1918.

[PRIVY COUNCIL.]

Present: Lord Parker of Waddington, Lord Sumner, Sir Arthur Channell

ADAMJEE LUKMANJEE *v.* THE YANGTSZE INSURANCE ASSOCIATION, LTD.

D. C. Colombo, 39,215.

Sale to plaintiff of teak logs by company outside Ceylon—Insurance effected by seller—Bill of lading in favour of seller—Logs lost between harbour—Action by seller against insurance company.

B company, by their agents at Colombo, sold to plaintiff, who was at Colombo, "200 tons of teak ..... Shipment November-December, at the rate of 100 tons monthly. Payment cash against documents." 144 logs, which constituted the first instalment under this contract, after being discharged over side *ex* steamship "Hild" at Colombo, were lost in a gale while still in raft. A policy of insurance was effected at their expense by B company, "as well in his or their own name as for and in the name and names of all and every person or persons to whom the same doth, may, or shall

[1] *(1906) 9 N. L. R. 98.*

appertain in part or in all." The policy covered 382 logs, of which only 144 were for plaintiff, and the remainder were for the account of B company. There was a separate bill of lading made out to the order of the shippers (B company) for the 144 logs, and in it they were identified by the same marks as in the policy. Among the marginal clauses in the policy was one covering the ancillary risk between ship and shore. The plaintiff sued the defendant (insurance company) upon the policy to recover the loss in respect of the 144 logs. There was no assignment of the policy to the plaintiff.

Held, that there was no evidence on which it could be found that the policy of insurance was effected on behalf of the plaintiff, or to cover his interest in the goods, and that plaintiff could not sue on the policy.

THE facts appear from the judgment. The judgment of the Supreme Court is reported in *3 Ceylon Weekly Reporter 134.*

March 15, 1918. Delivered by LORD SUMNER:—

In this case Mr. Adamjee Lukmanjee sued upon a policy of marine insurance to recover a loss in respect of 144 logs of teak wood, which, after being discharged over side *ex* steamship " Hild " at Colombo, were lost in a gale while still in raft. He succeeded, though on somewhat different grounds, both in the District Court of Colombo and in the Supreme Court of Ceylon. The insurance company now appeals.

The policy was effected at their own expense by the Bombay-Burma Trading Corporation, Limited, " as well in his or their own name as for and in the name and names of all and every person or persons to whom the same doth, may, or shall appertain in part or in all," following the company's usual form of policy, and under these words Mr. Lukmanjee claims to have been assured under the policy from the beginning, and entitled to sue as a party to it, subject to his having an insurable interest at the time of loss. There is no question here of any assignment of the policy. In fact, he had such an interest; for the logs, when lost, were his, so the question is, whether he was a party insured under this policy in respect of that interest, or, in other words, whether the Bombay-Burma Trading Corporation effected it in any measure on his behalf.

The Bombay-Burma Trading Corporation, by its agents at Colombo, had sold to Mr. Lukmanjee, who was also at Colombo, " 200 tons of Indian first class teak squares at 175 rupees per ton *ex* ship. Shipment November-December, at the rate of 100 tons monthly ..... Payment cash against documents." The 144 logs constituted the first instalment under this contract, and it is common ground that, when they were discharged *ex* ship into the water, they had been paid for, and had become the property of the respondent.

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Except in so far as it can be inferred from the transaction itself and the documents by which it was effected and carried out, there is no evidence to show with what intention the Bombay-Burma Trading Corporation effected the insurance, nor was there any evidence of any course of business or of any customary understanding of any of the terms employed. What is significant about the policy itself is that it covered 382 pieces of teak, all particularly marked, of which only 144 were for Mr. Lukmanjee, and the remainder were for the account of the Bombay-Burma Trading Corporation. There was a separate bill of lading made out to the order of the shippers, the Bombay-Burma Trading Corporation for the 144 logs, and in it they were identified by the same marks as in the policy. Among the marginal clauses in the policy was one covering the ancillary risk between ship and shore, viz., " all risk of craft and/or raft from land to land," but it was admitted that such a clause would be included almost as a matter of course, and that, although it was only under this clause that Mr. Lukmanjee could recover, the fact of its insertion in the policy threw little or no light on the question whether the policy was effected on his behalf as one of the original assured.

The Trial Judge was of opinion that the property in the goods passed to the buyer before shipment, and that in shipping them the sellers had acted as his agents. Hence he inferred that the insurance was effected for him. The Supreme Court apparently treated the contract as if it contained an implied obligation on the seller's part to insure the buyer in respect of such contingent interest in the goods as he might have while they were at sea. Neither view was, or indeed could be, sustained on appeal, nor had the attention of either Court been directed to the true question, whether the evidence showed that the insurance was effected on the buyer's behalf.

It is clear that the policy itself evidences no such intention. The sellers and the sellers alone were throughout interested in the major part of the cargo. Even as to the 144 logs, until the ship arrived and came to deliver over side, they and they alone had the interest properly describable by the words used in the policy, viz., " upon goods." If the buyer were to fail to pay for the timber in accordance with the contract, their interest in it would continue after discharge over side, for it would remain their property. Even if these logs were paid for against documents, as was the case, the inclusion in the policy of cover against raft and craft risk was necessary as to the residue, and was of no significance in the present connection.

Two suggestions were made in argument: one was that " against documents " means in the language of commerce against a policy of insurance and sundry other documents; the other, that an obligation, binding the sellers to insure on the buyer's behalf,

might be inferred because the effect of the contract was to require payment, not merely against goods delivered *ex* ship in a state corresponding to the contract description, but also against documents representing the goods, even though, through sea perils, they were no longer in a state corresponding to the contract description.

The first point fails because there is no evidence to show that the word "documents" in such a connection includes a policy of insurance. A contract of sale, at a price c. f. and i., is so well understood that no proof is needed that one of the documents which it contemplates is a policy. It may be that, detached from any context, the mere expression "shipping documents" would suggest that one of them is a policy. When, however, the expression is found in a contract, and there is nothing but the language of the contract to determine its meaning, it must be construed as meaning such documents as are appropriate to the contract. In the case of a sale "*ex* ship," the seller has to cause delivery to be made to the buyer from a ship which has arrived at the port of delivery, and has reached a place therein which is usual for the delivery of goods of the kind in question. The seller has, therefore, to pay the freight, or otherwise to release the shipowner's lien, and to furnish the buyer with an effectual direction to the ship to deliver. Till this is done the buyer is not bound to pay for the goods. Till this is done he may have an insurable interest in profits, but none that can correctly be described as an interest "upon goods," nor any interest which the seller, as seller, is bound to insure for him. If the seller insures, he does so for his own purposes and of his own motion.

Again, the mere documents do not take the place of the goods under such a contract. They are not the subject-matter of the sale. If an endorsed bill of lading is delivered to the buyer, it is given as a delivery order, and not with any intention of making him a party liable upon it, or of vesting him with the property in the goods by the mere delivery of the document. As the goods are not at the buyer's risk during the voyage, there is nothing from which to infer an obligation on the seller, and, therefore, an intention on his part to effect an insurance on the buyer's behalf.

It was said that "cash against documents," first of all, implied some document other than a delivery order, because of the use of the plural, and, secondly, must have reference to the risks of the voyage, so as to make the contract analogous to a c. f. and i. sale, since if "documents" only meant "delivery of the goods," this would be implied by law. The answer seems to be, on the first point, that the plural "documents" would be satisfied either by two delivery orders, one for each shipment, or by two documents, a delivery order and a receipt for the freight, in the case of each shipment. On the second point there is nothing surprising if such a contract is found to express something which the law would imply,

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and certainly there is nothing in it to compel a Court to give simple and well-known words a meaning which does not belong to them, and which does belong to other words or letters equally well known though not so simple. In truth, however, " cash against documents " does carry the matter beyond " cash on delivery," that is, delivery of the goods, for it imports a convenient mercantile way of effecting the same object without the inconvenience of a payment at or contemporaneous with the discharge over side. It was admitted that payment could not be demanded even " against documents " till the ship had arrived with the goods. The provision enables payment to be made in a counting-house and in the ordinary course of business, without reference to the precise stage which the process of tumbling the logs into the water may happen to have reached.

Their Lordships are, therefore, of opinion that there was no evidence on which it could be found that the policy was effected on behalf of the respondent, or to cover his interest in the goods, and that he could not sue on it. They will, therefore, humbly advise His Majesty that the appeal should be allowed, and that both judgments should be set aside, with costs here and below.

Appeal allowed.