

1947

Present: Jayetileke J.

COONJI MOOSA & CO., Appellant, and THE CITY
CARGO BOAT CO., Respondent.

S. C. 238—C. R. Colombo, 95,329.

Carrier—Liability to vendee—Loss of goods from warehouse by day—Negligence of carrier's watchers—Deposit of goods in warehouse—Customs Ordinance, sections 36 and 49.

Where the master of a boat authorised a Customs house agent to make arrangements with the defendants, who carried on business as landing agents, to land the plaintiff's goods—

Held, that the contract was made on behalf of the plaintiffs as owner of the goods and that there was privity of contract between the plaintiffs and defendants.

Held, further, that, where the goods were deposited in the warehouse for the purpose of ascertaining the duty payable and were lost during the day owing to the negligence of the defendants' watchers, the defendants were liable in damages to the plaintiff.

Asana Marikar v. Livera (1903) 7 N. L. R. 158 distinguished.

¹ (1943) 44 N. L. R. 379.

APPEAL from a judgment of the Commissioner of Requests, Colombo.

F. A. Hayley, K.C. (with him *M. Rafeek*), for the plaintiff, appellant.

H. W. Thambiah, for the defendant, respondent.

Cur. adv. vult.

November 25, 1947. JAYETILEKE J.—

The plaintiffs imported 71 bundles of dry fish from Bangalore by a boat bearing No. 55.

The boat arrived in the Colombo harbour on or about January 7, 1944.

By P3 dated January 7, 1944, the master of the boat authorised Thamotherampillai, a Customs house agent, to act as his agent in regard to the cargo, and Thamotherampillai made arrangements with the defendants, who carry on business as landing agents, to land the cargo.

According to the manifest of the cargo of the boat, there were 401 packages consigned to various persons in Colombo. Under section 36 (1) of the Customs Ordinance (Cap. 185), the defendant had to obtain a surrence from the Collector of Customs to land the packages, and they had to land the packages at the place appointed and expressed in such surrence. The surrence which was issued in respect of these packages was not produced at the trial. The defendants landed the said packages and took and deposited them in a King's warehouse. They were obliged to do so under section 36 (1) of the Ordinance.

When goods are deposited in the King's warehouse, the importer has to make a full and complete entry in respect of the goods within three clear days from the date of landing, and to pay all duties due and payable on such goods and remove the goods. If he fails to do so, he is liable to pay double rent for every period of 24 hours during such time as the goods may remain in the warehouse.

On January 10, 1946, the plaintiffs made an entry P1 in respect of 56 bundles of dry fish and paid the duties payable on them. Thereafter, the defendants removed the goods from the King's warehouse, put them into carts, and received from the plaintiffs their landing charges. Four or five days later, the plaintiffs made another entry P 2 in respect of the remaining 15 bundles. At that time the 15 bundles were in the warehouse. Dewasagayam, a landing waiter, weighed two of the bundles in order to fix the amount payable as duty and entered the weight in the blue book. As the Supervising Officer, who had to pass the weights had not arrived, the plaintiffs were unable to obtain the delivery order immediately. In the course of the day, the 15 bundles were stolen from the warehouse.

The plaintiffs instituted this action against the defendants for the recovery of the value of the 15 bundles alleging that they were stolen owing to the negligence of the defendants.

The defendants denied that they had a contract with the plaintiffs and they pleaded that, in any event they could not be held responsible as the goods were stolen from the King's warehouse.

The learned Commissioner of Requests held in the defendants' favour on both points and dismissed the plaintiff's action.

The first question that arises is whether the plaintiffs had a contract with the defendants to land his goods. The law on this point seems to be fairly clear. Generally speaking, when goods are delivered by the vendor to a carrier, to be forwarded to the vendee, the property in the goods vests immediately in the vendee; and he is, therefore, the proper party to sue the carrier for the loss or non-delivery of the goods or for any injury done to them (see *Dutton v. Solomonson*¹). The contract of carriage is, therefore, between the carrier and the consignee, and the consignor is merely the agent of the consignee to make the contract (see *York Distilleries Co. v. Great Southern and Western Railway Co.*²). A carrier is usually the agent of the consignee to receive the goods. At the termination of the voyage, it is the duty of the consignee to take delivery of the goods, according to the terms of the contract of carriage, and the custom of the port. If he fails to do so, the shipowner, i.e., the captain or the ship's agents may generally, on his behalf, make arrangements to land the goods at a sufficient and proper wharf (*Symons v. The Wharf and Warehouse Co. Ltd.*³).

In the present case, as the plaintiffs and the other consignees failed to take delivery of the goods consigned to them when the boat arrived in the Colombo harbour, the master of the boat authorised Thamotherampillai, a Customs house officer, to make arrangements to unload and load the goods. Acting on that authority, Thamotherampillai made a proposal to the defendants orally to unload and land the goods which the defendants accepted. Though the contract was not made in the name of the plaintiffs, it was made on their behalf as owners of the goods. I am, therefore, of opinion that the plaintiffs had a contract with the defendants.

The next question is whether the defendant's responsibility ceased when they deposited the plaintiff's goods in the King's warehouse. This is a mixed question of law and fact. In *Cairns v. Robins*⁴ and *Chapman v. Great Western Railway Co.*⁵, it was held that after the responsibility of the carrier, as a carrier has ceased, the carrier if he retains the goods in his possession—either under a contract or in accordance with the usual course of dealing between him and the owner—renders himself liable as a warehouseman. A person who undertakes to warehouse the goods of another for reward is a bailee of the goods and is liable for loss arising from his own negligence or from the negligence of his servants. In *Hudson v. Bazendale*⁶ and *Crouch v. Great Western Railway Co.*⁷, it was held that where the carrier retains the goods in his possession either expressly as a warehouseman, or in respect of his lien for the carriage, he is bound, whilst they are in his possession, to keep them with reasonable care, and to deal with them in a reasonable manner in respect of time and place.

The evidence of the Customs officers shows that, when a ship comes into the harbour, the Port Controller allots to the landing agents a warehouse to keep the goods that are landed, till the duties that are payable are ascertained. The landing agents are in charge of the goods during the day and the Customs authorities during the night. After the duties

¹ (1803) 3 B. & P. 582 at 584.

² (1874) L. R. 7 H. L. 269 at 277.

³ (1878) 1 S. C. C. 92.

⁴ (1841) 8 M. & W. 258.

⁵ (1880) 5 Q. B. D. 278.

⁶ (1857) 2 H. & N. 575.

⁷ (1858) 3 H. & N. 183 at 202.

are paid by the consignees, the landing agents recover their landing charges, and deliver the goods to the consignees, by putting them into the carts engaged by them.

The second defendant corroborated the evidence of the Customs Officers. He admitted that he was under an obligation to take the goods into the King's warehouse and put them into the consignee's carts, and also that he employed watchers to guard the goods in the warehouse during the day. But he made the following statements with regard to his liability for any loss sustained by the consignees while the goods were in the King's warehouse. He said :—

- “ (a) Once the goods are landed and put into the warehouse we are not responsible for the safe custody of the goods.
 (b) Once the goods are landed in the wharf on the orders of the Shipping Co., we are not responsible to deliver the goods to the consignee if we have a contract with the Shipping Co. Before the war, although the goods were in the King's warehouse, we were responsible for the goods.”

These statements imply that, before the war, the defendants accepted liability for losses while the goods were in the King's warehouse, and that, after the war, they did not do so.

There is nothing in the evidence which shows that there was any public notice or declaration by the defendants limiting or in any way affecting their liability after the commencement of the war.

However that may be, on the evidence it is clear that the plaintiff's goods were taken into the King's warehouse by the defendants, not for the purpose of warehousing them, but for the purpose of ascertaining the amount that was payable as duties in respect of the goods. Sections 36 and 49 of the Customs Ordinance draw a distinction between “ taking and depositing ” goods and “ warehousing ” goods in the King's warehouse. After “ taking and depositing ” the goods in the King's warehouse, the defendants had watchers to guard the goods till the warehouse was closed and locked by the Customs authorities. P 8 shows that the defendants claimed a lien over the goods for their landing charges.

It seems to me that the goods remained in the defendants' custody during the time the warehouse was kept open, and that they were lost owing to the negligence of the defendants' watchers. The defendants are, therefore, liable to make good the loss suffered by the plaintiffs.

Defendants' Counsel relied very strongly on the judgment of this Court in *Asana Marikar v. Livera*¹. In that case the Court was of opinion that there was no contract between the plaintiffs and the defendants, and that even if there was a contract, the defendants could not be held responsible because the goods were lost after the Customs authorities had closed the warehouse and locked it.

For the reasons I have given above I would set aside the judgment of the learned Commissioner and direct that judgment be entered for the plaintiffs as prayed for in their plaint. The plaintiffs will be entitled to the costs of appeal.

Appeal allowed.

¹ (1903) 7 N. L. R. 158.