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*Present:* Ennis J. and Shaw J.

NOORBHAI & CO. v. JANOO.

722—D. C. Colombo, 48,356.

*Sale of goods—Memorandum—No mention of price.*

When price has been agreed upon, it must be embodied in the memorandum for the sale of goods.

**T**HIS was an action for the recovery of a sum of Rs. 3,500 as damages alleged to have been sustained by the plaintiffs by reason of the failure of the defendant to deliver to them 350 bags of sugar, which the plaintiffs alleged that the defendant on July 16, 1917, agreed to sell and deliver to them at Rs. 35 per bag.

The defendant admitted the agreement to sell the 350 bags of sugar, but denied that the price agreed on was Rs. 35 per bag.

He denied that he failed to deliver the sugar, and that the plaintiffs have sustained damages to the extent of Rs. 3,500.

By way of further answer, he stated that he agreed to supply the plaintiffs with 350 bags of sugar out of a consignment which he was expecting at the current market rate on the date on which delivery was to be made, and that on the arrival of the sugar he notified the plaintiffs of its arrival, but that the plaintiffs refused to pay the current market rate, to wit, Rs. 41 per bag, for the sugar and remove it, and that the sugar was consequently not delivered to the plaintiffs.

The parties went to trial upon the following issues:—

- (1) and (2) On facts.
- (3) Can the plaintiffs maintain this action in the absence of some note or memorandum in writing of the contract signed by the defendant?
- (4) Can the plaintiffs lead oral evidence to prove that the price agreed on was Rs. 35 per bag?

The defendant contended that the agreement to sell should have been reduced to writing, and that the document P 1 which plaintiffs produced was insufficient in law. No part of the price was paid, and no part of the goods were delivered.

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The defendant further contended, even if the document P 1 was enough to satisfy Ordinance No. 11 of 1896, that the plaintiffs could not lead oral evidence to prove the price.

The learned District Judge made the following order on the law:—

I am of opinion that the document is sufficient compliance with the requirements of section 4 of the Ordinance No. 11 of 1896.

I cannot accede to the proposition that it is not . . . . . competent to the plaintiffs to prove orally that the price was agreed on in respect of the goods referred to in that document, and what that price was. The document is of a purely informal character.

I decide the third and fourth issues against the defendant.

After trial the Judge held on the issues of fact in plaintiffs' favour, and entered judgment as prayed for.

The document P 1 was as follows:—

*P 1.*

E. A. Janoo.

D. O. No. 1.

Colombo, July 16, 1917.

The Storekeeper, Pettah.

Please deliver the under-mentioned articles to Seth T. A. Jeewanjee Noorbhai or bearer.

Particulars.

Sugar bags 350 cash.

(Signed) NAINA MOHAMADO,

Sold by

Broker.

(Signed) HABEBB.

*A. St. V. Jayawardene* (with him *Bartholomeusz*), for appellant.

*Bawa, K.C.* (with him *R. L. Pereira*), for respondent.

February 28, 1919. ENNIS J.—

This was an action for damages for breach of contract to sell sugar. The appellant contends that there was no memorandum in writing such as is required by section 4 of the Sale of Goods Ordinance, No. 10 of 1896. The document P 1 was produced, but that contained no mention of the price agreed upon. Both the parties in the case concurred in saying that a price had been agreed on, but they differed as to the price itself. The learned Judge held that P 1, being only the counterfoil, should be read as one document with its foil, and it was suggested in the course of the case that the foil contained a note of the price. The defendant-appellant produced a foil in the book D 5. The learned Judge held that the counterfoil P 1 did not come from the book D 5, on the ground that on comparing the printed lines on P 1 with the books D 5 the lines

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did not correspond with the lines on the counterfoils of the other foils in D 5." We have had these two exhibits before us, and I am unable to agree with that conclusion. One of the counterfoils in the book has been found to be identical with P 1 as regards the alignment, and very few of the counterfoils appear to have the same alignments. The book must have been together and trimmed afterwards, so that the alignments are not exactly the same. This point having failed the respondent, it appears that the memorandum did not contain mention of the price. There are two English cases, *Acebal v. Levy and another*<sup>1</sup> and *Hoadly v. M'Laine*,<sup>2</sup> both to the effect that when the price had been agreed upon, it must be embodied in the memorandum. The formalities required by the Sale of Goods Act not having been complied with, the appellant is entitled to succeed.

The appeal is allowed, with costs; and the plaintiff's action is dismissed, with costs.

SHAW J.—I agree.

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