(1909) 01 CAL CK 0038

Calcutta High Court

Case No: None

South British Fire and Marine Insurance Co., of New Zealand		APPELLANT
	Vs	
Brojanath Shaha		RESPONDENT

Date of Decision: Jan. 15, 1909

Judgement

Francis Maclean, C.J.
This is an appeal by the defendants from a judgment of Chitty, J.

2. The suit was brought by the plaintiff against the defendants to recover the sum of Rs. 11, 630 undera policy of assurance issued by the defendants in favour of the plaintiff, on a cargo of jute said by the plaintiff to have been shipped at Ghiur on the 14th Septembar 1906, and which the plaintiff alleges by his plaint was subsequently destroyed by fire on the night of 14th October 1906.

3. The policy in question which is dated the 11th October 1906 provides that, subject to the conditions and warranties herein specified, the defendant assured the cargo consisting of 977 drams of jute of the value of Rs. 11,630 on a voyage from Ghiur to Calcutta against the risks and the. perils of the voyage including fire risk.

4. The warranties endorsed on the face of the policy, so far as material, are as follows: "It is farther warranted (2) that the risk of loss or damage by fire is not insured hereby unless expressly so stated in writing hereon in which case such fire risk shall be subject to the following additional conditions: (a) Any loss occasioned by smoking or cooking having been carried on in the said boat shall not be recoverable hereunder.

8. That no smoking nor cooking shall be carried on in the said boat but in a dinghy provided for the purpose.

9. That in the event of loss--

(a) the manjee or charandar must report to the nearest police station within 24 hours and must state that the cargo is insured.

(b) After report has been made to the police, the manji, charandar and two of the crew of the said boat shall proceed at once to Calcutta and report themselves to the Company and shall, thereupon, make a declaration or statement regarding the said loss.

(c) The assured shall within 7 days of the happening of such loss furnish to the Company a true and faithful statement and detailed account of such loss (on form obtainable from the Company) showing where and how such loss occurred.

(f) It is, furthermore, hereby expressly provided that no suit or action of any kind against the said Company for the recovery of any claim upon, under or by virtue of this policy shall be sustainable in any Court of Law or Equity unless such suit or action shall be commenced within the term of six months next after any loss or damage shall occur and in case any such suit or action shall be commenced against the said Company after the expiration of six months next after such loss or damage shall have occurred, the lapse of time shall be taken and deemed as conclusive evidence against the validity of the claim thereby so attempted to be enforced.

5. The defendants by their written statement first deny that the plaintiff shipped the jute in question; secondly, that the boat referred to in the policy was destroyed by fire; thirdly, they charge that the plaintiff with intent to defraud the defendants purchased an old and rotten cargo boat for Rs. 60 near Goalundo, and, thereafter, placed the same in the charge of manji Mohim Chandra Dass and loaded the same with earth and a small quantity of damaged jute that had been salved from a country boat which sank near Faridpore and a small quantity of other jute and caused the said boat and its cargo to beset fire and sunk at Khager Chur on or about the 14th October 1906 fourthly, the defendants did not admit that the conditions of the policy were complied with and in particular they do not admit--(a) that there was a charandar on board and in charge; that a report was made to the nearest police station within twenty-four hours stating that the cargo was insured, (c) that the manji, charandar or any of the crew proceeded to Calcutta, (d) that no detailed account was furnished within seven days, (e) that the boat was a good cargo boat.

6. This suit, which was instituted by the plaintiff on the 15th April 1907, came on for hearing before Chitty J., and on the 26th August 1907, the learned Judge gave judgment for the plaintiff for the amount claimed. Against'' this decision, the defendants have appealed.

7. Now, the story as told by the plaintiff and his witnesses is as follows : The plaintiff is a trader in jute and other commodities at a place called Ghiur.

8. The plaintiff alleges that the cargo of jute covered by the policy was placed on board the boat of one Mohim Chandar Dass between the 31st August and 14th

September 1906, a portion of the jute being placed on board in the canal at Ghiur on which the plaintiff''s premises abut, the boat then owing to the shall owness of the water in the canal was taken out into the river where the remainder of the jute was placed on board. This boat, according to the evidence on behalf of the plaintiff, had been purchased by Mohim from one Gropes war a few days prior to the date on which the jute was begun to be loaded.

9. On the 15th September the challan having been given to the manji the boat started and on same day reached Raipore, where for a period of seven or eight days the boat was held up by stress of weather. The crew on board consisted of the manji Mohim and four others and there was also a charandar, Hazari Duffadar.

10. The plaintiff also says that one Rameswar Chowdhry and his man accompanied the boat in their own dinghy for the purposes of making the soundings necessary for the safe navigation of the boat, and further that a dinghy was also attached to the boat for the purpose of cooking as required by the terms of the policy.

11. On the evening of the 14th October the boat arrived at Khager Chur.

12. At some time between the late hours of the night of the 14th October and two o''clock in the morning of the 15th October Mohim the manji, awoke and found the boat on fire. He immediately aroused the rest of the crew, but despite all their efforts the fire took hold of the jute, and they were forced to abandon their efforts and escape to the shore in the dinghy. The fire on the boat continued and eventually the boat sank. The manji and orew spent the rest of the night or rather the early morning on the banks of the river bemoaning'' their fate.

13. On the morning of the 15th October the manji and two or three of his men proceeded to look for the sunken vessel, the only trace, however, that they could find of it was a blade of the rudder.

14. The manji and crew spent the night of the 15th at the house of one Ishan Ali, a Chowkidar, and on the morning of the 16th at 8 a.m. they made a report at the thana at Badartuni. This report and the time of making it are of some importance, and we shall refer to this report more in detail at a later stage of our judgment.

15. On the same morning the manji telegraphed to the plaintiff at Calcutta, informing him that the boat had been " fired," the word fixed" as sent in the telegraphic despatch is an obvious error for fired."

16. The plaintiff informed the defendants of the loss on the 17th. At first the defendants thought that having regard to the terms of the telegram that the boat had got aground. On the 20th October, however, the plaintiff received a letter from Mohim. informing him that the boat had been burnt, and this he communicated to the defendants who on 22nd October wrote to the plaintiff asking him to send the manji to Messrs. Landale and Clarke at Chandpurand the crew to Calcutta. This is a brief outline of the case made, or attempted to be made, by the plaintiff and his

witnesses.

17. Turning then to the case set up by the defendants. In the first place it is to be noticed that the defendants in this case have raised a substantive case of an attempt by the plaintiff to defraud them.

18. Their case is that the plaintiff had on the 25th August shipped 425 drums of jute-on board belonging to one Sharabut Ali, and that this boat on the 29th August sank near Faridpore. The jute of the plaintiff on board Sharabut''s boat was uninsured. The defendants allege that the plaintiff owing to this loss was not in a good financial condition, and with a view to repair his losses he purchased for Its. 84 an old and rotten boat. Then having effected the policy and having loaded this boat with some of the jute that was salved from Sharabut''s boat and earth, together with a small quantity of jute in good condition, this old and rotten boat, with its composite cargo along with two tins of kerosine oil which had been placed on board, was set fire to with intent to defraud the defendants by pretending that this old loaded boat as alleged was the boat and cargo mentioned in the policy.

19. Having gone through the whole of the evidence we think that there are elements of considerable suspicion connected with the plaintiff''s case. The learned Judge, however, who tried the case and had the advantage of seeing and hearing the witnesses, has accepted the evidence of the plaintiff and his witnesses and has disbelieved the defendants'' witnesses.

20. In these circumstances we do not think there is sufficient to justify us in differing from the findings of fact of the learned Judge as to the sailing of the boat with the jute on board and its subsequent destruction by fire.

21. The case does not end there, however, as we have to consider whether there have been any breaches of the warranties appearing on the face of the policy. With regard to these points we cannot think that these matters were dealt in a wholly satisfactory manner at the trial. The points appear to have been dealt with only incidentally during the course of the trial and do not appear to have been very directly argued. Consequently most of the points arising on the warranties have not been dealt with by the learned Judge in the course of his judgment.

22. Now, the term " warranty " as used in Policies of Marine Insurance is used to denote two different kinds of conditions--first, it is used to denote a condition to be performed by the assured, and secondly, it is used to denote an exception from or limitation on the general words of the policy.

23. In the first case the warranties are conditions precedent to the policy--some of such-conditions being precedent to the effectual making of the policy, others presuppofie the contract made but are precedent to the accrual of a right to sue thereon, others declare the events in which all right under the contract is forfeited, others deal '' with the mode of settling dispute, and ''others limit the period for

bringing a claim. But in all cases whether the conditions be materials to the risk or not, they must, unless waived, be fulfilled with the most scrupulous exactness, and if they be not so fulfilled there is a breach of an express stipulation which is one of the essential terms of the contract and the insurer is discharged from liability as from the date of the breach of warranty see Pawson v. Watson (1778) 2 Cowp. 785 and see Arnould on Marine Insurance 7th edition page 617.

24. Performance of a warranty in a Marine Policy is not a stipulation for the breach of which an action lies, but a condition precedent to the liability of the underwriter. (Arnould, 7th Edition, 1901, page.731).

25. Coming then to the warranties on the face of the policy in suit, the first warranty it is material for us to notice is that contained in. condition 2 (a), namely, that loss occasioned by cooking or smoking is excepted from the risk covered by the policy. It is impossible, however, to deal with this clause of exception independently of condition 8, which provides that no smoking or cooking shall be carried on in the said boat.

26. Now, the learned Judge has not by his judgment found what was the cause of the fire that destroyed the boat or whether or not smoking or cooking took place on board.

27. It has been urged before us on behalf of the plaintiff that the onus of proving that the cargo was destroyed by a fire cm used by cooking or smoking lies on the insurers. This would appear to be so : Boyd v. Dubais (1811) 3 Camp 132 but this does not dispose of condition 8 which, provides that no smoking or cooking shall be carried on in the said boat. Condition 8 is a condition precedent to the liability of the insurers under the policy; and if smoking or cooking was carried on in the said boat it matters not whether the smoking or cooking caused the fire or not. It would appear that the plaintiff must prove that he has complied with all warranties as being conditions percent to the policy attaching (Arnold, 7th Edition, 19.01, page 1452) or that the performance, thereof, has been effectually waived.

28. As we have already said the learned Judge has mad no findings at all with regard, to the cause of the fire or whether or not smoking or cooking took place on board. \\ When we come to examine the oral evidence given a.(, the trial, we find there is a conflict of testimony on this point-There is, however, an important piece of documentary: evidence on this point which we must consider. In the report made by Mohim, the manji, and the crew at the thana on the 16th October, and when the facts, must have been fresh in their memory within two days of the loss we find that they stated that '' at about midnight (i.e., on the 14th October) somehow or other the fire of the earthen pot having caught the jute in the boat burnt all the jute in the boat."

29. Now, it seems to us from the wording of this report that there was fire in an earthen pot on board which set fire to the jute. This fire would be presumably used

for the purpose of smoking or cooking. It is said, however, on behalf of the plaintiff that as onus of proving a loss occasioned by cooking or smoking under condition 2 (a) of the policy is on the defendants this statement falls short of proving that the fire was occasioned by cooking or smoking. Even if that be so, the onus of proving compliance with, condition 8, is on the plaintiff, and it matters not for the purpose of condition 8 whether or not the smoking or cooking caused the fire. In our opinion, having regard to the evidence adduced on behalf of the plaintiff that the loss was caused by the fire in an earthen pot on board which could be presumably only used for. the purpose of cooking or smoking, we hold that the plaintiff has not shown that the provisions of condition 8 have been complied with.

30. We next come to condition 9 (a) which provides that in the event of loss the manji or Charandar must report to the nearest police station within 24 hours and must state that the cargo is insured. Now it is not suggested on behalf of the plaintiff that this condition was complied with. The evidence on behalf of the plaintiff is that the fire occurred either in the late hours of the night of October 14th or before two o''clock in the morning of October 15th. Some witnesses say the former, some the latter, and that the report was not made to the police station until 8 a.m. on. October 16 th, and such report did not state that the cargo was insured. It is said on behalf of the plaintiff, and this view was accepted by the learned Judge, that as there might be no police station within 24 hours'' distance, or the manji or charandar or both of them might be drowned, the condition is one which might be impossible of fulfilment and, therefore, may be neglected. With the greatest respect to the learned Judge we are unable to agree in this view. The condition is one of the essential conditions on the footing of which the defendants contracted with the plaintiff; by inserting it, the parties must be taken to have considered it of importance, and it is only on the fulfilment of this and other conditions that the liability of the defendants attaches. The fact that the condition may be impossible of fulfilment cannot affect this liability; if it were intended to do so qualifying words should have boon introduced into the contract. On this point we may refer to the case of Worsley v. Wood (1796) 6 T.R. 710 in which case, it was stipulated that the person assured should procure a certificate from the minister, churchwardens and some respectable house-holders of the parish not concerned in the loss importing that they were acquainted with the character and circumstances of the person insured, and knew or believed that he by misfortune and without any kind of fraud or evil practice had sustained by such fire the loss and damage therein mentioned." It was held that the procuring of such certificate was a condition precedent to the right of the assured to recover, and that it was immaterial that the minister, churchwardens, etc., wrongfally refused to sign the certificate. We may also refer to the case of Law v. George Newnes 31 Sc. L.R. 888.

31. The next conditions we come to are conditions 9 (5) and (c). It is not suggested that these two conditions were performed. The plaintiff, however, says the performance of these two conditions was waived by the defendants.

32. On the 22nd October 1906, Messrs. Finlay Muir and Company, the agents for the defendants, wrote to the plaintiff: "Please send the manji to Messrs. Landale and Clarke''s Office at Chandpur, so that the full particulars of the accident may be furnished to them; please also arrange to bring down the crew." The manji '' did proceed to Chandpur to Messrs. Landale and Clarke and was examined by them; the crew, however, did not come to Calcutta. The learned Judge on these facts has found that the defendants waived the performance of conditions 9 (c) and (d). So far as there was any waiver it seems to us that there was only a waiver as to the manji coming down to Calcutta--the letter distinctly asks that the crew be brought down. In the view that we take on other points in the case, it becomes unnecessary for us to enter further into this point.

33. The last condition that we need refer to is condition 9 (f) which limits the right of suit on the policy to a tern: of six months next after the loss. This condition is of the utmost importance for if the argument on behalf of the defendants is well founded this suit was instituted after the period within which the parties expressly contracted that a suit must be brought. Now the fire on the boat occurred late on the night of the 14th October or the early morning of October 15th, 1906. This suit was not instituted until the 15th April 1907. It is, therefore,'' a matter of all importance to determine whether or not the word month '' as used in the condition means lunar month or calendar month. Now it is abundantly clear on the authorities in England that the word month '' in all contracts except there is some evidence to show that calendar month" is meant, means lunar month except in mercantile transactions in the City of London where month '' means calendar month." In support of this we need not do more than refer to the decision in Simpson v. Margetson (1847) 17 L.J.Q. B. 81; Turner v. Barlow (1863) 3 F F. 96 and Bruner v. Moore (1901) 1 Ch. 305: 73 L.J. Ch. 377 : 89 L.T. 738 : 53 W.R. 295 : 20 T.L.R. 125. The ordinary meaning of the word month in the English, language is a lunar month and not the artificial month in the Gregorian calendar. This is sufficiently shown by the fact that until the year 1850 the word month '' in an Act of Parliament meant lunar month," since which date, however, by virtue of a statutory enactment the word month '' is used in Acts of Parliament means a calendar month. But -the rule as to month '' meaning a lunptr month" in contracts still remains the law in England.

34. The learned Counsel, however, for the plaintiff has argued before us that the rule is different in India having regard to certain statutory enactments of the Indian Legislature. The statutory enactments relied on are the General Clauses Act and Section 25 of the Indian Limitation Act.

35. The definition, of the word month," however, in the General Clauses Act is only for the purpose of Acts passed by the Indian Legislature. Then coming to Section 25 of the Limitation Act, all that section provides is that for the purpose of that Act time shall be computed according to the Gregorian calendar. The object of the section is obvious; hero in India there are in use several calendars, the Gregorian and the

Bengali, Sumbut, and so forth--each, of which divides the year artificially in a different manner, and for the purpose of the Limitation Act Section 25 provides that the Gregorian calendar is to be used. This section, therefore, appears to us to have no bearing on the question what is the moaning of the word '' month " in a contract drawn in the English language. In various statutes in India, a month is defined as a calendar month; this would have been unnecessary if that were its ordinary meaning. As we have pointed out above it is clear in England that the word "month" in a contract means " lunar month," and we see no reason why the interpretation of an ordinary word in a contractract in English should bear a different signification in India to that in England. But, even, if month in the policy moan calendar month, the plaintiff is apparently out of lime. According to some of his witnesses the lire occurred before midnight of the 14th October. In his plaint he says the fire occurred on the 14th, the suit was not instituted until the 15th April, one day after the expiration of the six months.

36. We think, therefore, that for the reasons given above this suit is not maintainable by the plaintiff and that the judgment of the learned Judge was wrong and ought to be reversed. This appeal must, therefore, be allowed with costs both, here and in the (Court below.

Harington, J.

37. This is an appeal by the defendants against a judgment of this Court in its original jurisdiction in favour of the plaintiff in an action on a policy of insurance on a cargo of jute.

38. The plaintiff alleges that the jute in question was loaded in a country boat bound from Ghim to Calcutta : when near Khager Chur the jute caught fire and the boat and cargo became a total loss.

39. When sued on the policy the defendants denied that the cargo was shipped, or that the boat was despatched from Ghiur. They denied that the boat referred to in the policy was destroyed by fire and alleged that the plaintiff had purchased an old boat of small value; loaded it with some damaged jute; and maliciously set it on fire so as to defraud the defendant Company. They further did not admit that the conditions of the policy had been complied with, and in particular, charged certain specific breaches of specific conditions.

40. The learned Judge who heard the case came to the conclusion that the story told by the plaintiff was substantially correct, and that the story of the defendants as to the purchase of the old boat and as to the fraud perpetrated was entirely unworthy of belief.

41. We have heard the evidence dealt with, and I must confess that the plaintiff''s case seems to me to be Oren to very grave suspicion. It is, however, needless to deal with the evidence, because though on paper there are many grounds for doubting

its reliability. I do not feel sufficiently convinced of its falsity to justify me in differing on the facts from the learned Judge who bath saw and heard the witnesses.

42. But the substantial grounds of appeal which the appellant has pressed arise on the non-compliance by the plaintiff with the conditions to be found on the face of the policy. The learned Judge in construing these conditions has held that a distinction must be drawn between the clauses which provide that on a breach of the condition the assured shall forfeit his rights under the policy, and the clauses which contain no such condition, and that as some of the latter might become impossible of fulfilment, a compliance with them must not be taken as a condition precedent to the assured''s right to recover. Further as to Clause 9(b) he has held that there has been a waiver by the defendants.

43. The appellant argues that the plaintiff was bound to prove that he had complied with the warranties appearing on the face of the policy, and that not having done so his claim must fail. Further, that on the evidence adduced it has been proved that he did not comply with certain of these warranties, and in particular that on the face of the plaint it was shown that the action was brought too late.

44. He also contends that it lay on the plaintiff to prove that the loss was not due to a fire caused by cooking or smoking from which risk the policy warranted free.

45. I do not agree with the last argument. The policy of insurance is a contract to indemnify the plaintiff against loss--inter alia against loss by fire--the plaintiff having proved the policy, his interest and the loss is entitled to be indemnified : if the defendant while admitting the loss desires to show that the fire which caused the loss was due to a particular risk which had been excepted from the risks he had undertaken to bear--then I. think he was bound to aver that in his pleadings, and to prove it at the hearing. But this ho has not done; there is no plea that the loss was due to cooking or smoking having been carried on in the boat, and, therefore, was not recoverable under Clause 2(a) of the warranties appearing on the policy. There has been a suggestion in the course of the argument that the manji''s report to the police, in which he states that the fire in an earthen pot communicated with the jute, establishes the fact that the fire was caused by smoking'' or cooking; but, in my opinion, the evidence does not go to that length. The witness should have been cross-examined on this point. The appellant''s contention, therefore, that he is relieved from liability by Clause 2(a), must fail.

46. Next with regard to the warranties appearing on the face of the contract, those in Clause 2 are exceptions from the risk which the defendants were willing to undertake--the others are conditions and, in my opinion, are conditions precedent to the assured''s right to recover under the policy.

47. First, as a general rule conditions appearing on the face of the policy are conditions precedent, and secondly, some of the conditions at any rate directly affect the risk to be undertaken by the insurers. For instance, Clause 5 provides for

the appointment of a charandar to take care of the cargo, Clause 6 the provision of money to enable assistance to be got in case of accident, Clause 8 provides that no smoking or cooking'' shall be carried on in. the boat If these conditions are not complied with the risk of loss is substantially increased. It was argued that Clause 8 was unnecessary as long as the policy contained the exception in Clause 2(a), but I do not agree with the contention. The presence of fire for cooking or smoking would materially increase the risk of loss by fire; if the defendant could prove that the fire was caused by smoking or cooking, he would, of course, be absolved from liability under Clause 2(a). but it would remain that the fire risk was increased while the defendants could not escape liability without proving that the fire was caused by smoking or cooking, and that might be extremely difficult for them to do. There is authority for the proposition that any statement of fact or any promise material to the risk undertaken by the insurers is a condition precedent which must be strictly complied with; and where the performance of the conditions is traversed by the defendant, such performance must be proved by the plaintiff unless he relies on a waiver by the insurers of their right to insist on the fulfilment of the conditions; Thomson v. Weems (1884) L.R. 9 App. Cas 684; Barnard v. Faber (1893) 1 Q.B. 340 .
48. I think, therefore, that the plaintiff was bound to prove a compliance with the warranties appealing on the face of the contract as a condition precedent to his right to recover.

49. He has not proved that he did comply with the conditions. On the contrary it has been proved that no report was made at the nearest police station within 24 hours as provided by Clause 9(a) of the conditions nor when the report was made, was there any statement that the cargo was insured. Lastly the appellant contends that the action was not brought within six months after the loss--the plaintiffs, therefore, are debarred from recovering under Clause 9(6) of the policy.

50. On the face of the pleadings the plaintiff is clearly barred for his plaint is dated April. 15th, and in it he alleges the loss occurred on October 14th and that his cause of action accrued on that day.

51. If that statement be true then his time for bringing the action must expire on April 14th, and indeed the plaintiff only becomes entitled to that delay if month be construed as calendar month," and if notwithstanding the very express words of the policy " that the action shall be commenced within the term of six months next after any loss or damage shall occur, and if any such suit or action shall be commenced after the expiration of six months next after such loss or damage shall have occurred, the lapse of time shall be taken as conclusive evidence against the validity of the claim," the English rule of construction be adopted, and the day of the occurrence excluded from the period : Radciffe v. Bartholomew (1892) 1 Q.B. 161.

52. But the appellant contends that even adopting the English rule of construction and excluding the day of the occurrence the plaintiff is out of time because "month "

means " lunar" and not an English calendar month.

53. In England there is a dictum at nisi prius in the case of Hart v. Middelton (1845)2 C. 9 to the effect that in mercantile transactions " month " means calendar, and not lunar month, but that dictum is directly at variance with the case Bruner v. Moore (1901) 1 Ch. 305 : 73 L.J. Ch. 377 : 89 L.T. 738 : 53 W.R. 295 : 20 T.L.R. 125 which lays down that month means lunar month, though the presumption that month means lunar month can be displaced by evidence to show that in any particular instance it was intended by the parties to moan calendar month or that there was a custom or statute under which month meant in the particular case calendar month. That the latter case, which is a carefully considered judgment and not the dictum in Hart v. Middleton (1845)2 C. K. 9 expresses what is really the law is shown by legislation for in the Sale of Goods Act 56 and 57 Viet. c. 71, Section 10 (2), it is enacted that in a contract of sale month" means prima facie "calendar month." This provision would have been quite unnecessary had the dictum in Hart v. Middleton (1845) 2 C. 9 been a correct statement of the law.

54. Is the law as laid down in Bruner v. Moore (1901) 1 Ch. 305 : 73 L.J. Ch. 377 : 89 L.T. 738 : 53 W.R. 295 : 20 T.L.R. 125 applicable here? To begin with a reason exists for interpreting month " in this country to mean lunar month which does not exist in England. Here a month, if. a lunar month, would express the same period of time to all the peoples who dwell in India, while if construed as a calendar mouth it would not, but would vary with the different calendars used, i.e., whether English, Bengali, Sumbut, etc. If, therefore, '"' month " were construed calendar month, then another question would have to be determined, and that would be what calendar the month was to be measured by, and in all cases where the contracting parties were accustomed to use different calendars, as for example in a contract between an Englishman and a Bengali, it would be necessary to prove by evidence which calendar the parties intended their months to be measured by.

55. But I think the course'' of legislation shows that the word " month " in India as in England means prima facie lunar month. In the Penal Code it is enacted that where the word month is used, it is to be understood that the month is to be reckoned according to the British calendar, and a similar provision is to be found in the Succession Act and General Clauses Act. I can find nothing in the Contract Act defining the meaning of " month " in a contract. Inasmuch as in the Acts to which I have referred "month " has prima facie statutory meaning, I infer that it would not have had that meaning but for the statutes.

56. As there is no Act giving this statutory meaning to the word month in a contract to indemnify, I take it that in such a contract month bears the same meaning, that it-would prima facie bear under English Law and would mean a lunar month.

57. For this reason, whether, the loss occurred on the 14th October as alleged in the pleadings and in the report made to the police or at 2 a.m. on the 15th as stated by

some of the witnesses, I think that the plaintiff''s suit is barred by Clause 9(f) of the conditions appearing on the face of the policy. It has been argued that the defendants were bound to have averred the breach of this condition in their written statement, I do not think so because it was apparent on the face of the plaint for the plaintiff embodied in his plaint the policy and dated his plaint so as to show that it was filed more than six months after the date of the loss.

58. In my opinion, therefore, the plaintiff''s suit must fail because it has been shown that he did not comply with Clause 9(a) and it has not been shown that he did comply with Clauses 6 and 8 of the conditions on which the defendants were willing to indemnify him against loss, and secondly on the ground that his action is not brought within the time limited by Clause 9(f) of the conditions on the policy, I agree, therefore, that the appeal must be allowed.

Fletcher, J.

59. The judgment delivered by the learned Chief Justice represents my judgment in the matter, and I, therefore, agree.