1950 *Present:* **Jayetileke C.J. and Gunasekara J.**

NATIONAL BANK OF INDIA, LTD., Appellants, *and* ESSACK, Respondent

S. C. 29—D. C. Colombo, 18,398

Contract—Bill of lading—Negligence in taking up a bill of lading contrary to instructions—Damages—Evidentiary value of statements contained in a bill of lading—Civil Law Ordinance (Cap. 66)—Bills of Lading Act, 1855—Carriage of Goods by Sea Ordinance (Cap. 71), Schedule, Article III, Rule 4.

Plaintiff sued the defendants for recovery of damages for negligence in taking up a bill of lading which did not comply with his instructions to them. His complaint was that though he instructed the defendants to honour from one M in Iraq drafts covering a shipment of 52 tons of dates, the defendants' agent in Iraq paid upon a bill of lading covering a shipment of 47 tons only. He claimed from the defendants the value of the unshipped quantity of dates as damages for negligence.

In regard to the actual weight of the consignment of dates received by him, plaintiff relied solely on the statement in the bill of lading that only 47 tons were shipped.

Held, that there was negligence on the part of the agent of the defendants in honouring M's draft when the bill of lading accompanying it did not show that 52 tons of dates had been shipped.

Held further, that the action was not one by or against the signer of the bill of lading or the owner of the ship, and the statement in the bill that 47 tons were shipped could not be regarded as evidence against the defendants. In the circumstances, the plaintiff was entitled only to nominal damages.

APPEAL from a judgment of the District Court, Colombo.

H. W. Jayewardene, for the defendant-appellants.

J. R. V. Ferdinands, with *G. F. Sethukavaler,* for the plaintiff respondent.

Cur. adv. vult.

August 4, 1950. JAYETILEKE C.J.—

The plaintiff sued the defendants in this action for the recovery of a sum of Rs. 1,525 as damages for negligence in taking up a bill of lading which did not comply with his instructions to them.

The plaintiff entered into a contract for the purchase of 52 tons of dates from one Mehta of Basrah. The contract was not proved at the trial but the letter of credit shows that it was a cost, insurance and freight contract. After entering into the contract the plaintiff by his letter P 3 dated January 15, 1947, requested the defendants to negotiate drafts drawn on him by Mehta to the extent of Rs. 15,860 provided Mehta surrendered to them shipping documents consisting of an on board bill of lading, an invoice, and a policy of insurance representing

1——J. N. 99740—1,049 (8/50)

a shipment of about 1,000 bundles of dates weighing 52 tons c.i.f. Colombo to be shipped per s.s. Minot Victory, and promised to honour such drafts at maturity. The defendants agreed to do so and made the following endorsement on P 3—

"This credit is confirmed by the National Bank of India, Ltd.

E. MACONOCHIE,
Manager".

Thereafter the defendants arranged with the Ottoman Bank of Basrah to honour Mehta's drafts. The Ottoman Bank honoured Mehta's draft P 5 and paid him Rs. 15,860 as against the invoice P 6, the bill of lading P 7 and a policy of insurance which was not produced at the trial. P 7 states as follows :—

"Quantity or number of pieces or packages .. 940
Description of goods. Baskets dates.
(bundles) kilos .. 47,000
Nine hundred and forty baskets only.
Freight kilos 47,000 at 1 D. 4. 125 per 1,000 kilos.
Pounds .. .. .. 193.875 ".

According to the evidence 47,000 kilos are equal to 47 tons.
P 6 states as follows :—

"No. of packages 940
Particulars. Dates each bundle to weigh about 124 kilos. Total 1,040 cwt. at Rs. 15.4.0, c.i.f. Rs. 15,860 ".

It must be noted that the invoice does not agree with the bill of lading and that there is a difference of five tons in the weights given in them. The goods are described in the plaintiff's instructions to the defendants in P 3 by reference to weight and quantity. The weight is given as 52 tons and the quantity as about 1,000 bundles. The value of the goods is also given as Rs. 15·25 per cwt. When P 3 is examined it seems to be clear that the weight of the goods was the essential thing from the plaintiff's point of view. The plaintiff complains that though he requested the defendants to honour drafts covering a shipment of 52 tons they have paid upon a bill of lading covering a shipment of 47 tons. He claims in this action from the defendants the value of the unshipped quantity of dates as damages for negligence. There can be no question that there has been negligence on the part of the agent of the defendants in honouring Mehta's draft which was not accompanied by a bill of lading showing that 52 tons of dates had been shipped. The point is covered by the decision in *London and Foreign Trading Corporation v. British and Northern European Bank.*[1] In that case the plaintiffs

[1] *(1921) Lloyd's Law Reports, 116.*

had purchased 500 tons of meal from a Singapore firm, the contract requiring the buyers to open credit in London. This they did with the defendant bank. The plaintiff's instructions authorised the defendants to pay against a bill of lading to order and endorsed in blank, insurance policy, invoice for 500 tons maize meal c.i.f. Liverpool, shipped per steamer from Singapore to Liverpool. The defendant bank paid against a bill of lading covering 5,895 bags of maize meal with no reference to weight. The accompanying invoice stated that what was forwarded was 5,895 bags at 190 lb. per bag equal to 500 tons. Although the stated number of bags was shipped they weighed only 448 tons. The plaintiffs sued the defendants for breach of duty in paying against those documents. The defendants contended that they were entitled to rely on the statement in the invoice but this contention was rejected and judgment was given for the plaintiffs for the value of goods short delivered. Rowlatt J. said :—

"It is to be observed that the bill of lading that is required by the letter of credit says nothing about weight or quantity of goods, or what the goods were or where they were coming from or where they were going to. All it specifies is that it is to order, that it is to be endorsed in blank, and its date.

Similarly the insurance policy merely names the risks covered. It is only when you get to the invoice you get the amount specified, the commodity itself specified, the price specified and the contract of sale specified. But to my mind it is quite obvious that when you read these you must read the requirements of the bill of lading and the insurance policy as the requirements of the bill of lading and insurance policy relevant to the invoice. It cannot mean that it is to be a blank form of bill of lading and insurance policy. They must be relevant to the invoice. Therefore I think nothing turns on the omission to state when the requisites of the bill of lading are being set out the quantity there, because I think that argument would carry one so far as to land one in an absurdity.

Therefore it seems to me what the bank were authorised to do was to pay against a bill of lading which answered to the invoice, so that the buyer got the responsibility of the ship for the amount of goods which his seller was charging him for ".

The only other question is what damages the plaintiff is entitled to. On this question the case I have referred to is not helpful because the damages seem to have been agreed upon by the parties. The facts of that case show that the plaintiffs had re-sold the meal to buyers in Liverpool, the latter had made a claim against the plaintiffs in respect of the deficiency, and plaintiffs had paid that claim. The action was brought for the recovery of the amount paid by the plaintiffs to the buyers in Liverpool.

At the trial of this case counsel for the defendants suggested the following issue :—

"What is the actual weight of the full consignment of dates received by the plaintiff in respect of this particular transaction ?"

Counsel for the plaintiff successfully objected to this issue on the ground that the statement in P 7 that only 47,000 kilos were shipped was conclusive as between the plaintiff and the defendants and that the plaintiff was entitled to recover the value of the deficiency independently of the weight shipped. The identical argument was advanced at the hearing before us but no authority was cited in support of it. Chapter 66 introduced into Ceylon the Law of England in maritime matters. Under the *Bills of Lading Act 1855* [1] the bill of lading is conclusive evidence in favour of a consignee or indorsee for valuable consideration of the shipment of the goods against the master or the person signing the bill of lading. But it is not conclusive as between the signer and the shipper, nor as between the owner and the shipper, nor as between the owner and the holder for value unless the owner signs it himself or by a servant. In all these cases the statements in the bill of lading are *prima facie* evidence which the person disputing them must disprove (Scrutton on Charter-Parties and Bills of Lading, page 78). Rule 4 of the rules framed under the Carriage of Goods by Sea Ordinance (Chapter 71) which provides that an outward bill of lading is *prima facie* evidence of the receipt by the carrier of the goods as therein described in accordance with paragraphs (*a*), (*b*) and (*c*) of Rule 3 does not apply to goods shipped from Iraq nor does it apply to a homeward bill of lading. The present action is not one by or against the signer of the bill of lading or the owner of the ship. The bill of lading was given by the signer to Mehta and not to the defendants and I am unable to understand how the statement in it that 47,000 kilos were shipped can be regarded as evidence against them. So far as the defendants are concerned that statement appears to me to be hearsay. There is no evidence before us that the plaintiff received only 47 tons. Rajaratnam, a clerk employed in the Customs, said that for the purpose of ascertaining the duty payable on the dates consigned to the plaintiff he picked up four bundles at random and weighed them and found that 2 bundles weighed 2 cwt. 10 lb. and the other two 2 cwt. 11 lb. According to these test weights the weight of 960 bundles would be a little over 49 tons which is in excess of the quantity given in P 7. Seyed Mohamed, the plaintiff's clerk, said that the exact weight of the 960 bundles received by the plaintiff appears in the plaintiff's books, but those books were not produced at the trial. The plaintiff has, in our opinion, failed to prove the damages sustained by him, and we have no alternative but to award him only nominal damages which we would fix at one rupee.

We would, accordingly, substitute for the sum of Rs. 1,525 in the decree that has been entered in the case the sum of one rupee. The appellant will be entitled to the costs of appeal. The parties will bear their own costs in the District Court.

GUNASEKARA J.—I agree.

Decree varied.

[1] *18 and 19 Victoria. c iii (1855) s. 3.*