1933 *Present:* **Drieberg and Akbar JJ.**

NATHAN & CO. *v.* BURMA FIRE AND MARINE INSURANCE CO., LTD.

42—D. C. Colombo, 43,955

Marine insurance—Policy to cover risk of particular voyage—Risks of transhipment not covered—Policy warranted free from particular average—Effect of special clause.

A Marine Insurance policy covered the risk of a voyage from "Colombo to Vizagapatam including all risk of crafts and boats to and from the ship or vessel."

The policy was warranted free from particular average, but there was a special clause extending the liability of the insurers in the case of transhipment to partial loss.

Held, that the policy did not cover risks in transhipment.

Held, further, the clause referred to applies only where transhipment has become necessary by a peril insured against.

THE plaintiffs brought this action against the defendant Insurance Company, to recover damages sustained by the loss of a part of a shipment of copper wire which was lost in transhipment at Cocanada, an intermediate port. The risk covered by the policy of insurance referred to a voyage from Colombo to Vizagapatam on the ss. "Gharinda" and included all risk of craft and boats to and from the ship or vessel.

The learned District Judge held that the defendant company was not liable for loss sustained in the course of transhipment and dismissed the plaintiffs' action.

Nadarajah for plaintiffs, appellants.—The plaintiffs are entitled to recover the money as the defendants had insured the goods until the arrival of the ship at Vizagapatam. The risks mentioned in the body of the policy and in the marginal notes included all risk of craft and boats to and from the ship during the voyage. The includes all losses incurred in transhipment. Even if this risk is not specifically mentioned in the policy, any loss is covered by marginal note 5. According to this the company is still liable even though there is no mention of transhipment in the body of the policy.

Garvin (with him *S. Alles*), for defendant, respondent.—The plaintiff is not entitled to the money as the goods were insured for the voyage from Colombo to Vizagapatam and against incidental risks on lighters to and from the boat at these two ports only. As the goods were lost in the course of transhipment into lighters at Cocanada, the company's liability ended at the time the goods left the "Gharinda" at this port. There must be an express stipulation to cover the risks of transhipment. If there is no such express stipulation, the company will be liable for a transhipment of necessity only. Transhipment at Cocanada is not incidental to the voyage from Colombo to Vizagapatam.

Where the printed and the written parts of a policy are at variance greater weight must be attached to the written part as this gives the real intentions of the contracting parties. See *Dudgeon v. Pembroke*.[1]

[1] *(1877) L. R. 2 (A. C.) 284.*

The policy being an F. P. I. policy the company would only be liable for a total loss. Marginal clause 5 is quite inconsistent with the terms of an F. P. I. policy as it would make the company liable for even a partial loss.

February 8, 1933. DRIEBERG J.—

The appellants brought this action to recover from the insurers, the respondents, damages sustained by the loss of a part of a shipment of copper wire which was lost in transhipment at Cocanada, an intermediate port. The risk insured so far as it appears in the body of the policy and in the typed matter inserted was at and from Colombo to Vizagapatam on the ss. "Gharinda" and included all risk of craft and boats to and from the ship. The policy was warranted free from particular average. So far as this goes there is no room for doubt. The words "all risk of craft until the goods are discharged and safely landed" do not cover risks of transhipment (*Houlder Brothers v. Merchant Marine Insurance Company* [1]). An express stipulation is needed to cover risks in transhipment. Where there is no such stipulation the insurer is only liable where transhipment becomes necessary as a result of a risk covered by the policy—section 59, Marine Insurance Act, 1906. Unless there is an express stipulation regarding transhipment or unless transhipment is necessitated by a peril insured against, it amounts to an abandonment of the insured voyage and the insurers are freed from liability. It is not suggested that transhipment at Cocanada is an incident of a voyage from Colombo known to and contemplated by the parties.

The policy being warranted free from particular average the insurers would only be liable for a total loss of the subject matter of the insurance. The consignment consisted of 7 bags and 47 bundles of copper wire and of these 7 bags are said to have been lost in transhipment at Cocanada. In the terms of the policy set out above the insurers would not be liable for this loss.

It was sought however to make them liable by reason of certain marginal clauses on the policy which are as follows:—

> "No. 5. Underwriters, not withstanding this warranty, to pay for any loss or damage caused by fire or by collision with any other ship or craft, and any special charges for warehouse rent, reshipping or forwarding, for which they would otherwise be liable. Also to pay the insured value of any package or packages which may be totally lost in transhipment."

The appellants claim that this has the effect of extending the policy to risks of transhipment. The written words in this policy so far as is necessary to note in this connection are an insurance on the goods in the "Gharinda" on this yoyage "from Colombo to Vizagapatam including all risk of craft and boats to and from the ship or vessel". Can this extend the insurance to risks in another craft and at another port? It is well settled that in cases of inconsistency between the printed and the written matter in a policy greater weight must be given to the latter for the words in it are the language and terms selected by the parties for the expression of their meaning *Joyce v. Realm Marine Insurance Company* [2]. In

[1] (1886) 17 Q. B. D. 354.

[2] (1872) L. R. 7 Q. B. 580.

Dudgeon v. Pembroke[1], Lord Penzance said : " The practice of mercantile men of writing into their printed forms the particular terms by which they desire to describe and limit the risk intended to be insured against, without striking out the printed words which may be applicable to a larger or different contract, is too well known, and has been too constantly recognised in courts of law, to permit of any such conclusion ".

The marginal clauses 4 and 5 deal only with the warranty of free from particular average and in no way affect the contract regarding the conditions of transport which was the subject of agreement. Both clauses introduce certain relaxations in the operation of the warranty which would otherwise make the insurers liable only in the event of a total loss.

Clause 4 provides that when the vessel or craft is stranded, sunk, or burnt, each craft or lighter is to be determined a separate insurance. The second part of clause 5 on which the appellants rely extends the liability of the insurers in the case of transhipment to partial loss, whereas otherwise they would be liable only for a total loss but this does not extend their liability to losses in all cases of transhipment but applies only where they are liable under their contract, that is to say, when the transhipment is rendered necessary by a peril insured against.

The appeal is dismissed with costs.

AKBAR J.—I agree.

Appeal dismissed.