
(1895) 09 MAD CK 0013
In the Madras High Court

The British India Steam Navigation Company
Vs
Ibrahim Sulaiman and Others

APPELLANT

RESPONDENT

Date of Decision : 25-09-1895

Acts Referred:

Citation : (1896) ILR (Mad) 169

Hon'ble Judges : Shephard, J;Best, J

Bench : Division Bench

Judgement

1. This is an appeal under the Letters Patent against the decision of Sir T. Muttusami Ayyar, J., upon a case referred to the High Court by the Chief Judge of the Presidency Small Cause Court. It was objected on the plaintiffs" behalf that no appeal lay; but we were of opinion that the decision was a judgment within the meaning of the clause of the Letters Patent. Moreover, it has to be observed that, under the rules of the High Court, the reference ought, in the first instance, to have been heard before a bench of two Judges.

2. The question raised is whether under the circumstances stated the defendants" company is liable for damage suffered by goods in consequence of their being exposed to rain on the pier where they were landed by the company. The opinion of Sir T. Muttusami Ayyar, J., which was in accordance with that expressed by the learned Chief Judge, was based on the finding that the landing of the goods by the company on the pier was an unusual and unauthorized act. It is found that the steamer arrived at Madras on the 4th December 1891, and that the defendants" agents unloaded the cargo and landed the plaintiffs" bags of grain on the pier. Under the Bill of Lading, the company has the option of landing the goods.

From the date when the goods were so landed till the 11th December, when the plaintiffs took delivery of them, the goods remained in the custody of the Harbour authorities, and it was in that interval of time that the mischief which gives rise to the action occurred. At the time when the ship arrived and the goods were landed, it appears that the plaintiffs were not possessed of the bill of lading; they did not know of the landing of the goods until the 8th December, and we infer that before that day they had taken no action with regard to them. We also infer from the absence of any finding to the contrary, that it was not the fault of the company that the plaintiffs did not have the bill of lading at an earlier date. This being so, the case is one in which the company were not in a position to deliver the goods immediately to the plaintiffs either at the ship's side or on the beach. The master of a ship on its arrival in port is clearly not bound to seek out the consignees of cargo, nor is he bound to wait more than a reasonable time. His responsibility cannot be prolonged for the convenience of consignees. If they are not in a position to take delivery in the ordinary way, which, as appears in this case, is on the beach, the master has the option of landing the goods and warehousing them *Meyerstein v. Barber* L.R. 2 C.P. 38.

3. The existence of the option possessed by the company under the circumstances of this case appears to have been overlooked both by the learned Chief Judge and by Sir T. Muttusami Ayyar, J., when they say that the landing of the goods was an unauthorized and unusual act. Neither in the judgment of the former, nor in the case, which does not give a complete statement of the facts, is it explained what would have become of the goods if they had been landed on the beach, and it is not easy to understand what difference it can make to consignees whether their goods, having to be warehoused, are taken to their destination by the route adopted in this case or by the beach. The only difference apparently lies in the expense. It would be most unreasonable to hold that under no circumstances masters of ships landing cargo in Madras can use the facilities which the Harbour Trust Act affords. The course may be unusual, but it is another thing to say that custom prohibits it, and we do not think it was intended so to find. There are two grounds on which the defendants might be held liable. Negligence might be proved against them, or it might be

charged that they had failed to deliver the goods.

4. There is no evidence of negligence on their part in their handling of the goods, nor is it suggested that the Harbour authorities are not persons to

whom goods may be properly entrusted. It is true that the latter did not take good care of the bales, but that circumstance cannot make the

defendants liable, if otherwise they were free from blame.

5. The other ground of liability also fails when once it is admitted that, in the absence of the consignees, the company were entitled to land the

goods and put them in the charge of some third person. No other delivery is, under the circumstances, possible. The learned Chief Judge referred

to the case of *Bourne v. Gatcliffe 7 Manning and Granger* 850. The decision in that case, which turned upon the pleadings, rests upon a ground

which is absent in the present case. The plea was held to be bad, because it did not show that the captain had a right to land the goods, or that a

reasonable time had elapsed to enable the consignees to come and receive them. Under these circumstances, it is intelligible that the delivery not

being shown to be at a usual place, was held not to be a delivery to the consignees. That decision affords no authority for the position that the

delivery in the circumstances of the present case was not in accordance with the contract. The case of *Mackinnon v. Minchin* 6 M.H.C.R. 353

resembles more closely the present case, the bill of lading appears to have been similar and there too the consignee did not present himself to take

delivery. We think that the conclusion at which the Chief Judge arrived is wrong and that judgment ought to have been given for the defendants.

The costs in this Court will be costs of the suit and follow the result.