1957 *Present :* Weerasooriya, J., and Sansoni, J.

THE CEYLON WHARFAGE CO., LTD., Appellant, *and* DADA *et al.*, Respondents

S. C. 508—D. C. Colombo, 27,821/M

Carrier—Landing agent—Non-delivery of goods deposited by him in Queen's warehouse—Limits of carrier's liability—Customs Ordinance, ss. 36, 49.

In the absence of a special agreement the responsibility of a carrier of goods from ship to shore ceases when the goods have been duly deposited by him in the Queen's warehouse.

APPEAL from a judgment of the District Court, Colombo.

Walter Jayawardene, with *L. Mututantri*, for defendant-appellant.

S. J. Kadirgamar, with *P. Somatilakam*, for plaintiffs-respondents.

Cur. adv. vult.

February 20, 1957. WEERASOORIYA, J.—

This is an appeal from the judgment and decree of the District Court of Colombo ordering the defendant-appellant (a company carrying on business as landing and shipping agents) to pay to the plaintiffs-respondents a sum of Rs. 1,000 as damages arising from the loss of 198 crates of potatoes which had arrived ex the s.s. Rampang in the port of Colombo.

According to the plaintiffs-respondents the 198 crates formed part of a cargo of 500 crates of potatoes bearing specific marks and shipped on the two bills of lading P4 and P5 to a third party from whom the plaintiffs became the endorsees for value of the two bills and entitled to the said cargo. Apart from the question of the identification of the cargo by its marks, it may be taken as established on the evidence adduced at the trial, and in particular the documents P18 and P19, that the appellant company, in its capacity as a carrier by trade, landed the full quantity of the cargo into lighters at the ship's side and, further, that out of that quantity the respondents had been able to obtain delivery of only 302 crates from the Kochchikade warehouse (being a Queen's warehouse) where in accordance with the procedure laid down in the Customs Ordinance (Cap. 185) the full cargo had been deposited.

The duties and liabilities of a carrier by trade in a case like the present one have been considered in *Bagsoobhoy v. The Ceylon Wharfage Co., Ltd.*,[1] where it was held that upon proof of receipt of the goods by the carrier and their loss or non-delivery to the consignee, the carrier is liable unless he can bring himself within the exceptions (*vis major* and *damnum fatale*), the onus of proof being on the carrier. The decision in that case that the carrier was liable proceeded on the finding that he had failed to prove the

[1] *(1948) 49 N. L. R. 145.*

delivery of the missing cargo at the Queen's warehouse after taking charge of it from the ship's side. In the present case it was, however, conceded by learned counsel for the respondents at the hearing of the appeal that the 500 crates of potatoes had been duly deposited by the appellant in the Queen's warehouse. But, relying chiefly on the decision of this Court in *Coonji Moosa v. The City Cargo Boat Co.*,[1] he submitted that even so the appellant would be liable in regard to the non-delivery to the respondents of the 198 crates (which fact, as stated earlier, may be taken as established) from the Queen's warehouse. The short point to be decided in this appeal is, therefore, whether the appellant is liable for such non-delivery after the cargo had been deposited in the Queen's warehouse.

The letter P19 written by the appellant company to the respondents states that 198 crates (of potatoes) were lying at the Kochchikade warehouse, the suggestion being that the respondents should take delivery of those crates as part of the cargo which arrived ex the s.s. Rampang although, according to a survey made a few days earlier, the potatoes in those crates had decomposed and a black liquid was exuding from them. This letter was sent with reference to the respondents' complaint in P6 (with a copy to the appellant) addressed to the ship's agents regarding the short delivery of 198 crates ex the s.s. Rampang. Certain evidence was led at the trial by the respondents with a view to establishing that the 198 crates referred to in P19 had come in an entirely different ship. Even if this evidence fell short of establishing that fact it would not have availed the appellant company since, if it was liable for non-delivery of the cargo from the Queen's warehouse, it has not discharged the onus of proving that the 198 crates to which the respondents were referred in P19 formed part of the 500 crates ex the s.s. Rampang in respect of which the bill P18 had been rendered to the respondents and payment received from the latter on the basis that they had been landed from the ship.

The same point that arises for decision in this appeal was considered in *Coonji Moosa v. The City Cargo Boat Co.* (*supra*) where it was held that though the carrier's responsibility had ceased after the goods had been deposited in the Queen's warehouse he had, nevertheless, rendered himself liable as warehouseman because, in terms of the contract in evidence in that case, the goods were in his custody and control, he had assumed responsibility for their loss from the warehouse and they were in fact lost as a result of the negligence of his servants.

The evidence in the present case is that although the same Queen's warehouse into which the 500 crates of potatoes had been deposited also contained cargo deposited by other landing companies the appellant and the other landing companies each maintained a staff of sorters, delivery clerks and watchers for the purpose of the delivery of the cargo from the warehouse to the respective consignees after the various customs formalities had been complied with. Reliance was placed on this evidence and also on the fact that payment had been recovered by the appellant in terms of P18, for the submission of respondents' counsel that this case too must be considered on the basis that (in the absence of express terms to that effect) there must be read into the contract between the

[1] *(1947) 49 N. L. R. 35.*

parties the implied terms that the appellant was to retain custody of the goods and be responsible for their loss from the warehouse. I do not think, however, that this submission can be accepted. Even if for the smooth operation of the delivery to consignees of cargoes lying in deposit in the Queen's warehouses the several landing companies concerned, with the permission of the customs authorities, maintain their own staff of employees it is clear from the evidence in this case and from a consideration of sections 36 and 49 and other relevant provisions of the Customs Ordinance that all goods while lying in deposit in the Queen's warehouses are exclusively in the custody and control of the customs authorities for and on behalf of the Crown. No doubt, while the goods are lying there it is open to a landing company, by contract, to undertake liability as bailee or insurer of the goods. But such a liability is not to be inferred from any of the circumstances already referred to, and this was pointed out in the case of *Athinarayana-pillai v. The Ceylon Wharfage Co., Ltd.*,[1] which followed a very old decision of this Court in *Asana Marikar v. Livera*,[2] where most of the submissions addressed to us by learned counsel for the respondents were considered and rejected. In both those cases it was held that in the absence of a special agreement by which the carrier became liable as bailee or insurer of goods in a Queen's warehouse his responsibility ceased when the goods had been duly deposited in the warehouse. But in the more recent case of *Hussain Alibhoy v. The Ceylon Wharfage Co., Ltd.*,[3] the liability of a carrier of goods from ship to shore seems to have been considered by Gratiaen J. on the basis that one of the obligations imposed on the carrier was "in due course to deliver at the (Queen's) warehouses to each particular consignee any part of the cargo which could be identified (by reference to the relative documents) as his property", provided the customs dues and the carrier's landing charges were first paid ; and he came to the conclusion that even on that basis the carrier was exempt from liability if the loss of the goods from the warehouse was "purely fortuitous and due to inevitable accident". It seems, however, that the observations of Gratiaen J. in that connection were not intended to imply that the obligation to give delivery from the Queen's warehouse is one of the normal incidents of the contract of carriage of goods from ship to shore as in the concluding portion of his judgment he affirmed the view expressed in the two earlier cases that the carrier's responsibility was at an end where the goods on being deposited in the Queen's warehouse were exclusively within the control of the customs authorities.

The judgment and decree appealed from must be set aside and decree entered dismissing the plaintiffs-respondents' action with costs in both Courts.

SANSONI, J.—I agree.

Appeal allowed.

[1] *(1952) 53 N. L. R. 419.* [2] *(1903) 7 N. L. R. 158.*
[3] *(1954) 56 N. L. R. 470, 51 C. L. W. 65.*