Privy Council Appeal No. 105 *of* 1917

Richard Stuart Pieris and Another - - *Appellants,*

v.

Ernest Mark Shattock and Others - - *Respondents.*

FROM

THE SUPREME COURT OF THE ISLAND OF CEYLON.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 2ND JULY, 1918.

Present at the Hearing:

EARL LOREBURN.
LORD BUCKMASTER.
LORD DUNEDIN.

[*Delivered by* LORD DUNEDIN.]

The respondents in this action, from and after April 1914, undertook for the appellants the agency and sale of produce of certain estates belonging to the appellants in Ceylon, on terms contained in a letter dated the 24th April, 1914. It is unnecessary to set out the terms minutely. The respondents were to finance the working of the estates and to sell the produce at agreed rates of commission. They were to make a monthly advance of 10,000 rupees to one of the appellants to meet his personal expenses, and accounts were to be balanced at the end of the year when the produce was finally sold. This agreement was acted upon till the month of September 1914. In that month the respondents intimated that they considered the agreement terminated, and the appellants not acquiescing in that view, they, on the 30th November, 1914, raised the present action for a declaration that the contract was cancelled, and for payment of Rs. 33,065 : 83 : 0, being the balance due on advances made by them. The grounds on which the right to cancel were based were (1) misrepresentation as to the amount of the crops made by the appellants and inducing to the contract; and (2) breach of a condition of the contract which provided that none of the crops was or should be hypothecated during the currency of the agreement in respect that there were registered mortgages affecting the estates. The first ground was not seriously insisted on. The appellants in their defence resisted the claim, and in particular alleged that on a just construction of the

clause hypothecation of the crops did not refer to an ordinary mortgage of the land. They also counter-claimed for dama es "up to date," which they estimated at 50,000 rupees.

The case went to trial before the District Judge. At the trial the appellants admitted the correctness of the respondents' figures showing the balance due to them on advances which by addition of interest then amounted to Rs. 33,635 : 65 : 0. They proffered evidence to show that damage had resulted from the non-manuring of a certain field to the extent of Rs. 3,077 : 20 : 0. They maintained their attitude as to the construction of the clause about hypothecation. The learned District Judge thereupon found that no damage had been proved : that the figure of the indebtedness was admitted, and that no continuing damage being asked for, and the termination of the agreement being acquiesced in, the plaintiffs ought to have judgment for the Rs. 33,635 : 65 : 0, and the counter-claim should be disallowed and he gave judgment accordingly. In this state of the facts he found it unnecessary to determine the point as to the correct meaning of the clause as to hypothecation, though he indicated an opinion that it would be contravened by the existence of an ordinary mortgage on the lands. On appeal the Supreme Court confirmed the judgment of the District Judge, again finding it unnecessary to determine the question as to the meaning of the clause, while again indicating an opinion to the same effect as that of the District Judge.

Before this Board the learned counsel for the appellants was insistent to argue the question of the true meaning of the clause with a view to showing that the original cancellation of the contract by the respondents was unwarranted. Their Lordships are unable to hold that there is any necessity to decide that question on the merits of which they will express no opinion. The sum sued for was admitted. There are concurrent findings of fact that the appellants suffered no damage by the action of the respondents in putting an end to the agreement. As to the future the District Judge expressed himself thus : "The defendants do not claim continuing damages, and I take it they have acquiesced in the termination of the agreement," and no objection to this statement was made to the Court of Appeal.

The position is therefore as follows. There is no defence to the demand for the sum sued for. The counter-claim is excluded by concurrent findings. The non-continuance of the agreement for the future is agreed to by mutual consent. It is out of the question to ask this Board to decide a question of law, as to which there has been no decision in the Courts below, although opinions on it have been expressed, merely in order to say that there ought to have been a finding for nominal damages in respect that the contract had been illegally cancelled.

Their Lordships will humbly advise His Majesty to dismiss the appeal with costs.

In the Privy Council.

RICHARD STUART PIERIS AND ANOTHER

v.

ERNEST MARK SHATTOCK AND OTHERS.

DELIVERED BY

LORD DUNEDIN.

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