

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Pokarmull Kishendyal v. Gokooldass Gopaldass, from the Court of the Judicial Commissioner of the Central Provinces, India; delivered 21st February, 1870.*

Present:

SIR JAMES W. COLVILLE.

THE JUDGE OF THE HIGH COURT OF ADMIRALTY.

LORD JUSTICE GIFFARD.

SIR LAWRENCE PEEL.

IT does not seem to their Lordships that any other question in this case is really material than one, viz. aye or no, were or were not the holders of this cotton bound to give notice to the Appellant before they sold? If they were not bound to give notice, then whether they did or did not sell before the whole cotton arrived is not material, because the arrival of the cotton was between the 11th and the 25th of May. There might have been a lawful sale on the 25th, and there is no evidence that the market had then risen or until some time afterwards. It therefore matters not whether the sale took place on the 24th or the 25th of May, and if it took place on the 4th of June, of which there is some proof, and notice was not necessary, there would be an end of the question.

Their Lordships are of opinion that it was unnecessary to give any notice whatever, for, though true it is, according to the cases which have been quoted, that where you have the mere circumstance of a pledge and nothing more, the person who holds the pledge must give notice before he sells! There is here more than that mere circumstance, for when the terms of this agreement are looked to, it is quite plain that when the cotton had all arrived it was (unless then redeemed) to be sold, and it was the duty of those whose cotton it was

to have their agent in the way to redeem or attend to the sale, and if they made default in having their agent in the way, or paying, which they did, then the persons who held the cotton had a right to sell.

The agreement is this. It begins, "In lieu of the above items we have delivered the 488 bales now lying at Thugna. In addition to, and irrespective of the sums mentioned above, there is a sum of Rs. 5000 due to the cultivators of the cotton, which sum is to be paid by you, and charged to us with discount. The expenses of the transit of the cotton to Bombay should also be paid by you, and charged to us with premium." Now this latter passage affords a reason for saying that there ought to be no sale until the whole of the cotton arrived, because the expenses of the transit of the whole of the cotton are to be paid, and to be charged as part of the debt; and if to be charged as part of the debt, there must have been a right to redeem when the whole of the debt was due, and that right could not be exercised antecedently to that period. But the agreement goes on, "On the arrival of the cotton at Bombay it will be sold through you"—that is, undoubtedly, a right to sell on arrival,—“and the proceeds thereof placed to our credit. If the proceeds do not cover the whole of what is due to you, we will be responsible for the balance; and if, on the other hand, the proceeds are more, you are to repay the excess to us. We further agree to pay interest at the rate of 7 as. 9 pie per cent. on the running account, and the cotton on arrival at Bombay is to be sold by our agent, through you, at the current rate, and if we desire to retain the cotton we will pay up all expenses of transport thereof, as well as the principal and interest due to you. We, also, further bind ourselves to pay all the expenses of your agent, who accompanies the cotton (irrespective of what has been agreed to above).” What that really amounts to is, that this is cotton pledged to be sold on arrival, unless then redeemed, the parties who pledge it contract either to redeem or to have an agent there to join in the sale on arrival; and if their agent was not there and they never had one there, it simply is as if you struck out everything about the sale being

through the agent, and as if it was neither more nor less than a pledge with these parties to sell on arrival. That being so, it being pledged to be sold on arrival, there was no necessity for any notice.

Their Lordships will therefore humbly advise Her Majesty to dismiss this Appeal with costs.

