
(1871) 12 CAL CK 0003

Calcutta High Court

Case No: None

C.E. Stewart

APPELLANT

Vs

J.S. Dods and Others

RESPONDENT

Date of Decision: Dec. 15, 1871

Judgement

Sir Richard Couch, Kt., C.J.

The defendants in this case were the holders of the bills of lading of goods which were shipped on board the "Chairman," the bills of lading expressing that freight for the said goods was to be paid in Calcutta in accordance with the terms of the charter-party. The vessel had been chartered by Mr. Compton to whom or his assigns the goods in the bills of lading were made deliverable, and the terms of the charter-party with reference to the payment of freight were that the vessel should proceed with the goods "to Calcutta or so near thereunto as she may safely get and deliver the same unto any vessel or at any wharf or pier or railway jetty where the ship can safely lay afloat, as directed by the charterers on being paid freight at and after the lump sum of ■ 1,150 for the full reach of the ship," and further on, it is said "the said freight to be paid on unloading and right delivery of the cargo as customary in net cash of the day at six months" sight bank drafts on London, less any advances that may have been made." I think that by the terms of the charter-party, the owner of the vessel had an undoubted right to insist on the freight being paid before he parted with the goods, and he was not bound to land the goods and keep them on shore, but had a right if it was more convenient for him to do so, to keep them on board his own vessel. This, however, is not very material in this case; and I think it is enough that by the terms of the charter-party he had a right to keep possession of the goods until the freight, according to the charter-party, was paid; and as the bills of lading referred to the terms of the charter-party, he would have as against the holders of the bills of lading the same right; that is he would not be bound to part with the goods without being first paid the freight.

2. Then it appears, that a portion of the cargo which had been put on board the vessel was delivered, and that the charterer had received from the persons to whom that part of

the cargo (which consisted of horses) was consigned the sum of ■ 600 for freight. But his allowing a portion of the cargo to be delivered, would not prevent the owner of the ship from insisting upon his lien on the remainder until the freight due to him had been paid. If any authority were needed for that proposition there is that of Lord Campbell in the case of *Moeller v. Young* 5 E. & B., 7, where he says.--"Although part has been delivered the master may decline to deliver the residue till the freight is paid."

3. Therefore, at the time the correspondence between the parties commenced, the state of affairs (and I think, it is material to notice this) was that the owners of the vessel had refused to part with that portion of the goods which remained undelivered, until they were satisfied as to the payment of the freight under the charter-party, and they were insisting on that right. Then a letter was written on the 14th June, by the agents of the owners and the captain, and I think that this letter was written by them on behalf of the captain acting for the owners, and not as the agents of the captain in his individual capacity or as representing the charterer. In that letter, Messrs. Findlay Muir and Co. write, addressing the agents of the charterer--"We are quite clear that both by the general bearing of the law on the subject and also by custom, the Chairman is entitled, now to be paid the chartered freight. We must, therefore, refuse to deliver any more cargo till this is done. Unless some satisfactory arrangement for the due payment of the inward freight is made today, we shall land the balance of the cargo ourselves. Kindly communicate this to Messrs. Compton and Co. They have already received about ■ 600 for the freight on the horses which was under lien to the ship on account of the chartered freight. This was paid before the vessel came into our hands." There they distinctly insist upon the right which the owners of the vessel had of refusing to deliver any more cargo until the chartered freight was paid. The reply from the defendants to that letter bearing the same date, is "We have your letter of this date, and since its receipt have again perused the charter-party handed us by the charterers. We do not want to quarrel about this matter, but if you will look again at the charter-party you will find that the ship is in the hands of the charterer"s agents until the discharge is completed. You have therefore no locus standi in the matter, and we would therefore warn you against delaying the vessel"s discharge. If you still think you have a right to interfere, we have no objection to the matter being referred to some independent arbitrator."

4. On the same day, Messrs. Findlay Muir and Co. write dissenting, as they well might, from the position of the parties being as put forward in that letter. "We have been favored with your letter of today just received. Our locus standi is that of agents for the owners and captain of the "Chairman" whose interests in the matter we are bound to protect. We must therefore adhere to the resolution expressed in our letter of this morning." There, as I have already remarked, they say they are agents of the owners; and though they add "and captain," I think that they meant the captain as agent of the owners and representing them. They then go on and give an extract from a book on Shipping, and add: "We have no wish to give any unnecessary annoyances in this matter, and shall feel much indebted if you will partner give us your own guarantee for payment of the freight on delivery or

advise Messrs. Compton and Co. to pay the amount at once. We shall of course be responsible for any short delivery or rightful claim the charterer may have on the vessel." Now this letter must I think be looked at with reference to their previous letter in which they had indicated to Ker, Dods that they were insisting on the right of the owners to be paid their freight; and when they say: "We shall of course be responsible for any short delivery or rightful claim, the charterer may have on the vessel," the clear meaning is this; if you will undertake to pay us the freight due to the owners of the vessel, we will on our part undertake to pay you what the owner might be responsible to pay to the charterer. I do not understand that they intended to contract, or to be understood as contracting, to be responsible for anything which the master in another capacity might be responsible for, either as representing the charterer, or personally, for (as it turned out) improperly signing the bills of lading. Then there is a postscript "we feel that as agents of the ship" (showing the character in which they were acting) "we should fail in our duty by referring this matter, and the fact of the inward consignment being to Messrs. Compton does not preclude us as the owner's agents from interfering on their behalf." I am obliged to Mr. Justice Macpherson for referring to that; because that makes it still clearer that they were acting as agents for the owner, and that the proposal which was made by them was made as such and not as agents for the captain as representing the charterer.

5. The reply to that is "We have your letter of date. We thank you for the extract from Lees on Shipping, but as we happen to have that work by us, it did not afford us any further enlightenment on the subject of the chartered freight per Charmian."

6. "As, however, it will be necessary for us, for the protection of our own interests, to get delivery of the cargo, and as we do not care about further trouble in the matter, we agree to guarantee payment of the balance of freight due on the charter-party less any claims for short delivery, &c."

7. Now this being a reply to the other letter, we must refer to that to see what was meant by the words "less claims for short delivery, &c." To my mind it is clear they were alluding to the passage in the letter of Findlay, Muir and Co. to which they were replying "short delivery or rightful claim the charterer may have on the vessel."

8. It appears to me that the learned Judge in putting the construction he has on the guarantee has come to a right conclusion. The fair construction is this, that it was to be a guarantee for the payment of the balance of the freight due under the charter-party, less any claims which the charterers might have against the owners, and that it does not extend to a claim like the present, arising out of the master signing bills of lading for more goods than were put on board the vessel.

9. With regard to the 11 logs, I think, that the decree cannot be interfered with on that ground. It has not been put forward as a distinct ground of appeal that there ought to be any alteration in the decree in consequence of the non-delivery of the 11 logs. If there has been a substantial delivery of the timber, it would be an extraordinary state of things that

if from any accident it should turn out that 10 or 11 logs only have not been delivered, the guarantee could not be enforced. That, as observed by the learned Judge, is so small a matter, that it ought not to be taken notice of. The decree must be confirmed with costs.