[BELCHER, C.J. AND DICKINSON, J.]

THOMAS AND JAMES BERNARD, LTD. OF EDINBURGH

*v.*

STEPHANOS LANITIS OF LIMASSOL.

*July* 6.

CONTRACT—ENDORSEMENT OF INVOICE—PLEDGE—"OWNERSHIP" IN GOODS PLEDGED—GENERAL RULE—ESTOPPEL—KNOWLEDGE OF PLEDGEE—EQUITABLE INTEREST.

A beer importer, shortly before becoming bankrupt, pledged a number of beer barrels with his port-agent as security for payment of a debt.

The agent had been in the habit of clearing the barrels from the Customs and, to enable him to effect this, the invoices for the beer were sent to him and those remained in his possession. Each of these invoices were endorsed with the following words:—

"Casks to be returned, when empty, in sound and sweet condition to the brewery within four months from date of invoice, otherwise must be paid for."

After the bankruptcy of the importer, the agent retained the barrels as a secured creditor and made no claim in the bankruptcy.

The exporters demanded the return of the barrels, and the agent refused stating (1) that he had no knowledge that the barrels had to be returned, and (2) that as the bankruptcy occurred over four months later than the date of the last invoice the property in the barrels had already passed to the importer.

The exporters sued the agent for the return of the barrels or their value.

HELD: That defendant was estopped from denying that he knew the barrels were to be returned in view of his possession of and action on the invoices.

HELD FURTHER: that the endorsement on the invoices was not sufficient automatically to pass the property in the barrels.

APPEAL by defendant from a judgment of the District Court of Limassol.

*Triantafyllides* for appellant.

*G. Houry* and *M. Houry* for respondent.

The facts are sufficiently set out in the judgments of the Court delivered by the Chief Justice.

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*Judgment.* THE CHIEF JUSTICE: This is an appeal by the defendant from a judgment of the District Court of Limassol whereby he was ordered to deliver to the plaintiff certain barrels and other containers used for the shipment of beer in bulk, or their value which was assessed at £241 11*s.*; and, in the event of his delivering-up the barrels, to pay also £80 as damages caused by their wrongful detention.

The dispute arises out of the failure in business of one Ktorides. Ktorides used to import beer from the plaintiffs who are brewers in Scotland; the business began some time in 1925 and there were several consignments accompanied by correspondence and invoices, of which one was produced to the Court below and is before us. It is to be inferred from the evidence that the others were in similar terms.

Defendant used to finance Ktorides, who rented a store from him of which the key remained in defendant's possession; the defendant was accustomed to clear the consignments from the Customs and to let Ktorides have beer from time to time against payments. Some at least of the invoices were in defendant's hands throughout, and he saw the particular invoice which is exhibited in the case.

On the 20th April, 1926, Ktorides pledged to defendant the beer and empty containers then in the store by a written document of deposit to secure £236. This includes 40 casks full of beer and 60 empty beer casks, all imported from the plaintiff.

Ktorides became bankrupt in May or June 1926. The barrels were all empty when the writ in this action was issued on the 29th January, 1927, though it does not appear exactly when the beer was taken from them; probably, as appears from Ktorides' evidence, before his bankruptcy.

On the invoice before the Court below are the words, which we presume to have been on the others also, " casks to be returned, when empty, in sound and sweet condition to the brewery within four months from date of invoice, otherwise must be paid for."

The first question we must decide is: had the property in the casks passed to Ktorides on the 20th April, 1926? If it had there is an end of the matter, for he could deal with them as his own. Whether it had so passed, is a matter of the intention of the parties. As the four months were already up, it could be argued that Ktorides

had, by mere expiration of time, lost his right to return the barrels and that correspondingly they became his property and his only obligation was to pay their price. The evidence decides me against this view. These beer containers are, relatively to their contents, of high value (though no price was fixed); they would not, in ordinary circumstances, be worth a Cyprus importer's while to buy on a valuation. The exporters clearly wished to have them back and Ktorides states it was his intention to return them. He had certainly done nothing, prior to the written pledge, to put an end to the plaintiffs' ownership, and I conclude that the position was then that these barrels remained plaintiffs' up the day of the pledge; though no doubt defendant might have paid for them and made them his own by exercising that option, he had not in fact done so. In view of the short time, four months, mentioned in the invoice, it seems to me that all the parties intended by the indorsement on the invoice (which Ktorides by consent accepted as part of the contract) was, that if at the expiration of the four months the barrels had not been returned, or if, having been returned, they were not in the condition specified, the vendor should have the right to insist on recovering their cash value in the unlikely event of his considering it worth his while to do so. And on his part Ktorides, it is clear, would have the right, at any time whatsoever, to pay cash for the barrels instead of returning them; this, we have seen, was an unlikely contingency; but the thing to be noted is that neither party, up to the purported pledging of the barrels to the defendants, had taken any steps to take the ownership of the barrels out of the plaintiffs, in whom both parties intended that in the ordinary course of business it should remain.

Now in general, no man can sell or pledge goods so as to convey any valid interest in them, unless he be the owner. I cannot see that any element is present which would take this case out of the general rule. The defendant, who cleared the goods at the Customs and for that purpose had the invoices in his possession, must be taken to be aware of the contents of those invoices and he cannot be heard to say that through ignorance of English or for any other cause he was unaware of the terms on which Ktorides held the barrels. His employés certainly knew. Ktorides himself says in his evidence that he told defendant that the barrels had to go back and that defendant said he did not object to the barrels being returned or words to that effect, but that he insisted on their being inserted in the schedule of pledged articles. The Court below accepted this evidence

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and though it is denied by the defendant we think the Court was justified in finding as a fact that defendant knew of the terms on which the barrels were sent out and that Ktorides has not acquired the property in them. And that knowledge could as clearly prevent Ktorides pledging them as factor, as the circumstances of their not being his would prevent his making such a disposition of them as owner.

As to damages, the evidence is not very strong as to when the deterioration in the barrels, which was observed and its extent sworn to as on 11th March, 1927, took place; but at all events the plaintiffs notified the defendants by letter dated 26th July, 1926, that they claimed the barrels, of their liability to damages and of their value, and as they, defendants, did nothing for eight months at least thereafter, except to continue their initial trespass, it is not unreasonable to attribute the damage to their negligence; and on the whole I do not think we should interfere with the finding on this head of the Court below.

DICKINSON, *J.*: This is an appeal from the judgment of the District Court of Limassol where the defendant was ordered to return 90 kilderkins, 11 firkins and 14 barrels to plaintiff and further to pay them £80 damages for wrongful detention and repairs. Alternatively the defendant was ordered to pay £241.11.0 the value of the above-mentioned barrels, etc.

The facts are as follows:—

Plaintiffs are brewers carrying on business in Edinburgh. A firm named Ioannis Ktorides & Co. of Limassol ordered various consignments of beer from plaintiffs amounting in all to 160 barrels of various sizes during the year 1925. Defendant was the financial backer of Ktorides & Co. and, according to the evidence, knew all about their business dealings. He found the money to pay for the beer and to clear it through the Customs, and he, as a fact, was in possession of the invoices issued by plaintiffs to Ktorides from the time the beer arrived, until this action, when he produced to the Court the last invoice dated December, 1925 (Exhibit S.L. 3).

The defendant lent money to Ktorides and on April 20th, Ktorides gave him a document of pledge, (Exhibit S.L. 1) whereby Ktorides pledged to the defendant (*inter alia*) 20 empty barrels and 40 full barrels, against a debt of £236.

The invoice S.L. 3 has and (according to the statements of both sides) the earlier invoices (not produced in the case) have an endorsement to the following effect:

" Cases to be returned, when empty, in sound and sweet condition to the brewery within four months from date of invoice, otherwise must be paid for."

It is noticeable that it is only " when empty " that the casks have to be returned. For the purpose of this case the barrels invoiced earlier are inextricably mixed up with those covered by the last invoice, and must be treated by us as if all were part of the same consignment; we have no knowledge about the dates of the other invoices. Defendant admitted he had had these invoices and although ordered to discover all documents, he failed to produce them.

Defendant says that he cannot read English, and that he never was told the meaning of the endorsement on S.L. 3.

I agree with the District Court that the defendant must be held to have acted as a reasonable man and obtained a translation of an obvious limitation affecting the business. Therefore I hold the defendant is bound to respect the full effects of this endorsement whatever they may be.

In my opinion, this endorsement was inserted by plaintiffs to cause the importer Ktorides to return the beer barrels as soon as possible, after the contents had been disposed of.

The defendant sought to show that the meaning of the endorsement was that 4 months after the date of the invoice, *i.e.* on the 15th April, 1926, the property in the barrels passed automatically to the importers, Ktorides and Co.

I think this is an unreasonable construction. There were still some 40 barrels full of beer on April 20th. How can it be said that they were liable to pay forfeit for non-return within the four months specified?

In my opinion the endorsement would not become operative until a date after all the contents had been disposed of, and the importers had been given a reasonable time to return the barrels to the brewery.

The plaintiffs may have lacked the knowledge of what would be the probable time for the importers to dispose of the contents and therefore have inserted the period of 4 months as approximately such time. Had the plaintiffs sought to force the importers to buy the barrels they would have fixed a sale price. The defendant must be credited with having a sufficient knowledge of business

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to know that the property in the barrels was not passed at the time of the payment for the contents, and he has been shown to have had such an intimate knowledge of the importers' affairs, that he must have known firstly, that the importers were not in such a financial position as to pay for the barrels without his (the defendant's) knowledge, and secondly, that they were not likely to buy such articles which, according to the evidence given in the case, were unsaleable in Cyprus.

How then did the defendant think Ktorides had obtained the property in the barrels? It seems clear to me that he knew the meaning of the endorsement and that when he accepted the barrels as a pledge he only took the equitable interest that Ktorides had, namely, that if he wished to do so he could purchase the barrels from plaintiff. I think defendant must be held to have had full notice that the importers had not, at the time of the contract of pledge, any property in the barrels.

I hold, therefore, that the District Court were correct in ordering the defendant to return the barrels to plaintiffs or alternatively to pay their value.

*Appeal dismissed.*