Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Pestonji Jehangirji and Others v. *The Firm of Jaisingdas Hansraj, from the Court of the Judicial Commissioner, Hyderabad Assigned Districts; delivered the 8th July* 1903.

Present at the Hearing:

LORD MACNAGHTEN.
LORD ROBERTSON.
SIR ANDREW SCOBLE.
SIR ARTHUR WILSON.

[*Delivered by Lord Robertson.*]

The Appellants are the heirs and executors of Jehangirji Hormasji, a merchant in Bombay. Jehangirji had certain transactions with the Respondents, who are a firm of merchants trading at Khamgaon; and on 23rd March 1892 he sued the Respondents in the Court of the Civil Judge at Akola for Rs. 24,600. 1. 6, as the balance due to him on those transactions. The Respondents brought into Court Rs. 2,571, which they admitted to be due, and they denied liability for the rest. The Civil Judge at Akola, on 30th April 1897, gave decree for Rs. 13,421. On appeal, the Judicial Commissioner of the Hyderabad Assigned Districts, on 29th November 1899, reversed this Decree, holding that the Respondents were liable for no more than the sum brought into Court. The question in the present Appeal is, which of those judgments is right.

On the face of the documents, the contracts now in dispute were sales of cotton by Jehangirji, to the amount of 2,800 bojas; and,

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although in each case the sale purports to be to a third party, yet it is common ground that by registering the sale note the Respondents, to whom it was transmitted, made themselves liable, as the agents of Jehangirji, to the purchaser. It is also common ground that, delivery of the 2,800 bojas not having taken place, the Appellants must be debited with some sum representing those undelivered bojas, and the whole question is, with what sum? The case of the Respondents is that it was an implied term of the contract that the rate payable for cotton not delivered should be fixed by a certain Committee of Khamgaon merchants dealing in cotton; that this body, called a Panchayet, has fixed the sum at Rs. 57. 14 per boja; and that this is conclusive of the controversy. The case of Jehangirji, as stated in his plaint, was that, "If the Plaintiff "failed to deliver the goods, both parties should "calculate the price of the goods not so delivered "at the rate of ready goods of the *satta* descrip- "tion prevailing in the Khamgaon market on "13th March 1892."

From the position thus assumed by Jehangirji, of ignoring the Panchayet, he was dislodged at the trial by his own evidence. He first said, "If I did not make delivery, the rule in the "printed contract Exhibit $\frac{D}{XIV}$ applied. On "looking at Exhibit $\frac{D}{XIV}$, I find no such rule "as referred to by me above." He then said "The rule which was to apply was that the "rates were to be settled by rates ruling on the "day of delivery." But he went on, "These "rates were to be settled by certain shroffs "appointed by the *satta* shroffs at Khamgaon; "and the profits and losses were to be determined "by these rates if the rates settled were fair and "true. This the shroffs do in accordance to the "practice of the *satta* trade at Khamgaon." . . .

" I knew of this system of appointing a Pan-
" chayet and settlement of rate by them and
" settlement of profits and losses to be deter-
" mined accordingly, if the rates are fair and
" true, since it is a practice that prevails all
" over Berar and in other places." This admis-
sion is qualified, as will be observed, by the words "if the rates were fair and true"; and the case of the Appellants ultimately consisted of an impeachment of the rate fixed by the Panchayet as not having been " fair and true."

This being the condition of the argument, it is manifest that the Appellants can only get behind the decision of the body to whom the question of rate stood referred, by making out a strong and clear case. Their theory was that the duty of the Panchayet was simply to find out at what rate sales of this class of cotton had been made on 13th March 1892; and they say that, as a matter of fact, the rate ruling on that day was not Rs. 57. 14, but Rs. 50. The matter, however, is a great deal less simple than this contention assumes it to be.

The truth is, that the transactions in which Jehangirji was engaged were of the nature of speculations on the rise and fall of the cotton market, and did not deal with extant goods required for purposes of commerce. On the contrary, the amount of cotton named in the contracts now in question far transcended the amount of cotton in the market on the dates when performance of those contracts purported to be due. "On any of the dates" in question, says one of the Appellants' own witnesses, Mr. Macintyre, " 2,800 bojas of cotton of any de-
" scription were not available in the Khamgaon
" market. There were not 2,800 bojas of cotton
" in the aggregate available on any one parti-
" cular day. I think on any of these dates 100
" or 200 bojas of cotton of the *satta* description

" could have been purchased per day. Under " ordinary circumstances I do not think more " than 200 bojas of *satta* description of cotton " could have been available in Khamgaon on " any of those days."

It is obvious that in these conditions the problem to be solved was something much more complicated than that suggested by the Appellant; and it is perhaps not surprising that the Khamgaon speculators should have set up a skilled committee of their own number to settle such questions. For it is to be borne in mind that, in order to take part in those speculations in cotton, the Bombay merchant required to employ, as his agent, one of the Khamgaon shroffs in whose hands the dealing was, and to submit to the conventions governing the trade, such as it was. The highly artificial operation of fixing the prices which would have to be paid, in imaginary purchases, in order to procure non-existent goods, is one not to be controlled by the Appellants' rule-of-thumb, and it necessarily involves more arbitrary methods. Accordingly the mere fact that on 13th March 1892 certain comparatively small parcels of cotton were sold at Rs. 50 per boja does not prove the Appellants' case, or convict the Panchayet even of error. Very much more than error, however, would be required to upset the decision of an expert tribunal voluntarily set up for the decision of matters of skill.

In their attack on the Panchayet the Appellants have entirely failed to prove fraud, either in the inception or the proceedings of that body. The Panchayet was set up in the usual way. Its *raison d'être*, of course, was that its members, as well as the persons coming before them, were engaged in speculating in cotton. Some of its members were "bull" operators and some "bears"; some were inter-

ested to have a high figure fixed, some to have a low one; some had no interest one way or the other. There is nothing to suggest that they treated this matter of the Appellants' otherwise than in the ordinary course of business. The exposition in the witness box, by these gentlemen, of their *rationes decidendi* is certainly not lucid; but this is not inconsistent with the honesty and validity of their conclusion. Their Lordships find in the Judgment of the Judicial Commissioner an adequate and intelligent defence of that conclusion.

Their Lordships will humbly advise His Majesty that the Appeal ought to be dismissed. The application to the High Court for leave to appeal to His Majesty in Council appears from the Record to have been presented by all the Appellants, and leave to appeal was apparently granted to them all. But in the Petition of Appeal which has been referred to their Lordships by His Majesty, the first Appellant appears as the sole Petitioner, and their Lordships are informed that he is in fact the sole surviving executor at present entitled to act either in British India or the Hyderabad Assigned Districts. In these circumstances their Lordships will order the first Appellant to pay the Respondents' costs of the Appeal.