

Original Suit No. 442 of 1870.

1870.
July 19.

RA'JA'RA'M GOVINDRA'M and NA'RANDA'S

MULCHAND *Plaintiffs.*

M. B. BROWN, M. DONALD, and KARSAN-

DA'S MA'DHAVDA'S *Defendants.*

Bills of Lading fraudulently signed—Indorsées of Bills of Lading for Value—Mate's Receipts held by unpaid Vendors of Goods shipped—Injunction—Title—Summons—Service—Civ. Proc. Code, Sec. 17.

The plaintiffs agreed with the defendant K. M. to purchase and ship cotton on account of K. M., and to retain the mate's receipts for the cotton so shipped until the purchase-money should be paid by K. M.

Under this agreement the plaintiffs shipped 609 bales on board the "Teresa." Before the greater part of the 609 bales had been shipped, and before paying for the same, K. M., without production of the mate's receipts, induced the master of the ship to sign bills of lading for the said 609 bales, and indorsed over the bills of lading for 310 of such bales to J. C. and Co., *boná fide* indorsees for value, without notice.

In a contest between the plaintiffs, holders of the mate's receipts, and J. C. & Co., indorsees for value of the bills of lading of the said 310 bales, it was held that the plaintiffs were entitled to the possession of the 310 bales, to the exclusion of J. C. & Co.

Service of a summons on an agent to whom a ship is consigned is good service on the owner in respect of matters connected with such ship.

THE plaint in this case stated that the plaintiffs, on or about the 9th of May 1870, agreed with the defendant Karsandás Mádhavdás to buy for him, in the name of the plaintiffs, 3,000 bales of cotton, and to press and ship the same on board such ship or ships as Karsandás Mádhavdás should direct, upon condition, amongst other things, that the plaintiffs should take the mate's receipts for the bales, and keep the receipts until Karsandás Mádhavdás should pay the plaintiffs for the 3,000 bales, with commission (2 per cent.) and Rs. 3-12-0 per bale for pressing and *mukádam* charges; that the plaintiffs bought 609 bales in accordance with the agreement, and caused them to be pressed, and shipped on board the "Teresa," of which the defendant Brown was master, and the defendant Donald was owner, and took the mate's receipts for the 609 bales; that there was due to the plaintiffs, for purchase-money, commission, &c., Rs. 94,354, and that the plaintiffs had tendered the mate's receipts to


1870.
 RAJA RAM
 GOVINDRAM
et al.
 v.
 M. B. BROWN
et al.

Karsandás Mádhavdás, and requested him to pay the said sum, but that Karsandás Mádhavdás had not paid the same, and was in insolvent circumstances; that, according to the custom of the port of Bombay, the master of the ship was bound to deliver bills of lading for the said 609 bales to the holder of the mate's receipts, and to no other person, yet that he, on the 4th of June 1870, before any of the bales had been put on board, fraudulently signed bills of lading purporting to be in respect of the said 609 bales, and delivered the bills of lading to Karsandás Mádhavdás, and refused to give the bills of lading to the plaintiffs as holders of the mate's receipts.


The mate's receipts held by the plaintiffs were seven in number, in the usual form:—"Received on board the ship 'Teresa,' bound for Liverpool from Bombay, the following packages, in good order and condition"—(Here follows description.)


(Signed) "C. F., Commanding Officer."

The first (dated June 6th, 1870) was for 90 bales


marked 


The second (dated June 7th) was for 56 bales

marked 


and for 19 bales marked 


The third (dated June 9th) was for 91 bales

marked 


and for 60 bales marked 


The fourth (dated June 13th) was for 41 bales

marked 


and for 60 bales marked 

The fifth (dated June 16th) was for 49 bales


marked 

and for 3 bales marked 

The sixth (dated June 14th) was for 100 bales

marked 

The seventh (dated June 14th) was for 100 bales

marked 

1870.

RA'JA'RA'M
GOVINDRA'M
et al.

v.

M. B. BROWN
et al.


The first three receipts did not mention the name of any shipper. In the fourth the bales purported to be shipped by Karsandás Mádhavdás, in the fifth by Mulchand (one of the plaintiffs), in the sixth and seventh by Hirjibháí Sorábji.

The boat-notes, which did not materially differ from the mate's receipts, were produced at the hearing. Their contents are set out in the judgment.

The plaintiffs sought to recover possession of the 609 bales, and damages, Rs. 6,000, for their detention.

Upon affidavit affirming the truth of the matters stated in the plaint, and averring that bills of lading in respect of the 609 bales had been presented to the master, which he had refused to sign, and that the "Teresa" was nearly ready to sail, and that it was apprehended that if the "Teresa" left the harbour of Bombay the defendant Brown would remove from the jurisdiction of the court the goods sought to be recovered in the suit, and would thereby defeat the execution of any decree that might be passed against him, *McCulloch*, on the 4th of July 1870, obtained a rule calling upon the defendants to show cause why an injunction should not issue restraining them and each of them, their servants, &c., from wasting, damaging, or removing out of the jurisdiction of the court, the abovementioned 609 bales of cotton, and why a manager should not be appointed to take possession and have custody of the said bales. An injunction was also granted *ad interim*. None of the original defendants showed cause against the rule, but when, on the 14th of July 1870, on behalf of the plaintiffs, *McCulloch* moved to make the rule absolute, *Anstey*, on behalf of Jefferson, Campbell, & Co., applied to be allowed to intervene, upon the grounds stated in an affidavit of Joseph Jefferson, one of the partners in that firm. From that affidavit it appeared that Karsandás Mádhavdás, on the 7th of June 1870, had consigned 500 bales of cotton

1870.
 RAJA'RAM
 GOVINDRAM
 et al.
 v.
 M. B. BROWN
 et al.

marked  by the "Teresa" to Jefferson's firm in

London for sale in England, and had drawn a bill of exchange for £6,000 against the shipment on that firm, and had indorsed to Jefferson's Bombay firm bills of lading signed by the defendant Brown, some bearing the above mark, and all dated the 7th of June, and had handed to Jefferson policies of insurance and a letter of hypothecation in respect of the said 500 bales. On these documents Jefferson, Campbell, & Co. had advanced to Karsandás Mádhavdás Rs. 60,000, in good faith, in the ordinary course of business, and without any notice of any claim upon the bales of any person other than Karsandás Mádhavdás. Jefferson, Campbell, & Co. indorsed the documents to the Chartered Bank of India, Australia, and China, for value. Mr. Jefferson stated that his English firm would accept and pay the bills drawn upon them, and would then receive the shipping documents, and that he believed that the 500 bales for which the documents had been given to him were part of the 609 bales mentioned in the plaint.

Mr. Jefferson's affidavit then stated that the price of the 609 bales would be about Rs. 80,000, and that, from information received, he believed that the plaintiffs had received from Karsandás Mádhavdás Rs. 1,50,000 between the 19th of May and the 14th of June 1870, which would be about the price of 1,100 bales, and that from the time the shipment of the said cotton commenced in the "Teresa" Karsandás Mádhavdás paid to the plaintiffs Rs. 82,000, and that Rs. 30,000 paid by Jefferson, Campbell, & Co. to Karsandás Mádhavdás were on the same day paid by him to the plaintiffs, and that the plaintiffs were aware that Karsandás Mádhavdás obtained advances on the cotton, and that they were being paid out of such advances. The affidavit further denied the custom set up in the plaint, and (from information) that the bills of lading were signed before the goods had been put on board.

Nárandás Mulchand made an affidavit in reply explaining the manner in which Karsandás Mádhavdás was indebted to

the plaintiffs, on account of the cotton purchased by them under the agreement mentioned in the plaint, and showing that the 609 bales on board the "Teresa" had not been paid for : and denying that the plaintiffs were aware of the source from which the moneys paid to them from time to time by Karsandás Mádhavdás were derived. He further stated that the bill of lading held by Jefferson, Campbell, and Co. was dated the 4th, and not the 7th, of June, and showed that it must have been signed before the goods to which it purported to refer were put on board.

In addition to the 609 bales in respect of which the suit was brought, 600 other bales had been shipped by the plaintiffs on the "Teresa," under the agreement referred to in the plaint, but for them the plaintiffs had been paid, and the mate's receipts handed to Karsandás Mádhavdás. Of these 600 bales, 190 were marked



Anstey and Latham then, on behalf of Jefferson, Campbell, and Co., showed cause against the rule obtained on the 4th of July, and contended that, under the circumstances, the *bonâ fide* indorsees of the bills of lading were entitled to the bales comprised in them as against the holders of the mate's receipts, and cited *Abbott on Shipping*, p. 387, 11th ed.; *Schuster v. McKellar* (a); *Coventry v. Gladstone* (b); *Cowasjee v. Thompson* (c); *The Marie Joseph* (d); *Bristow v. White-more* (e); that, as there was no prayer for an injunction in the plaint, none could be granted: *Savory v. Dyer* (f); *Wright v. Atkyns* (g); that the property in the goods had passed from the plaintiffs: "*The Argentina*" (h); *Cuming v. Brown* (i); *Gurney v. Behrend* (j); that the demand for the goods was not made in proper time: *Tindall v. Taylor* (k); that the fraud practised by Karsandás Mádhavdás did not affect Jefferson, Campbell, and Co.'s title to the goods: *White v.*

(a) 7 El. & B. 704. (b) Law Rep. 6 Eq. Ca. 44.

(c) 5 Moo. P. C. C. 165—177. (d) Law Rep. I. P. C. App. 219.

(e) 28 L. J. Ch. 801. (f) *Amblerr*.

(g) I. Ves. & B. 313. (h) Law Rep. I. Adm. 370.

(i) 9 East. 506. (j) 3 El. & B. 622. (k) 4 El. & B. 219.

1870.

RA'JA'RAM
GOVINDRA'M

et al.

v.

M. B. BROWN
et al.

1870. *Garden (l)*, followed in *Kingsford v. Merry (m)*; and that, considering the inconvenience that would be caused to third parties, the court should not grant the injunction: *Child v. Douglas (n)*; *Goodhart v. Lowe (o)*.

RAJARA
GOVINDRAM
et al.
v.
M. B. BROWN
et al.

McCulloch, in reply, cited *Grant v. Norway (p)*; *Craven v. Ryder (q)*; *Thompson v. Trail (r)*; *Abbott on Shipping*, p. 402 (11th edn.).

Cur. adv. vult.

19th July 1870. GREEN, J. :—This suit is instituted by Rájárám Govindrám and another against M. B. Brown, the master, and one M. Donald, the owner, of the ship “Teresa,” alleged to be residing in England and carrying on business by means of the firm of Messrs. Rennie, Scovell, & Co., of Bombay, and against one Karsandás Mádhavdás, and seeks to recover from the defendants possession of 609 bales of cotton which have been shipped on board the said vessel, or their value, and the sum of Rs. 6,000 as damages for their detention.

On the 4th instant an order was moved for by the plaintiffs, and granted, calling upon the then defendants to show cause why an injunction should not issue restraining them, their servants and agents, from wasting, damaging, alienating, or removing out of the jurisdiction of the court, the said 609 bales of cotton until the further order of the court, and also why a fit and proper person should not be appointed to take possession and have custody of the said bales of cotton until further order of the court; and it was ordered that in the meantime, or until the further order of the court, the defendants, their servants and agents, should be restrained from wasting, damaging, alienating, or removing out of the jurisdiction of the court, the said bales of cotton, or any part thereof.

On the 9th instant Mr. Scoble, Advocate General (with whom was Mr. Starling), appeared on behalf of Messrs. Rennie, Scovell, & Co., to protest against the service of the

(l) 10 C. B. 919. (m) 11 Exch. 577. (n) 5 DeG. M. & G. 739.

(o) 2 Jac. & W. 349.

(p) 10 C. B. 665.

(q) 6 Taunt. 433.

(r) 6 B. & C. 36.

summons and order to show cause on them, being held to be good service on the owner; but after argument I held that in the circumstances of the case, and on the facts disclosed in the affidavit of Mr. Thomas Wilson (the Bombay manager of the business of the firm of Rennie, Scovell, & Co.), the lastnamed firm did carry on business for and in the name of the owner, within the meaning of Sec. xvii., cl. 2, of the Civil Procedure Code, and that service on that firm of any summons or order in a matter connected with the business so carried on by them was a good service on the owner. The Advocate General was not instructed to accept the offer of the court to allow his clients time to communicate with the owners, and the case has proceeded without any appearance on the part of the master or owner, or of Messrs. Rennie, Scovell, & Co., except as watching the case.

On the 14th instant Mr. McCulloch (with whom was Mr. Ferguson) moved to make absolute the order of the 4th instant; and Mr. Anstey and Mr. Latham, on behalf of the firm of Messrs. Jefferson, Campbell, & Co., of Bombay, applied to intervene and be allowed to show cause against the order being made absolute, as having, or claiming to have, an interest in the bales of cotton in question in the suit, under bills of lading signed by the master, and indorsed to them for value by the defendant Karsandás Mádhavdás. I considered that they ought to be allowed to show cause, and that the proper mode of proceeding was to order that the firm of Messrs. Jefferson, Campbell, & Co. should be made parties (defendants) to the suit, under Sec. 73 of the Civil Procedure Code, and that the plaint should be amended accordingly, without prejudice to the *interim* injunction. This having been done, and a warrant to defend having been filed on the part of Messrs. Jefferson, Campbell, & Co., Mr. Anstey and Mr. Latham proceeded to show cause on their behalf, the other defendants, namely, the master, the owner, and Karsandás Mádhavdás, not appearing in person or by counsel.

Before considering the application to the present case of any of the various authorities which have been cited by counsel, it may be desirable to state the material facts which

1870.

RAJA'RAM
GOVINDRAM


et al.


v.


M. B. BROWN
et al.

1870.
 RAJARAM
 GOVINDRAM
et al.
 v.
 M. B. BROWN
et al.


in my opinion, are to be deemed to be established at the present stage of the proceedings. The plaintiffs, in the month of May last, agreed with the defendant Karsandás Mádhavdás to buy for him, but in the plaintiffs' name, 3,000 bales of cotton, and to press and ship the same on board such ship or ships as Karsandás should direct, on the condition, amongst others, that the plaintiffs should take the mate's receipts, to be given on delivery on board of the cotton, and retain the same until Karsandás should pay for the cotton, with 2 per cent. commission, and Rs. 3½ per bale for pressing and *mikádam* charges. Subsequently to this agreement, the plaintiffs purchased up-country, at various places, 3,000 bales of cotton, and the same were sent down to them in Bombay. Of the cotton so purchased by the plaintiffs, 1,209 bales in all were shipped on board the "Teresa," and mate's receipts for the same delivered to the plaintiffs. For 600 of the 1,209 so shipped the plaintiffs have been paid by Karsandás, and have delivered to him the mate's receipts in respect of them, but in respect of the residue, namely, 609 bales, the plaintiffs have not been paid, and still hold the mate's receipts; and in respect of these bales the suit is brought. The 609 bales were received on board the "Teresa" under seven boat-notes (which have been produced on the part of Messrs. Jefferson, Campbell, and Co., and admitted by the plaintiffs), and which substantially agree with the mate's receipts produced by the plaintiffs, except that according to the boat-notes 613 bales appear to have been sent, according to the mate's receipts 609 only appear to have been received. It may be, the difference is to be accounted for by the fact that the condition of 4 bales was such that they were not received on board; but this is not very material. The boat-notes bear various dates, from the 4th to the 14th of June, and comprise, as I have said, 613 bales. Of these, 381


bearing the mark  are mentioned as being "from

Hirjibháí Sorábjí;" 100 bearing the mark  and 79


bearing the mark  as "from Karsandás Mádhav-


1870.
RAJA'RAM
GOVINDRA'M
et al.
v.
M. B. BROWN
et al.


dás;" and 50 bearing the mark  and 3 bearing the


mark  as "from Nárandás Mulchand" (the name of


one of the plaintiffs). By the mate's receipts, also seven in number, and dated from 6th June to the 16th of June, 609 bales are acknowledged to have been received on


board. As to 200 bales bearing the mark  and 56


bearing the mark  no name is mentioned in the receipts.

As to 41 bales bearing the mark  and 60 bales

bearing the mark  the name Karsandas Mádhavdás is mentioned in the receipt. As to 200 bearing the

mark  the name of Hirjibhái Sorábji is mentioned; and

as to the residue of 52 bales (49 bearing the mark 


and 3 bearing the mark  the name Mulchand (one


of the names of one of the plaintiffs) is mentioned in the receipts. In respect of the price of the 609 bales so shipped, the plaintiffs claim from Karsandás Mádhavdás for unpaid purchase-money, with commission and charges, the sum of Rs. 94,354. The plaintiffs have tendered to the defendant Karsandás the said mate's receipts, and required him to pay the amount due, but he has not done so, and the plaintiffs allege that he is now insolvent and unable to pay his debts. On or about the 28th of June last,


1870.
 RAJA RAM
 GOVINDRAM
et al.
 v.
 M. B. BROWN
et al.

the plaintiffs having, it appears, heard a report that the master had signed bills of lading without any goods being shipped, and without any production of mate's receipts, called upon him to sign bills of lading to them in respect of the 609 bales, tendering the mate's receipts, but the captain refused to sign such bills, and after some further demand the plaintiffs instituted this suit.

The facts set up on the part of Messrs. Jefferson, Campbell, and Co. are that on the 7th of June the defendant Karsandás Mádhavdás consigned to their London firm through them

500 bales of cotton marked  drawing against the

consignment, and indorsing to their Bombay firm a bill of lading for such cotton, bearing date, to the best of deponents' belief, the 7th of June; and that, on the security of such bill of lading and a policy of insurance and letter of hypothecation, the firm of Messrs. Jefferson, Campbell, and Co. advanced on the same day to the defendant Karsandás Mádhavdás Rs. 60,000, and all this in good faith in the ordinary course of business, and without any notice, direct or indirect, express or implied, of any claim of any person whomsoever other than Karsandás Mádhavdás to the said 500 bales of cotton. As to 109 of the bales claimed by the plaintiffs, the defendants Messrs. Jefferson, Campbell, and Co. do not advance any claim; and as 190 of the 600 bales shipped by the plaintiffs, and for which the plaintiffs have been paid by Karsandás Mádhavdás, bear the mark  the

mark mentioned in the bill of lading given to Messrs. Jefferson, Campbell, and Co., it may well be that to that extent there are now on board bales of cotton deliverable to the holder of the bill of lading in question over and above the 609 bales claimed by the plaintiffs. Indeed, for all that appears in evidence, it may be that, besides the 1,209 bales shipped by the plaintiffs, other bales bearing the mark  (which is said to denote "Karsandás

Mádhavdás, Machine-ginned New Broach") may have been shipped, and out of these, with the 190 bales bearing that mark which are in fact on board and to which the plaintiffs make no claim, the holders of the bill of lading may obtain delivery of their full quantity of 500 bales bearing that mark. But there is no evidence of the existence of such other bales, and I must, I think, assume at this stage of the proceedings that with respect to at least 310 bales marked



now on

board the ship, the claims of the plaintiffs, and of the holders of the bill of lading clash, and that one party or the other must be left to any remedy they may have against the master, or owner, or charterer of the ship.

Having stated the facts which, in my opinion, must be taken to be established, and are material to the present application, I proceed to consider some of the many cases which have been cited by counsel. Of these, three, namely, *The Argentina*, *The Marie Joseph*, and *Cowasjee v. Thompson*, are, in my opinion, distinguishable in their circumstances from the present, and do not bear so directly on the points in question as the three others, which I shall presently mention. In *The Argentina (ubi supra)*, the title of the assignee of a bill of lading to the goods represented by it is considered to be subject to two conditions; first, that he be *bonâ fide* assignee for value, without notice of fraud or insolvency of the purchaser; and, second, that the bills of lading (which in that case had been indorsed in blank by the shipper, and by him sent to an agent in England with instructions not to part with the same without first receiving payment) must be transferred by one having authority to do so; and it was held in the circumstances of the case that the agent had such authority. In *The Marie Joseph (ubi supra)* the bills of lading had been indorsed by the shippers and consignors, and delivered by the consignors' agent in England to the purchaser on his acceptance of the bill of exchange drawn for the price. The bill of lading was subsequently, by arrangement, re-delivered to the consignors' agent as a

1870.
RAJA RAM
GOVINDEAM
et al.
v.
M. B. BROWN
et al.

1870.

RA'JA' RA'M
GOVINDRA'Met al.
v.M. B. BROWN
et al.

security for the bill¹ of exchange being paid, but the purchaser afterwards again got possession of it by a misrepresentation, and indorsed it to a creditor as security for money due by him (the purchaser) to such creditor. In this case it was held that, by the indorsement and original delivery of the bills, the purchaser had acquired complete property in the goods, and in virtue of such property had power to sell or pledge the goods, and that the title of the pledgee of the goods (*i.e.*, the creditor) ought to prevail against the unpaid vendor. In *Covasjee v. Thompson (ubi supra)*, where the sellers held mate's receipts, but the master had signed bills of lading in the name of the purchaser, who became insolvent during the currency of the bill of exchange they had accepted, the ground of decision was that the goods had been completely delivered to the purchaser, and that after his acceptance of the bill the transaction was complete, and that the retention of the mate's receipts by the sellers was the result of a mere oversight, or a fraud, and was wrongful, and could of itself confer no right or control over the goods.

The above three cases do not, in my opinion, govern the present one. In the present case the retention of the mate's receipts was intentional and rightful, and was done with the view of retaining control of the goods till payment was made for them; and the vendors and original owners of the goods were wholly strangers to the bill of lading, which was signed without their consent or knowledge.

Among the cases cited, I consider that the three which bear most directly on the present case are those of *Craven v. Ryder*, *Gurney v. Behrend*, and *Schuster v. McKellar*. In *Craven v. Ryder* the Court considered that to an action against the master of a ship for conversion of certain sugars which had been sold and shipped by the plaintiffs, they retaining the lighterman's receipts, it was no defence that the goods had been sold by the person who had purchased from the plaintiffs to a person who had paid the price to such purchasers, and that the defendant had signed a bill of lading in favour of such second vendee deliverable to his assign.

The Chief Justice says: "The practice is that the person who is in possession of the lighterman's receipt is the person entitled to the bill of lading, which ought to be given only to the holder of that receipt. Consequently, the holder of that receipt retains a control over the goods, at least until he has exchanged the receipt for the bill of lading." And, again, "French and Co. (the first vendees) might sell their right again, but the plaintiffs might refrain from delivering the goods, unless under such circumstances as would enable them to recall the goods if they saw the occasion. The plaintiffs refuse to deliver them except in exchange for this receipt. They know a bill of lading will be executed before the ship sails, and they know that the bill of lading ought regularly to be executed to themselves. French and Co. sell to Caldas (the second vendee). Caldas goes to the defendant (the master) and obtains the bill of lading of these goods, but the defendant signs that bill of lading to Caldas in his own wrong, for he ought not to have given the bill of lading but in exchange for the lighterman's note." In *Gurney v. Behrend* we find in the judgment of the court, delivered by Lord Chief Justice Campbell, the following passage:—"The *onus* lies on the plaintiffs to prove that they had become the owners. For this purpose it is not enough that they had become *boná fide* holders of the indorsed bill of lading for valuable consideration. A bill of lading is not, like a bill of exchange or promissory note, a negotiable instrument which passes by mere delivery to a *boná fide* transferee for valuable consideration, without regard to the title of the parties who make the transfer. Although the shipper may have indorsed in blank a bill of lading deliverable to his assigns, his right is not affected by an appropriation of it without his authority. If it be stolen from him, or transferred without his authority, a subsequent *boná fide* transferee for value cannot make title under it as against the shipper of the goods." In the case of *Schuster v. McKellar*, the plaintiffs, a London firm, had purchased abroad, on their own credit, goods for another firm (Coles Brothers), who in their own name engaged room for the goods in a ship in the port of London bound for

1870.
 RA'JA'RAM'
 GOVINDRA'M
 et al.
 v.
 M. B. BROWN
 et al.

1870.
 RAJA'RAM
 GOVINDRAM
 et al.
 v.
 M. B. BROWN
 et al.

Calcutta. The plaintiffs, with a view to preserve their lien, retained the mate's receipts, but Coles Brothers, without redeeming the mate's receipts, fraudulently induced the ship-brokers to get bills of lading to their order signed by the master, though the mate's receipts were not produced, and Coles Brothers fraudulently indorsed those bills of lading for value to a *bonâ fide* indorsee. It was held that the plaintiffs could recover damages against the master and owner of the ship for refusing to deliver the goods. In the course of the argument, Lord Campbell expressed his opinion that the property in goods remains in the commission merchant till there is a delivery by him, and that a shipment is not a delivery unless made *animo transferendi*; and in delivering the judgment of the court he was of opinion that "the property in the goods in question had not been divested out of the plaintiffs, the intention being that the goods should remain the property of the plaintiffs till, according to the usual course of dealing, they received the price of them from Coles Brothers by the redemption of the mate's receipt." He says further that "Coles Brothers knew full well that until they redeemed the mate's receipt they had no property in the goods, and no right to obtain a bill of lading for them. They were well aware that in obtaining a bill of lading without the mate's receipt they committed a gross fraud. They thereby acquired the power of giving a right as against the ship-owner or charterer to a *bonâ fide* assignee of the bill of lading for value; but they acquired no right *as against the plaintiffs, in whom the property was still vested.*"

In the present case the defendant Karsandás Mádhavdás has not filed any affidavit, and the only evidence of the relations between him and the plaintiffs is that which has been adduced by the latter. But, on the materials at present before me, I am unable to come to any other conclusion but that the plaintiffs, though they shipped the goods, and took the mate's receipts, some in the name of Karsandás Mádhavdás and some in the name of Hirjibhái Sorábji (who is said to have been a servant of Karsandás), others being in their own name,

did so not intending thereby to transfer the property in the goods to Karsandás, except on payment by him of the money due in respect of such goods ; and that, to preserve their hold on the goods, they retained possession of the mate's receipts, trusting to the general mercantile usage that bills of lading are not signed for goods unless on production of such receipts.

I consider that Karsandás, in breach of the agreement between him and the plaintiffs, and in fraud of their rights, induced the master to sign bills of lading without the mate's receipts being produced, and, in fact, before the greater part of the goods were shipped at all, and, having obtained such bill of lading, indorsed it for value to the defendants Messrs. Jefferson, Campbell, and Co. But if I am correct in the view which I take, that the property never passed, or was intended to pass, out of the plaintiffs, the act of Karsandás in indorsing the bill of lading to Messrs. Jefferson, Campbell, and Co. was the act of a man who had no title so to indorse the bill, or to the goods to which it related, and his indorsement, as against the plaintiffs' right of property, cannot be allowed to have any legal operation. Had there been any evidence of collusion between the plaintiffs and the defendant Karsandás, that they had by their conduct in any way authorised or enabled the defendant Karsandás so to obtain and deal with the bill of lading, this would, I think, have been sufficient ground for holding them to be precluded from insisting on their legal right to the goods ; but I am unable to see any evidence of such collusion or conduct. With regard, then, to 299 of the 609 bales in question, I do not consider that the defendants Messrs. Jefferson, Campbell, and Co. have shown any cause at all against the order for an injunction being made absolute ; and with regard to the residue, namely, 310 bales, I consider, for the reasons above stated, that the cause they have shown ought not to prevail ; and I, therefore, consider that the order of the 6th of July must be made absolute. Costs will, of course, be reserved.

NOTE.—In the above case service of the summons of the rule to show cause on the defendant M. Donald, who was described in the heading of the plaint as “ of Liverpool, residing in England, and carrying on business

1870.
RAJA RAAM
GOVINDRAM
et al.
v.
M. B. BROWN
et al.

1870.
 RAJA'RAM
 GOVINDRA'M
 et al.
 v.
 M. R. BROWN
 et al.

in Bombay by means of his agents Messrs. Rennie, Scovell, and Co., of Bombay, merchants," was effected by serving it upon Thomas Wilson, manager of the firm of Rennie, Scovell, and Co.

On the 9th of July *the Honorable A. R. Scoble* (Acting Advocate General) (with him *Starling*) appeared before GREEN, J., to protest against the service of the summons, and of the rule to show cause against the injunction being held to be good service on the owner of the "Teresa," upon the grounds stated in an affidavit of Thomas Wilson. Therein it was stated that the "Teresa" arrived in Bombay from Liverpool consigned to Rennie, Scovell, and Co., as freighters' agents, under a charterparty sent to Mr. Wilson by the freighters, Rennie, Antrobus, & Co., which firm was composed of the same members as Rennie, Scovell, & Co.; that in the charterparty the owners of the ship were described as Messrs. Callart & Co., but that, from the Register, M. Donald, of New Brunswick, appeared to be the owner, and that he, Mr. Wilson, did not know who was really the owner. That Rennie, Scovell, & Co., had no communication with M. Donald (nor had Rennie, Antrobus, & Co., as it was believed), but only with Callart & Co. and that the relation of Rennie, Scovell, & Co. towards the ship and the said Callart & Co. was simply that which was defined by the charterparty, wherein the ship was addressed to Rennie, Scovell, & Co. for outward business; and that although, by virtue of that consignment, Rennie, Scovell, & Co., in accordance with the usual practice, styled themselves, in all matters relating to the said outward freight of the ship, "Agents for the Captain and Owners," yet the duties of Rennie, Scovell, & Co. were simply to procure freight for the ship outwards, to prepare the outward manifest, to check and pass bills of lading for the captain's signature, to exercise a general superintendence over the ship's disbursements, and advise the captain in all matters relating to the loading and despatch of the ship from this port; but not, without the special instructions of the owner (which in this case had not been received), in any way to interfere with, or exercise any sort of control over, the cargo when on board; that M. Donald did not carry on business in Bombay by means of Rennie, Scovell, and Co., and that neither they nor Mr. Wilson had authority to appear for him in the above suit. Mr. Wilson also, amongst other things, stated that the bill of lading alluded to in the plaint was signed without his knowledge, and without the knowledge of Rennie, Scovell, & Co.

McCulloch argued in support of the sufficiency of the service.

GREEN, J., held that the service was good service upon the owner, but offered to allow time to Rennie, Scovell, & Co. to communicate with the owner before the argument of the rule.