

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Betts
and others v. Arbuthnot and Co., from the
High Court of Judicature at Fort William
in Bengal; delivered 12th December 1872.*

Present :

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

SIR LAWRENCE PEELE.

THIS is a suit brought by Messrs. Arbuthnot and Company, who are merchants and agents at Madras, against Mr. Betts and his partners, who are indigo planters in Bengal. The suit is brought to recover the price of certain indigo seed which Messrs. Arbuthnot and Company purchased as agents for Mr. Betts and his partners, under instructions received from them. In one of the earliest letters from Messrs. Arbuthnot and Company, they say: "At the request of Mr. Herklots, of Coonoor,"—Mr. Herklots was a friend of Mr. Betts,—"we write to inform you that indigo seed of this year's growth is now available here, and that supplies will continue to come in for the next two or three months. The present price is 6-4 to 6-8 per maund, but the demand is so great that we expect to see shortly a considerable rise. If you send us an order, we will endeavour to execute it to the best of your interests." It appears that, at first, Mr. Herklots inquired of Messrs. Arbuthnot whether they could buy 2,000 maunds, which was a much larger quantity

than the Defendants wanted to sow in the following October. The probability is that when Messrs. Betts instructed Messrs. Arbuthnot to purchase, they were purchasing upon speculation, intending to pay the price of the seed out of the money to be obtained by re-selling it. There is no doubt that the Defendants were not prepared to pay for the seed, and it was unlikely that they would be buying seed in February to sow in October, when they had not the means to pay for it. Mr. Betts, by a letter of the 13th February, instructed Messrs. Arbuthnot to purchase for him 1,000 maunds upon the most favourable terms. He says, "best fresh indigo seed;" but he sent them a telegram afterwards, instructing them to buy, not the "best," as requested in the letter, but "fresh, good." According to the evidence of Mr. Betts himself, what he instructed Messrs. Arbuthnot to purchase was, "one thousand maunds indigo seed, fresh, "good, on most favourable terms." Having received a letter of the 25th February, informing him that Messrs. Arbuthnot and Company had purchased at the rate of 10 rupees per maund, Mr. Betts writes, on the 6th March, the following letter: "Yesterday I despatched a telegram to you to the effect that the seed I ordered "must be fresh and good." That "yesterday" was the 5th of March. He had received Messrs. Arbuthnot's letter on the 2nd, stating that they had actually purchased. Then why should he immediately send off a telegram to say that he hoped the seed would be fresh and good? He had instructed Arbuthnot and Company to buy fresh and good; why should he suppose that they had not bought fresh and good? And yet he thinks it necessary, on the 5th of March, to send a telegram to them to say that the seed which he ordered must be fresh and good, as he needs it for his October sowings. "And I now beg to advise you that if "the seed is not of this description,"—Why should he suppose that it was not of that description?—

“ that is, *fresh*, and such as I sent you an order
 “ for, you must be aware that it would be
 “ ruinous to sow it. Pray, therefore, kindly
 “ exercise your judgment in this matter.”
 How were they to exercise their judgment?
 They were instructed to purchase, and they
 had purchased. Mr. Betts must have supposed
 that they had purchased according to their
 instructions, and he must have known that if
 they had not purchased according to their in-
 structions or used due diligence in carrying out
 his order, he was not bound to take it. There
 was, therefore, no necessity to write that
 letter if the transaction really was such as Mr.
 Betts would have it supposed. It appears that
 when Mr. Betts found that the price had risen
 from 6-4 to 10 rupees he was anxious to get out
 of his contract. It is clear that he was not able
 to pay. He afterwards asks Messrs. Schoene
 and Company whether they can sell the indigo
 for him, and when they tell him that Madras
 indigo is not saleable in Bengal, then, for the
 second time, he asks for a sample. He had
 originally asked for a sample, but Messrs.
 Arbuthnot and Company had informed him that
 the indigo had been sent to Messrs. Thomas and
 Company as his agents, and that they would give
 him a sample. He was satisfied with that
 answer, and did not ask again for a sample until
 he was informed by Messrs. Schoene and Com-
 pany that they could not sell the indigo for him
 to advantage; then he asks for a sample, and a
 sample is given to him, and then he commences
 his experiments to see if the seed will germinate.

Three of the Judges of the High Court have
 found that Messrs. Arbuthnot and Company
 properly discharged their duty as agents.
 Messrs. Arbuthnot and Company, although they
 did state in their plaint that they were acting as
 sellers, were really only agents for Mr. Betts.
 Having purchased in Madras they had paid or
 would have to pay the person from whom they
 purchased; they were, therefore, in the nature of

sellers, although they were really only *del credere* agents. It was necessary for Mr. Betts, before he could repudiate what his agents had done for him and refuse to take the indigo and to pay for it, to show affirmatively that Messrs. Arbuthnot and Company had been guilty of negligence in executing the order which he had given them. He deals with the sample when he gets it by sowing it and testing it. Whether that test was or was not a good one it is not necessary to inquire, for Messrs. Arbuthnot and Company, when they were buying indigo seed at Madras in a rising market, under an order to purchase on the most favourable terms, could not have experimented by sowing a sample of the seed and waiting eight or ten days before they purchased to see whether it would germinate. They were only bound to act to the best of their judgment and to use proper care and skill as agents in purchasing what they were ordered to purchase, viz., good fresh indigo seed.

Now, did Mr. Betts prove that Messrs. Arbuthnot and Company had not fairly and properly executed his order? It appears to their Lordships that there is no evidence to that effect, and they agree with the views which the learned Judges of the Court below have taken, that Messrs. Arbuthnot and Company did fairly and properly execute the order. The Chief Justice says: "Looking at the evidence, I can see no reason for distrusting the Plaintiff's case, and thinking that they did not perform that which they undertook to do for the Defendants, namely, to purchase good fresh seed." Mr. Justice Louis S. Jackson says: "I have no doubt that Messrs. Arbuthnot and Company, as agents of the Defendant, honestly fulfilled the commission intrusted to them, and that the Plaintiffs are entitled to recover the whole of the amount they claim in this suit," with the exception of a small amount for excess. The learned Judge of the first Court

did not try the case upon the evidence. He decided against the Plaintiff on the ground of variance. That ground has, very properly, been given up to-day, and it has been admitted that the Judge ought not to have dismissed the Plaintiff's claim upon the ground of the variance. There were three Judges of the High Court, and they were unanimous in coming to the conclusion that Messrs. Arbuthnot did properly and honestly fulfil the commission which had been intrusted to them.

Their Lordships, therefore, see no reason for interfering with the judgment of the Court below, and they therefore will humbly advise Her Majesty that the decision of the High Court be affirmed, with costs.

