
(1927) 03 MAD CK 0030
In the Madras High Court

Haji Shakoor Gani Sait

APPELLANT

Vs

The B.I.S. N. Co., Ltd.

RESPONDENT

Date of Decision : 21-03-1927

Acts Referred:

Presidency Small Cause Courts Act, 1882 — Section 69

Citation : AIR 1927 Mad 671 : (1927) ILR (Mad) 804 : 103 Ind. Cas. 323 :
(1927) 26 LW 872 : (1927) 52 MLJ 693

Judgement

1. This is a reference by the Chief Judge and Judges of the Madras Court of Small Causes through their Registrar u/s 69 of the Presidency Small

Cause Courts Act submitting for the opinion "of the High Court the following questions:

The goods in question in this suit, namely, sugar, having been found to be imported into Calcutta from Java, and from there shipped by the plaintiff

to Madras in the bags in which such sugar had come from Java under the Bills of Lading covering the carriage thereof from Calcutta to Madras, do

such goods come under the category of "re-shipped or re-exported goods" within the meaning of the Bills of Lading in question?

If such goods do come under such category in the clause in question in the Bill of Lading, is the shipping company protected from liability for loss

or slackage in such consignments, by the stipulation in such Bill of Lading that they are "not responsible for the condition or contents of re-shipped

or re-exported goods"?

2. The plaintiff in Suit No. 2129 of 1924 in the Small Cause Court sued the British India Steam Navigation Co., Ltd., for Rs. 1,200 and odd for

slackage in three consignments of sugar from Calcutta to Madras. The three consignments were (1) on 15th December 1922, 377 bags of white

Java sugar per S.S. "Mantola," (2) on 20th December, 1922, 1,630 bags of white Java sugar per S.S. "Tregonnel," and (3) on 10th February,

1923, 380 bags of white Java sugar per S.S. "Margha." On arrival at Madras certain bags in all the consignments were found torn and restitched

and there was a very considerable slackage on the value claimed in all the three consignments. The defendants denied liability on two grounds: (1)

that the sugar was packed in single gunnies, and (2) that under the Bill of Lading the goods had been re-shipped or re-exported and that they were

therefore not liable for their condition or contents. The learned Chief Judge who tried the case found the slackage alleged in the plaint was proved

and that the packing in single gunnies was sufficient. He also held that the goods had been re-shipped or re-exported because they had been

imported into Calcutta from Java and were re-shipped or re-exported to Madras in the same bags in which they had come from Java. In the Full

Bench Application No. 201 of 1925 this latter was the only question argued and as the Full Bench of the Small Cause Court entertained

reasonable doubts as to how these words should be construed the reference comes before us. The point urged before the Full Bench and

apparently also before the learned Trial Judge was that the clause in the Bill of Lading relating to re-shipment or re-exportation must be confined to

the course of the voyage to which the contract evidenced by the Bill of Lading relates. "It is, therefore, necessary in order to answer the questions

that have been referred to us to refer somewhat in detail to the Bill of Lading, Ex. A-I. The opening words are:

Shipped in good order and condition.

3. Then follow:

The said goods to be carried and delivered, subject to the terms and conditions of this Bill of Lading in the like good order and condition, at the

port of Madras to the consignee or their assigns.

4. It may here be noted that the consignor and the consignee are the same person as the plaintiff carried on business in both Calcutta and Madras.

As pointed out by Carver in his standard work on Carriage by Sea, Section 73, the general statement in good order and condition" amounts to an

admission by the shipowner that so far as he and his agents have had the opportunity of judging, the goods were so shipped. The next observation

to make is that the company is at liberty

To tranship or land and store the goods either on shore or afloat and to re-ship and forward the same at the company's expense but at shipper's

or consignee's risk,

5. That is obviously a transshipment and re-shipment in the course of the voyage, as for instance when the original ship in which the goods are laden

is disabled and unable to continue her voyage she is allowed to land the goods and re-ship and forward them at her expense but at the shipper's

risk. As was said in *Stuart v. The British and African Steam Navigation Co.* (1875) 32 LT 257 "the *Ida*" "the transshipment at the shipper's risk

only extends the rights and liabilities of the parties under the Bill of Lading to the rest of the voyage; with this, that any expense that is incurred must

be paid by the ship, the risks remaining the same" (per Pollock). So that as regards this transshipment and re-shipment it is a matter which the

shipowner is entitled to undertake and over which the shipper has no control.

6. The Bill of Lading is stated to be issued subject to the following further conditions:

Weight, contents and value when shipped unknown. The Company is not to be responsible for any loss or damage or delay whatsoever directly or

indirectly resulting from insufficiency of the address, or packing internal or external, nor for condition or contents of re-shipped or re-exported

goods.

7. Where

weight, contents and value unknown.

8. is inserted, it has been held "in *New Chinese Antimony Company v. Ocean Steamship Co., Ltd.* (1917) 2 KB 664 that the onus is on the

plaintiffs, the shippers, to prove the quantity shipped, as the Bill of Lading is under these circumstances not even prima facie evidence of quantity.

The effect of these words is that the shipowner declines to accept the declaration of the shipper and recording to the learned Judges in *Lcbeau v.*

General Steam Navigation Co. (1872) 8 Com. Pleas 88 their insertion

completely does away with the statement made by the shipper with respect to the nature of the goods and both parties must then be taken to agree

to the Bill of Lading in a modified form by which there is no binding statement as

to the contents of the package, but the carrier undertakes in his capacity as carrier to carry the case whatever it contains.

10. However this may be we are primarily concerned with the words condition or contents of re-shipped or re-exported goods.

11. It was pressed upon us that contents must mean specie, that is to say, if the bags described as containing Java sugar in fact contain sand, the shipowner will not be responsible. Even if this is so, the exception as to condition might well be held to absolve the shipowner from liability because

it is but reasonable to infer that the bags having been torn and restitched part of their contents had been abstracted or lost owing to the tearing and

that therefore, provided that these bags are re-shipped or re-exported goods, the shipowner would not be responsible for their external condition

on account of the exception But it appears to us that contents must in these instances also include the internal condition of the package and that

where the shipowner states that the weight is unknown when shipped he cannot be responsible for the internal condition or contents of the package

should it turn out to weigh less than the shipper is prepared to prove it weighed when he put the bags" on board the ship.

12. This paragraph of the Bill of Lading obviously refers to matters within the control of the shipper; insufficiency of the address or packing, internal

or external, are matters with which the shipowner has nothing to do. It is, therefore, reasonable to suppose that the following clause

nor for condition or contents of re-shipped or re-exported goods

13. has also to do with something inherent in the goods themselves which is, so to speak, in the disposition of or within the knowledge of or under

the control of the shipper and not the shipowner. The whole of this clause has nothing to do with the incidents of the voyage, and it seems to us that

from the collocation of the clause there is no ground for referring the words "re-shipped or re-exported" to the preceding clause "to tranship, re-

ship and forward". It is also perfectly clear that a shipowner cannot ordinarily re-export. That must be a matter under the control of a shipper. We

therefore think that the contention that this clause relates to re-shipment or re-exportation in the course of the voyage covered by the Bill of Lading

and not to goods which had been previously re-shipped or reported, cannot be sustained.

14. Exportation does not necessarily mean exportation to a foreign country. See *Stockton and Darlington Ry. Co. v. Barrett* (1884) 11 CI and

Fin. 590 where the House of Lords held that goods shipped from Stockton to London were exported goods.

15. As to whether these goods are in fact re-shipped or re-exported, he clearly says that the sugar was laden on board the defendant's vessels in

the same gunnies as they were shipped in Java. Mr. A. Wright who has experience in the shipping department of Messrs, Binny and Co. says that

re-exported goods are, goods which are unloaded from a ship and lie at the port for some time and then the owner re-exports them to another

port.

(The italics are ours.)

16. The only other reference to re-shipped goods is in the last paragraph but one of the Bill of Lading which refers to action on the part of third

parties, i.e., neither the shipper nor the shipowner; such as strikes, war, sanitary regulations, etc. When these prevent the ordinary discharge of

cargo the ship-owner may tranship or land or otherwise dispose of the goods and may re-ship thence to destination as soon as conveniently may

be. One such very common occurrence is illustrated by the recent strike in the Port of Colombo where goods destined for Colombo were over-

carried to Madras or Calcutta, re-shipped there and returned to Colombo when the conditions were favourable for landing. This is what is called

over-carrying. The Bill of Lading concludes:

The Company shall not be responsible for loss or damage of any kind which may result directly or indirectly from the above causes or any of them

and, the delivery by the Company of packages externally in good condition as received shall be conclusive evidence of delivery of full weight and

contents.

17. The concluding words lend some weight to the argument for the plaintiffs that weight is different from contents. But, as we have already pointed

out, even if weight is to be excluded in the "condition or contents of re-snipped or re-exported goods," which we very gravely doubt, for the

reasons above given, the Company would not be responsible under this clause for the condition of such goods, nor, it seems to us, for the results

or consequences of such condition. In "A Treatise on the Law of Bills of Lading"

published in 1880 there is an interesting form of the Bill of Lading

employed by the defendant company in those days. One of the clauses is as follows:

This Bill of Lading is issued subject to the following conditions; Weight, contents and value when shipped unknown. Neither Company (that is to

say neither B.T.S.N. Co., Ltd., nor the Transshipping Co., the P. & O. Co.) is to be responsible ""for leakage or package or other consequences

arising from the insufficiency of the address or package or for damage, leakage or breakage to re-exported goods.

18. We are not unmindful that a shipowner can only contract himself out of the performance of his duties as a common carrier by clear and

unambiguous language *Nelson Line (Liverpool) Ltd. v. Nelson & Sons, Ltd.* (1908) AC 16,. In this case for the reasons stated we are

of opinion that the language of the Bill of Lading is sufficiently clear and unambiguous though the

19. attention of the shipowners may be drawn to the dicta of Lord Halsbury in the case cited. We are, therefore, of opinion that under the

circumstances set out in question (1) the goods in question do come under the category of re-shipped or re-exported goods within the meaning of

the Bill of Lading. We are also of opinion with regard to the second question that the defendant company is protected from liability for loss or

slackage in such consignments by the stipulation in their Bill of Lading that they are not responsible for the condition or contents of re-shipped or

re-exported goods

20. These are our answers to the questions submitted.