Privy Council Appeal No. 117 *of* 1923.

The St. Madeleine Sugar Company, Limited - - - *Appellants*

v.

Samuel Taylor - - - - - - - *Respondent*

FROM

THE COURT OF APPEAL OF TRINIDAD AND TOBAGO.

JUDGMENT OF THE LORDS OF JUDICIAL COMMITTEE OF THE PRIVY COUNCIL DELIVERED THE 8TH MAY, 1924.

Present at the Hearing:

LORD ATKINSON.
LORD PHILLIMORE.
LORD BLANESBURGH.

[*Delivered by* LORD PHILLIMORE.]

This is an appeal from a judgment of the Court of Appeal of Trinidad and Tobago affirming the judgment given by the Chief Justice at the trial of an action in which the appellant Company was defendant, and respondent was plaintiff.

The action was brought for the price of sugar canes supplied by the plaintiff to the defendant Company, and the defence was in substance that the price had already been paid or tendered.

There were no pleadings, and the nature of the case has to be gathered from the endorsement on the writ and the evidence produced on either side.

The appellant Company is the proprietor of a sugar factory or usine in Trinidad, and it is a part of its business to receive sugar canes from cultivators in the island who deliver them at scales set up by the Company in various parts of the Island, where the weight of each parcel delivered is ascertained, the price to be paid bearing a ratio to the weight. Many of the cultivators are quite small proprietors. The plaintiff at the material time was growing 5 or 6 acres of cane. He was the chairman of an

association of small farmers, and the action which he brought was in the nature of a test action.

The mode of business which the Company has followed for some years, has been to publish a notice which is printed and set up at the various scales and at shops and other similar places in the neighbourhood.

There appear to have been earlier notices. But the first one brought to the notice of the Court was that published on the 2nd January 1919, which was in the following terms :—

> " THE STE. MADELEINE SUGAR CO. until notice is given to the contrary will pay for canes supplied by all who are on their list of Permanent Suppliers. on the following terms, viz. :—
>
> 4½ per cent. on the average net proceeds of the Grey Crystal Sugar after deducting the cost of transport of cane to the Usine, bags, transport of Sugar to the steamer, export taxes and all other charges, Thus :
>
> If price of Sugar, *i.e.*, the net proceeds after deducting the Charges specified as above is :— Price of Canes will be
>
> 20*s*. per cwt. 18*s*. per ton."

Then follows a table for prices down to 10*s*. per cwt. The notice then proceeds as follows :—

> " The Net proceeds cannot be ascertained until the accounts for the year are made up, but payments on account will be made at rates to be announced by the Manager, and the balance will be paid as soon as the amount is ascertained.
>
> " The price of cane for the 1918 crop on the above basis of 16*s*. per ton has been paid.
>
> " All who deliver canes to the Usine in 1918 will be put on the List of Permanent Suppliers, if they desire. Any others who desire to be put on that list should make application. Any Farmer who does not deliver all his canes regularly to the Usine will be struck off the list. Canes from others will not be received on the same terms.
>
> STE. MADELEINE SUGAR CO., LTD.
> 2nd January, 1919."

The plaintiff supplied cane in 1919 and in each of the following years. It is not in dispute that cane delivered during the season of 1919 was bought and paid for in accordance with these terms.

It should be observed that this notice contains words saying that the Company will pay on this scale until notice be given to the contrary.

In the year 1920, the Company instead of selling its wares as they came forward from time to time in the market, effected a lump sale beforehand at a price which turned out to be less than the price ruling when the actual deliveries came to be made and the farmers grumbled at having their percentage estimated on the low price at which the Company had sold. So to remove the objection, an agreement was made by which the Company paid the farmers a flat rate of 30*s*. per ton, no bonus.

In 1921 the arrangement made by the Company worked out in favour of the farmers. At the end of that year the officials of the Company came to the conclusion that it would be better to pay the farmers according to the average prices ruling on the seasonal deliveries without regard to any contracts it might itself make. And accordingly a new notice was delivered in the following terms :—

NOTICE.

"THE STE. MADELEINE SUGAR COMPANY, LIMITED, announce with reference to their previous notice dated 2nd January, 1919, that in future 'average F.O.B. value from January to June inclusive,' will be taken in ascertaining the price of canes instead of 'net proceeds.'

"This year the Company sold a certain amount of sugar early at a rate above the average for the six months and the farmer benefited by getting a better price for his cane. Last year the price rose and he lost. The change does away with this risk and the farmer gets paid according to the F.O.B. value of sugar whatever we sell ours at.

"As before, a payment on account will be made and the balance paid as soon after June as the value and necessary figures for deductions can be arrived at.

"The F.O.B. value of sugar will be announced from time to time.

THE STE. MADELEINE SUGAR CO., LTD.

25/11/21."

Which was followed by this supplementary notice :—

NOTICE.

"THE INTERIM PAYMENT for FARMERS' CANES purchased under the SLIDING SCALE published 25th November 1921, will be

9*s.* PER TON

UNTIL FURTHER NOTICE.

"D625, CONGO, CLARET, UBA varieties will not be accepted.

"Hill's Seedling will be accepted this year, but must not be re-planted.

STE. MADELEINE SUGAR CO., LTD."

The new notice was—though dated in November—actually issued on the 20th December, and possibly not set up in some places till the early days of January.

The plaintiff delivered his cane as usual; and thereupon the Company proposed to pay him according to the terms of the new notice; but he claimed to be paid according to the terms of the old notice.

As things happened to work out that year, the old notice was, at any rate according to the construction which rightly or wrongly the plaintiff put upon it, more favourable to him; and he accordingly sued for the sum of £39 5*s.* 5*d.* as the balance due on the price of 29 tons of cane delivered in 1922, or alternatively for an account of what was due to him in respect of this delivery.

By an agreement between the parties, the issue to be decided between the Court in the first instance, was limited "to the ascertainment of the terms and construction of the contracts between the plaintiff and the defendant Company."

Upon this issue the Chief Justice declared that the contract was contained in the notice of 1919; and this judgment was upheld though for different reasons, by the two judges constituting the Court of Appeal.

The case for the plaintiff as made by himself and other witnesses was that he and they never knew of the notice of 1921 until after they had delivered their canes; and that they delivered them on the faith of the notice of 1919 being still in force, nothing having been announced to the contrary. No precise date for their actual delivery was given by any of the farmers; but it appears that the harvest is from January to June, and it is not likely there were any deliveries before February. However, they said they had never seen these notices, nor heard of them, till late in the year, and after the harvest. Some said they had never seen them at all.

On the other hand, there was direct evidence of orders to issue the circulars, of their receipt by the various shops, and by shopkeepers that they had been so posted,—one quite near the plaintiff's little farm,—and that the notice had been discussed at farmers' meetings; and further, that the supplementary notice as to interim payment, which refers to the leading notice, had also been brought to the knowledge of the farmers.

For reasons which will hereafter appear, the Chief Justice did not find it necessary to determine this issue, but he does say "I have no doubt this notice was stuck up about the district; the plaintiff and some of his witnesses say they did not see it. I am rather inclined to think that the plaintiff must have seen it."

Russell J. in the Court of Appeal construed this expression of the Chief Justice as a finding that the plaintiff knew of the later poster; and said that he was not "inclined to disagree."

Thomas J. quotes the Chief Justice's passage without expressing an opinion. He decided the case on other grounds.

Their Lordships in considering this matter, have not forgotten that the plaintiff and others like him are small peasant proprietors who are entitled to have any contract made with them by such a body as this Company put in clear terms and to have any change in the mode of conducting business explicitly stated. But having the expressions of the learned judges in the Courts below before them, and having perused the printed evidence, they have no doubt that the plaintiff saw the notice and knew of its terms and saw that there was a change in the terms, one which perhaps might work out in his favour, but which for the year 1922 as he thought worked out against him.

This being so, the plaintiff failed on the main, if not the only ground, upon which he had rested his case.

But the Chief Justice discovered two other grounds upon which the plaintiff could succeed. It appears that sugar canes take rather more than 12 months to mature. They are planted towards the close of one year and do not mature till some time between January and June in the second year following. This is as regards

what may be called maiden stocks. Sometimes canes spring, by a process known as ratooning, from the old stock after it has been cut down.

In the Chief Justice's view, the planter accepts an offer by the Company and does an act in completion of the contract when he starts to plant the cane; and therefore, a notice given after planting time in 1921 will not be operative as to the crop of 1922 or that of 1923. He puts it that the plaintiff was entitled to reasonable notice before the terms of the contract were altered; that he grew his canes relying on the 1919 contract, and that that contract "could not be altered just when the canes were going to be cut."

Thomas J. agrees with this view. Russell J. did not agree. He pointed out among other difficulties that there was no evidence that the plaintiff, when growing cane, relied on selling this cane to the defendant Company, or relied on selling it to the Company under the terms of the 1919 notice. And with respect to a suggestion by the plaintiff's counsel, that the buying factories formed a ring and had all except one—the same price, the learned judge rightly observed that if these matters were relevant, they ought to have been proved.

Their Lordships are in agreement with Russell J.

No representation is made in either notice except that cane—if and when delivered at the scales—will be paid for at a certain price. No one suggested that for the deliveries in 1919, the terms of any notice previous to that of 1919 were looked upon as governing. Cane appears to have been taken and paid for that year on the terms of that notice; and in the year 1920—when there was grumbling owing to the way in which the Company did its business—no one again seemed to have suggested that the notice of 1919 did not apply.

Both the Chief Justice and Thomas J. speak as if there was an earlier contract which could not be altered except by reasonable notice. In fact there was no contract till the offer by the Company to take cane and pay for it at a certain price was converted into a contract by the acceptance of that offer—the acceptance showing itself by the delivery of the cane.

The last ground on which the Chief Justice decided for the plaintiff does not seem to have been dealt with by Thomas J., but was accepted by Russell J. and is the reason why he concurred with Thomas J. in affirming the judgment of the Chief Justice.

This point—as expressed by Russell J.—is that the Company had not proved that the plaintiff "had acquiesced in the terms contained in the 1921 poster." In his view it followed either "that no price had been fixed, or else that the 1919 price applied." Russell J. followed this up by saying that on the whole he thought that the Chief Justice was right in taking the 1919 price. Counsel for the respondent at their Lordships' bar supported this view, but submitted that in the alternative his client was entitled to have an assessment of a fair and reasonable price.

Their Lordships think that the contention in either form is unwarranted. When a seller and a buyer are not in agreement as to the price of an article and make their disagreement known to each other, but nevertheless the goods pass as upon a sale, he who takes action accepts the other's terms. The buyer, if he picks up the goods from the counter, takes them at the price which the shopkeeper has fixed. If he were to contend otherwise, he would put himself in a parlous state. The seller, who has been told the best price which the buyer will give him, when he delivers the goods delivers them at that price. He cannot be heard to say the contrary. Otherwise, his delivery would be an intrusion and a trespass. The Company had made the scale of prices according to which they would receive and pay for cane, clearly known. The plaintiff might protest as much as he chooses that he did not like the price, that it was a shame, that he ought to have more or expected more; but he has made his election and must take the consequences.

Their Lordships will humbly advise His Majesty that this appeal should be allowed with costs, and that the suit should be dismissed with costs in both Courts below.

In the Privy Council.

THE ST. MADELEINE SUGAR COMPANY, LIMITED

v.

SAMUEL TAYLOR.

DELIVERED BY LORD PHILLIMORE.

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