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UNIVERSITY OF LONDON
W.C.
1955
INSTITUTE OF ADVANCED
LEGAL STUDIES

IN THE PRIVY COUNCIL

No. 57 of 1960

63326

ON APPEAL FROM
THE SUPREME COURT OF CEYLON

B E T W E E N :

THE ATTORNEY GENERAL OF CEYLON
(Plaintiff) Appellant

- and -

THE SCINDIA STEAM NAVIGATION
COMPANY LIMITED, India
(Defendant) Respondent

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CASE FOR THE APPELLANT

Record

1. This is an appeal by the Attorney-General of Ceylon (hereinafter called "the Appellant") from the judgment and decree of the Supreme Court of Ceylon, dated the 20th October 1958, whereby the Supreme Court (Basnayake, C.J. and Pulle, J.), on an appeal by the above-named Respondent set aside the judgment and decree of the District Court of Colombo, dated the 6th December 1952, and dismissed the Appellant's action with costs. The judgment of the District Court had granted, with a minor variation, the Appellant's claim in the action.

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2. The action from which this appeal arises was instituted in the District Court of Colombo on the 31st August 1954 by the Appellant, as representing the Crown in Ceylon, against the Respondent for the recovery of the sum of Rs. 14279.19 which the Crown claimed as being the value of 235 bags of rice belonging to the Crown which the Respondent had failed to deliver out of a total number of 100,652 bags of rice taken on board the Respondent's ship s.s. "Jalaveera" at Rangoon to be carried to the Port of Colombo and to be delivered to the Director of Food Supplies, an officer of the Crown in Ceylon. The said cargo was shipped by the State Agricultural

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Marketing Board of Burma for carriage under the terms of three Bills of Lading dated the 14th, the 16th and the 17th September 1953.

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3. The Respondent denied liability and in its answer dated the 23rd February 1953 pleaded, inter alia, that -

(a) the full quantity of rice shipped at Rangoon was delivered at Colombo;

(b) even if the 235 bags were short delivered, the Respondent was not liable under the terms of the Bills of Lading for such short delivery; 10

(c) the Appellant, as Attorney-General was not entitled to make the claim; and

(d) the claim was not made within the limit of time provided in the Bills of Lading.

The clauses of the Bills of Lading (which were similar in terms) relied upon by the Respondent are as follows -

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"NUMBER & CONTENTS

1. Weight, contents and value when shipped unknown. The company is not to be responsible for any loss, damage or delay whatsoever, directly or indirectly resulting from insufficiency of the address, or packing, internal or external; nor for condition of contents of re-shipped or re-exported Goods." 20

"SHIP NOT RESPONSIBLE FOR:-

DAMAGE FROM HEATING AND/OR CAKING OF NEW RICE GRAIN OR BRAN; OBLITERATION OF MARKS, DETERIORATION OF CONTENTS OR STAINING OF BAGS CAUSED BY THE NATURE OF CONTENTS AND/OR SHORTAGE OF WEIGHT CAUSED BY THE EVAPORATION OF CONTENTS; BURSTING OF BAGS AND LOSS OF CONTENTS. 30

SHIP NOT RESPONSIBLE FOR WEIGHT OF BAGS ON OUT-TURN."

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4. Eighteen issues were raised at the trial and were answered by the learned trial Judge as follows-

1. Was a quantity of 100,652 bags of rice shipped on board the s.s. Jalaweera for carriage by the Defendant from Rangoon to Colombo?

Answer: Yes.

2. Did the Defendant Company make delivery of a quantity of only 100,417 bags of rice, that is 235 bags less than the quantity taken delivery of at Rangoon?

Answer: Yes.

10 3. If issues 1 and 2 are answered in favour of the Crown, did defendants become liable to compensate the Crown in respect of the value of 235 bags of rice short delivered?

Answer: Yes.

4. What is the reasonable value of the 235 bags of rice?

Answer: Rs. 14,279.19, less Notional Insurance for 235 bags.

20 5. (a) Is the plaintiff entitled to institute, or bring this action against the defendant?

Answer: Yes.

(b) Have any rights accrued to the Plaintiff entitling him to institute this action against the defendant?

Answer: Yes.

30 6. (a) At the port of Rangoon in Burma did the defendant undertake the carriage by sea of a cargo shipped by the State Agricultural Marketing Board, Government of Burma, subject to the terms and conditions of the Bills of Lading, referred to in the plaint.

Answer: Yes.

(b) In terms of the said Bills of Lading did the defendant undertake to carry and deliver subject to the terms and conditions of the said Bills of Lading, the said cargo at Colombo to the Director of Food Supplies?

RecordAnswer: Yes.

7. Were the Bills of Lading referred to in the plaint signed or issued by, or on behalf of the Commander of the Steamship Jalaweera?

Answer: Yes.

8. Were the provisions set out in paragraph 8 of the answer contained in the Bills of Lading?

Answer: Yes.

9. Did the vessel voyage from Rangoon to Colombo direct, without touching at any intermediate port?

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Answer: Yes.

10. Was the entire quantity of the cargo on board the vessel discharged in Colombo alongside the vessel's tackle?

Answer: No.

11. Upon discharge of the cargo as aforesaid in Colombo did the liability of the defendant cease in terms of the Bills of Lading?

Answer: No.

12. Is the defendant liable to the plaintiff (a) for any number of bags, (b) for the contents of any bags, or, (c) for the value of 235 bags as alleged by the Plaintiff?

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Answer: Defendant liable for the number of bags and for the value of the 235 bags.

13. If 235 bags were short in Colombo (a) is the defendant liable whether the shortage rose from the bursting of bags or any other cause whatsoever, (b) was there any actual fault or privity of the defendant, or by any agent or servant of the defendant?

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Answer: Not argued.

14. Has delivery been effected in full to the Director of Food Supplies of all the goods from s.s. Jalaweera to which he was entitled?

Answer: Less 235 bags.

15. Was any claim made as provided in the Bills of Lading within the limits of time therein provided?

Answer: Yes.

16. If issues 5 to 15, or any one or more, are answered in favour of the defendant is plaintiff entitled to judgment?

Answer: Does not arise.

10 17. (a) Even if issue 15 is answered in favour of the defendant was the claim made after the time limit provided in the said Bills of Lading.

(b) Was the claim referred to in issue 17 (a) entertained by the defendant?

Answer: Already answered.

18. If issues 17(a) and (b) are answered in favour of the Crown is plaintiff entitled to maintain this action?

Answer: Already answered.

20 5. At the trial the following facts were proved on behalf of the Crown -

(a) The Respondent was under an obligation to supply ships for the carriage of rice purchased by the Government of Ceylon from Rangoon to Colombo under a general agreement dated the 22nd April 1953.

30 (b) According to the Bills of Lading 100,652 bags of rice marked SAMB F.BLD were shipped at the Port of Rangoon "to be carried and delivered subject to the terms and conditions of the Bill of Lading in the like good order and condition at the Port of Colombo unto the Director of Food Supplies, Colombo."

(c) A tally was taken of all the bags of rice delivered at Colombo over the ship's side and this tally which was in the form of boat notes were signed by the Chief Officer of the ship and by a representative of the Landing Company. This tally showed that out of the total of 100,652 bags of rice shipped only 100,402 bags were delivered. At a second tally taken at the time of warehousing it was found that

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100,417 original bags had been delivered and the latter figure was adopted as the correct figure for the purpose of the Appellant's claim.

(d) Loose rice collected from the holds (referred to at the trial as sweepings) were delivered in specially marked bags. These bags numbering 259 were specially noted in the boat notes.

(e) It was a general custom in the Port of Colombo for the ship to deliver to consignees the empty original bags and empty containers in cases where under the Bills of Lading the shipowner undertook to deliver a specific number of bags or packages. This was also the normal course of dealing between the parties in the shipments which the Respondent had carried rice cargo for the Government of Ceylon. 10

6. The Respondent did not lead any evidence. It relied on the defences indicated in its answer referred to in paragraph 3 above and also suggested that the sweepings accounted for the missing bags. 20

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7. The learned trial Judge having answered the issues as stated in paragraph 4 above, gave judgment for the Appellant in a sum of Rs. 14,279.19 less the notional insurance claimed, and costs.

8. The learned trial Judge took the view that the sweepings were accounted for by the rice that had leaked out of the bags delivered by the Respondent and that 235 bags of rice were in fact not delivered. On the law, the learned trial Judge held that Article IV of the Indian Carriage of Goods by Sea Act, 1925 (which Act was, according to terms of the Bills of Lading, to regulate the rights and obligations under the contract of carriage) made the Bill of Lading prima facie evidence of the number of packages put on board and that the clauses relied on by the Respondent did not exclude the operation of the said article in regard to the number of packages stated in the Bills of Lading. He also held that notice of the claim had been given within the period provided in the Bills of Lading. He rejected the Respondent's contention that the proper party to sue was the Director of Food Supplies and not the Attorney-General. The learned Judge however disallowed the insurance (calculated at $\frac{1}{4}\%$ of the value of the 235 bags) on the ground that the insurance 30 40

claimed to be effected is notional.

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9. It is submitted that the findings of law and fact in the judgment of the learned trial Judge are right except his disallowance of the Appellant's claim to recover insurance.

10. The Respondent appealed and the Supreme Court by its judgment and decree, dated the 18th December 1956, set aside the judgment and decree of the District Court and dismissed the Appellant's action with costs. Basnayake, C.J. (with whom Pulle, J. agreed) took the view that the Appellant had not proved that 100,452 bags had been put on board the s.s. Jalaveera and that the Appellant's action therefore failed. His grounds for so holding are contained in the following passage in his Judgment:

20 "In order to succeed in this action the Attorney-General must establish that the defendant failed to deliver the quantity of rice handed to him by the shipper at Rangoon for transportation to Colombo. He must prove by evidence that the shipper handed to the defendant's ship 100,652 bags of rice each weighing 160 lbs. This he cannot do except by calling a witness or witnesses able to speak to that fact. He has failed to do so. In view of the conditions in the bills of lading quoted above he is not entitled to rely on the weight, number and quantity given in them as establishing his claim."

30 11. It is submitted with respect that the Supreme Court erred in taking the view that the clauses of the Bills of Lading relied on by the Respondent had any reference to the number of bags stated in the Bills of Lading to have been taken on board for carriage and delivery at Colombo. The Supreme Court also erred in assuming that the case for the Crown depended on the proof of weight either of a bag of rice or of the whole consignment.

40 12. It is respectfully submitted that this appeal should be allowed with costs throughout for the following among other

R E A S O N S

1. BECAUSE the Supreme Court has erred in regard to the scope and effect of the provisions on

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the Bills of Lading relied upon by the Respondent.

2. BECAUSE the Bills of Lading furnished prima facie proof of the number of bags of rice put on board the steamship Jalaveera.
3. BECAUSE the trial Judge's finding of fact that 235 bags of rice were short delivered to the consignee is right.
4. BECAUSE the non-delivery of 235 bags (empty or not) was a breach of -
 - (a) the contract of carriage contained in the Bills of Lading; and/or
 - (b) the custom of the port; and/or
 - (c) the established course of business between the parties.
5. BECAUSE the non-delivery of 235 empty bags was proof of the fact that the sweepings did not consist of rice that had spilled out of the 235 undelivered bags.
6. BECAUSE the judgment of the learned District Judge (except for his disallowance of the Appellant's claim in regard to insurance) was right for the reasons given by him.

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E.F.N. GRATIAEN.

WALTER JAYAWARDENA.

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CASE FOR THE APPELLANT

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