

(1917) 08 MAD CK 0053
In the Madras High Court

P. Thiruvarangiah

APPELLANT

Vs

D. K. Pania and Co.

RESPONDENT

Date of Decision : 14-08-1917

Acts Referred:

Citation : 43 Ind. Cas. 673

Hon'ble Judges : Coutts Trotter, J

Bench : Single Bench

Judgement

Coutts Trotter, J.—This is an action for damages for breach of three contracts between the parties dated the 24th April, 27th April and 30th April 1914, under which the plaintiff agrees to purchase a certain number of cases of Belgium window glass. Those goods were shipped—we do not know the exact date, but as the invoices were made out on the 23rd July 1914 and the bills of exchange were dated the 29th July, the probability is that they were shipped between those dates, and it is conceded for the purpose of this case that they were shipped before the outbreak of war between Great Britain and Germany on the 3rd August. The contracts were c.i.f., c.i., Madras, and they were shipped on board a German ship the "Spitzfels" at Antwerp. While she was on her voyage, war broke out; I am told that she was ultimately captured, and was brought to Colombo where the ship was condemned as a prize, but she was allowed to proceed to such ports in the British Empire as she had cargo consigned for and to discharge that cargo there; and arrangements were ultimately made I do not think it is material to go in detail into what they were—whereby the Government of this country undertook to give delivery to British subjects who were entitled to receive delivery of the cargo on board the ship. The result of all that was that on the arrival of the ship in May 1916 at Madras, the defendant, had he been minded to do so, was in a position to hand over these cases of glass to the plaintiff and take the price for them That is conceded. The question is whether he was under any obligation to do so.

2. There has been some discussion recently as to whether or no it would be

correct to speak of a c.i.f. contract in the language of Scrutton, J., as a sale of documents and not of goods. Bankes L.J., in *Arnhold Karberg and Co. v. Blythe, Green, Jourdin and Co.* (1916) 1 K.B. 495 says: "I am not able to agree with that view of the contract--that it is a sale of documents relating to the goods. I prefer to look upon it as a contract for the sale of goods, to be performed by the delivery of documents, and what those documents are must depend upon the terms of the contract itself." That seems to me a distinction so subtle as really to be immaterial. The point is that under a c.i.f. contract what is expected and intended to be delivered to the ultimate purchaser is the documents of title to the goods. No doubt it is a sale of goods, it says so; but at the same time it is intended to be performed not by the delivery of goods but by the delivery of the documents of title to the goods. Now what are those documents? They are, first, the bill of lading relating to the goods, it being the duty of the vendor under his contract to ship the goods and get the bill of lading in respect of them from the ship's agents, then there must be a policy of insurance in an approved form, and lastly there must be the invoice; and in most mercantile contracts all those documents are generally forwarded along with bills of exchange, which are to be accepted or paid by the vendee in return for the other documents. What are the essentials of the bills of lading that must be tendered in order to fulfil the contract? They must, I think, be bills of lading which do not contain an illegal or unenforceable contract. That seems to me to be the effect of the decision in *Arnhold Karberg & Co. v. Blythe, Green, Jourdain and Co.* (1916) 1 K.B. 495 and in the Court below the very instructive judgment of Scrutton, J., in *Arnhold Karberg and Co. v. Blythe, Green, Jourdain and Co.* (1915) 2 K.B. 379. That case decided that where a seller tendered to a buyer documents under a c.i.f. contract which included a bill of lading in a German ship, the tender was bad, not because the putting of the goods on board the ship was not at the time it was done perfectly in accordance with the contract, but because the event of the outbreak of war having rendered that contract illegal, to force that by way of tender on the buyer was equivalent to saying "under the terms of your contract I shall make you trade with the enemy." That is what it comes to. It has never been doubted, since it was pointed out by Willes, J., in *Esposito v. Bowden* (1857) 7 E.L. & B.L. 763 : 110 R.R. 822, that to enter into a contract of affreightment with an alien enemy is trading with the enemy and on the outbreak of war such contracts become void and incapable of performance, I am content to rest this judgment upon those general considerations and I think I should have been quite satisfied to rest it on the authority of the cases in the Court of Appeal in England, but I am fortified in the conclusion to which I have come in that this case is admittedly indistinguishable from the case of *Madhoram Hurdeo dass v. G.C. Sett* 40 Ind. Cas. 383, which is a decision of Sanderson, C.J., who is a lawyer of great experience in Commercial Courts in England and of Mookerjee, J. Although their judgment is not binding on me, I should naturally treat it with great respect and I not only do so but I respectfully agree with them. Practically, the same conclusion has also been come to in Bombay in a very exhaustive judgment by Beamatt, J., in *Marshall and Co. v. Naginchand Phulchand* 18 Bom. L.R. 915. I

think even if I did entertain any doubt upon it, in a question of this sort it is extremely desirable that the Courts of the Empire, because commercial transactions of this kind extend all over the Empire, should speak with one voice and I should not dissent from the judgments of the Bombay and Calcutta High Courts, which I believe to be in entire agreement with the principles laid down by the English Court of Appeal. I must, therefore, on this ground alone give judgment for the defendant with costs.