

(1913) 12 BOM CK 0007
In the Bombay High Court

T.S. Natcheappa Chetty

APPELLANT

Vs

The Irrawaddy Flotilla Company, Limited

RESPONDENT

Date of Decision : 08-12-1913

Acts Referred:

Transfer of Property Act, 1882 — Section 137

Citation : (1914) 16 BOMLR 298

Hon'ble Judges : Shaw, J;Moulton, J;Ameer Ali, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Shaw, J.—The respondents in this case are the. Irra waddy Flotilla Company, and their vessels ply in the inland waters of Burma. The appellants, who were the original plaintiffs in the suit, are money lenders, and they carry on their business in Henzada, and in other places, in Lower Burma. :On the 13th, 20th, and 23rd October 1906, there having been eight other shipments in similar terms, there were the three shipments of paddy which are in dispute in this case. They, were sent by ship from Henzada to Rangoon.

2. The document which accompanied their transmission is in each case similar in terms to the one which is now to be quoted. It is dated 12th October 1906, and it is headed as follows:?" Irrawaddy Flotilla Company, Limited." It is denominated plainly in the document as a " Mate"s receipt." The document then proceeds in these terms:?" Received from O. Rahman" (who in this judgment is called, for brevity, " Chowdhry "), "the under mentioned quantity of paddy to be forwarded per cargo boat 128 in tow steamer," and then the denomination is given, and then follows this expression "with liberty to tranship to other vessel. Number Flotilla of baskets 5,000?five thousand baskets paddy, "more or less." That document is signed "Alex. Wingate, Agent." He was, in point of fact, the ship"s agent acting at Henzada for the Irrawaddy Flotilla Company, the respondents in this appeal. Chowdry was, as the document bears, the shipper. It appears to be the fact that in this year 1906 the appellants had advanced monies to Chowdhry

for the purchase of the paddy so shipped.

3. It might be a question under what legal category this document fell. It is manifest that the parties to it were not at all assured in their own minds as to what that category was because although the document was headed "Mate's receipt" there were appended to it certain terms, which were- more suitable to bills of lading. The document says :? "N. B, All risk of navigation, loading and unloading goods, destruction or damage by fire, robbery, weather wreck of boat, separation of fiat from steamer, or any other cause of whatsoever nature or kind to be borne by the shipper. Freight payable before delivery."

4. It is in these circumstances that their Lordships have before them two judgments of the Courts of Lower Burma. The present appeal is from a decree of the Chief Court dated the 22nd November 1910, and that reversed a decree of the District Court of Henzada dated the 17th December, 1908. They have no difficulty in pronouncing that in their opinion the judgment of the Chief Court of Lower Burma is a correct judgment, and that the appeal fails.

5. Two points upon this appeal have been carefully argued by Mr. Roskill. With reference in the first place to the document itself, it is pleaded as a document of title. It is admitted, however, in argument, that it is not a bill of lading, and therefore not economic a negotiable instrument.

6. In the second place it is admitted that if, as it denominates itself, it is a Mate's receipt, then also it must fall under the category of documents which are not negotiable.

7. But Mr. McCarthy supplemented the argument by saying that notwithstanding that it could not claim negotiability as a bill of lading, and notwithstanding -that if it were a mere T.S. Nat- " Mate's receipt," it would be non-negotiable, yet this document falls u/s 137, the concluding section, of the Transfer of property Act, 1882, Act IV. The language which is there adopted is:?" And any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing, or purporting to authorize, either by endorsement, or by delivery, the possessor of the document ?? to transfer or receive goods thereby represented."

8. Their Lordships are of opinion that this document was not a negotiable document in the sense of this section of the Statute. It was not a document of title. There was no authority by law to give to an assignee by. transfer of that document any right as against the shipowner except upon the usual form of an assignment as between the shipper and his assignee. That usual form must be accompanied by notice to the shipowner which charges him with the fact of the assignment, and makes him responsible to the assignee instead of the original shipper. There is great difficulty in cases of this kind, in avoiding being misled by terminology. Each of the categories attempted has failed. The document is not a bill of lading, not a Mate's receipt, and not a statutory negotiable instrument. The simple fact remains that this is a document which charges the respondents

with receipt of certain goods of Chowdhry, under a bargain to convey them by ship to Rangoon for a stipulated freight and on certain conditions, and the duty arising from it was to deliver the goods to Chowdhry, or to his nominee at Rangoon. In complete compliance with that duty the goods so placed in the possession of the ship owner for carriage were duly delivered.

9. In these circumstances their Lordships see no reason to doubt that the judgment reached in the Court appealed from is correct. It is a simple ordinary receipt for goods. Why should these goods not be delivered to the person who is said to have handed them to the ship owner? Assuming the "Mate's receipt," as it is called, to have been lost, was the owner of the goods, who then handed them to the ship owner not to be entitled, because the receipt had disappeared, to possession of his own goods from the carrier whose freight he was willing to pay.

10. Their Lordships are of opinion that that simple statement of the point shews that there is no legal foundation for the position that this was a document of title, and that the goods passed upon the transfer of it.

11. The second point which was taken by Mr. Roskill is, that whatever be the name under which this document might be classed, the respondents themselves are charged with a duty and have come under an obligation to deliver to no one Flotilla except upon the Mate's receipt. The argument is an astute one, and it is founded upon the circular dated 1st January 1907, which their Lordships presume is a sample of what was usually issued in the course of the respondents' business. That circular is headed:—"Rates for paddy in bulk by the Company's barges and cargo boats in Rangoon," and it contains these two clauses: "That the barges and boats will be moored at mills in accordance with instructions received from holders of Mate's receipts, which must previously have been presented at Rangoon office for verification." In terms the circumstances do not demand any application of that rule.

12. But the next rule is said to be square with the situation in the present case. The clause is: "Mate's receipts must, however, be given up before discharge is allowed to commence, or in the event of Mate's receipts not having come to hand, the Company's usual guarantee must be signed." In the opinion of their Lordships the sentences now quoted from the circular of the respondent Company merely set forth a mode in which, in conducting their own business, the respondent-Company would protect themselves in the course of their trade. But they cannot be founded upon by other parties as forming any part of an obligation to them restrictive of their freedom or methods of action in conducting their own affairs. As against customers they afford protection to the Irrawaddy Flotilla Company, and they give an intimation or warning that they shall not part with the goods unless Mate's receipts are given up, or otherwise unless a guarantee be obtained. But this protection of themselves they could freely give up if satisfied of the identity and solvency of the owner or of the owner who demanded the goods at the port delivery. And it is wholly *jus tertii* for any person

in the position of the appellants (who are money leaders who had made certain trading advances to Chowdhry and make claims against him for the paddy) to plead that that clause of the shipowners' circular constitutes an obligation upon which they as outside parties are entitled to found.

13. Failing these clauses as constituting a contract with the appellant, the next argument presented was that there was a course of business on the part of the Irrawaddy Flotilla Waddy Company which showed that they did protect themselves and apprised the public at large that they, the public, were also, Protected by the manner of negotiating the Mate's receipts. Their Lordships are of opinion that this point in the abstract does not fall to be determined, because upon the facts it entirely fails. The judgment of the Judge who framed these issues is a merely apparent affirmative or negative, in fact, a-most indefinite answer, to the two issues which he has himself written out "Was it," says the seventh issue, "the usual course of business of the second defendant not to recognize any person as entitled to the paddy shipped without his giving up the Mate's receipts, and not to discharge the paddy without the production of such Mate's receipts?" It follows on the judgment of the learned Judge that this might have been what he describes as a general course of business which is open to exception at the will of the traders themselves. In such circumstances the question of fact really does not arise.

14. Their Lordships therefore think that the point as to any contract in this case fails. There is no document constituting such a contract, and there was no course of business from which a contract could be inferred. And accordingly the learned Counsel for the appellants puts his case upon tort. It is difficult to figure it but the thing upon which tort was founded was some failure of duty. The failure of duty apparently was this: that the Irrawaddy Flotilla Company had suspicions raised in their minds, or might have had suspicions raised in their minds, as to the expediency of parting with these goods unless on production of the Mate's receipts to Chowdhry, who himself handed them over to them because some financiers like the appellants might have claims upon them. Their Lordships are surprised to find what is put forward as in any respect a communication upon which the appellants are entitled to found. Wingate, the owners' agent, gave evidence, and his evidence instead of being to the effect cited, is of a completely different character. It is necessary, however, to see what Wingate says upon the subject. Wingate does admit that it was known, at a certain stage of the proceedings, to him, that Chowdhry was having advances for the purchase of the paddy which was being shipped, and that the Chetty from whom advances had been given might have had certain rights. Then Wingate in his evidence proceeds thus: "I refused to give him the Mate's receipt in first defendant's name until I got the sanction of the Chetty. He then brought the Chetty to my office. The Flotilla Chetty then agreed to have the Mate's receipt in first defendant's name. I did so accordingly. They told me that Lord Shaw the differences had been settled."

15. In these circumstances their Lordships think it unnecessary to pursue this point further, because, so far as the evidence stands, instead of the Shipping Company being charged with the knowledge that there was any danger on account of rights possessed by the Chetty, in this case it turns out upon the evidence that those rights had been the subject of negotiation and settlement, and that the settlement having been achieved the goods were forwarded in the name of Chowdhry himself. This being so there was no duty left in the circumstances except, of course, to deliver to Chowdhry, or to his order, and this was done. The failure of duty pleaded completely disappears, the respondents having fulfilled all the duties resting upon them, either by contract, or under the common law.

16. Their Lordships will therefore humbly advise His Majesty that the appeal should be dismissed, and the respondents are entitled to costs.