

## CONSIGNMENT OR CONTRACT

### Judgement in Albumen Export Case Delivered by Supreme Court

Judgement in the case of Hsin Chong Hong v. Ch. Goldrei Foucard & Son was given by his Honour Judge Skinner Turner in H. M. Supreme Court on Saturday.

His Lordship said:

In 1920 the plaintiff hong and the defendant had various transactions in egg products: some were purchases direct by the defendant, some were shipments by the defendant for account and risk of the plaintiff; these transactions involved very considerable sums of money. Most of the transactions mentioned before me were purchases: in fact 12 out of 16; and this is not unnatural, as I know now that the defendant firm in London are consumers as well as salesmen of these products. In August, 1920, the plaintiff had 70 casks of duck albumen to dispose of: he asked the defendants and they agreed to ship them for him on consignment. At the same time he expressed his willingness to accept 4/6 a lb. c.i.f. London. This figure was cabled to London and a reply was sent containing an offer of 4/0 a lb., if quality prime. Now at the time this offer came (August 14) the goods had left the plaintiffs' godown; and we know now that that was the date on which the ship actually arrived here and she sailed with the goods on board on August 16. This figure of 4/0 was communicated the same day to the plaintiff and he accepted it at once and confirmed this by letter of August 16, to which I will refer later. He contends that this acceptance turned a shipment on consignment terms into a sale here for which he was entitled to immediate payment. The defendants on the other hand contend that the original arrangement was never altered and that the sale was on his account all the time: all that happened being that the bargain was fixed here. And it is round this point that the fight has raged.

#### THE QUESTION OF PRICE.

There is really very little in dispute in this case; it is agreed that originally it was a consignment contract, that the offer from London of 4/- was communicated to and accepted by the plaintiff; that he wrote the letter of August 16, and that exchange was settled shortly afterwards for the full amount at 6/1½ by the defendants for and at the request of the plaintiff. The important document is the letter of August 16 from plaintiff to defendants: this "accepts your firm offer at 4/- per lb. c.i.f. London, if possible a better price." Now the offer thus accepted was the one communicated on August 14 in conversation, the telegram from London that they could sell at that price, and should it be accepted? Answer: Yes. Now there is no doubt that this

is the only contract of the 16 mentioned where such a position arose; the others were sales outright here or consignments that awaited the market in Europe. It is known that sales here are usually paid for at once: by means of cash obtained in the ordinary way through the banks against the shipping documents. Nothing of that sort happened here and the shipping documents went forward direct by post. I am content to take it that the plaintiff sought to obtain payment for these goods before they reached England; but was he right so to do? It is pointed out that the terms of this letter, "if possible a better price," point to some hope of more than 4/0 being obtained; that there was no need to settle exchange August-December if the sale was outright, and this was done at plaintiff's request in order (as he told us) that he might know how many taels he was to get; and that the plaintiff was told all along that he had to wait for his money till the defendant got a remittance from London, which would not have been the case if there had been a sale here: further, that there was no need to communicate to him the telegram of August 14 sent to London. I am satisfied in my mind that, whatever the transaction was, it was not a sale here on which the plaintiff could demand immediate payment. It was a sale in London for the plaintiff at 4/- unless a better could be obtained. The plaintiff is driven to say that the words "if possible a better price" mean nothing; I decline so to hold. I don't want to put too highly technical an interpretation upon a letter of acceptance written in English by a Chinese hong whose proprietor cannot give his evidence in English; but I have always understood that the rule of interpretation is to give effect to all the clauses in documents if possible. I think the transaction is this: please sell my goods for me in London remembering that I will take 4/6 a lb. for them. Reply: I will certainly sell them for you and I can get 4/- lb. Reply: Accept that unless you can get a little better. And the effect of that is that all the words are made effective: and unless a better price was obtained a sale at 4/- by the defendants' house in London for the plaintiffs resulted. That result was not known here till after the letter of December 2 from London was received. Unless that was the meaning of the transaction, I entirely fail to see why exchange was settled August-December. It seems to me that that is a perfectly reasonable business transaction and with exchange settled for the full amount everyone was all right: the defendants were satisfied that at least 4/- a lb. would be received in London—it was notified as sold on August 16 (telegram); on that date exchange was settled and the plaintiff knew approximately how many taels he was to receive when the transaction was completed in London by payment and delivery of the goods.

#### DIFFERENT CURRENCIES.

Now the plaintiff is suing in sterling for the value of this

cargo at 4/- a lb; and it is agreed that is practically the correct sum. I am not going to decide the very knotty problem as to whether this Court should accept writs or give judgement in any other currency but local currency: certainly in England it would be impossible (see remarks of Bankes L. J. in *Di Ferdinando v. Simon Smith & Co.*, 1920, 3 K. B., on p. 412). In this case the matter is settled for me. I think it is impossible to hold otherwise than as contended by Mr. Ward that the two matters are so bound up together that they cannot be separated. It is agreed that the exchange contract was made for and at the request of the plaintiff—it is his: it is for this very sum of money and he wanted it made in order that he might know how many taels he was going to get. In these days of fluctuating exchange, it is a very important matter for any one to be able to fix it. And the Court of Appeal in England have just laid down the rule that the conversion of foreign money must be done, in cases of contract, at the rate prevailing on the day of breach. Here there is no need to do that; the parties have fixed it for themselves and I hold the plaintiff is entitled to recover in taels calculated at 6/1½; and that was the demand made in writing by the plaintiffs' legal practitioner on December 16, 1920, before writ; and all that was then threatened was repudiation of liability on the exchange contract.

#### CHARGES AND COMMISSION.

The only other matter remaining is the question of the charges and commission sought to be deducted by the defendants. No doubt these are always charged on sales on consignment and the plaintiff, by his lawyer's letter of March 19, 1921, does not dispute the figure stated by the defendant, and in an ordinary case I should have held there was an implied contract to pay them. But this case is different: the defendant has on two occasions admitted that he owes this amount without any deduction of charge or commission. On December 4, he went so far as to enclose a cheque for £46/4/10 for the difference between that sum and the claim on other contracts—a difference in favour of the plaintiff. If that cheque had been accepted, I cannot believe he could afterwards have been heard to claim this commission. It was not accepted, however; and on December 22 he notifies the plaintiff that he has taken up the exchange contract and holds the taels he has received (i.e., the equivalent of the £2,800) in part payment of the claim which now exceeds that amount. Whether this is to be called an estoppel or a waiver, it seems to me that it prevents the defendant from saying it was only provisional; and I hold he is not entitled to now deduct those charges and a commission.

I therefore give judgement for the plaintiff for Tls. 9,142.85, being the tael equivalent of £2,800 at 6/1½.

Mr. H. P. Wilkinson applied for costs on behalf of plaintiffs, and Mr.

H. Lipson Ward, for defendants, asked that the question of costs be reserved pending further proceedings between the parties in the Mixed Court.

His Lordship ruled that plaintiff was entitled to such costs as the present judgement carried. He granted a stay of execution pending proceedings in the Mixed Court, upon the decision of which a balance would be struck between the parties, and allowed plaintiff half taxed bill of costs on the judgement for Tls. 9,142.85.