

(1889) 03 CAL CK 0002
In the Calcutta High Court

Heilgers and Co.

APPELLANT

Vs

Jadub Lall Shaw and Another

RESPONDENT

Date of Decision : 05-03-1889

Acts Referred:

Citation : (1889) ILR (Cal) 418

Hon'ble Judges : Wilson, J;Trevelyan, J

Bench : Division Bench

Judgement

Wilson, J.—We do not think there is any necessity for us to call on the defendants in this case.

2. The point is a very small one. The contract out of which the suit arises was a contract for delivery of certain bales of jute, so many in October and so many within certain days of November. The contract was a written one, and contains only a few words having any bearing on the question in dispute. The amounts and price are set out. The goods are to be delivered free on board, and the sellers undertake to deliver as soon as possible. Then under the heading, " Terms and conditions, "come the words" Cash on delivery." Then it is provided that 1,000 bales are to be shipped during October, and 1,000 bales between the 1st and 28th November, in lots of 250 at a time. The real point now is, what is the meaning of "Cash on delivery"? What happened was this: Some days before the 28th November, I think on the 23rd, plaintiffs wrote to the vendors (defendants) and said they desired a certain quantity of bales delivered on the 25th and 26th November, so much on one ship, so much on another. The defendants replied that they could not exactly comply with the plaintiffs' desire as to time of delivery, but they would deliver the whole quantity by the 28th, which would be within time according to the contract. As a fact, it turned out that the vendors had their lighters alongside the ships on Sunday and Monday, the 27th and 28th, and were ready and willing to give delivery, if paid then and there for the jute.

3. On Monday the 28th, rather late in the day, a communication was made to the purchasers on the subject, and then when it was too late for delivery to be given

on that day of the whole of the bales, they sent some one on board the ships with cash to pay for the bales as they were delivered. The consequence of this delay was that the bales were not delivered. The plaintiff's cannot say they were taken by surprise, as there had been correspondence between the* parties in which the vendors said they would insist strictly on their rights under the contract, and it was known what they meant by that, as similar points had been the subject of litigation in a case in which the present defendants were concerned; and that the plaintiffs did not think they could safely assert any other view of the contract is plain from what they did on the 28th when they sent cash on board the ships. Under these circumstances, the plaintiffs have brought this suit against the defendants for non-delivery of the jute. The defence is that the vendors were ready and willing to deliver the jute if the plaintiffs had been ready to pay for it as it was delivered. The only question, then, as I said before, is what is the meaning of the words "Cash on delivery." The defendants say the words mean, cash as the bales are delivered over the ship's side.

4. The plaintiffs say they mean, cash in exchange for mate's receipts to be brought to their office. These words are of common occurrence not only in this country, but all over the world; and it would be a most dangerous thing if we were to introduce any doubt as to their meaning. Cash on delivery means cash in exchange for and simultaneous with delivery of the goods. If doubt were allowed as to the meaning of these words, it might also be raised as to the meaning of other just as common words, such as payment against shipping documents.

5. No doubt such a contract, if rigidly enforced, may in many cases prove very troublesome to the parties, and, consequently, we find from the evidence that some mercantile men avoid such a form of contract. Sometimes the purchaser waives a little of his rights and pays for the goods a little before delivery. Sometimes the vendor waives a little of his rights and takes payment on presentation of the mate's receipts. But that does not alter the plain meaning of the words.

6. Then it is said that there is evidence of custom which alters the meaning of the words. In the first place, I think it may well be questioned whether evidence could be given to contradict the plain meaning of these words of a written contract; but whether that be so or not, there is nothing in this case amounting to evidence of custom to show that a different meaning should be put on the words from the natural one. The evidence goes no further than to say that the difficulty in most cases is got over by one party giving way a little. The result is that we think the learned Judge's decision is correct.

7. The first three questions referred to us are-

8. [His Lordship read the first three questions, see ante p. 419, and continued.]

9. These three questions it is convenient for us to answer together by saying that, where a contract is for delivery free on board," and cash on delivery" is provided for, payment may be required upon delivery of the goods at the time

and place mentioned in the contract for delivery.

10. The other two questions we answer in the negative.