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UNIVERSITY OF LONDON
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INSTITUTE OF ADVANCED
LEGAL STUDIES

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63625

IN THE PRIVY COUNCIL No. 57 of 1960

ON APPEAL
FROM THE SUPREME COURT OF THE ISLAND
OF CEYLON

BETWEEN

THE ATTORNEY GENERAL OF CEYLON
(Plaintiff) ... Appellant

and

10 THE SCINDIA STEAM NAVIGATION
COMPANY LIMITED (Defendant) Respondent

CASE FOR RESPONDENT

RECORD

1. This is an Appeal by leave of the Supreme Court of the Island of Ceylon granted on the 25th February 1959 from a Decree of the Supreme Court of the Island of Ceylon dated the 28th October 1958 (the Honourable H.H. Basnayake, Q.C., Chief Justice, and the Honourable M.F.S. Pulle, Q.C., Puisne Justice) setting aside a Decree of the District Court of Colombo dated the 6th December 1956 (District Judge W. Thalgodapitiya) whereby judgment had been entered for the Plaintiff, the present Appellant, in the sum of Rs. 14,279.19 less the Notional Insurance for 235 bags of rice and costs. On the 18th December 1956 the Defendant, the present Respondent, appealed against the said Decree of the District Court to the Supreme Court and on the 28th October 1958 the Supreme Court set aside the said Decree and dismissed the Appellant's action with costs.

p.76
p.66 l. 1 -
p.68 l.32
and p.69

pp.57-60;
p.61.

pp.62-65
p.69

2. The issue which arises upon this Appeal is whether the Appellant (suing on behalf of the Government of Ceylon) is entitled to damages and, if so, in what amount, by reason of the alleged short

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Facing p.82 delivery in Colombo of 235 bags of rice alleged to have been shipped on the Respondent's vessel S.S. "Jalaweera" at Rangoon under 3 bills of lading respectively dated the 14th, 16th and 17th September 1953.

p.25 11.19-25 3. Between about the 14th and 17th September 1953 a number of bags of rice were shipped on the Respondent's S.S. "Jalaweera" at Rangoon by The State Agricultural Marketing Board of the Union of Burma for carriage to Colombo and delivery to the Director of Food Supplies, Colombo. The said Director of Food Supplies was an officer of the Government of Ceylon and the Respondent does not dispute the Appellant's title to sue in these proceedings. The said bills of lading were signed on behalf of the Respondent and stated under the heading "Particulars declared by Shipper" the number and the average weight of the bags alleged to have been shipped and further stated under the heading "Measurement and Weight" the alleged total weight of the bags alleged to have been shipped, such total weight being qualified by the words "Said to weigh". The aforesaid statements in the said bills of lading may be summarised as follows:-

Facing p.82 (i) Bill of Lading dated 14th September 1953 20

Particulars declared by Shipper

2187 bags each weighing 159.74821 lbs. net; making a total of Tons 155- 19- 1- 18 of rice.

Measurement and Weight

"Said to weigh" Tons 155- 19- 1- 18 nett
Tons 157- 10- 1- 19 gross 30

Doc. P.1 facing p.82 (ii) Bill of Lading dated 16th September 1953

Particulars declared by Shipper

47,992 bags of different average weights ranging between about 157lbs. and about 160 lbs. per bag; making a

Doc. P.2 facing p.82

total of
Tons 3382- 0- 1- 14 nett and
Tons 3424- 17- 1- 14 gross.

Measurement and Weight.

"Said to weigh" Tons 3382- 0- 1- 14

(iii) Bill of Lading dated 17th September 1953

Doc. P.3
facing p.82

Particulars declared by Shipper

50,473 bags each weighing 158.27799 lbs.
nett and 160.27799 lbs. gross, making a
total of

10

Tons 3566- 8- 1- 1 nett and

Tons 3611- 9- 2- 7 gross

Measurement and Weight.

"Said to weigh" Tons 3566- 8- 1- 1

20

4. The total number of bags which the said Shippers declared to have been shipped under the said 3 bills of lading is accordingly 100,652 bags. The average nett weight per bag as stated in the said bills of lading was about 160 lbs. (A witness on behalf of the Appellant calculated the average nett weight per bag on the basis of the average weights stated in the said bills of lading as 159.84 lbs. per bag, and the Respondent does not dispute this figure).

p.34 11.25-
34

5. All the said bills of lading further included the following provisions:

Facing p.82

In print:

"Paramount Clause

30

All the terms, provisions and conditions of the Indian Carriage of Goods by Sea Act, 1925, and the Schedule thereto are to apply to the contract contained in this bill of lading... "

pp.336-345

Number and Contents.

"1. Weight, contents and value when shipped unknown".

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Rubber stamped clauses on back

"Ship not responsible for ... bursting of bags and loss of contents.

Ship not responsible for weight of bags on outturn."

6. No oral or other evidence was adduced as to the number of bags or as to the weight in fact shipped at Rangoon.

p.57 ll. 1-12 7. The said cargo was carried pursuant to an agreement between the Food Commissioner (Supplies) and various shipping lines (including the Respondent) headed "Contract with Conference Lines". Freight was payable to the Respondent on the basis of the nett weight of rice stated by the bills of lading to have been shipped at the port of loading; the freight was not computed by reference to the number of bags. 10

pp.77-80
p.32 ll.17-19
p.78 ll.22-29

p.64 ll.3-4
p.68 ll.15-18
p.32 ll.2-8

8. Having loaded the said cargo at Rangoon the vessel proceeded direct to Colombo without touching at any intermediate port and the vessel carried no cargo other than the said bags of rice. On arrival at Colombo the officers of the Government of Ceylon, by stevedores employed by private contractors, satisfied themselves that no rice remained on board the vessel after the completion of discharge, and the Appellant did not contend before the Courts in Ceylon that any part of the rice loaded into the vessel at Rangoon was retained on board the vessel after the completion of the vessel's discharge at Colombo. 20

p.40 ll.23-29

p.68 ll. 19-24

p.26 l.41-
p.27 l.12

pp.115-257

p.28 ll.36-46

9. At Colombo the cargo was discharged into lighters and then taken ashore in the lighters and landed at a landing jetty. A tally of numbers of bags was carried out as the cargo was loaded into lighters and "Boat Notes" were prepared showing the numbers of bags as ascertained on this tally, the Boat Notes being initialled by someone on behalf of the vessel. After the bags had been landed ashore from the lighters they were taken into Customs 40

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Warehouses and thence loaded onto lorries for carriage to granaries. A further tally of numbers of bags was carried out in the warehouses or as the bags were being loaded onto the lorries. According to the "Boat Notes" the total number of bags delivered to the Director of Food Supplies was 100402. However, upon the said further tally being taken in or upon delivery from the Customs Warehouses the total number of bags delivered to the Director of Food Supplies was found to have been 100417, an excess of 15 bags over the "Boat Notes" tally. Both the said figures exclude 1804 bags of sweepings as referred to in Paragraph 10 (iv) hereof. The damages claimed by the Appellant herein are in respect of the alleged non-delivery of 235 bags, being the difference between the said 100,417 bags and 100652 bags, the total number of bags stated in the said bills of lading to have been shipped at Rangoon.

p.27 11.27-28

p.331

p.27 11.28-30

10. In addition to the said 100,417 original bags which were delivered, a total number of 1804 bags of "sweepings" were also delivered. "Sweepings" consist of loose rice which has fallen out of the bags, either due to bags having burst or by rice escaping through holes made by hooks used by the stevedores in loading and unloading the bags. Bags which were found to have become torn or to have burst were stitched or otherwise repaired, and these bags were weighed. The sweepings were bagged into special bags marked "SW" provided by the Department of the Director of Food Supplies, and discharged contemporaneously with the discharge of the original bags. The bags of sweepings were also weighed. It has not been contended on behalf of the Appellant in this action that there is any difference between the value of the rice delivered in the original bags and the value of the rice delivered as sweepings. The Appellant's contention, however, is, in effect, that no credit is to be given to the Respondent for the sweepings which were delivered, and that the Appellant is entitled to recover the value of 235 full bags alleged to have been short-delivered without taking the sweepings into account.

p.29 11.24-29

p.57 1.39-

p.58 1.6

p.27 11.36-46

p.30 1.43-

p.31 1.9

p.35 11.11-13

p.28 11.1-11

p.29 11.22-24

p.35 11.11-13

11. The Respondent respectfully submits that

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it is important to appreciate the quantity of sweepings which was delivered and how this quantity was made up. The figures are conveniently set out in a "Wharf Tally Statement Claim Sheet" (hereinafter referred to as Exhibit D1). This was prepared by the Wharf Assistant, an official in the Department of the Director of Food Supplies. When Exhibit D1 is considered in the light of the judgment of the learned District Court Judge and of the evidence it is apparent that the position relating to sweepings may be summarised as follows:-

pp.89 and 90
p.35 11.1-5
p.57 11.28-38
p.28 11.12-35
p.30 1.42-43
l.15
p.35 11.1-32
p.37.11.26-27
p.40 1.35-
p.41 1.24
p.42 11.14-16

(i) There was a total of 3667 torn and stitched bags, weighing 3422 cwts. 1 qr. 12 lbs. which were delivered ex warehouse; these included 541 torn and stitched bags weighing 500 cwts. 1 qr. 6 lbs. which had been repaired on board and were accordingly shown in the "Boat Notes" as torn bags. 10

(ii) There was also a total of 700 bags whose mouths had burst, weighing 650 cwts. 1 qr. 8 lbs. which were delivered ex warehouse. 20

(iii) By adding together the numbers and weights under (i) and (ii) above one finds that there was a total of 4367 "slack" bags weighing 4072 cwts. 2 qrs. 20 lbs. which had lost some of their contents, such loss resulting in the sweepings referred to in (iv) below. These 4367 bags were included in the total number of 100,417 original bags which the Appellant admits were delivered. With the exception of the said 4367 bags, the balance of the said 100,417 bags were full bags, without any loss of contents. 30

p.35 11.33-36

(iv) As regards the sweepings, 287 bags of sweepings weighing 265 cwts. 0 qr. 15 lbs. were discharged from the ship, plus 1517 bags of sweepings weighing 2305 cwts. 3 qrs. 21 lbs. which were delivered ex warehouse. The total sweepings therefore consisted of 1804 bags weighing 2569 cwts. 0 qr. 6 lbs. 40

(v) In order to determine the full quantity of rice duly discharged from the vessel, and in order to test whether there really was a shortage of 235 bags as alleged by the Appellant, it is necessary to determine the quantity of rice delivered in addition to that part of the sweepings which is accounted for by the loss of content from the 4367 slack bags under (iii) above.
10 This calculation may be summarised as follows: p.53
p.54 ll. 4-13

4367 slack bags weighed 4072cwts.2 qrs.20 lbs.
Taking the full content of the slack bags as 160 lbs. each, (as against the average of 159.84 lbs. calculated by the Director of Food Supplies) the slack
20 bags originally contained a total of 4367 bags @ 160 lbs. 6238cwts. 2qrs. 8 lbs. p.34 ll.27-34

The quantity of sweepings required to make up the loss of contents of the slack bags is accordingly the difference between these figures, i.e. 2165cwts. 3qrs. 16 lbs.

30 The total quantity of sweepings delivered (see (iv) above) was 2569cwts. 0 qr. 6lbs.

The excess of sweepings delivered which cannot be accounted for by the loss of content from the slack bags and for which the Appellant is giving no credit of the Respondent was
40 accordingly 403cwts. 0qr. 18 lbs.

This is equivalent to 282 bags @ 160 lbs per bag and closely corresponds to the figure of 287 bags of sweepings which were discharged from the vessel (see (iv) above).

(vi) The aforesaid 282 or 287 bags of "excess" sweepings which were delivered, (i.e. sweepings in excess of the contents

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lost from the slack bags) exceed the 235 bags alleged by the Appellant to have been short delivered.

12. The Respondent respectfully submits that, having regard to the matters set out in Paragraph 10 hereof, the Appellant has failed to prove any short delivery of rice on the part of the Respondent. Further, the Respondent respectfully submits that the evidence shows that the Respondent in fact delivered the full quantity of rice shipped. 10

p.58 11.9-11
p.28 11.29-31

13. At the trial, the Appellant strongly relied upon the fact that no empty bags were delivered. Evidence was given by the Director of Food Supplies, which the learned District Court Judge accepted, that "If a bag is completely empty the general practice is to deliver that empty bag to us without the contents". However, even admitting that no empty bags were delivered in respect of the 235 bags to which the Appellant's claim relates, the only loss suffered on the part of the Appellant would be the value of 235 empty bags. The Respondent respectfully submits that there is no evidence that 235 full bags of rice were shipped at Rangoon and not delivered at Colombo. The Appellant's 20

pp. 13,14

p.40 11.2-3

Plaint herein does not include any claim in respect of empty bags. There was evidence that an empty bag of the description of the bags in question had a value of between 60 to 70 cents. The value of 235 empty bags would accordingly lie between Rs. 141 and Rs. 161.50 (equivalent @ 1s. 6d. per rupee to about £10.11.0 or £12.1.0.) The Respondent respectfully submits that any liability on its part cannot in any event exceed the aforesaid amounts, but no claim on this basis was ever put forward on behalf of the Appellant. 30 40

p.58 1.43 -
p.59 1.3

14. The learned District Court Judge held that the said bills of lading were prima facie evidence against the Respondent of the number of bags shipped. The Respondent respectfully submits that the number of bags stated in the bills of

lading to have been shipped was qualified by the words: "Number and Contents. Weight, contents and value when shipped unknown". Alternatively, the Respondent respectfully submits that, having regard to the fact that the numbers of bags stated in the bill appeared under the heading "Particulars declared by Shipper", the bills of lading were only evidence of the numbers of bags which the shippers stated had been loaded. The learned District Court Judge further held that, since there was a discrepancy of 235 bags as between the total numbers of bags stated in the bills of lading to have been shipped (100,652 bags) and the total number of original bags, excluding bags of sweepings, which were delivered (100,417 bags) the Appellant was entitled to recover the value of 235 full bags and that none of the sweepings were to be taken into account. The Respondent respectfully submits that the Learned District Court Judge was wrong in holding that the Appellant's proved loss was the value of 235 full bags and that no credit was to be given for the bags of sweepings.

10 p.58 1.12 -
p.59 1.3

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15. The Supreme Court held that the bills of lading were not prima facie evidence against the Respondent of the number of bags shipped and that, on the evidence, the Respondent had delivered at Colombo all the rice which had been shipped on board the vessel at Rangoon. The Respondent respectfully submits that the judgment of the Supreme Court is correct.

30 p.67 1.25-
p.68 1.24

16. The Respondent respectfully submits that this appeal should be dismissed with costs and the judgment of the Supreme Court of the Island of Ceylon affirmed for the following amongst other

R E A S O N S

- 40 (1) BECAUSE the Appellant has not proved that 235 full bags of rice of the alleged weight were shipped at Rangoon and not delivered by the Respondent at Colombo.
- (2) BECAUSE the Respondent has proved (whether or not the said bills of lading are prima facie evidence of the numbers of bags

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shipped at Rangoon) that all the rice shipped at Rangoon was delivered at Colombo.

- (3) BECAUSE the only short delivery (if any) at Colombo which can be established against the Respondent upon the evidence is a short delivery of 235 empty bags of a total value of about £11., but no claim in respect of the value of empty bags has been made on behalf of the Appellant herein. 10
- (4) BECAUSE the said bills of lading are no evidence against the Respondent of the number of bags shipped at Rangoon or of their weight.
- (5) BECAUSE the judgment of the learned District Court Judge in favour of the Appellant was wrong.
- (*) BECAUSE the judgment of the Supreme Court was right and should be affirmed. 20

MICHAEL KERR

No. 57 of 1960

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE SUPREME COURT OF THE
ISLAND OF CEYLON

B E T W E E N

THE ATTORNEY GENERAL OF CEYLON
(Plaintiff) ... Appellant

— and —

THE SCINDIA STEAM NAVIGATION
COMPANY LIMITED (Defendant)
... ... Respondent

C A S E O F R E S P O N D E N T

HOLMAN, FENWICK & WILLAN,

1, Lloyds Avenue,

LONDON, E.C.3.