(1880) 02 CAL CK 0004

Calcutta High Court

Case No: None

Sourujmull and Others		APPELLANT
	Vs	
The Ganges Manufacturing Co.		RESPONDENT

Date of Decision: Feb. 3, 1880

Acts Referred:

- Evidence Act, 1872 - Section 2

Citation: (1880) ILR (Cal) 669

Hon'ble Judges: Richard Garth, C.J; Pontifex, J

Bench: Division Bench

Judgement

Richard Garth, C.J.
We think that the lower Court has taken a correct view of this ease. The plaint does not very correctly describe what the true cause of action is against the defendants; but the evidence is conflicting, and the circumstances peculiar; and we think that the learned Judge was fully justified in giving the plaintiffs a decree for what really appears to be their due.

2. The facts, as we consider them to be proved, are these:

3. Messrs. Cohen Brothers had contracted with the defendants to buy of them a large number of gunny bags in the months of April and May 1878. The time for taking delivery of these bags had been extended at the request of Messrs. Cohen; and on the 22nd July there remained 107,500 bags still undelivered.

4. The defendants had been pressing Messrs. Cohen to take delivery of these bags; and on the last-mentioned day Mr. Cohen, a member of the firm, called at the office of Messrs. Macneill and Co., the defendants'' agents. He informed them that he had arranged to take delivery of 57,500 bags, and he then made a further contract for the purchase of 30,000 twilled bags. Accordingly, on the following morning, the 23rd

July, the defendant Company sent to Messrs. Cohen delivery orders &#65533;675] for the 57,500 bags, and also for the 30,000 twilled bags sold on the previous day. On the afternoon of that day Mr. Cohen again called at the office of Macneill and Co., and saw Mr. Lyall, who had the conduct of their business as the agents of the defendants. According to Mr. Lyall''s own evidence, Mr. Cohen, on this occasion, handed him an open letter from Cohen Brothers to Macneill and Co., in the following terms:

Memorandum.

From Cohen Brothers and Co., 11, Radha Bazar Lane, Calcutta, to Messrs. Macneill and Co., Agents, Ganges Jute Co., dated 23rd July 1878.

Dear Sirs,

With reference to your delivery orders, Nos. 45 to 52, for 57,500 C bags, and Nos. 53 to 55, for 30,000 A twills, we have handed the delivery orders to Baboo Roop Chand Samareemull, to whom you will please deliver the bags as may be required.

Yours faithfully,

Cohen Brothers & Co.

5. Mr. Cohen said, that he had made arrangements to take the bags, for which they had received the delivery orders; but that he wished Macneill and Co. to deliver them to a person whom he had brought with him, the witness Ramrutton, who in fact represented the plaintiff''s.

6. He then went and fetched Ramrutton into the room, and pointing to him said, that he was the man whom he wanted to have the bags, and begged Mr. Lyall to write to the manager to that effect. Mr. Lyall said, that there was no necessity for such a letter; but if he wished it, he would give one. He then proposed merely to initial the open letter; but Mr. Cohen said that that would not be enough, because he wished the bearer personally to get delivery; and therefore Mr. Lyall wrote these words upon the letter,--"the bearer of this will personally take delivery of each lot as required." Mr. Lyall states that he had no conversation with Ramrutton and that this was substantially all that passed.

7. Ramrutton, on the other hand, says, that he told Mr. Lyall, that Roop Chund Samareemull, one of the plaintiff''s, wanted the paper signed by Mr. Lyall as a guarantee for the 87,500 bags; and that if he signed it, the plaintiffs would advance Rs. 15,000 to Cohen; so that, according to his evidence, Mr. Lyall had notice of the whole arrangement between the plaintiffs and Messrs. Cohen. This fact of Ramrutton''s statement, however, the learned Judge in the Court below has disbelieved, and we are not disposed to question the correctness of his finding in that respect. Mr. Lyall, on the other hand, states, that he believed Ramrutton to be merely a servant of Messrs. Cohen, and that the only reason why he was asked to

sign the letter, was in order to secure the delivery of the bags to that particular man. But this statement of Mr. Lyall really amounts to nothing. What was said and done on this occasion is of course evidence; but what was passing in Mr. Lyall''s mind is no evidence as against the plaintiffs. We are bound to put a reasonable construction on what occurred, and to view the transaction as Mr. Lyall himself, being a mercantile man and a man of business, ought to have regarded it: and dealing with it in that way, it seems to us quite impossible to accept the explanation which Mr. Lyall himself, and the appellants'' counsel have endeavoured to impress upon us. It is obvious-that Ramrutton was introduced to Mr. Lyall, not as a servant of Cohen and Co., but as a third person, to whom he desired Mr. Lyall to transfer the right of taking bags under the delivery orders. Messrs. Cohen had experienced great difficulty in taking delivery of these bags; it is pretty clear that this difficulty arose from their not being in a position to pay for them; and the fact of Ramrutton being introduced, and of Messrs. Macneill being asked as a favour to make a special order for the delivery of the bags to him, was quite sufficient, as it seems to us, coupled with the other circumstances of the case, to have fully apprized Mr. Lyall of what he was really asked to do.

8. The delivery orders which had been sent on the morning of the 23rd would have enabled any servant of Messrs. Cohen to obtain delivery of the goods upon paying for them. It would have been quite unnecessary to ask Mr. Lyall as a favour to deliver the goods to any of Messrs. Cohen''s servants; and Mr. Lyall knew that perfectly well. The favour which Mr. Cohen asked was to obtain an order for delivery to the plaintiffs, with whom he was making the arrangements; and we think that Mr. Lyall must, as he ought to, have known that this was Mr. Cohen''s intention.

9. Certain it is, that, upon the faith of the order which Mr. Lyall signed for the delivery of the goods to Ramrutton, the plaintiffs were induced to, and did actually, advance Rs. 15,000 to Messrs. Cohen on that same day; and the larger portion of the goods was in fact afterwards delivered to the plaintiffs under that order, without their being required to pay for them.

10. The case, therefore, appears to us to come clearly within the principle of the authorities which were acted upon by the learned Judge, and especially the cases of Knights v. Wiffen (IL.R. 5 Q.B. 660), and Woodley v. Coventry (2 H. & C. 164). In the latter case, the defendants, who were warehousemen, had sold to a Mr. Clark a portion of a large quantity of flour, which was lying at their warehouse, without making any appropriation to him of any particular barrels. Mr. Clark then sold to Messrs. Woodley, the plaintiffs, a portion of that flour, and gave them a delivery order for it; which delivery order was taken to the defendants, who said that "it was in order," and subsequently delivered to the plaintiffs a portion of the flour. Clark then became insolvent, and the defendants refused to deliver to the plaintiffs, the remainder of the flour. But it was held, that as the defendants had consented to the transfer, and had thereby induced the plaintiff to act upon it, it was not competent

to them to recede from their word, or to repudiate the transfer which they had been the means of confirming.

11. In that case, as in this, no actual appropriation of the goods had been made to the original purchaser; and the point was taken, as it has been here, that as there had been no severance of the particular goods, no property in them had passed to the vendees; but the Court considered that as the delivery orders had been assented to by the defendants, the latter were estopped from denying that they held the goods, answering to the description in those orders, at the disposal of the person to whom the orders were given.

12. The case of Knights v. Wiffen (ILR. 5 Q.B. 660), is. to the same effect, and there also no appropriation of the goods had been made to the original purchasers at the time of the transfer.

13. It has been further contended by the appellants, that Sections 115 to 117 contained in Chap. VIII of the Evidence Act lay down the only rules of estoppel which are now intended to be in force in British India; that those rules are treated by the Act as rules of evidence; and that, by Section 2 of the Act, all rules of evidence are repealed, except those which the Act contains.

14. But if this argument were well founded, the consequences would indeed be serious. The Courts here would then be debarred from entertaining any questions in the nature of estoppel which did not come within the scope of Sections 115 to 117, however important those questions might be to the due administration of the law.

15. The fallacy of the argument is in supposing that all rules of estoppel are also rules of evidence. The enactment in Section 115 is, no doubt, in one sense, a rule of evidence. It is founded upon the well-known doctrine laid down in Pickard v. Sears (6 Ad. & E., 469) and other cases, that where a man has made a representation to another of a particular fact or state of circumstances, and has thereby wilfully induced that other to act upon that representation and to alter his own previous position, he is estopped as against that person from proving that the fact or state of circumstances was not true. In such a case the rule of estoppel becomes so far a rule of evidence, that evidence is not admissible to disprove the fact or state of circumstances which was represented to exist. But "estoppels," in the sense in which the term is used in English legal phraseology, are matters of infinite variety, and are by no means confined to the subjects which are dealt with in Chap. VIII of the Evidence Act. A man may be estopped, not only from giving particular evidence, but from doing acts, or relying upon any particular arguments or contention, which the rules of equity and good conscience prevent his using as against his opponent. A large number of cases of this kind will be found collected in the notes to Doe v. Oliver (2 Smith''s L.C. 8th edn., pp. 775 et seq) and whatever the true meaning of Section 2 of the Evidence Act may be as regards estoppels which prevent persons from giving evidence, we are clearly of opinion that it does not debar the plaintiffs in

this case from availing themselves of their present contention as against the defendants.

16. When once Mr. Lyall had consented to the transfer which had been made, to the plaintiff''s by his instrumentality, and had placed it in the power of Messrs. Cohen to obtain an advance from the plaintiffs on the strength of it, it would clearly be inequitable to allow the defendants to recede from the arrangements which had been made by their agent, Mr. Lyall.

17. Holding, therefore, as we do, that the judgment of the Court below was right on principle, and as there was no contention on the part of the appellants that the amount of the damages was erroneously estimated, the appeal will be dismissed with costs on scale 2.