

*Privy Council Appeal No. 68 of 1927.*

Ramgopal and others - - - - - *Appellants*

*v.*

Dhanji Jadhavji Bhatia, trading under the name of The Andani  
Company - - - - - *Respondent*

FROM

THE COURT OF THE JUDICIAL COMMISSIONER OF THE CENTRAL  
PROVINCES.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 17TH MAY, 1928.

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*Present at the Hearing :*

VISCOUNT SUMNER.

MR. AMEER ALI.

SIR JOHN WALLIS.

[*Delivered by VISCOUNT SUMNER.*]

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The respondent, who was the plaintiff in the suit, claimed against the legal representatives of the partners in a firm now dissolved, who are the present appellants, to recover damages for breach of a contract to gin for him in their ginning factory raw cotton, which he contemplated buying and, when ginned, pressed and made up into bales, proposed to sell on the market in Bombay or elsewhere.

At the trial the Second Additional District Judge of Akola decided that the alleged contract was not proved and he dismissed the suit. Thereupon the plaintiff appealed to the Court of the Judicial Commissioner for the Central Provinces. Before the appeal came on to be heard, the Judge was removed from his office for judicial misconduct, not however connected with this case. Accordingly, in the language used by the members of the Judicial Commissioner's Court,

“In the lower Court the plaintiff's suit was dismissed. In this Court it was agreed that no reference should be made to the very long judgment of that Court, for reasons which need not be specified. In this Court it is not seriously contended for the respondents that the contracts alleged by the plaintiffs was not duly made and was not a binding contract. That is anyhow very completely proved by the plaintiff's evidence.”

In view of this passage it is difficult to see how their Lordships could review a finding of fact thus arrived at. Without dealing with the technical effect which such an agreement might be deemed to have, it is plain that on a pure question of credibility of witnesses, their Lordships have no better competence to determine where the truth lay than the Appeal Court had, if so much, nor was the contention pressed at the bar that they ought to endeavour to do so.

There remains the question whether, as the appellants urged, the damages were intrinsically too remote, and had been awarded on wrong principles. As to this the judgment under appeal says—

“It is further quite apparent that the amount of profit the plaintiff could have made, if the defendants had held to their contract with him, is the amount of the loss, which naturally arose in the usual course of things from their breach of it, which also the parties knew when they made the contract to be likely to result from a breach of it.”

The appellants argued that the plaintiff's expected profit was a speculative amount and too remote; that he had little or no cotton to be ginned and bought none; and that in any case he could get no more than the extra cost paid to other mills for ginning such cotton as he tendered to them. With these contentions their Lordships cannot agree.

The contract found by the Court was one made at the beginning of the cotton season, by which during six months or so the defendants were to place their mill at the plaintiff's disposal for half its working time at fixed rates in order to gin cotton, which he contemplated buying and for his part undertook to procure and supply to them. The contract is one of a familiar type. The customer proposes over a prolonged period to buy a raw product from the growers, prepare it and pack it for sale, and dispose of it to purchasers at a profit. In a sense it is and must be a speculative business, but it suits him, by getting the cost of ginning and pressing fixed in advance, to introduce a factor of certainty into his calculations, leaving himself only at the risk of fluctuations in the buying and selling prices of the cotton. But for this he might find the ginning mill advancing prices as the selling price of baled cotton rose, and, his necessities being thus taken advantage of, a substantial part at least of anticipated profit would be intercepted by the mill. On the other hand, to get its overhead and running charges secured, in whole or in part, by a contract guaranteeing half-time employment at any rate, might be an arrangement that would suit the mill very well, leaving it to apply changes of rates to other customers and their cotton. Essentially then an estimate of profits would be the natural way of measuring the plaintiff's loss and, though only an estimate, it could be correctly formed by the Court, the actual course of markets being known at the date of the trial. So far then the appellants' criticism fails. As to their other point, though no doubt the plaintiff was bound to take

reasonable steps to mitigate his loss, the present argument requires that, after the appellants' breach, he should have bought the cotton, which both parties knew he had not yet done, and then have tendered it for ginning to other mills in order to cut down his loss for their benefit to a mere difference in ginning rate. The fact, however, is that this was a case of anticipatory breach. The contract was repudiated almost as soon as it was made, and, the intended operation being thus baulked, the plaintiff was entitled to measure his damages as they then stood and could not be required by the defendants to buy the cotton, which they had announced in advance they would not gin for him. Their Lordships are therefore of opinion that the appeal fails and should be dismissed with costs, and so they will humbly advise His Majesty.

In the Privy Council.

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RAMGOPAL AND OTHERS

v.

DHANJI JADHAVJI BHATIA, TRADING UNDER  
THE NAME OF THE ANDANI COMPANY.

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DELIVERED BY VISCOUNT SUMNER.

Printed by  
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.  
1928.