Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Grenon and others v. *Luchmeenarain Augurwallah and others, from the High Court of Judicature at Fort William in Bengal; delivered 27th June* 1896.

Present:

LORD HOBHOUSE.
LORD MACNAGHTEN.
LORD MORRIS.
LORD JAMES OF HEREFORD.
SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

The action which gives rise to this appeal is founded on a contract made through Thomas & Co. as brokers for both parties. It is in the usual form of bought and sold notes, dated 27th October 1890. The sold note addressed to the vendors who are Defendants is as follows :—

"New Mart, Calcutta,
"Dear Sirs, 27th October 1890.

"We have this day sold by your order and for your "account, to our principals, 2,000 (Two thousand) maunds of "good fresh and clean new Purneah indigo seed to be of the "growth of season 1890-91 at Rs. 8. 8 (Eight rupees eight "annas) per maund.

"The seed to be delivered at any place in Bengal in March "and April 1891 and to be paid for by draft at 30 days date "from date of delivery.

"The seed to be packed in good strong bags and each bag "to contain two maunds only.

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" The place of delivery to be mentioned hereafter.
" Terms and conditions as above.
" Brokerage 2½ per cent.

" We are,
" Dear Sirs,
" Your obedient servants,
" J. THOMAS & Co.,
" Brokers.

" To Babus Muckon Lall, Gobindram."

The bought note is in exact correspondence.

There has been dispute whether the Defendants ever recognized the Plaintiff Grenon who was sole Plaintiff in the first instance as the principal interested in the contract. That matter was decided against the Defendants by Mr. Justice Hill, who presided at the trial, and it is not raised in this appeal.

The dispute which did arise and still exists between the parties relates to the place of delivery. Ultimately it came to a question between two places; the Plaintiff insisting on delivery at the Howrah railway station, and the Defendants refusing to deliver except at their own godowns at Sulkeah. After much discussion through the brokers, the Defendants wrote to them on 1st May 1891 as follows:—

" Dear Sirs,

" Contract No. 27 dated 27th October 1890.

" We waited all day yesterday to give delivery of the indigo " seed sold to you from our Sulkeah godowns, but as you " failed to take delivery, we consider the contract at an end " and cancelled."

Upon that the action was brought.

The Defendants contended that in the course of the correspondence the Plaintiff had bound himself to accept their godowns at Sulkeah as the place of delivery. After a careful examination of the evidence Mr. Justice Hill decided that point also against the Defendants. They have renewed their contention here, but without persuading their Lordships, who do not think it necessary to say anything more than

that they entirely concur with Mr. Justice Hill on this point.

That leads to the question principally discussed at the Bar, how the contract is to be construed with reference to the place of delivery. The Plaintiff contends that the place is to be some reasonable place mentioned by himself. The Defendants contend first, that the place was left over for future agreement; so that there is no concluded bargain until the parties have come to that agreement. Failing that argument they contend secondly, that the seller can discharge his liability under the bargain by delivering, or offering to deliver, the goods at any reasonable place within the specified limits.

The former of these arguments was considered fully by the learned Chief Justice, who expressed an opinion in favour of its soundness, but did not decide the case on that ground, because the Defendants' Counsel had not argued it. He held indeed that if the contract had contained only the first sentence relating to delivery it would be very difficult to say that the seller had not contracted to deliver at any place in Bengal which the buyer might select. But he thought that the second sentence modified the meaning of the first; otherwise it would have no effect. The only way of making it effective is, the Chief Justice says, to construe it as meaning that the parties are to agree on the place. That conclusion has been ably supported here at the Bar.

Their Lordships agree that the first sentence relating to delivery gives the choice of placed to the buyer, subject only to the expressed condition that it must be in Bengal, and to the implied one that it must be reasonable. But they cannot see how the choice which is given by the words "to be delivered at any place" is taken away, or converted into a deferred

agreement, by the statement that the place is "to be mentioned hereafter." That is a very unsuitable expression by which to reserve a point for subsequent agreement. It would be quite simple to say "to be agreed on hereafter," if that were meant. But it is only "to be "mentioned," and the obvious meaning of that term is that the place is to be mentioned by the party who according to the former part of the agreement had the right of mentioning it.

It is true that with such a meaning the sentence in question adds nothing of value to the document; it merely takes notice that some place of delivery is to be mentioned, more definite than the very wide area of Bengal. The addition is natural enough, and though it may be legally superfluous, such superfluities are not unknown in agreements. The principle of giving a meaning to all expressions is a sound one, but it does not justify the importation of a meaning which the expression does not of itself suggest, for which another expression equally short and simple would more readily be used, and which materially affects the rights of the parties.

The learned Chief Justice considers that the contract should be read as if all the provisions for delivery were taken out of it. Then, he says, it would fall within Section 94 of the Indian Contract Act, which deals with contracts where there is no special promise as to delivery; and which in the circumstances of this case would prescribe that the seed should be delivered where it is produced. But under any construction of the final sentence it contains a special promise as to delivery, and a delivery bounded by area, though it is true that the area is so large as to require further delimitation. Moreover the contract is not to deliver at some place to be chosen or assented to by the seller,

but at any place, without restriction except the area of Bengal. It requires nothing more for completion than a mention of the place, and so far from falling within Section 94, seems rather to resemble the contracts contemplated in Section 49, where the promisee has not to make any application for performance, but no place is fixed. In those cases not only has the promisee the right of naming the place, but there is thrown on the promisor the duty of applying to the promisee to appoint a reasonable place.

Mr. Justice Hill did not enter into any discussion of arguments such as these. He simply stated his opinion that the Plaintiff was entitled by the terms of the contract to ask the Defendants for its performance at the place selected by him, viz., Howrah station. For the reasons above assigned, their Lordships have to express their agreement with him, and their dissent from the opposite view of the High Court.

There is a further question as to the amount of damages. That depends upon the price of indigo seed at the time when the contract should have been performed. Mr. Justice Hill estimated the price at Rs. 12 per maund. His estimate rests partly on oral evidence, and partly upon two contracts made by Thomas & Co. for the sale of indigo seed; one on 4th April and the other on 30th April 1891. He says that the rate under the earlier contract is Rs. 13 per maund, which is the case; and that the rate under the latter is Rs. 12. 8 annas. As regards this latter contract, the learned Judge seems to have been misled by the circumstance that the same document contains a contract for the sale of Shirkarbhoom seed at Rs. 12. 8 annas. The price of the Purneah seed is Rs. 15.

The learned Judge says that there is evidence to show that at the end of April rates

were running from Rs. 12 to Rs. 13. 8 annas. In fact the evidence shows that the Calcutta rates were higher; the lower rates mentioned by the learned Judge appear to be those at Pertabgunge, the principal mart in Purneah; and something substantial (the Plaintiff puts it as high as Rs. 2, but at least 8 annas) has to be added for freight to Howrah, and other expenses. The only evidence to the contrary is that of Balaram, one of the Defendants' firm, who says that at the end of April they sold this seed in Calcutta at Rs. 6 and before that at Rs. 5. 8 annas. If this were true, it is incredible that the Defendants should not gladly have taken the seed to Howrah for the contract price of Rs. 8. 8 annas.

Their Lordships do not go very minutely into this question because the Plaintiffs' counsel do not ask for an enhancement of damages on a higher basis than Rs. 13 per maund, and they have fully proved their case for as much as that.

By Mr. Justice Hill's decree additional Plaintiffs, now represented by the Appellants Juggun Nath and Ramjee Dass, were placed on the record, and the Defendants were ordered to pay to the Plaintiffs Rs. 7,000 with interest and costs of suit. The High Court decree simply dismissed the suit with costs in both Courts. The proper course now will be, to discharge the decree of the High Court; to order the Defendants to pay the costs of appeal in that Court; to vary the decree of the First Court by substituting the sum of Rs. 9,000 for Rs. 7,000; and in other respects to affirm that decree. Their Lordships will humbly advise Her Majesty in accordance with this opinion. The Respondents must pay the costs of this appeal.