

THIS was an action to recover a sum of Rs. 43·75 alleged to be due on a contract entered into between the plaintiffs and the defendants to supply the latter with 750 lb. of white sugar. The contract was dated April 12, 1929. The sugar was to be delivered at the buyer's stores at the rate of 125 bags on each month, July to December.

On or about July 5 the Customs duty on sugar was increased. On July 20 the plaintiff delivered 125 bags to defendant in terms of the contract and requested payment of the price agreed upon and a further sum of Rs. 43·75, the amount of the increased duty, which the plaintiffs had paid. The defendants refused to pay the sum. The Commissioner of Requests gave judgment for the plaintiff.

N. Nadarajah, for defendant, appellant.—Section 58, sub-section (2), of Ordinance No. 11 of 1896 makes provision as regards the applicability of the rules of English law save in so far as they are inconsistent with the provisions of Ordinance No. 11 of 1896. In 1896 there was no rule of English law which passed the extra duty from the seller to the buyer. Provision was made by the Finance Act of 1901 (1 *Edw. VII. c. 7*). It cannot be inferred that section 58, sub-section (2), lets in all rules or provisions as regards sale of goods subsequent to the year 1896, for the simple reason that the section does not contemplate such an introduction. The wording of Ordinance No. 5 of 1852, which let in the English law in regard to maritime matters, clearly says that the “law to be administered in Ceylon shall be the same as that administered in England at the corresponding period”. Similarly, *vide* Ordinance No. 22 of 1866; section 118 of the Trusts Ordinance, and section 58 of Ordinance No. 7 of 1853. It is submitted that the provisions of the Finance Act of 1901 would be inconsistent with the provisions of the Sale of Goods Ordinance.

1930

Present : Dalton J.

USMAN v. RAHIM.

43—C. R. Colombo, 56,090.

Sale of goods—Increase of Customs duty after contract—Seller's right to ask higher price—Sale of Goods Ordinance, s. 58 (2).

Under a contract for sale of goods, the seller may not recover from the buyer in addition to the contract price, the amount of any additional Customs duty levied on the goods before delivery.

Section 58 (2) of the Sale of Goods Ordinance, 1896, applies only to the English law in force at the time the section was enacted, and not to any subsequent change in the English law.

H. E. Garvin, for plaintiff, respondent—
Section 58 (2) does not state that only such rules as were existent before 1896 should be applicable. It is submitted that there is nothing in the Finance Act which is inconsistent with the provisions of the Sale of Goods Ordinance. The Legislature must be deemed to have intended that all the provisions of the English law whenever enacted were applicable if in existence at the time of the transaction.

July 31, 1930. DALTON J.—

The plaintiffs entered into a contract (P 1) dated April 12, 1929, with the defendant firm to supply the latter with 750 bags of white Java sugar at Rs. 23·50 per bag. The sugar was to be delivered at the buyer's stores at the rate of 125 bags in each month, July to December, on the arrival of the steamer with each shipment. The sum of Rs. 750 was paid in advance, and the balance was in the terms of the contract note "payable before delivery and on arrival of the steamer with the said shipment".

On or about July 5 the Customs import duty on sugar was increased. On July 20 plaintiff delivered 125 bags to defendant in terms of the contract and requested payment of Rs. 2,812·50, for 125 bags at Rs. 23·50, less an advance of Rs. 125, and payment of a further sum of Rs. 43·75, being the amount of the increased duty the plaintiffs had paid on the importation of the sugar. The defendant firm paid the sum of Rs. 2,812·50, but refused to pay the further sum of Rs. 43·75. Plaintiffs therefore sued them for this sum and obtained judgment in the lower Court. The defendants now appeal.

It is clear from the terms of the contract that defendants were aware the sugar had to be imported, and both parties knew that it was liable to duty. The importation however was solely a matter for the plaintiffs. The contract is for the purchase and delivery of the sugar at the defendants' stores. Nothing is said about the payment of duty or what

was to happen should the duty be increased or lowered. Defendants say that the price to be paid by them is fixed by the contract, and that plaintiffs cannot now vary it as they seek to do by adding on to the price agreed upon the increased duty. Persons engaged in commercial pursuits in Ceylon must know from experience that Customs duties are varied, from time to time, and doubtless provision is generally specifically made in most contracts that deal with imported goods for this contingency. In the absence of such provision in the contract before me, who is to pay?

The Sale of Goods Ordinance of 1896, section 58 (2), provides that "the rules of the English law, including the law merchant, save in so far as they are inconsistent with the express provisions of this Ordinance, shall apply to contracts for the sale of goods". The Finance Act, 1901 (1 *Edw. VII*, c. 7), provides that where Customs import duty is imposed, repealed, increased, or decreased, and any goods in respect of which the duty is payable are delivered after the day on which the change takes effect in pursuance of a contract made before that day, in the absence of any agreement to the contrary the seller may recover in addition to the contract price any additional duty or in the case of a decrease the purchaser may make an equivalent deduction. The learned Commissioner has held that under section 58 (2) those provisions of the English Finance Act are applicable to contracts for the sale of goods in Ceylon.

It is conceded that, when the Ordinance of 1896 was passed, there was no such provision existing, but it is urged, although the section does not expressly so provide, that, section 58 imports the English law enacted after 1896, if it is not inconsistent with the express provisions of the Ordinance.

Section 58 (2) is the same as section 61 (2) of the English Sale of Goods Act, 1893. The only changes are that the word

“common” in the English Act is changed to “English” in our Ordinance. The reason for that is obvious, since if the alteration was not made the Roman-Dutch law, being our common law, would apply. For the same reason the words “continue to apply” in the English Act are changed to “apply” in the local Ordinance, for the reason that as English law did not apply before the Ordinance, it could not be said to “continue to apply” after the Ordinance. Section 61 (2) then from its terms obviously does not apply to any provision of English law that came into force after the date of the Sale of Goods Act. Do the changes that the Ceylon Legislature has made in the section in enacting it in the words of section 58 (2) of our Ordinance show any intention to import subsequent legislation on the subject? I think not. Any assistance that reference to the equivalent English section gives in interpreting the local section leads one, in my opinion, to conclude that section 58 (2) only applies to the English law in force at the time the section was enacted, and not to any subsequent change in the English law. I am unable to see in the section any intention on the part of the Legislature to import into Ceylon any English law than that in force at the time the Ordinance was passed.

That view it seems to me is put beyond question when one looks at other Ordinances that import English law on other matters. Ordinance No. 5 of 1852 directs that in maritime matters the law to be administered in Ceylon shall be the same as that administered in England “in the like case at the corresponding period”. A similar provision is enacted by that Ordinance in respect of bills of exchange. The Insolvency Ordinance, section 58, provides, in respect of fraudulent preferences, that the law of England “at the corresponding period” shall decide what is a fraudulent preference. Ordinance No. 22 of 1866 provides that in certain commercial matters set out the law to be administered shall be the same

as would be administered in England “at the corresponding period” if the question or issue arising had arisen or had to be decided in England. The Evidence Ordinance, 1895, section 100, in the same way provides that any question of evidence not provided for by any Ordinance in force in Ceylon shall be decided by the English law of evidence for the time being. A similar provision is found in section 118 of the Trusts Ordinance, 1917. All these cases show the Legislature has provided in express terms for the application in Ceylon of English law that may only come to be enacted in England after the local enactment has passed. As I have stated, I cannot find anything in section 58 (2) of the Sale of Goods Ordinance, 1896, importing English law passed after the date of that Ordinance. The provisions of the Finance Act, 1901, therefore in my opinion do not apply in Ceylon. To decide otherwise would in my opinion be making the law and not construing it.

In view of this conclusion it is not necessary to consider the further question, or the authorities cited, to the effect that the provisions of the Finance Act are inconsistent with the provisions of section 8 of the Sale of Goods Ordinance.

In coming to his conclusion, the learned Commissioner has remarked that it is eminently equitable that the extra duty should be passed on from the seller to the buyer, and from the buyer to the consumer. That is, of course, very true, but there is nothing to prevent them doing that by providing for it in the contract, as I think is usual. It is open also to the Legislature to make provision for such a case if it so desires. As matters stand now, where the parties do not do so, and the price to be paid is nevertheless fixed as here, then in the absence of any other good and sufficient reason for departing from the terms of the contract, the buyer cannot be called upon to pay more than the agreed price.

The appeal is allowed with costs, judgment in favour of the plaintiff is set aside, and judgment must be entered for defendant in the lower Court with costs.

Appeal allowed.

