Present: The Hon. Sir Joseph T. Hutchinson, Chief Justice, and Mr. Justice Middleton.

April 22, 1910

HASSEN *v.* THE CEYLON WHARFAGE COMPANY.

C. R., Colombo, 16,173.

Ordinance No. 7 of 1901, s. 3—" Within three clear days "—Computation of time—Double rent for every twenty-four hours.

When an act has to be done within so many clear days, the rule is to exclude the first and include the last day.

The word " clear " involves the exclusion of both terminal days if so many clear days at least are given to do an act, or not less than so many days are to intervene.

In calculating the period " within three clear days " in section 3 of Ordinance No. 7 of 1901, we have to exclude the day of landing and include the last of the three clear days (fourth day). After the last of the three clear days, double rent is due only for complete periods of twenty-four hours; and no rent—not even single rent—is due for fractions of twenty-four hours.

APPEAL from a judgment of the Commissioner of Requests, Colombo (M. S. Pinto, Esq.). Certain bags of rice which were consigned to the plaintiff were landed on July 16, 1909 (Friday), and deposited in the Colombo Customs Warehouse. The plaintiff removed the bags on July 21, 1909 (Wednesday). The defendant company (by virtue of a contract with Government) imposed upon the plaintiff double rent for July 21, viz., Rs. 81.84, and the plaintiff paid the same under protest. In this action plaintiff claimed a refund of the said sum of Rs. 81.84, on the ground that under section 3 of Ordinance No. 7 of 1901 the defendants had no right to impose the rent.

The learned Commissioner held that he was bound by the judgment in *Ahamed v. Ceylon Wharfage Co.*,[1] and entered judgment for the plaintiff.

The defendants appealed. The case was first argued before the Chief Justice, who ordered it to be listed before two Judges.

Bawa, for the appellants—The decision in *Ahamed v. Ceylon Wharfage Co.*[1] does not take into consideration the word " within ". It only explains the word " clear ". The first day, July 16, has to be excluded; but the act of removal has to be done " within " three clear days, exclusive of the day of landing (July 16). In calculating a period within which an act is required to be done, the day from or

[1] *(1905) 2 Bal. 101.*

April 22, 1910

Hassen v. The Ceylon Wharfage Company

after which such period is to run is excluded, and the last day of such period is included. Counsel cited *14 Encyclopædia of the Laws of England, 83, 84; Wickramasooriya v. Appusingho.*[1]

De Sampayo, K.C. (with him *Balasingham*), for respondent.—We must read section 3 of Ordinance No. 7 of 1901 as giving the plaintiff the liberty to keep the bags in the warehouse, paying single rent for three clear days, and not as imposing on the plaintiff an obligation to remove the bags within three clear days. " Clear " means clear of both ends. Counsel also referred to *Robinson v. Waddington.*[2] Even if the appellants' contention be right as to the interpretation of the term " within three clear days ", they cannot succeed, as the bags of rice did not remain in the warehouse for twenty-four hours after the " three clear days ". [CHIEF JUSTICE: Is single rent due for the 21st ?] No. The Ordinance does not provide for single rent after the three clear days. It only provides for double rent for complete periods of twenty-four hours.

Bawa, in reply.

April 22, 1910. HUTCHINSON C.J.—

This action was brought to recover Rs. 81.84, which the plaintiff had paid to the defendants under protest. Some bags of rice were consigned to the plaintiff in Colombo, and arrived there by steamer on July 15, 1909, and were landed and placed in the defendant's warehouse on the 16th, and the plaintiff removed them on the 21st. The defendants claimed from him Rs. 81.84 as double rent in respect of the rice for one day, that is the 21st, and he was compelled to pay it in order to obtain delivery of the rice. The defendants' claim was made under section 3 of Ordinance No. 7 of 1901, which enacts that " within three clear days from the date of landing, exclusive of Sundays and public holidays, the importer shall make a full and complete entry thereof.....; and in default of such entry being made and the goods being removed within three clear days as aforesaid, after the same shall have been landed, such goods shall be liable to double rent for every twenty-four hours of such time as they may remain in the warehouse thereafter." July 18 was a Sunday, so that the three clear days after the goods were landed were the 17th, 19th, and 20th, and the goods were removed on the 21st. The issue which the defendants' counsel suggested, and which the Court accepted, was: " Did the plaintiff remove 1,023 bags from defendants' warehouse within three clear days after the landing, *i.e.*, July 16? The Commissioner held that he must follow the decision in *Ahamed v. Colombo Wharfage Co.*[3] and " deciding the issue in the negative give judgment for the plaintiff." It seems

[1] *(1895) 1 N. L. R. 178 and (1891) 1 C. L. R. 84.*

[2] *L. J. Q. B. vol. 18, 250*

[3] *(1905) 2 Bal. 101.*

that he said " negative " by mistake for " affirmative ". At all events the formal decree is that the defendants do pay to the plaintiff Rs. 81.84 and costs. I do not understand the decision in *2 Balasingham* as it is reported. The goods in that case were landed and warehoused on January 7, the 8th was a Sunday, so that the three clear days within which they had to be removed were the 9th, 10th, and 11th. They were not removed within these three days. Nevertheless, it was held that they were removed within three clear days when they were removed on the 12th. I cannot follow that; " within " does not mean " after the expiration of." In the present case the three clear days were the 17th, 19th, and 20th, and the rice was not removed within those three days. Another point, however, which does not seem quite so hopeless was taken by the plaintiff on the hearing of the appeal. The goods are liable for double rent " for every twenty-four hours of such time as they may remain in the warehouse thereafter," *i.e.*, after the expiration of the three clear days. But this rice did not remain for twenty-four hours after the third day, and I think that it was not liable for any double rent. If the Legislature had meant that goods should be liable for double rent for every day or part of a day that they remained in the warehouse after the expiration of the three clear days, I think that it would have so expressed it. The enactment seems to me to mean that the liability is only in respect of each complete period of twenty-four hours, so that if the rice had been removed on the 22nd before midnight on that day, it would have been liable for double rent for one period of twenty-four hours, *i.e.*, from midnight on the 20th to midnight on the 21st. I would, therefore, dismiss the appeal, but as the plaintiff succeeds on a point which was not raised in the Court below, I would make no order as to costs of this appeal.

MIDDLETON J.—

His Lordship stated the facts, and continued:—

The case mainly depends on the construction of section 3 of Ordinance No. 7 of 1901, and I think it is quite clear on the facts before us that the plaintiff did not remove his rice from the warehouse in question within three clear days from the date of landing, and if so, he is liable under the section to the payment of double rent for every twenty-four hours of such time as it may remain in the warehouse thereafter. The word " clear " involves the exclusion of both terminal days, if so many " clear days " at least are given to do an act, or not less than so many days are to intervene (*Maxwell on the Interpretation of Statutes, 3rd edition 487*). In other cases the rule is to exclude the first and include the last day. Under the section here the three clear days, excepting the Sunday, would terminate on the conclusion of July 20, but the act of removal was

April 22, 1910

MIDDLETON J.

Hassen v. The Ceylon Wharfage Company

to be performed within three clear days, and therefore if performed on the 21st it would not be in conformity to the Ordinance. Mr. de Sampayo admittedly raised a question, which had not been raised before, when he contended that the respondent was not liable for double rent on the 21st, on the ground that there was not a completion of the twenty-four hours, after the three days, so as to entitle the appellant to demand double rent. The section also does not say that the liability for double rent shall apply even if a portion of the twenty-four hours mentioned after the three clear days has elapsed before removal. What it says is that in default of such entry being made and the said goods being removed within three clear days as aforesaid, after the same shall have been landed, such goods " shall be liable to double rent for every twenty-four hours of such time as they may remain in the warehouse thereafter." There is no double rent to pay, therefore, it seems to me, unless they have remained in the warehouse for twenty-four hours after the lapse of the three clear days. The Legislature, if it intended to make a consignee responsible for double rent for any fraction of twenty-four hours, should, it seems to me, have so stated its intention. On the principle that a penal enactment must be strictly construed, I would hold that the plaintiff would not be liable for double rent until the expiration of the full twenty-four hours succeeding his three clear days. It is noticeable that section 3 of Ordinance No. 7 of 1901 distinctly amends section 27 of the principal Ordinance by making the consignee liable to pay " double rent for every twenty-four hours of such time as goods may remain in the warehouse " after the three clear days, while the principal Ordinance made him liable for double rent " for such time as the goods may remain in the warehouse," after the same period, which would impose a double liability for every second after the expiration of the period of three clear days. I do not think the decision of this point involves the hearing of any further evidence on the question, and I would, therefore, hold that the appeal must be dismissed on the terms as to costs ordered by my Lord. I was at first inclined to consider that the plaintiff would be liable for single rent for the day, but a study of D1 at pages 7, 8, and 9 shows, I think, that he escapes it.

After the foregoing judgments were delivered Mr. Bawa obtained permission to argue on behalf of the appellants that the plaintiff was liable for single rent at least.

HUTCHINSON C.J.—

We gave judgment in this case yesterday, and at the request of the appellants the case was put down for argument on the question whether the plaintiff was not liable to the defendants for single rent

in respect of the fourth day. It was assumed in the Court below and here by both parties that the defendants are in the position of agents to the Government to collect whatever rent is due to the Government. The only enactment under which single rent could be payable for the fourth day so far as I can see is section 13 of Ordinance No. 17 of 1869, which enacts that Government may charge rent for such time as goods remain in the warehouse at such rates and under such regulations as the Government may fix. Rates were fixed and regulations made under that enactment, but they only provide for payment of rent for three clear days. The Customs tariff which was put in evidence, which is dated March, 1909, fixes on page 8 the single rates of warehouse rent, giving as its authority the Ordinance and the notification of December 2, 1887. Then it says the goods may remain in the warehouse on payment of the said rates for any time not exceeding three clear days, after which they shall be liable for double rent for every twenty-four hours, giving as the authority for that section 3 of Ordinance No. 7 of 1901. I may conjecture that the Government if it had thought of it would have specially provided in the tariff that single rent should be payable for the fourth day also if the goods were not removed until the fourth day. But we are bound by the enactment as it stands; by section 3 of the Ordinance No. 7 of 1901 it is enacted that the goods are to be liable for double rent for every twenty-four hours of such time as they remain after three clear days, and I think, as I said in my judgment yesterday, they are not liable for the double rent for a fraction of twenty-four hours, and I cannot find that under the regulations made under the Ordinance they were liable for single rent beyond the three clear days. I think therefore that the appeal must be dismissed.

MIDDLETON J.—

I agree, and have nothing to add.

Appeal dismissed.