[PRIVY COUNCIL.]

Present : Viscount Haldane, Lord Wrenbury, and Lord Blanesburgh. 1925.

NOORBHAI *et al.* *v.* KARUPPAN CHETTY.

D. C. Colombo, 8,290.

Contract—Sale of goods—Repudiation of contract—Consensus ad idem.

Plaintiff entered into a contract with defendant to buy sugar at Rs. 37·50 per bag. A few days later, in the course of a letter to the defendant, the plaintiff gave the price as Rs. 34, which the defendant promptly corrected. The defendant declined to deliver the sugar on the ground that the contract was no longer binding. In an action for damages for breach of contract brought by the plaintiff—

Held, that there had been no repudiation of the contract, as the defendant did not accept plaintiff's attempt to revoke the contract.

APPEAL from a judgment of the Supreme Court.[1] The facts are set out in judgment of the Judicial Committee of the Privy Council.

July 13, 1925. Delivered by LORD WRENBURY :—

For brevity the plaintiffs are in the following judgment referred to as the buyer and the defendant as the seller.

This is the buyer's action for damages for breach of a contract for the sale of sugar. He claims repayment of Rs. 7,500, which he paid as an advance on the price of the goods, and damages for non-delivery of the goods sold. The question in the case, and the only question, is contract or no contract. The trial Judge held that there was no contract. Two of the Judges in the Supreme Court were for affirming his decision, but were not agreed on the grounds which they assigned for that conclusion. One held that there was a contract, but that the buyer was estopped from relying upon it ; the other that there was no contract and that no question of estoppel arose. The Chief Justice, on the contrary, held that there was a concluded contract, and was unable to see how there could be any doubt in the case. Their Lordships are of the same opinion as the Chief Justice.

For the decision of the case there is no need to travel beyond the very elementary proposition of law that a contract is concluded when in the mind of each contracting party there is a *consensus ad idem*, and that a modification or revocation of the contract requires a like consensus.

The facts lie in a very small compass. On February 16, 1923, Kandappa Pillai, a broker, was instructed by the buyer to arrange

[1] *26 N. L. R. 161.*

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for him a purchase of sugar. The authority of the broker is not in dispute. He went on that day to the seller, arranged with him for the purchase of 1,500 bags at Rs. 37·50 per bag, and gave him a cheque for Rs. 7,500 as an advance, at the rate of Rs. 5 per bag. The seller cashed the cheque the same day. He signed and gave the broker the document D 1, which was the seller's memorandum of the contract and acknowledgment of the receipt of the Rs. 7,500. That document is as follows :—

16. 2. 1923.

The receipt rewritten and granted to T. A. J. Noorbhai by S. P. L. K. R. Karuppan Chetty. I acknowledge receipt of a sum of Rs. 7,500 by Chartered Bank cheque as advance for the sale to you of 150 tons of Java sugar at Rs. 37·50 per bag c. i. f. to be delivered to you as follows :—

Fifty tons as February shipment, 50 tons as March shipment, 50 tons as April shipment in terms of the conditions of the Indent entered into by me with Messrs. Carson & Co.

On the arrival of each shipment the entire value should be paid and delivery taken.

(Signed) S. P. L. K. R. KARUPPAN CHETTY.

There was, therefore, a contract signed by the defendant, the seller, and part payment made by the plaintiffs, the buyer. There was a concluded contract between the parties. The broker gave D 1 to the buyer on the same February 16, and it seems to have remained in his possession for three days, until February 19. On February 19 the broker took D 1 back to the seller to have some words added as to delivery by " weighing without slackage and moisture, as usual " (upon which nothing turns). The words were added and signed by the seller, and the broker took the document back again and handed it to the buyer. Whether it reached the buyer's hands until after February 20, when he wrote the letter of that date next stated, does not appear.

On February 20 the buyer wrote the letter D 2, which is as follows :—

Keyzer Street,
Colombo, February 20, 1923.

S. P. L. K. R. Karuppan Chetty, Esq.,
Colombo.

Dear Sir,—With reference to the contract purchasing from you 1,500 bags Java sugar (February, March, and April shipment of 500 bags monthly), at Rs. 34 per bag *ex* bond through broker Kandappa, we have to inform you that although we made an advance of Rs. 7,500 by C. B. cheque dated February 16, 1923, towards the contract, we have not yet received the contract signed by you.

We would, therefore, ask you to send the contract duly signed by you without any further delay, to avoid unnecessary steps being taken on the matter.

Yours faithfully,
(Signed) T. A. J. NOORBHAI & CO.

P.S.—We are daily inquiring from broker *re* delay of the contract, and in reply he says that he was told by your Manager that you are gone to estate and expected to-day. Therefore we write you now this letter.

In this letter the buyer states that the price was Rs. 34 per bag. It was not. It was Rs. 37·50. Whether the buyer had forgotten the price, and not having D 1 before him at the moment, made this statement innocently (which is improbable), or whether he intentionally stated a lower price makes, in their Lordships' opinion, no difference. The seller promptly corrected him by his letter of February 21, D 3, in which he says, and correctly, that the contract price is Rs. 37·50 There is no possible question of estoppel. The misstatement which the buyer made was not acted upon by the seller in the faith that it was accurate. He knew it was not accurate, and immediately said so.

But the buyer's letter of February 20, the seller says, was a repudiation. Their Lordships find in it no trace of repudiation. It speaks of " the contract " (naming, it is true, an erroneous price), states that the buyer has made an advance of Rs. 7,500 towards the contract, and says that the buyer has " not yet received the contract signed by you " (which was not the fact, unless " the contract " means D 1 with the additional words at the end which possibly had not yet reached his hands). There was, in their Lordships' opinion, no repudiation.

But, further, if that letter can be read as a repudiation by the buyer, he as one of the parties to the contract could not avoid it of his own mere motion. The seller might either accept or reject the buyer's attempt to revoke it. The seller promptly replied on February 21, insisting on the contract and requiring the buyer to send the contract duly signed by the buyer. There was no *consensus ad idem* to a revocation. On February 23 the buyer wrote again asking for " the contract signed by you."

This really makes an end of the case. The fall in the price of sugar which the seller suggests was the incentive to the buyer to seek to get out of the contract to buy at Rs. 37·50 was followed by a rise, which made it to be the seller's interest to seek in his turn to say there was no contract. On March 22 the seller returned the Rs. 7,500 and wrote that he was disposing of the goods. On the same March 22 the buyer sent the seller's cheque back again and insisted on the contract. The subsequent letters add nothing which in any way affects the question at issue. In April the first consignment of the sugar arrived. The buyer asked for delivery, the seller refused to give it, and on April 21 this action was commenced.

From that which has been stated it results that the buyer is entitled to recover. The appeal succeeds. There must be judgment for the plaintiffs for the Rs. 7,500 which they have paid and for damages. The case must go back to the District Court to assess the damages. The plaintiff must have their costs in the Courts below and before this tribunal. Their Lordships will humbly advise His Majesty accordingly.

Appeal allowed.