

(1917) 08 MAD CK 0021
In the Madras High Court

P. Thiruvarangiah

APPELLANT

Vs

D.K. Pania and Co.

RESPONDENT

Date of Decision : 14-08-1917

Acts Referred:

Citation : AIR 1918 Mad 322 : (1917) 33 MLJ 410

Judgement

1. 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 agreed 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 *Arnold Karberg and Co. v. Blythe Green, Jourdain 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 of the goods. Now what are those documents?

They are first, the bills 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 *Arnold*

Karberg and 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

Arnold 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. & B. 763 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 and B.R. Sett* 21 C.W.N. 670

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 Beaman, J. in *Marshall and Co. Vs. Naginchand Fulchand*, .

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 Judgment 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.