

(1898) 03 CAL CK 0012
In the Calcutta High Court

Cutler Palmer and Co.

APPELLANT

Vs

The British India Steam Navigation Co., Ltd.

RESPONDENT

Date of Decision : 16-03-1898

Acts Referred:

Citation : (1898) ILR (Cal) 654

Hon'ble Judges : Knight, C.J;Trevelyan, J;Macpherson, J;Francis William Maclean, J

Bench : Full Bench

Judgement

Maclean, C.J.—This case raises a short point, but one not altogether free from difficulty. The question we have to decide appears from the reference made by the Judge of the Small Cause Court and I need not recapitulate the facts. The question really turns upon what meaning we are to attribute to the words, inserted by the defendants in writing in the Bill of Lading, "Hogshead brandy covered with gunny, not responsible for condition and contents." I agree with the contention of the plaintiff's that, prima facie, the defendants were bound to deliver the goods in good order and so forth. But this obligation is subject expressly to the conditions in the Bill of Lading, one of which is that which I have read. As appeal's from the finding of fact in the reference, the cask of brandy was shipped at Madras in good order and condition, but on arrival at Calcutta was found to be empty. The question is, are the defendants liable for the loss of the brandy? They repudiate such liability, and rely on the condition I have specially referred to.

2. We must give some effect to these words, which are an essential part of the contract, and it is difficult to see why we should not place their ordinary meaning upon them. If so, it appears to me that the defendants were not to be responsible for the contents of the cask. This special condition was possibly suggested to the defendants by reason of the circumstance that the cask was covered with gunny, and the defendants, the contents being unknown, wished to guard themselves against responsibility for such contents. It is urged that other parts of the Bill of

Lading indicate that when the defendants are to be absolved from their prima facie obligation to deliver, the Bill of Lading expressly so states, as in clause 7. Taking that to be so I do not think that any inference to be drawn from such provisions in the Bill of Lading is sufficiently strong to warrant us in not giving effect to the clause I have quoted, reading the language of that clause according to the natural meaning of the words used. In my opinion the Judge of the Small Cause Court was right in the view he took. The defendants must have their costs according to the fixed scale.

Macpherson, J.

3. I agree.

Trevelyan, J.

4. I also agree.