APPELLATE CIVIL.

Before Gosain and Grover, JJ.

MESSRS THE RAJ SPINNING MILLS,—*Plaintiff-Appellant.*

versus

MESSRS. A. AND G. KING, LIMITED, RAGLAN MILLS, GIBSON STREET BRADFORD (ENGLAND),—*Defendant-Respondent.*

Regular First Appeal No. 237 of 1950.

1958

Feb., 21st

C. I. F. Contract—Incidents of—Vendor—Obligations of—Buyer—Whether bound to make payment on presentation of the documents.

Held, that in a C. I. F. Contract the vendor is bound to do certain things. First, to make out an invoice of the goods sold. Second, to ship at the port of shipment goods of the description contained in the contract. Third, to procure a contract of affreightment under which the goods will be delivered at the destination contemplated by the contract. Fourth, to arrange for an insurance upon the terms current in the trade which will be available for the benefit of the buyer. Fifthly, with all reasonable despatch to send forward and tender to the buyer these shipping documents, namely, the invoice, bill of lading and policy of assurance; delivery of which to the buyer is symbolical of delivery of the goods purchased, placing the same at the buyer's risk and entitling the seller to payment of their price.

Held further, that in a C. I. F. Contract payment must be made on presentation of documents, and, if there is any breach of any term or condition or there is any excess in the charges, that can be agitated separately, but it is not open to the buyer to refuse to make payment. The buyer can make a claim for a refund of any excess charges later.

Johnson v. *Taylor Bros. and Company, Limited* (1), *Biddell Brothers* v. *E. Clemens Horst Company* (2), and *Urquhart Lindsay and Co.* v. *Eastern Bank, Ltd.* (3), relied on.

(1) 1920 A.C. 144.
(2) (1911) 1 K.B. 214.
(3) (1922) 1 K.B. 318.

First Appeal from the decree of Shri Mani Ram Khanna, Sub-Judge, 1st Class, Amritsar, dated the 11th July, 1950, dismissing the plaintiff's suit and leaving the parties to bear their own costs.

A. M. SURI, for Appellant.

D. K. MAHAJAN and SHANKER NATH, for Respondent.

JUDGMENT

Grover, J.

GROVER, J. This appeal arises out of a suit for recovery of a sum of Rs. 30,000 filed by an Amritsar firm against an English Limited Company; the suit having been dismissed by the trial Court by its judgment, dated 11th July, 1950. The plaintiff and the defendant seem to have had business relations prior to November, 1946, and the plaintiff had opened a letter of credit through the Punjab National Bank, Limited, Amritsar, but the previous deal fell through, and actually on the 14th of November, 1946, the defendant wrote a letter, Exhibit D. 3, saying that the plaintiff's method of business was somewhat irregular and, therefore, business transactions would be discontinued.. But it seems that later on the parties decided to enter into another transaction. By means of a letter, dated the 26th of November, 1946, Exhibit D. 2, the Midland Bank, London, informed the defendant at Bradford that advice had been received from the Punjab National Bank, Ltd., Amritsar, issuing confirmed credit in its favour on account of Raj Spinning Mills to the extent of £ 13,000 valid until 15th March, 1947, and available by their drafts at sight accompanied by—

"Certified Invoice in three copies along with	Certificate of origin (form A) if
Shipped Bills of Lading in complete set to order	goods of British make. Insurance Policy of Certificate covering
and blank endorsed. "freight paid"	Marine and war risks.

Evidencing shipment of the under-mentioned goods by S. S. or M. V. from U.K. to Karachi Worsted Spinning Plant complete with Bobbins, wheels and all spares c.i.f. Karachi." Later on the proprietor of the plaintiff-firm himself went over to Bradford and bought one complete spinning plant for the sum of £ 12,000, and an agreement was also made with regard to the dismantling, packing, carriage, etc., of the plant; the entire transaction being evidenced by a letter addressed by the defendant to the plaintiff as follows:—

"Dear Sirs,

We beg to confirm the sale to you today of ONE complete Spinning Plant as per the enclosed inventory, for the sum of £ 12,000, where it stands. All charges for dismantling, packing carriage to port, marine insurance and freight, and dock charges to Karachi.

Please note that all charges over and above the price of the plant cannot be given exactly but these will be charged to you at Net Cost as per invoices received from the various people. The prices charged on the invoices are estimated as near as possible.

We would suggest Letter of Credit is made out to us for £ 14,500 against part shipment of machinery and sundry charges c.i.f., Karachi.

As the various invoices for packing, freight carriage, etc., are received by us we will then present these to the bank for payment. The same applies to the plant with regard to shipping documents.

We remain,
Yours faithfully,
X X X "

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A sum of £ 2,000 was paid by the plaintiff to the defendant by way of deposit. Along with this letter two other documents were attached giving the cost of the plant and the estimated removal charges, the total amount coming to £ 16,500. The first lot of ten cases containing parts of the machinery was despatched by the defendant and a sum of £ 1,320 equivalent to Rs. 18,000 was drawn on the plaintiff. This amount was paid to the defendant on the bank's delivering the documents to the plaintiff. Later on another sum of £ 250 was deposited by the plaintiff for the purchase of a boiler and engine from the defendant, but this contract was cancelled by mutual consent, and it was agreed that the aforesaid amount be credited towards the amount deposited by the plaintiff for the worsted spinning plant. The validity of the letter of credit was extended up to 30th June, 1947, and the amount of credit increased by £ 1,500, bringing the total to £ 14,500,—*vide* Exhibit D. 4. The validity date was further extended up to 31st August, 1947,—*vide* Exhibit D. 8. Thus the time for delivery was also extended up to 31st August, 1947. As already stated, the first lot was shipped, and, in accordance with the agreement, it was sent to Karachi. The second lot was also shipped to Karachi, the Bill of Lading being dated 30th June, 1947, which was forwarded to Midland Bank, Ltd., on 8th August, 1947. At the request of the plaintiff contained in the letter, dated the 19th June, 1947, the balance of machinery was shipped to Bombay; the third lot being shipped on 13th August, 1947, the Bill of Lading being dated 2nd August, 1947; and the fourth and final lot was shipped on 28th August, 1947, the Bill of Lading being dated 31st August, 1947. The plaintiff, however, did not take delivery of the second lot sent to Karachi, and the third and the fourth lots sent to Bombay, and instituted the present suit in January, 1948, for recovery of the

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sum of Rs. 30,000, on the allegations that the plaintiff had deposited £. 2,250 with the defendant and on being required to furnish the details of the costs incurred in packing, dismantling, rust-proofing and packing materials and carriage, etc., the defendant had failed to furnish the same as undertaken in the agreement and, therefore, a breach of contract had been committed by him with the result that the plaintiff was entitled to recover the amount paid as advance money apart from the loss and damage caused by failure to perform the contract. The defendant pleaded that the entire machinery had been despatched in four ~~lost in~~ lots accordance with the instructions of the plaintiff, the particulars of the despatches and the necessary documents having also been forwarded through the bankers. The defendant had also sent particulars of the cost of packing and dismantling, etc., and the plaintiff never raised any objection to that. It was asserted that the breach had been committed by the plaintiff and not by the defendant and, therefore, the suit was liable to dismissal. The trial Court framed the following issues:—

(1) Did the defendants commit the breach of the contract ?

(2) To what damages, if any, is the plaintiff entitled ?

It was found that the contract which was a c.i.f. contract had been duly performed by the defendant and that the necessary documents had also been tendered. The plaintiff's main contention that the invoices and details about the expenses incurred on the dismantling and packing charges had not been sent to him, as was required under the terms of the contract, was considered and the trial Court held that there had been non-compliance with the stipulation with regard to furnishing of details and invoices regarding the amount spent on dismantling

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and packing of the machinery, but the plaintiff was not entitled to the return of the amount, or to any amount by way of claim paid by him as part of the contract of purchase as such a non-compliance did not give the plaintiff a right to avoid the contract. The suit was consequently dismissed.

Mr. Anand Mohan Suri, who appears for the plaintiff-appellant, has referred to the relevant correspondence and has laid a good deal of emphasis on the condition in the contract that the various invoices for packing, freight, carriage, etc., as and when received by the defendant would be presented to the bank for payment as also the shipping documents. His contention is that the amount of £ 4,500 was only an estimate of the dismantling, packing and other charges, and as the plaintiff was liable according to the contract to pay only such charges as had been proved to have been actually incurred it was an essential term of the contract that all the relevant documents relating to aforesaid charges should have been forwarded before the plaintiff could be called upon to carry out his part of the contract and accept the goods. It is pointed out that the plaintiff kept on writing various letters to the defendant making such a demand. In particular, attention is invited to the letters, dated 22nd May, 1947, Exhibit D. 25, dated 4th September, 1947, Exhibit D. 13, dated 3rd October, 1947, Exhibit D. 11, the telegram received by the defendant on 12th October, 1947, Exhibit D. 10, the letter dated 11th October, 1947, Exhibit D. 9, and the letter dated 28th October, 1947, Exhibit D. 8, in which repeated demands were made for all the bills and invoices pertaining to the dismantling, packing, transport, freight and other charges. On the 30th of October, 1947, the defendant wrote a letter, Exhibit D. 7. giving an account of what is stated "claims against

letter of credit". In this letter the cost of packing cases and packing, cost of dismantling, etc., were separately stated. The plaintiff wrote a letter, dated 4th November, 1947, Exhibit D. 6, in which no reference seems to have been made to the defendant's letter of 30th October, which probably might not have reached by then. In this letter also it was reiterated that a statement of account giving the dismantling, packing, transport, freight and other charges had not been sent nor the copies of bills and invoices pertaining thereto had been made available. It was requested that the aforesaid papers be sent at the earliest. Mr. Suri has further referred to the evidence of Harry King, the Managing Director and Secretary of the defendant-company, and that of his son Gordon King, and of Mrs. Vera Bentley, the Secretary of Harry King, and has criticised the same. Harry King in answer to question No. 257 stated that the defendant had undertaken to present the invoices as and when they were presented to the defendant-company showing the net cost of dismantling, packing and other charges. When asked as to why no information was sent about the same to the plaintiff and as to why the original documents were not sent, he stated that the dismantling and packing, etc., had been carried out by the defendant and for that reason the same had not been sent (answer to question No. 259). One matter in particular seems clear from the evidence of Mrs Vera Bentley. Certain work had been got done by other firms and there were invoices relating to those items, e.g., Messrs Fletcher Bolton had been paid £ 470-18s-2d. There were other similar invoices. With regard to the item of £. 240, which had been included in the account under the heading of packing in the letter, dated 30th October, Mrs. Bentley stated that it had originally been included as estimated payment to Messrs Boards

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and Cases, but it was admitted that this payment in fact had never been made (*vide* questions Nos. 1083 to 1089). Thus there can be no doubt that although certain work, so far as dismantling and packing was concerned, might have been got done by the defendant-company through its own employees, but other work had been done and expenses incurred for which payment had been made to other firms and for which invoices were in existence. These invoices could have been sent and ought to have been sent as was being demanded by the plaintiff. Admittedly the sum of £. 240 also was included in the final account although that item of expense could not validly have been so included. But the essential question is whether a breach of the term relating to despatch of these invoices, etc., could entitle the plaintiff to repudiate the contract. According to Mr. Suri the stipulation in the contract with regard to this matter was a condition within the meaning of section 12(2) of the Indian Sale of Goods Act, 1930, and its breach gave rise to a right to treat the contract as repudiated. He has laid emphasis on the rule that in construing mercantile contracts it must be assumed that every clause in it was inserted by the parties for some good purpose and with some definite meaning as merchants are not in the habit of inserting stipulations to which they do not attach value and importance *Adam Haji Peera Mohamed Ishack v. Sakavath Hussain Akbari* (1). It is urged that it was absolutely essential for the plaintiff to know and be satisfied about the exact cost of dismantling, packing, etc., as he was not liable to pay any estimated charges but only the actual cost incurred by the defendant and the latter was bound to satisfy him by production of relevant invoices and details with regard to the same, and that he was entitled to refuse to accept the consignments in case excess amount was being demanded

(1) A.I.R. 1923 Mad. 103.

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Reliance for this purpose has been placed on M.R. *Mehta and Co.* v. *Joseph Heureux* (1). In that case it has been laid down that with regard to goods shipped on c.i.f. terms where documents are sent to a bank to be delivered on acceptance of the draft, the property in the goods does not pass to the buyer until the draft is accepted. In such cases, however, the draft should not include amounts which may be due to the consignor from the consignee on other accounts. In that case a sum of 15s. only had been included wrongly and the defendants had objected to its payment, and it was held that the defendants were entitled to refuse to accept the draft as it did not comply with the terms of the contract. It is submitted that clearly at least the sum of £ 240 had been included by the defendant which admittedly could not have been charged from the plaintiff, and, therefore, he was within his rights in not accepting the goods and making the payment.

Mr. Daya Kishan Mahajan submits on behalf of the defendant that on a true construction of the contract it could not be said that the term with regard to the sending of various invoices for packing, freight, etc., as also with regard to dismantling, was a condition within the meaning of section 12(2) of the Indian Sale of Goods Act, 1930. He says that the contract was with regard to the machinery which had been sold at the spot and the undertaking with regard to sending it after getting the plant dismantled was only a subsidiary one for the facility and convenience of the plaintiff and the same could not be regarded to be the main purpose of the contract. It was open, in spite of the above terms, to the plaintiff to get the dismantling done through any other agency if he so wished and at the most such a term might fall within the meaning of the expression "warranty", but neither

(1) A.I.R. 1924 Bom. 422.

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on principle nor on authority it could be characterised as a condition. It is then urged that assuming the aforesaid term was a condition, the plaintiff could not now be heard to say that it was so in view of the terms of section 13 of the Sale of Goods Act. The contract of sale was not severable as it related to the plant as a whole and as the property had passed to the plaintiff the breach of the aforesaid condition could be only treated as a warranty as the goods had been accepted in part, the plaintiff having taken delivery of the first lot and paid for it. Mr. Mahajan has laid stress on the fact that according to the letter dated 30th January, 1947, which was the sole repository of the terms of the contract, the sale had been made of the complete spinning plant "where it stands". This meant that the sale was complete and property had passed to the plaintiff. Reliance is placed on section 20 of the Indian Sale of Goods Act, which relates to the passing of specific goods in a deliverable state. On the other hand Mr. Suri relies on section 21 according to which property does not pass until the seller does what he is bound to do to the goods for the purpose of putting them in a deliverable state and the buyer has notice thereof. Mr. Mahajan further refers to section 34 of the Act which provides that a delivery of part of goods, in progress of the delivery of the whole, has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole, but a delivery of part of the goods with an intention of severing it from the whole, does not operate as a delivery of the remainder. It seems that there is a good deal of force in the contentions canvassed on behalf of the defendant with regard to the passing of property. But it is unnecessary to finally decide this point as the position seems to be quite clear on another point which has been raised by Mr. Mahajan. It is urged that there are two peculiar conditions with regard

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to the nature of the contract in question: (1) it was a c.i.f. contract and, in such a contract, payment must be made on presentation of documents, and, if there is any breach of any term or condition, that can be agitated separately, but it is not open to the buyer to refuse to make payment, (2) the incidents of a transaction carried out by means of opening of a letter of credit are quite different. In *Johnson* v. *Taylor Bros and Company, Limited* (1), Lord Atkinson laid down the well-known rule containing the incidents of a c.i.f. contract. According to this rule "the vendor is bound by his contract to do six things. First, to make out an invoice of the goods sold. Second, to ship at the port of shipment goods of the description contained in the contract. Third, to procure a contract of affreightment under which the goods will be delivered at the destination contemplated by the contract. Fourth, to arrange for an insurance upon the terms current in the trade which will be available for the benefit of the buyer. Fifthly, with all reasonable despatch to send forward and tender to the buyer these shipping documents, namely, the invoice, bill of lading and policy of assurance, delivery of which to the buyer is symbolical of delivery of the goods purchased, placing the same at the buyer's risk and entitling the seller to payment of their price." In *Biddell Brothers* v. *E. Clemens Horst Company* (2), a c.i.f. contract came up for consideration. The buyer contended that he was not bound to pay for the goods until their arrival at the destination and a reasonable opportunity had been allowed for examination to see if they were in conformity with the contract. It was held that the seller was entitled to payment against shipping documents upon delivery of goods on board ship at the port of shipment, the buyer's right to reject the goods remaining unimpaired if upon arrival they were found

(1) 1920 A.C. 144.
(2) (1911) 1 K.B. 214.

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upon examination not to be in conformity with the contract. At page 220, Hamilton, J., observed—"Such terms constitute an agreement that the delivery of the goods, provided they are in conformity with the contract, shall be delivery on board ship at the port of shipment. It follows that against tender of these documents, the bill of lading, invoice, the policy of insurance, which completes delivery in accordance with that agreement, the buyer must be ready and willing to pay the price." In Exhibit D. 2, which relates to the letter of credit, the only documents that are mentioned are those which have already been mentioned before and there is no mention at all of invoices, etc., relating to dismantling, packing and other charges. It is clear from the evidence of P.W. 3, the Manager of the Punjab National Bank, who were the bankers of the plaintiff, that all these documents were duly sent. It is true that P.W. 4, the plaintiff, stated that the Putlighar Branch of the Bank, did not present the bills of lading, invoices, certificates of insurance, etc., but this seems to be a lame excuse as the main Branch of the Bank at Amritsar, namely, the Hall Bazar Branch, did receive these documents as has been admitted by P.W. 3, the Manager, and it is difficult to believe that these documents could not be forwarded to the smaller branch of Putlighar for being presented, if required. It must, therefore, be held that the plaintiff was bound according to the contract to make payment on presentation of the documents. In England the rule has been accepted that in such contracts the buyer is taken, as between himself and the banker, to accept the seller's invoices as correct and any adjustment, if claimed, must be made by way of refund by the seller later (*Urquhart Lindsay and Co.* v. *Eastern Bank, Ltd.* (1). In that case the plaintiffs had entered into a contract with buyers in Calcutta to manufacture

(1) (1922) 1 K.B. 318.

and ship machinery by instalments over several months at agreed prices, but subject to a stipulation that should the cost of labour or wages increase, there should be a corresponding increase in the purchase price. The buyers were to open a confirmed irrevocable credit in favour of the plaintiffs with a bank in England, and to pay for each shipment as it took place. Two instalments were shipped and payments were received under the letter of credit. The buyers then considered that the invoices included some increase in the purchase price, and they refused to pay the bill presented on the next shipment. The plaintiffs cancelled the contract claiming damages from the defendants. It was held that the credit being irrevocable, the refusal of the defendants to take and pay for the particular bills on presentation of the proper documents constituted a repudiation of the contract as a whole, and that the plaintiffs were entitled to damages so reckoned. It was observed by Rowlatt, J.—".....the defendants undertook to pay the amount of invoices for machinery without qualification, the basis of this form of banking facility being that the buyer is taken for the purposes of all questions between himself and his banker or between his banker and the seller to be content to accept the invoices of the seller as correct." Halsbury's Laws of England, Volume II, contain the following statement at page 217:—"A banker issuing an irrevocable credit or a confirmed credit usually under takes to honour drafts negotiated, or to reimburse in respect of drafts paid, by the paying or negotiating banker, and is thus in the hands of the beneficiary binding against that banker. The credit contract is independent of the sales contract on which it is based, unless the sales contract is in some measure incorporated." The credit contract in this case covered only such documents as were mentioned in Exhibit D. 2, and,

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therefore, the bills sent along with such documents were bound to be honoured, and as has been laid down in *Urquhart Lindsay and Co.* v *Eastern Bank, Ltd* (1), the plaintiff was not entitled to refuse to carry out his part of the contract, and if he had any complaint on account of any excess in the charges made for dismantling, packing, etc., it was open to him to make a claim for a refund of any such charges. In the present case it would be quite legitimate to say that the Midland Bank which had advised the defendant about the credit, *vide* Exhibit D. 2, was the agent of the plaintiff and was, therefore, bound to make payment as soon as the proper documents mentioned in the aforesaid letter were presented which indeed has been proved to have been done. As a matter of fact the payments had been made to the defendant by the Midland Bank, but because the plaintiff had refused to make payments of the drafts, the Midland Bank recovered back all the payments made in terms of certain indemnity agreements executed by the defendant.

As a result of what has been stated above, the decision of the trial Court must be affirmed. The appeal is, therefore, dismissed. As the defendant had included a sum of £. 240 in the amount which was being demanded from the plaintiff, which could not legally be done, the defendant will not be entitled to costs in this Court.

B. R. T.