
(1919) ILR (Mad) 455 : 51 Ind. Cas. 692 : (1919) 10 LW 15

Madras High Court

Case No: None

The Municipal Council
of Cocanada

APPELLANT

Vs

The "Clan" Line
Steamers, Limited

RESPONDENT

Date of Decision: Nov. 8, 1918

Citation: (1919) ILR (Mad) 455 : 51 Ind. Cas. 692 : (1919) 10 LW 15

Hon'ble Judges: John Wallis, C.J; Napier, J

Bench: Division Bench

Judgement

John Wallis, C.J.

The question in this appeal is whether the Clan Line of Steamers, who have their registered office in Glasgow, are liable

u/s 53 of the Madras District Municipalities Act, 1884, to pay profession tax in Cocanada on the ground that they are persons exercising within

that Municipality one of the professions, trades or callings specified in the schedule, which includes persons ""carrying on business as a company

and also ""ship-owners,"" The Clan Line Steamers call at Cocanada to take in cargo for Europe and also unload there any cargo consigned to

Cocanada, of which there is very little. They are represented in various matters by Messrs. Ripley and Co, sub-agents engaged by Messrs.

Gordon Woodroffe and Co., the Clan Line's Agents at Madras. Messrs. Ripley have no authority to contract with shippers for the allotment of

cargo space under letters of engagement such as are now common. Shippers apply direct to Gordon Woodroffe and Co, if they apply to Messrs.

Ripley and Co., the latter forward the application to be dealt with by Gordon Woodroffe and Co., or take their instructions by telegraph if the time

is short. They issue shipping orders to shippers who have secured space, sign the bills of lading for cargo shipped, and receive the freight where it is

payable in advance, as it is in all cases where the goods are consigned to London for transshipment to America. They also settle the bills of the

Dubash who is employed by Gordon Woodroffe and Co. to supply the ships with necessities, and pay the Doctor who is similarly employed. They

apparently collect any freight that may be payable on the small quantity of cargo landed.

2. Having regard to these facts, it may be said that in one sense the Clan Line carry on business at Cocanada through Messrs. Ripley, but what we

have to see is whether it is such an exercise of their trade or carrying on business within the Municipality as to bring the case within the language of

the Statute, which is indistinguishable from that of similar taxing Acts both in England and the colonies. Those cases have been reviewed by the

learned Judge and have again been considered by us, but it is unnecessary to go behind the decision of the House of Lords in *Grainger v. Gough*

(1896) A.C. 325 and the more recent decision of the Privy Council in *Lovell & Christmas v. Commissioner of Taxes* (1908) A.C. 46. In *Grainger*

v. Gough (1896) A.C. 325 the fact that Louis Roederer, who carried on business at Rheims in France, employed an agent and a large number of

sub agents in England to canvass for orders for his champagne, which were sent to Rheims for acceptance, was held not to make him a person

exercising a trade within the United Kingdom, even when coupled with the further facts that the agents in England sometimes received the price of

the goods sold for transmission to their principal, and that the principal's name appeared in the London Directory as carrying on business at 21,

Mincing Lane, London. Lord Herschell, L.C, pointed out that in previous cases of this nature where liability was established, the contracts of sale

had been habitually made in the United Kingdom and observed that there was a broad distinction between trading with a country and carrying on a

trade within the country, and that it was impossible to say that merchants and manufacturers who export their goods to all parts of the world

exercise or carry on their trade in every country in which their goods find purchasers. A wine merchant, be said, exercised his trade by making or

buying a wine and selling it again with a view to profit, and it all he did was to solicit orders in England, he could not be said to exercise his trade

there.

3. Lord Watson reviewed the earlier decisions and observed there may, in my opinion, be transactions by or on behalf of a foreign merchant in this

country so intimately connected with his business abroad, that without them it could not be successfully carried on, which are nevertheless

insufficient to constitute an exercise of his trade here within the meaning of Schedule D." He referred in this connection, as did Lord Davey, to Sully

v. Attorney-General (1860) 5 H. & N. 711 ; 2 L.T. 439 where it was held that the purchase of goods in England by a branch of an American firm

established there of goods which it is intended to resell at a profit in New York, "does not, of itself, constitute an exercise of the trade in the United

Kingdom, when that department of the business from which profits or gains are directly realised is carried on in another country." These two cases

were followed and applied by the Judicial Committee in Lovell & Christmas v. Commissioner of Taxes (1908) A.C. 46. In that case the question

was whether any of the profits of the appellant's business, which consisted of the sale of provisions on commission in London, were "derived from

New Zealand" within the meaning of the New Zealand Statute, because the appellants had agents in New Zealand, who contracted with shippers

there that they should consign their goods to the appellants in London for sale on commission in consideration of advances made to them against

the bills of lading. The New Zealand Court held the appellants liable on the ground that these contracts from which profits resulted were made in

New Zealand but the Judicial Committee reversed the decision. Their Lordships, after referring to Grainger V. Gough (1896) A.C. 325 and

distinguishing *Erichsen v. Last* (1882) 8 Q.B.D. 414 and citing *Sully v. Attorney-General* (1860) 5 H. & N. 711; 2 L.T. 439 with approval,

observed that the decisions did not furnish authority for going further back, for the purpose of taxation, than the business from which profits are

directly derived, and the contracts which form the essence of that business. In the case before them they were of opinion that the business which

yielded profit was the business of selling goods on commission in London and that the earlier arrangements entered into in New Zealand, were

merely transactions, the object and effect of which was to bring goods from New Zealand within the net of the business which was to yield a profit.

4. Looking at the facts of the present case in the light of these decisions, I think there is no ground for holding that the Clan Line exercise a trade at

Cocanada. It is a shipping company which earns profits by the carriage of goods by sea, and in the course of its business trades, in Lord

Herschell's language, with, but not necessarily within, port towns in various parts of the world. It has not been contended before us that a

shipowner exercises his trade at all the ports at which his steamers habitually call to discharge or load cargo, which latter operation may involve

entering there and then into contracts with shippers. In the absence of other arrangements, the shipowner is represented by the ship's master in all

the business incidental to loading and unloading, and it is open to question whether the fact that this business is done by a resident agent himself

carrying a business there and not by the master, makes any difference. It is unnecessary to pursue this question, because it is, I think, clear upon

the authorities that where, as in the present case, the freight earning contracts with shippers which enable profits to be earned by sea carriage are

not entered into at the port in question by the shipmaster or the local agent of the shipowner, but elsewhere, the shipowner cannot be held to

exercise his trade at the port merely because he employs a shipping agent there to attend to other matters, such as issuing shipping orders and

signing bills of lading pursuant to contracts already made, and receiving payment of advance freight.

5. It was, however, argued that such contracts were made in Cocanada in some instance because Messrs. Ripley and Co. delivered to shippers

their letters of engagement sent by Gordon Woodroffe and Co. from Madras. I agree with Coutts Trotter, J., that this is not shown to have

happened, and that even if it did happen in a few instances, what we have to see is where, in substance, the business of making contracts was

carried on and controlled, and that this was not at Cocanada. The appeal fails and must be dismissed with costs.

Napier, J.

6. I entirely agree with the judgment just delivered by the learned Chief Justice, but as the case is one of great importance I would like to add a few

words with regard to the contentions of the appellant. We were asked to examine a certain number of old cases, in which the carrying on of

business had been found, to ascertain what facts were there proved and if we found some of those facts to exist in this case, to hold that carrying

on business is established. I agree with the learned Judge that it is not open to us to do so in a case of this class. It may be that some of the learned

Judges in *Tischler v. Apthorpe* (1885) 62 L.T.314; *Pommery v. Apthorpe* (1886) 56 L.J.Q.B. 155; *Erichsen v. Last* (1882) 8 Q.B.D. 414; 30

W.R. 30 and *Werle v. Colquhoun* (1888) 20 Q.B.D. 753 ; 57 L.J.Q.B. 323 have used the language indicating their application of tests other than

those applied in *Grainger v. Gough* (1896) A.C. 325 ; 74 L.T. 436. But the House of Lords in this last case have distinctly ignored those tests and

treated those cases as decisions turning on the question, where was the contract made. In two of those cases Brett, L.J., has used this as the test,

and, as pointed out by the learned Chief Justice, both Lord Herschell and Lord Watson in the House of Lords case accept this test and the Privy

Council in *Lovell & Christmas v. Commissioner of Taxes* (1908) A.C. 46 have followed this case. Whatever, therefore, may have been the view

of Jessel, M.R., or Fry, L.J., in two of those earlier cases, we must accept this proposition as established by the House of Lords and the Privy

Council that in this class of cases, if the contract out of which the profit arises is not made in the place where the tax is sought to be imposed, the

liability does not arise. I do not mean that if any contract is shown to have been made in the course of a business from which profits are eventually

earned, that is sufficient to impose the liability, for the decisions in *Sully v. Attorney-General* (1860) 5 H. & N. 711 ; 6 Jur. 1018 ; 120 R.R. 793

by the Exchequer Chamber and in *Lovell & Christmas v. Commissioner of Taxes* (1908) A.C. 46 ; 24 T.L.R. 32 show that this test cannot be

broadly applied. I may add that in a case of production or manufacture in the country by a person sought to be assessed, the question where the

contracts for sale of the proceeds are made may be immaterial. But in this class, after the above rulings I do not think it is open to us to consider

any other aspect and I, therefore, agree with *Coutts Trotter, J.*, that the plaintiffs are entitled to recover the amount paid.