

ORIGINAL CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice.

1921.

October 8.

L. & I. RAPAPORT (PLAINTIFFS) v. KALLIANJI HIRACHAND (DEFENDANTS)^o.

Civil Procedure Code (Act V of 1908), Order XI, Rules 15, 18—Inspection of documents—Documents referred to in pleadings but not material to the case—Principles regulating inspection of—Practice.

Under indent forms signed by the defendants in favour of the plaintiffs, the defendants agreed to purchase from the plaintiffs the goods mentioned in the indents at the prices noted therein and to pay for the goods at the current rate of exchange on delivery of the shipping documents. On arrival of the goods the defendants refused to take delivery unless the plaintiffs consented to fix the rate of exchange at two shillings to a rupee. The plaintiffs declined, and sued to recover the value of the goods according to the indent prices. In their plaint, the plaintiffs incidentally referred to the invoices received from England for the purpose of showing that they had received advice of the goods they had purchased and that they would make out their own invoices and send the same to the defendants. The defendants did not file their written statement, but took out a summons asking for an order against the plaintiffs for inspection of the original invoices.

Held, that the defendants had not made out a case for inspection of the invoices, inasmuch as under their contract with the plaintiffs they had nothing to do with the prices which the plaintiffs paid in England, and the said invoices were not necessary for either the plaintiffs' or the defendants' case.

Observations of Bowen, L. J. in *Quilter v. Healy*⁽¹⁾, referred to.

CHAMBER Summons for inspection of documents.

The plaintiffs, L. & I. Rapaport & Co. carried on indenting business in Bombay and received orders from merchants for goods to be purchased in England.

The practice adopted by the plaintiffs was that the merchants placing orders with them had to sign indent forms of the plaintiffs, showing *inter alia* the prices of the goods and the terms on which the plaintiffs undertook to transact business for their constituents.

^oO. C. J. Suit No. 3083 of 1921.

⁽¹⁾ (1883) 23 Ch. D. 42.

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The defendants, Kallianji Hirachand, were piece-goods merchants, and they in the course of their dealings with the plaintiffs gave orders for the purchase of different kinds of cloth in England and signed five indent forms in favour of the plaintiffs. The material portion of the indent form was as follows :—

“(I) I/We the undersigned hereby agree to purchase from L. & I. Rapaport the goods hereinafter mentioned or any portion of them at the prices and on the terms noted below and to pay for them in or at L. & I. Rapaport in cash at the current rate of exchange for demand Bank Bills on London on delivery of the shipping documents.....(II) This contract shall be between seller and buyer as principal dealing with principal”.

On arrival of the goods ordered by the defendants, the plaintiffs wrote to the defendants requesting them to take delivery of and pay for the same at due dates after paying the clearing charges. The defendants replied as follows :—

“Received your letter and in reply I beg to write that if you agree to give me the rate of exchange at 2s. for said 5 cases according to the resolution passed by our Native Piece Goods Association, I will be prepared to take up these cases. If you take any steps against me, it will be to your account and risk which please note”.

The plaintiffs not agreeing to the proposal contained in the said letter sued the defendants to recover the moneys due to them under the terms of the indents.

In their plaint the plaintiffs referred to the invoices received by them from the manufacturers in England. This was apparently done with the object of showing that they had received advice of the goods they had purchased in England and that they could make out their own invoices and send them to the defendants.

The invoices being thus referred to as part of their narrative the plaintiffs proceeded to state in para. 17 of the plaint as follows :—

“The defendants falsely allege that as the Native Piece Goods Merchants' Association have fixed the rate of exchange at 2s. they can only take delivery

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of the indented goods and pay its price at that rate of exchange. The plaintiffs say that they have nothing to do with the rate of exchange fixed by the Native Piece Goods Merchants' Association. The plaintiffs submit that the defendants are sued for the price of goods and charges, and exchange should be calculated as of the date of the decree".

The defendants, without filing their written statement, took out a summons for an order calling upon the plaintiffs to give inspection of the invoices referred to in the plaint and that in the meanwhile the hearing of the suit be stayed.

Paragraphs 4 and 5 of the defendant's affidavit in support of the summons were as follows:—

"4. I say that it is alleged in paragraph 5 of the plaint that when the plaintiffs contract with dealers in Bombay and purchase the goods in England at a rate which gives the plaintiffs a profit they are entitled to do so. I deny that any such practice ever existed between the plaintiffs and the defendants.

"5. I say that the defendants are entitled to inspection of the invoices referred to in paragraphs 10 to 15 of the plaint and until they get such inspection the defendants are unable to file their written statement".

The plaintiffs showing cause against the summons stated in their affidavit:—

"4. I say that clause II of all the indents relating to the goods in suit provided that the contract is between seller and buyer as principal dealing with principal and the defendants are not entitled to inspection of the invoices sent by the plaintiffs' home vendors. Moreover the said invoices are privileged documents as the defendants have no concern with the party from whom the plaintiffs purchase the goods in order to supply them to the defendants and the defendants are not entitled to know the name of the plaintiffs' home vendors which would prejudicially affect the plaintiffs' business.

"5. I further say that as the defendants have not filed their written statement they are not entitled to the inspection of any documents other than those set out in the list of documents annexed to the plaint on which the plaintiffs rely".

Desai, for the plaintiffs.

Thakurdas of Thakurdas & Co., for the defendants.

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MACLEOD, C. J.:—The plaintiffs have filed this suit to recover from the defendants the price of certain goods ordered by the defendants under various indents. Under the form of indent employed the defendants agreed to purchase from the plaintiffs the goods mentioned in the indents, or any portion of them at the prices and on the terms noted therein and to pay for the goods at the current rate of exchange for demand Bank Bills on London on delivery of the shipping documents. The goods arrived but the defendants refused to take delivery or to pay for the goods. In the plaint the plaintiffs referred to the invoices received from England for the goods which the plaintiffs had ordered to fulfil their contracts with the defendants. It appears that the defendants were willing to take delivery of the goods provided the plaintiffs were willing to fix the rate of exchange at 2s. On the 9th February 1921 the defendants wrote :—

“ Received your letter and in reply I beg to write that if you agree to give me the rate of exchange at 2s. for said five cases according to the resolution passed by our Native Piece Goods Merchants' Association, I will be prepared to take up these cases ”.

The defendants before filing their written statement have taken out this summons asking for an order that the plaintiffs should give inspection to the defendants of the invoices referred to in paragraphs 10 to 15 of the plaint.

Now, undoubtedly the defendants are entitled, under Order XI, Rule 15, Civil Procedure Code, to give notice to the plaintiffs to produce these invoices for their inspection and if inspection is refused, they are further entitled to get the opinion of the Judge whether such a demand for inspection is justifiable. That is provided for by Rule 18, under which “ the Court may, on the application of the party desiring it, make an order for

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inspection,... Provided that the order shall not be made when and so far as the Court shall be of opinion that it is not necessary either for disposing fairly of the suit or for saving costs."

It appears now that the defendants claim that under their contracts with the plaintiffs they are not obliged to pay for the goods at the contract price but at some other price at which the plaintiffs may have secured the goods in England; and it is for that purpose that they are now seeking inspection of these invoices, which would shew the prices at which the plaintiffs secured the goods. On the facts alleged in the plaint and on the written contracts signed by the defendants, it is perfectly obvious that the contention raised now by the defendants is untenable, as the defendants under their contract had nothing to do with the prices which the plaintiffs paid in England. Accordingly the defendants have not made out a case for an order directing the plaintiffs to give inspection.

The law is laid down under the corresponding Supreme Court Rule in *Quilter v. Heatly*⁽¹⁾, where Bowen L. J. said :

"Order XXXI, Rule 14, provides for immediate production of any document which a party has referred to in his pleadings or affidavits. The party against whom the application is made must produce them unless he can shew good cause why he should not. If he refuses, the party applying can go to the Judge, who may refuse the application if he sees good reason for so doing.... In my opinion the *onus* is on the refusing party."

So that the plaintiffs here have to give sufficient reason why they should not be ordered to give inspection of these invoices. Now it is clear that these invoices are merely referred to in the plaint as part of the narrative showing how the plaintiffs received advice of the goods they had purchased in England so that

⁽¹⁾ (1883) 23 Ch. D. 42.

they could make out their own invoices to send to the defendants. The plaintiffs were not obliged to mention the invoices they received from England since the invoices were not necessary either for proving the plaintiffs' case or for assisting the defendants in their defence. The present application is obviously made for the purpose of delaying the plaintiffs' suit.

The summons will be discharged with costs.

Counsel certified.

Attorneys for plaintiffs : Messrs. *Little & Co.*

Attorneys for defendants : Messrs. *Thakordas & Co.*

Summons discharged.

G. G. N.

ORIGINAL CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

BAI GULAB (PLAINTIFF-APPELLANT) v. JIWANLAL HARILAL (DEFENDANT-RESPONDENT)*.

Hindu law—Marriage—Anuloma marriage, whether valid—Marriage between a Vaishya male and the illegitimate daughter of a Vaishya born of a Sudra woman—Validity of the marriage.

According to Hindu law as administered in the Bombay Presidency, the marriage between a Vaishya male and the illegitimate daughter born of a Vaishya father and a Sudra mother is valid.

Validity of *anuloma* marriages discussed and texts of Hindu law cited.

Brindavana v. Radhamani⁽¹⁾, referred to.

Bai Kashi v. Jamnadas⁽²⁾, considered.

APPEAL from the judgment of Kajiji J.

* O. C. J. Appeal No. 27 of 1921: Suit No. 1924 of 1920.

⁽¹⁾ (1888) 12 Mad. 72.

⁽²⁾ (1912) 14 Bom. L. R. 547.

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