

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Shaik Mahomed Meracoir v. Donner and Others, from the High Court of Judicature at Madras ; delivered the 12th June 1903.*

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Present at the Hearing :

LORD MACNAGHTEN.

LORD LINDLEY.

SIR ARTHUR WILSON.

[*Delivered by Lord Lindley.*]

This is an action brought by a mortgagor against his mortgagees for wrongfully entering upon and selling the mortgaged property, which consisted of a tannery and works and skins. The documents by which this property was mortgaged were—(1) An agreement of the 5th June 1891; and (2) a formal mortgage of 6th February 1896. There was also another agreement of the 8th October 1896, but this did not affect the tannery in question.

The short effect of the two first of these documents was that the property in the tannery and works was vested in the Defendants, the mortgagees, as security for large advances made by them to the Plaintiff; that the advances were to be repaid by quarterly instalments; that in default of payment the Defendants might enter and hold and enjoy the mortgaged property; that the Defendants were to place their own man in charge of the tanneries; that the Plaintiff was to carry on the business subject to the supervision of the person put in charge; that

the Plaintiff should buy the skins, &c., and defray the expenses of the business with the assistance of advances made by the Defendants; that the Defendants were to have possession of and a lien on the skins when bought; that, when tanned, the skins should be consigned to the Defendants for sale, and that until the tanned goods were delivered to the Defendants for sale the Plaintiff was to have the custody of them "as a workman only and as agent" of the Defendants. From February 1891 down to the middle of October 1896 the Plaintiff carried on the tannery business in his own name; but he had other creditors besides the Defendants, and in October 1896 he was in serious difficulties and was pressed by some of his other creditors. On the 14th or 15th of that month the Defendants put up a sign-board on the place of business bearing their own names and the names of the South Indian Export Company, Limited, who apparently were to some extent at all events their principals. From this time forward the Defendants carried on the business as mortgagees and sold what they tanned.

The action is brought for damages occasioned by this seizure and sale, and also for an account of all dealings and transactions between the Plaintiff and the Defendants from June 1891.

The Defendants put in a defence justifying their conduct on the grounds—(1) that the Plaintiff was in default in the payment of instalments, and that they had a right to enter and sell; and (2) that what was done was done with the consent of the Plaintiff. The other matters in dispute are not now material and need not be alluded to.

Issues were settled and tried raising the questions, generally, whether the Defendants had acted wrongfully, and, particularly, whether the sign-board was put up with the knowledge

and consent of the Plaintiff. The Judge of the High Court found these issues in favour of the Plaintiff, and awarded him heavy damages, viz., Rs. 1,55,732, and after settling the disputed accounts and deducting the amount due to the Defendants, the learned Judge gave the Plaintiff judgment for Rs. 1,08,544 with interest at 6 per cent. and the costs of the action.

The Defendants appealed from this Decree, and the High Court in its Appellate Jurisdiction reversed it on the ground that the Plaintiff all along consented to what the Defendants had done, and that, as to the other matters, there was in any view of the case a large balance due to the Defendants. The Appellate Court therefore dismissed the Plaintiff's action with costs and ordered him to refund the moneys which the Defendants had paid him under the judgment which was reversed.

The present Appeal is by the Plaintiff from this decision of the Appellate Court.

The proceedings in the Court below, and especially the evidence bearing on the question whether the Plaintiff knew of and consented to the erection of the sign-board on the 14th or 15th October 1896, were brought to their Lordships' attention with great minuteness by the able counsel for the Appellant; and their Lordships have carefully considered the evidence and his criticisms upon it. But, even if there were no other difficulties in the Plaintiff's way, the letter of the Plaintiff (Exhibit K) of the 4th December 1896 renders it impossible for their Lordships to dissent from the view taken of the case by the Appellate Court. Their Lordships cannot agree with the learned Judge of First Instance in thinking that the Defendants acted in a high-handed and oppressive manner. On the contrary, their Lordships are of opinion, not only that the Defendants did not exceed their rights, but that the course taken by them was the best that could

be taken to save the Plaintiff from ruin by his other creditors and to work off their own debt. Their Lordships are also of opinion that the learned Judge's estimate of the damages sustained by the Plaintiff was excessive; and they regret that the large sum awarded to him has been paid to him. The Order to refund the amount so paid was criticised by the Appellant's Counsel on the ground that part of it ought not to be repaid to the Defendants. But all the money ordered to be refunded was paid to the Plaintiff out of Court, and was paid into Court by or on behalf of the Defendants to the credit of this action. When understood, the Order to refund to the Defendants appears to be free from objection, as was pointed out in the course of the argument.

Their Lordships will therefore humbly advise His Majesty to dismiss this Appeal, and the Plaintiff must pay the costs of it.

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