the cotton, according to the

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account-sales, being less than it ought to have been. He says he was present when it was weighed here, and has given the weights, and deducts twenty-five hundred-weights for tare; but there is no evidence to show that the weight of the cotton which was received by the plaintiffs in England was not as stated in the account-sales. I think it was necessary for the defendant to meet the *prima facie* evidence of the account-sales by better evidence than has been given, and that the plaintiffs are entitled to recover the deficiency claimed.

On the second issue I find for the plaintiffs, and the judgment will be for the amount claimed, Rs. 5,168-4-0, and interest on Rs. 5,168-4-0 from the 4th of August 1868 to this date, at nine per cent. per annum, with costs and interest at six per cent. on the amount of the judgment.

Attorney for the plaintiffs: *Acland, Prentis and Bishop.*

Attorney for the defendant: *Khanderao Moroji.*

Jan. 28.

Crown side.

In the matter of GEORGE LEWIS, *Master of the Ship "Glen Tilt," and of 17 & 18 Vict., c. 104.*

Shipping Master—Discharge of Seaman—Discretion—Merchant Shipping Act—17 & 18 Vict., c. 104, s. 207.

The Shipping Master of Bombay has a discretion vested in him of refusing to sanction the discharge of a seaman, shipped from a foreign port, whose articles have not expired, though the seaman consents to such discharge.

On the 16th of January 1869, *Dunbar*, before Couch, C.J., on behalf of George Lewis, master of the Ship *Glen Tilt*, obtained a rule directing J. D. Freemen, Shipping Master of Bombay, to show cause why a writ of mandamus should not issue to compel him, J. D. Freeman, to discharge Frederick Whyte and two other seamen from the ship *Glen Tilt*, and to sign and attest a release of all claims between Frederick Whyte and the two other seamen and the master