
(1871) 12 CAL CK 0004

Calcutta High Court

Case No: None

J.A. Charriol and
Others

APPELLANT

Vs

C.G.M. Shircore

RESPONDENT

Date of Decision: Dec. 13, 1871

Judgement

Sir Richard Couch, Kt., C.J.

The two questions which have been raised in this case appear to me to be substantially the same; because unless the signature which was put on the 17th May to the document was a sufficient signature to satisfy the Statute of Frauds, the plaintiffs cannot recover; and the ground upon which the Advocate-General rests his case is that the agreement which the parties came to on the 5th June, was not complete, because there was something further to be done in the shape of signing. The real question is, whether the parties, on the 5th of June, intended that the signature which was put on the 17th May, should be treated as a signature to the agreement as it had been altered by them; because, unless they did so intend, there would be no binding writing signed by the party to be charged which would satisfy the Statute of Frauds. We have been referred by the learned Counsel for the appellants to the case of *Durrell v. Evans* 1 H. & C., 174, on which he appears considerably to rely. Now the language of Mr. Justice Blackburn in that case shows what is the real question. Mr. Justice Blackburn says in more than one passage of his judgment, that what is necessary is not merely that the signature, which was at the head of the document and which was printed, should be there when it had been altered; but that being so signed it must be intended by the parties to be a binding instrument of contract. He says at page 191, "I cannot look upon this document as an invoice or bill of parcels in the sense that it was only intended to be the vendor's account of the contract. If the facts are looked at, it is impossible to deny that there is evidence from which a jury might draw the inference that it was written by the defendant's authority as a record of a contract by which both parties meant to be bound." He then speaks of the evidence, and says at page 192, "that is evidence for the jury that Noakes was requested to alter this writing, not merely as the seller's account, but as a record of the contract

binding on both parties," and further on in the same page he says: "There is the decision of two eminent Judges that where a document contains the name of the party to be charged, and he intended it to be a binding memorandum of the contract, that is sufficient."

2. It is not enough that this paper, as altered on the 5th June, contains the name of Mr. Shircore, which was put on it on the 17th of May and was not struck out on the 5th of June; but did Mr. Shircore intend at that time that it should remain as the signature to the document as altered? If he did not so intend, there is no signature to the document as altered, and therefore, no contract to satisfy the Statute of Frauds.

3. It is to be observed, that the plaintiffs who sue to enforce this contract, must make out that there was such a contract, and if they are unable to satisfy us on that and have left the matter in doubt, they cannot be entitled to recover in this action.

4. Now let us look on this question at the evidence of Mr. Beer, one of the plaintiffs. Mr. Beer's account of what took place on the 5th of June is this. He says, "the defendant called on the following Monday, the 5th June. I explained to him again I would on no consideration accept such a clause as he had put at the end of the contract. I also said, you know very well you may always find money here when you want it, but I will not bind myself to give advances unless you find security when called on to do so. Why I may hear to-day you are running away from Calcutta and you may come to me and call on me for advances, and I shall be bound to give them if I accept your contract." He then goes on to speak about the alterations regarding the price; and says he struck out the clause with regard to advances, put "cancelled" against it, and put the words "approved R. and C." "I then passed it on to Mr. Shircore and asked him to put his initials to the word "cancelled." He said what is the use of signing on this paper there are so many corrections? I said never mind, put your initials. I shall have a fair copy made out and sent to you for your signature. I told him I would send an unstamped copy for him to keep, and a stamped copy to be returned. He did put his initials to it (A). After defendant so initialed A, nothing further was done." Then in cross-examination by the learned Advocate-General, Mr. Beer said: "He objected to write on it at all on the ground it was so full of alterations. It was to be signed after it was fair copied. He said what is the good of signing this paper, it is so full of corrections? The paper was to be copied out word for word, and he was to sign it again", and then he goes on to say he had signed the paper, and the signature of the 17th of May was a sufficient signature to the document.

5. Now the fair inference to be drawn from Mr. Beer's evidence is that both parties did not, on the 5th of June, contemplate or consider that the signature, put on the 17th of May on the paper, was to be treated as the signature to the document as altered. Mr. Beer evidently considered that the document so altered should be fair copied and signed, and if he thought that the document as altered was to be treated as the agreement, the signature being then there, there would have been no necessity for having the agreement fairly copied and stamped and sent to Mr. Shircore for signature. The proper course

would have been not to have taken the initials of Mr. Shircore merely to the cancellation of the clause as to advances, but to have authenticated all the alterations by obtaining his initials to them, because there is nothing to show, as the document stands, that Mr. Shircore consented to be bound by all these alterations.

6. Then the state of the document itself appears to me to show that both parties intended that the document was to form the draft from which the agreement ultimately to be signed was to be prepared. You find that at the foot of that part of the agreement which remained and which was to be binding, the words "approved R. and C." were written by Mr. Beer, showing that Mr. Beer had approved of that part of it and that it was intended that the defendant should sign it after he had approved of it on his part. I cannot see that at that time Mr. Beer thought at all of the signature of the 17th May, or that he contemplated that signature as being the defendant's signature to the altered document. If he did not or the defendant did not, then the paper was never signed by the defendant so as to satisfy the Statute of Frauds.

7. On the other question, viz., whether on the 5th of June Mr. Shircore reserved to himself the right to recede from the contract until he had affixed his signature to the instrument, there is possibly some difficulty and even some conflict of evidence. His own letter, which was written on the 5th of June, and which was received by Mr. Beer on the same day, certainly rather indicates that he did so consider, and that he thought that till he signed the fair copy of the agreement he had the power of receding. I see no reason to think that that letter was not honestly written. I think it states what he honestly believed, and it confirms what he now contends for, that he understood on the 5th of June that the contract was not to be a binding contract till the draft had been copied out fairly on stamped paper and signed by him. It is quite possible that there has been a misunderstanding, and that one party understood one thing and the other party another thing; but if Mr. Shircore really understood that he was not to be bound till he had signed the fair copy, there was no contract.

8. I therefore think that the judgment of the learned Judge in the Court below, holding that there was no signature in this case to satisfy the Statute of Frauds is correct. I only think it necessary to remark that in confirming that judgment I wish not to be understood as concurring in all the law laid down in it. I think some propositions there stated may be questionable. The decree will be affirmed with costs on scale No. 2.