

1924.

Present : Ennis J. and Jayewardene A.J.

MERCANTILE AGENCY v. ISMAIL.

59—D. C. Colombo, 5,795.

Sale of goods—Breach of contract—Assessment of damages—Rate of exchange.

Where upon the breach of a contract the person in default becomes liable for the payment of a sum of money in foreign currency, the damages, for the purpose of the judgment, must be assessed as at the date of default, and the sum payable must be converted to local currency at the rate of exchange prevailing at that date.

The defendant committed a breach of his contract when he failed to pay the bill on maturity and take delivery of the goods, and not when the goods were sold at his risk.

THIS was an action arising out of a contract for the sale of goods. The defendant contracted to purchase from the plaintiffs 27 boxes of embroidery for the price of £212. 19s. 11d. with

interest at 8 per cent. per annum from April 20, 1920. Payment was to be made by bills drawn on the defendant, who agreed to accept them on presentation and pay on maturity. The defendant failed to pay the bills on maturity and to take delivery of the goods. In terms of the contract plaintiffs sold the goods in July, 1921, and they realized a sum of Rs. 1,900 equivalent to £121. 14s. 4½d. Plaintiffs sued to recover the balance £119. 3s. 3½d. being the amount of the deficiency. In converting the amount due to local currency, the plaintiffs did so at the rate of exchange prevailing at the date of the plaint. The defendant contended that the conversion should be at the rate of exchange ruling at the date he committed the breach of contract. The District Judge held that the amount due to the plaintiffs must be ascertained according to the rate prevailing at the day the goods were sold by the plaintiffs, viz., July 28, 1921.

1924.

*Mercantile
Agency v.
Ismail*

Driberg, K.C. (with him *Choksy*), for defendant, appellant.

Croos Da Brera, for plaintiffs, respondents.

October 20, 1924. ENNIS J.—

This was an action for the price of goods sold and delivered. The plaintiffs drew a bill on the defendant for £212. 19s. 11d. payable in one month's time which the defendant accepted. On the arrival of goods the defendant refused to take delivery, and refused to pay the bill on maturity (*i.e.*, August 30, 1920). The contract contains a special provision by which the plaintiffs could sell the goods in such an event. The goods were sold in July, 1921. The learned Judge gave judgment for the plaintiffs, and directed that the sterling sum should be calculated in rupee currency as on the date of the sale of the goods.

On the appeal there is but one question for decision, viz., whether the rate of exchange should be taken as on August 30, 1920, or as in July, 1921, as directed by the learned Judge.

Primarily the rate of exchange must be taken as at the date of default in payment, viz., August 30, 1920, when the bill of exchange became payable, but it was urged that the defendant had asked for time for payment. The learned Judge on this point says that "the goods were not sold earlier owing to the negotiations between the parties which were mainly at the defendant's instance," and so he directed the exchange to be calculated as on the day of the sale of the goods. The Ceylon authority on the subject is the case of *Harrison & Crosfield v. Adamally*,¹ which cites the English case of *Ogle v. Earl Vane*.²

The present case is very similar to *Harrison & Crosfield v. Adamally* (*supra*). It has not been established in the present case that there was a request on the part of the defendant to extend the time

¹ 5 C. W. R. 32.

² (1868) L. R. 3 Q. B. 272.

1924.

ENNIS J.

Mercantile
Agency v.
Ismail

for delivery, and the evidence does not support the suggestion that there was a new contract subsequent to the breach. Some negotiations for a reduced price were entered into, but no agreement was arrived at. In the circumstances the price realized on the sale of the goods goes in reduction of the amount due on the date of default, taken at the rate of exchange on that date.

I would allow the appeal to this extent, with costs, on the appeal.

JAYEWARDENE A.J.—

This is an action arising out of a contract for sale of goods. The defendant on an agreement contained in letters that passed between the parties and embodied in indent P 2 contracted to purchase from the plaintiffs 27 boxes of embroidery for the price £212. 19s. 11d. with interest at 8 per cent. per annum from April 20, 1920. Payment was to be by bills drawn on the defendant who agreed to accept them on presentation and pay on maturity. The goods duly arrived, but the defendant failed to pay the bills at maturity and to take delivery of the goods. Under a term of the contract the plaintiffs sold the goods in July, 1921, and they realized a sum of Rs. 1,900 equivalent to £121. 14s. 4½d. The plaintiffs now seek to recover the balance which they say amounts and £119 3s. 3½d.; £91 5s. 6½d. being the amount of the deficiency and £28. 3s. 9d. being interest up to June 30, 1922. These facts are not seriously disputed. The plaintiffs in converting the amount due to local currency seek to do so at the rate of exchange ruling at the date of the plaint. The defendant contends that the conversion should be at the rate of exchange ruling at the date he committed the breach of his contract. The learned District Judge has held that the amount due to the plaintiffs must be ascertained according to the rate prevailing on the day the goods were sold by the plaintiffs, namely, July 28, 1921. This is the main question argued on appeal. As regards the contention of the defendant that the goods were purchased by him according to an agreement entered into between the parties after the breach, and that the payment of the sum of Rs. 1,900 as the price of the goods extinguished his liability on the contract, the learned Judge has on the facts found that that sale was not to the defendant, but to a third party, and I see no reason to doubt the correctness of his decision on the point. On the question of the rate of exchange applicable, I am not certain that the learned Judge has come to a right conclusion. It has been held in numerous cases that where upon the breach of a contract the person in default—whether buyer or a seller—becomes liable for the payment of a sum of money in a foreign currency, the damages, for the purpose of a judgment, must be assessed as at the date of default, and the sum payable must be converted into local currency according to the rate of exchange prevailing at that date: *Bary v. Van den Hurk*,¹ *Labeaupin v.*

¹ (1920) 2 K. B. 709.

Richard Crispin & Co.,¹ *Di Ferdinando v. Simon Smits & Co.*;² and *ss. Celia v. ss. Valtorna*³, where the previous cases were approved by the House of Lords. Therefore in this case the amount the defendant has to pay must be calculated according to the rate of exchange prevailing at the date the breach was committed. In my opinion, the defendant committed a breach of his contract when he failed to pay the bill on maturity and take delivery of the goods. This happened in July, 1920. From July, 1920, till the sale of the goods on July 28, 1921, negotiations went on between the parties. The defendant positively refused to pay the amount appearing on the bill of exchange and wanted a reduction. Correspondence passed between the parties for the purpose of a settlement, but they failed to arrive at an agreement, and the goods were sold on July 28, 1921, at the defendant's risk. There was, therefore, no variation of the terms of the original contract, and the rights and liabilities of the parties must be decided according to the terms of the contract. But the plaintiffs' counsel contends that the breach must be regarded as having taken place when the goods were sold on the failure of the negotiations, and he relies on the principle laid down in the case of *Ogle v. Earl Vane* (*supra*) and *Hickman v. Haynes*.⁴ I have examined these cases, but I cannot find in them any principle applicable to the question arising here. In *Ogle v. Earl Vane* (*supra*) there was a breach of contract to deliver certain iron. The purchaser at the request of the seller granted an extension of time for the delivery of the iron. Ultimately, the seller failed to deliver the iron contracted for, and the purchaser bought in the open market. At this time the price of iron was much higher than what it had been at the date of the breach. It was held that the buyer was entitled to recover as damages the difference between the contract price and the price he actually paid for the iron. *Hickman v. Haynes* (*supra*) was the converse case; there the seller abstained from delivering the goods at the request of the buyer made both before and after the date for delivery under the contract. The seller was held entitled to the difference between the contract price and the price prevailing at the time when the buyer finally refused to accept the goods. Postponement of delivery in these cases was held to be mere forbearance by one party at the request of the other, and not the formation of a new contract nor an abandonment of the original one, and that either party might at any time have insisted upon his rights under the original contract. In the present case there was no mere postponement of delivery at the request of the buyer, but a refusal on his part to pay the price agreed upon. The parties were negotiating about the reduction of the price, and if the negotiations had been successful, a new contract would have been formed. In taking the view that the original contract was still subsisting and not

1924.

JAYEWAR-
DENE A. J.*Mercantile
Agency v.
Ismail*¹ (1920) 2 K. B. 714.² (1920) 3 K. B. 409.³ (1921) 2 A. C. 5284, 551, 552.⁴ (1875) L. R. 10 C. P. 568.

1924.

JAYEWAR-
DENE A. J.*Mercantile
Agency v.
Jemal*

abandoned, the Court has taken a view very favourable to the plaintiffs, and it is fortunate for them that the defendant had not raised the defence that the original contract had been rescinded. There is no evidence that the plaintiffs had suffered any damage by having to sell the goods in a falling market. I cannot see on what principle they could ask that the rate of exchange at which the pound sterling should be converted should be the rate prevailing at the date when the goods were sold to a third party and not at the date the defendant committed a breach of his contract and became liable in damages. The plaintiffs, as I have pointed out, did not ask that the rate should be fixed as allowed by the Court, but that the amount due to them in sterling should be converted according to the rate prevailing at the date of the institution of the action. This, as I have pointed out cannot be the basis of conversion according to the authorities. The rate according to them is the rate prevailing when the breach occurred. The amount due to the plaintiffs will be calculated on this basis.

The defendant will have the costs of appeal, but he will pay the plaintiffs' costs in the lower Court as decreed.

Judgment varied.
