

1958

Present : Basnayake, C.J., and Pulle, J.

SCINDIA STEAM NAVIGATION CO., LTD., Appellant, and
THE ATTORNEY-GENERAL, Respondent

S. C. 21—D. C. Colombo, 33028/M.

*Contract for carriage of goods by sea—Bills of lading—Evidential value thereof
concerning weight, number and quantity of goods shipped.*

Where the bills of lading containing the terms of a contract for the carriage of goods by sea expressly provide that the weight, contents and value of the goods shipped are unknown, they do not afford *prima facie* evidence of the weight, number and quantity stated therein as shipped.

APPPEAL from a judgment of the District Court, Colombo.

H. V. Perera, Q.C., with *S. J. Kadirgamar* and *Ralph de Silva*, for Defendant-Appellant.

A. C. Alles, Deputy Solicitor-General, with *W. Ladduhetty*, Crown Counsel, for Plaintiff-Respondent.

October 28, 1958. BASNAYAKE, C.J.—

This is an action by the Attorney-General on behalf of the Crown against the defendant, the Scindia Steam Navigation Company Limited, in which a sum of Rs. 14,279·19 is claimed as damages for breach of a contract for the carriage of goods by sea. It is agreed that the terms of the contract are to be found in the documents P1, P2 and P3, which are the bills of lading issued at Rangoon by the agent of the defendant to the shipper, the State Agricultural Marketing Board, Union of Burma. The Attorney-General claims that the shipper delivered at Rangoon to the defendant company a total number of 100,652 bags of rice, each weighing 160 pounds, and that the defendant failed to deliver those bags of rice at Colombo. In order to establish this claim the Crown relies on the statements of particulars of the shipments in the documents P1, P2 and P3. P1 is a bill of lading issued on 14th September 1953. It is issued in respect of a consignment of rice declared by the shipper as "2187 Bags Full Boiled Rice 1953 crop each 159·74821 lbs. nett Tons 155·19·1·13 nett", P2 is issued on 16th September 1953 in respect of a consignment of rice declared by the shipper as a total of 47,992 bags weighing 3,382 tons 0 cwt. 1 qr. 14 lbs. nett. This according to the shipper's statement represents a total of seven items. P3 issued on 17th September 1953 is in respect of a total of 50,473 bags declared by

the shipper an unspecified number of which are 158 lbs. each and the rest 160 lbs. each in weight. This consignment is said to weigh 3,566 tons 8 cwt. 1 qr. and 1 lb. nett.

Each of the bills of lading is subject to the following condition

“ *This Bill of Lading is issued subject to the further conditions :—*

NUMBER and CONTENTS

1. Weight, contents, and value when shipped unknown. The company is not to be responsible for any loss, damage or delay whatsoever, directly or indirectly resulting from insufficiency of the address, or packing, internal or external ; nor for condition of contents of re-shipped or re-exported Goods.”

There is also the following stamped endorsement on each of the bills of lading :—

“ SHIP NOT RESPONSIBLE FOR :—

DAMAGE FROM HEATING AND/OR CAKING OF NEW RICE GRAIN OR BRAN ; OBLITERATION OF MARKS, DETERIORATION OF CONTENTS OR STAINING OF BAGS CAUSED BY THE NATURE OF CONTENTS AND/OR SHORTAGE OF WEIGHT CAUSED BY THE EVAPORATION OF CONTENTS ; BURSTING OF BAGS AND LOSS OF CONTENTS.

SHIP NOT RESPONSIBLE FOR WEIGHT OF BAGS ON OUT-TURN.”

It is also agreed by the parties that the courts in Ceylon have jurisdiction in this matter and that, as stated in the bills of lading, the Indian Carriage of Goods by Sea Act, No. XXVI of 1925, and the schedule thereto are to be regarded as applicable to this contract.

The Crown sought to establish its case by producing the bills of lading and claiming that according to the bills of lading 100,652 bags of rice each weighing 160 lbs. had been delivered to the defendant and that the defendant had failed to deliver this number of bags each containing 160 lbs. of rice at Colombo. The Attorney-General relied on the hearsay statement of the carrier in the bills of lading for which he did not vouch and from which he expressly dissociated himself and offered no proof either oral or documentary that each of the bags of rice weighed 160 pounds, nor did the Attorney-General establish by evidence that the total quantity of rice handed over by the shipper at Rangoon was not discharged by the carrier at Colombo. It is in evidence that the ship carried exclusively rice consigned by the shipper to the Director of Food Supplies, Colombo, and that after it left Rangoon it did not call at any other port on its way to Colombo. In order to succeed in this action the Attorney-General must establish that the defendant failed to deliver

the quantity of rice handed to him by the shipper at Rangoon for transportation to Colombo. He must prove by evidence that the shipper handed to the defendant's ship 100,652 bags of rice each weighing 160 lbs. This he cannot do except by calling a witness or witnesses able to speak to that fact. He has failed to do so. In view of the conditions in the bills of lading quoted above he is not entitled to rely on the weight, number and quantity given in them as establishing his claim.

Learned counsel for the appellant referred us to the case of the *New Chinese Antimony Company, Limited v. Ocean Steamship Company, Limited*¹, where it was held that where bills of lading were qualified by the use of such words as "said to be . . ." or "weight etc. unknown" they do not afford *prima facie* evidence that the stated weight or quantity was shipped. The burden is on the plaintiff to establish the facts on which he relies to succeed in his case. Apart from the conditions above-mentioned there is in the instant case in the defendant's favour the added circumstance that the ship was loaded only with rice consigned to the Director of Food Supplies, Colombo, and that she did not call at any intermediate port before reaching Colombo.

The officers of the Government of Ceylon had access to the ship and they had every opportunity of satisfying themselves that every grain of rice put into the ship at Rangoon was landed at Colombo. The Attorney-General does not claim that any part of the rice loaded into the ship at Rangoon has been retained in the ship's hold.

We therefore set aside the order of the learned District Judge and dismiss the plaintiff's action with costs in both courts.

PULLE, J.—I agree.

Appeal allowed.
