

(1881) 01 CAL CK 0006

Calcutta High Court

Case No: None

J.E. MacLachlan

APPELLANT

Vs

Juggernath Khan and  
Others

RESPONDENT

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Date of Decision: Jan. 11, 1881

Citation: (1881) ILR (Cal) 681

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

Bench: Division Bench

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#### Judgement

Richard Garth, C.J.

It is clear from these letters, that the construction which the plaintiff put upon the contract, and which has been adopted by the Court below, was that, although the whole of November was the period mentioned in the contract for giving and taking delivery of the goods, the particular time in November at which the delivery was to commence was to be determined by a seven days" notice, which was to be given by the buyer, The buyer had thus the option of fixing the time for delivery; and at the expiration of the seven days" notice, the sellers would be bound to commence to deliver, although, of course, they would be allowed a reasonable time after the expiration of the notice for completing the delivery.

2. The defendants, on the other hand, contended that they had the whole month of November in which to deliver the ginger; and that although the seven days" notice might have been given by the plaintiff on the 1st of November, the defendants would still have until the last day of the month to complete the delivery.

3. I am of opinion that the view which has been taken by the Court below is the correct one. No doubt if the words had been "delivery to be taken and given during the whole of November," the sellers would have had the whole month in which to deliver. But it seems to me that the words "on seven days" notice from the buyer" are intended to give the buyer the right of fixing the particular time in November at which the delivery was to take place. If this were not so, the words seem to me to

have no meaning.

4. I think, therefore, that the defendants were bound to commence delivery on the 13th of November, and that the breach of contract occurred when the sellers virtually refused to deliver until the 28th of the month.

5. It has also been suggested by Mr. Evans that the seven days" notice which the plaintiff gave was insufficient, because it required the delivery to be made "within seven days" instead of at the expiration of seven days from the 5th November. But this is at best a mere formal objection; and I think it clear from the correspondence that the defendants understood and treated the notice as a seven days" notice under the contract. If the notice had not been given, the sellers would not have been bound to deliver at all; but the defendants evidently considered themselves bound by the notice to deliver according to the true meaning of the contract. Moreover, this point as to the form of the notice was neither taken in the correspondence between the parties, nor in the written statement of the defendants, nor in the Court below, nor in the grounds of appeal to this Court.

6. The only other point which has been made by the appellants is, that the Judge, in estimating the damages, has given the plaintiff two annas a bag too much. This is a small point, and Mr. Branson does not contest it. The damages, therefore, will be reduced by two annas a bag. But as the appeal has substantially failed, it will be dismissed with costs on scale No. 2.