(1869) 03 CAL CK 0029

Calcutta High Court

Case No: None

Biharilal		APPELLANT
	Vs	
Madhusudankundu		RESPONDENT

Date of Decision: March 10, 1869

Judgement

Sir Barnes Peacock, Kt., C.J.
It appeals to me that this case is different from that of Hale v. Rawson (4 C.B.N.S., 85), inasmuch as in that case the contract was not to sell tallow to arrive by the Countess of Elgin, but merely so much tallow to be delivered on the safe arrival of the Countess of Elgin. In this case, the contract was for the sale of goods to be imported by the Michael Angelo, and the goods which the defendant agreed to purchase were to be delivered on the day on which they should be landed at the Custom House. It clearly, therefore, was not a contract to purchase any 226 barrels of sulphur to he delivered, on the date on which they should arrive, without reference to the ship in which they should arrive. If the contract was to purchase 226 barrels of sulphur to be delivered on the date on which they should be landed at the Custom House, the delivery might be extended to any period. If the Michael Angelo had arrived with sulphur on board at a time when there was a rising market, the plaintiff would not have been bound to deliver those goods to the defendant, if the contract was a contract simply for the delivery of 226 barrels of sulphur; and, instead of delivering those, he might have waited and delivered 226 barrels from some other ship when there was a falling market.

2. Again, the defendant contracted to take 226 barrels of sulphur from the Michael Angelo, weighing 1100 maunds, more or less. But if that was not a contract for the goods to arrive by the Michael Angelo, the plaintiff might have compelled the defendant to take 226 barrels from some other ship, provided they should weigh only 1100 maunds, more or less, though they might weigh more than any 226 barrels by the Michael Angelo, and this, though the market was a falling one.

3. It is contended that the meaning of this contract was to purchase 226 barrels of sulphur to be delivered on the date on which sulphur should be landed from the Michael Angelo,

but I cannot read the contract in that way. If the landing of goods from the Michael Angelo, was referred to merely to fix the time of the delivery of the goods which the defendant contracted to purchase, it would be quite immaterial whether the landing was a landing of sulphur or of any thing else. Inasmuch, therefore, as the time of the delivery of the goods and the weight, more or less, of the goods to be delivered had reference to goods to be landed from the Michael Angelo, it appears to me that the defendant, under the terms of his contract, was not bound to accept goods imported by any other ship and to have merely the time of payment regulated by the time of the delivery of the cargo of the Michael Angelo.

4. According to the case of Johnson v. Macdonald (9 M. & W., 600), the plaintiff would not have been bound to perform his part of the contract if the sulphur on board the Michael Angela had been lost on the voyage; and if he would not have been so bound, it appears clear, that he cannot compel the defendant to accept goods imported by any other vessel. We have to construe the contract, which the parties entered into, and not to bind them to do something, else which they might have contracted to do, if they had thought fit, but which they did not contract to do.

5. It is not very material, but it appears to me that the plaintiff''s own evidence, and the correspondence in the case, shew that the plaintiff himself originally put the same construction upon the contract, as I now do. I am of opinion that the decision ought to be reversed, and the plaintiff''s suit dismissed with costs of suit, and of this appeal to be taxed according to Scale No. 2. The money brought into the Court for the purpose of staying execution to'' be paid out.

Macpherson, J.

I am of the same opinion.