

**(1890) 01 CAL CK 0004****Calcutta High Court****Case No:** None

Prem Sook and Another

APPELLANT

Vs

Dhurum Chand and Another

RESPONDENT

**Date of Decision:** Jan. 6, 1890**Citation:** (1890) ILR (Cal) 321**Hon'ble Judges:** Knight, C.J; W. Comer Petheram, J; Pigot, J**Bench:** Full Bench**Judgement**

W. Comer Petheram, Knight, C.J.

This is a reference from the Small Cause Court upon which a question of law arises. The suit was a suit brought by the plaintiffs against the defendants to recover the price of six bales of twist at the rate of Rs. 10-15 a bundle.

2. The defendants paid into Court a sum of money calculated at the rate of Rs. 9-15 a bundle, and the question between the parties was, what was the sum which, according to the contract between them, the defendants were to pay the plaintiffs for these goods, it being admitted that they had received them.

3. The goods were sold by the plaintiffs to the defendants under a written contract (here followed the contract above set out, ante p. 320).

4. After that contract had been entered into, it appears that the defendants resold these parcels of goods in the Calcutta market to some other dealer, and the person to whom the defendants sold them, I believe, though that fact is not material to the decision of this case, resold them again in Calcutta to another dealer, and that dealer sent them to Madras. Upon that the plaintiffs claimed to be paid at the higher rate, and the defendants objected to pay at that rate, because they had not themselves sent them to Madras.

5. The learned Judge of the Small Cause Court gave judgment for the defendants, considering that the lower rate only was payable, but at the request of the parties

has referred these two questions for the opinion of the Court-1st, "whether the contract is void as being in restraint of trade and being opposed to public policy;" if not, 2ndly, "whether in consequence of the buyer of the defendants" vendees having sent the goods to Madras, the defendants are bound to pay the higher rate mentioned in the contract."

6. As to the first question, we can see no reason for supposing that this is a contract in restraint of trade in any sense whatever. The defendants are not restrained by the contract from dealing with Madras as much as they please. All that the plaintiffs say in that contract is, we will sell these goods to you at one price if you are going to send them to Cuttack, but we will charge you another price if they are sent for sale to Madras. They had a right to refuse to sell to the defendants at all this small parcel of goods, and they had a right to fix the price at which they were willing to sell them; and they did fix the price in this way, and the defendants accepted the bargain. We can see no restraint of trade in that, because it left the defendants free to trade with the goods in any other place and in any way they thought fit.

7. Then comes the other question, whether, in consequence of the buyer of the defendants, vendees having sent the goods to Madras, the defendants were bound to pay the higher rate mentioned in the contract. This is a simple question of the construction of the words of the contract. These words are: "These goods shall go to Cuttack, not to Madras. If they are taken to Madras we will pay at the rate of Rs. 10-15." In our opinion the meaning of these words is, we agree to send these goods to Cuttack, and if, instead of their going to Cuttack, they go to Madras, we agree to pay the higher rate. There is not only a contract that the defendants will not send them to Madras, but the defendants agree that if they go not to Cuttack but to Madras, they will pay the higher price for them. They have gone to Madras and not to Cuttack, and therefore it seems to us that the defendants must pay the higher rate.

8. A great deal has been said as to there being no limit as to time, and no limit as to the way in which they get to Madras. As to that, it seems to us that this contract must be read in the light of common-sense, and that the plain meaning of it is, that the goods are to be sent to Cuttack from Calcutta for sale, and if, instead of that, they are sent from Calcutta as bundles of bales of twist of that particular mark to be sold at Madras, they shall be paid for at the higher rate. We do not see anything illegal in that or anything in restraint of trade, or that it is unreasonable or unlikely for the parties to make such a contract. We think therefore that the Judge of the Small Cause Court was wrong in the view he took of this matter, and that judgment must be entered for the plaintiff for an amount calculated at the higher rate.