

*Privy Council Appeal No. 58 of 1944*

*Allahabad Appeal No. 24 of 1941*

**Thakur Prem Singh Hyanki and another** - - - - *Appellants*

*v.*

**Thakur Deb Singh Bisht and another** - - - - *Respondents*

FROM

**THE HIGH COURT OF JUDICATURE AT ALLAHABAD**

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE  
OF THE PRIVY COUNCIL, DELIVERED THE 24TH JULY, 1947.

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*Present at the Hearing :*

LORD SIMONDS

LORD OAKSEY

LORD MORTON OF HENRYTON

MR. M. R. JAYAKAR

SIR JOHN BEAUMONT.

[*Delivered by* LORD MORTON OF HENRYTON]

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This is an appeal from a judgment of the High Court of Judicature at Allahabad setting aside a judgment of the Subordinate Judge of Almora and dismissing with costs the suit of the appellants for the balance of the price of wool sold and delivered.

On the 14th April, 1931, a contract was entered into between the first appellant and one Deb Singh, of the first part, and the respondents of the second part. The terms of the contract were as follows:—

“ We (1) Prem Singh Deb Singh, residents of patti Chaundas, have kept 1,085 maunds, 25 seers and 4 chhatacks of new wool which has been weighed, at Tanakpur at the shop of Ram Lal Munna Lal commission agents, 372 maunds and 12 chhatacks, 995  $\frac{1}{2}$  ‘ phanchas ’ (bundles) of wool of last year at Tanakpur, at the commission agency shop and 717 maunds, 9 seers and 1 chhatack, 1,857 bundles at Haldwani at the shop of Hardeo Das Mohar Singh. We (1) Prem Singh, Deb Singh have sold the entire wool mentioned above, *i.e.*, 1,085 maunds, 25 seers and 4 chhatacks of new wool and 1,089 maunds, 13 seers and 9 chhatacks of wool of the last year to you, (2) Thakur Deb Singh, Dan Singh Bisht the new wool at the rate of Rs.21 per maund and the wool of the last year at the rate of Rs.19 per maund. Prem Singh Deb Singh (No. 1) shall have to give the entire wool aforesaid in possession of Thakur Deb Singh Dan Singh (No. 2) within five days. We, Prem Singh Deb Singh (No. 1) have for making payments to Ram Lal Munna Lal, commission agents, and for expenses received half pieces of currency notes of Rs.30,000 at Tanakpur, on the 14th of April, 1931, from you Thakur Deb Singh Dan Singh Bisht, by way of earnest money in respect of the wool aforesaid and we, Prem Singh Deb Singh (No. 1) have given separate receipt in respect of the said amount to Thakur Deb Singh Dan Singh Bisht (No. 2). If on account of any act on the part of Prem Singh Deb Singh (No. 1) the wool aforesaid is not transferred to the possession of Deb Singh Dan Singh (No. 2) within the time then Thakur Deb Singh, Dan Singh Bist (No. 2) shall have the right to take damages from us, Prem Singh, Deb Singh (No. 1) at the rate of Rs.5 per

maund from Prem Singh Deb Singh (No. 1) and when the entire wool is given in possession of party No. 2, they (party No. 2) should remit the entire remaining amount in full payment at the rate which has been agreed upon, under insured cover to Prem Singh Deb Singh (No. 1) at Chaundas, post office Khela. The party No. 1 shall take damages from party No. 2, in case they (party No. 2) do not take the wool, at the rate of Rs.5 per maund, in the same way as they (party No. 2) would take damages from party No. 1, if they (party No. 1) do not give the wool. The wool which belongs to us is not moist, mixed with earth and is not worm eaten. If it is found to be rotten in any way, then party No. 2 shall have every right to take out of it after making choice.

“ Dated the 14th April, 1931.

“ (Signed) PREM SING.

“ (Signed) DEB SINGH HYANKI.”

Thakur Deb Singh, party of the first part, died in the year 1931 and was thereafter represented, in the matters out of which this appeal arises, by his widow, the second appellant.

The respondents paid to the appellants the sum of Rs.30,000 mentioned in the contract but refused to pay any more, and on the 14th April, 1934, the appellants instituted the present suit in the Court of the Subordinate Judge of Almora, claiming Rs.12,809-14-0, the balance of the price of the wool described in the contract, together with interest thereon. The Subordinate Judge gave judgment in favour of the appellants for the sum claimed, with interest at the rate of 10 per cent. per annum from the 19th April, 1931, to the 22nd August, 1935, and thereafter at the rate of 6 per cent. per annum. He ordered the respondents to pay Rs.1,491 on account of the costs.

The respondents appealed to the High Court of Judicature at Allahabad. That Court allowed the appeal and dismissed the suit of the appellants, with costs throughout. From that decision the appellants appeal to their Lordships' Board.

At an early stage of the hearing of this Appeal, Counsel for the respondents stated that he raised no question as to the wool described in the contract as being at Tanakpur. He submitted:—

(1) that, under the contract of 14th April the precise quantity of wool to be sold was not ascertained, and the transfer of the property in the wool was not to take place, until a condition was fulfilled, namely, the inspection and approval of the wool by or on behalf of the purchasers;

(2) that the condition just stated was never fulfilled in regard to the wool at Haldwani; consequently, the property in that wool never passed to the purchasers. Alternatively, if the property did pass, there was never any delivery of that wool to the purchasers; consequently, an action for the price of that wool must fail, and the respondents had already paid more than was due from them.

In support of his first submission, Counsel relied on the last two sentences of the contract, conceding that if those sentences had been absent, the property in the wool would have passed to the purchasers on the signing of the contract. The construction of the contract is not free from doubt, but their Lordships incline to the view that it was a contract for the sale of ascertained goods; that the parties intended the property in these goods to be transferred to the purchasers on the signing of the contract; and that the last two sentences amounted only to a warranty given by the sellers the existence whereof did not prevent the property from passing. Breach of such a warranty would ordinarily give rise to a claim for damages, but the parties chose to confer a different remedy upon the purchasers. If that is the true construction of the document, there is of course no doubt that the property in the wool passed to the

purchasers on the signing of the contract (see section 19 of the Sale of Goods Act). It is, however, unnecessary to form a concluded opinion on this point, as their Lordships are of opinion that, even if the respondents' first submission is correct, the "condition" on which they rely was promptly and completely fulfilled. The Subordinate Judge, who heard the oral evidence of several witnesses, came to the conclusion that the wool at Haldwani was weighed by an authorised agent of the respondents, and that the agent rejected part of the wool and accepted the balance, which weighed 681 maunds, 6 seers. There was undoubtedly evidence upon which the trial Judge could reasonably come to this conclusion. Clear evidence to that effect was given by Thakur Prem Singh, whom the trial Judge regarded as a truthful witness, the dates of the weighing being 16th and 17th April, 1931. Moreover, the account which Prem Singh gives of the matter is, to some extent, confirmed by statements made subsequently by or on behalf of the respondents, and by the subsequent conduct of the respondents. The High Court did not accept his evidence but their Lordships find no sufficient reason why, on this vital matter, the High Court should have come to a different conclusion from the Judge who had the advantage of seeing and hearing the witnesses. They have carefully weighed the reasons which led the High Court to disbelieve the evidence of Prem Singh, but they are unable to agree with these reasons. The principles which should have guided the High Court in deciding whether to reverse the trial Judge on this question of fact have often been laid down, and were recently stated by Lord Thankerton in the case of *Watt v. Thomas* (1947) 1 A.E.R. 582 at page 587 as follows:—

" I. Where a question of fact has been tried by a judge without a jury and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses could not be sufficient to explain or justify the trial judge's conclusion.

II. The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence.

III. The appellate court, either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court."

In their Lordships' view, if the High Court had applied these principles correctly, the finding of the trial Judge on this matter would have been accepted. The result is that if the property in the wool did not pass to the respondents on the signing of the contract, it passed to them on the 17th April, 1931.

As to the respondents' contention that there was never any delivery of the wool at Haldwani to them, their Lordships have no doubt that there was delivery, within section 36 (3) of the Sale of Goods Act, on the 19th April, 1931. On that date the Marwaris, who had in their possession the wool at Haldwani, wrote a letter to the respondents in the following terms:—

" We have received in full the sum of Rs.25,600 which was due to us by Param Singh, Radhar Singh and Deb Singh and others Bhotiyas Chaundasia, in respect of which halves of currency-notes were received through Param Singh and other Bhotiyas, and the other halves have been received to-day from Deb Singh and Dan Singh. Now nothing remains due by them to us in respect of this

transaction. The wool at Tanakpur has been entrusted to you to-day. The key has been handed over to you. You may remove the wool at Haldwani at any time you like, we shall have no objection. We shall not be responsible for the wool in any way. We have therefore written this receipt bearing a stamp that it may serve as evidence."

Their Lordships think that this letter was a plain acknowledgment by the Marwaris that they held the wool at Haldwani on behalf of the respondents, and it is clear that the respondents so interpreted it, for they wrote an answer of the same date in the following terms:—

" We have received the weight of the wool lying at Mandi Tanakpur together with the keys. The wool of Haldwani remains with you. When we come it would be incumbent on your part to hand over that wool also to us. We have received the entire wool of Tanakpur and we shall remove the wool of Haldwani also very soon."

According to the evidence of Prem Singh, the appellants had given to the Marwaris permission to send the wool at Haldwani to the respondents. Thus by 19th April, 1931, all the three parties concerned had concurred in the wool at Haldwani being held by the Marwaris on behalf of the respondents. Nor does the matter end there. In May, 1931, the respondents entered into negotiations with a firm called Sham Tilak Mehra and Company of Amritsar for the sale of the wool at Haldwani and a price of Rs.25 per maund was ultimately agreed. Ultimately this sale went off because a difficulty arose in regard to obtaining delivery of the wool from the Marwaris at Haldwani. The respondents were incensed at this and on the 5th June, 1931, an advocate wrote a letter on their behalf to the Marwaris in which he said, in reference to the wool at Haldwani:—

" You were fully aware that this wool had become the property of my clients; and nobody else neither you nor the Bhotiyas had any claims to take it; and this wool was kept with you on behalf of my clients for the sake of convenience."

The Bhotiyas are the appellants. The writer went on to complain of a refusal by the Marwaris, on 24th May, 1931, to deliver the wool to the respondents. He demanded the price of the wool (Rs.25 per maund) " which could not be sold because of your wilful default ".

On 28th October, 1931, the respondents filed a plaint against the Marwaris claiming damages for their refusal to deliver the wool at Haldwani to the respondents. In paragraph 4 of this plaint the respondents referred to 681-6-0 maunds of wool at Haldwani, and it is noteworthy that this figure fits in exactly with the evidence of Prem Singh, already mentioned. Paragraph 6 of the plaint is " That the title of the plaintiffs to the wool referred to in the plaint was complete and was perfected on 14th April." That is, on the date of the contract. Ultimately, this action was discontinued on certain terms.

In their Lordships' view the conduct of the respondents from 19th April, 1931, onwards, which has been briefly summarised above, is of importance for two reasons. In the first place, the acts of the respondents in writing the letter of 19th April, 1931, in trying to resell the wool at Haldwani, in giving instructions for the letter of 5th June, 1931, and in filing the plaint of 28th October, 1931, were clearly acts " inconsistent with the ownership of the seller " within section 42 of the Sale of Goods Act, and were thus an acceptance of the wool at Haldwani. In the second place, these acts afford strong confirmation of the evidence of Prem Singh that the agent of the defendants weighed the wool, rejected part and accepted 681 maunds 6 seers. Having regard to the last two sentences of the contract of 14th April, 1931, it is difficult to believe that the respondents would have done all the acts just mentioned unless the wool at Haldwani had been inspected on their behalf, and passed as being in accordance with the contract.

The result is that, in their Lordships' view, the High Court arrived at a conclusion which cannot be supported because, on insufficient grounds, they rejected the evidence of Prem Singh, accepted by the trial Judge, as to the events of 16th and 17th April, 1931.

Their Lordships will humbly advise His Majesty that the appeal should be allowed and the decree of the Subordinate Judge should be restored. The respondents must pay the costs of the appellants of the hearing before the Board and in the High Court.

In the Privy Council

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THAKUR PREM SINGH HYANKI  
AND ANOTHER

v.

THAKUR DEB SINGH BISHT  
AND ANOTHER

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DELIVERED BY LORD MORTON OF HENRYTON

Printed by His Majesty's Stationery Office Press,  
Drury Lane, W.C.2.

1947