
(1879) 05 CAL CK 0017

Calcutta High Court

Case No: None

Soopromonian Setty

APPELLANT

Vs

Heilgers

RESPONDENT

Date of Decision: May 16, 1879

Acts Referred:

- Contract Act, 1872 - Section 230

Citation: (1880) ILR (Cal) 71

Hon'ble Judges: Wilson, J

Bench: Single Bench

Judgement

Wilson, J.

I think the defendants are entitled to judgment in this case, and on several grounds. The first ground of defence taken by Mr. Phillips is that the defendants are not themselves liable as parties to the contract, but that if any one is liable, it is their principals. I think he is right. The liability depends on Section 230 of the Indian Contract Act. The first part of that section says: "In the absence of any contract to that effect an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them."

2. The present contract is one in terms made by Messrs. Heilgers and Company as agents for and on behalf of the owners of the steamship Lumley Castle. It is signed "P.W. Heilgers and Company, Agents for owners of Steamship Lumley Castle."

3. It follows (if the case be governed by this first part of the section) that they are not bound unless the terms of the contract are such as to show that they meant to bind themselves personally. I find nothing to that effect in the contract. On the contrary, I think an intention not to bind themselves is plainly shown. There are only two clauses in the contract which can be thought to point the other way. It is said: "The said agents covenant and agree with the charterers in the manner following." I think that means that they covenant as agents for and on behalf of their principals. The

other clause is the later one, which says, that the master shall be responsible in certain instances, and again, that the owners or agents shall be responsible for the consequences of certain kinds of negligence.

4. I think the meaning is, that the owners contract that the master shall do certain things, and the owners contract that they or their agents shall make good certain losses. But it is necessary also to look at the second part of the section. It says: "Such a contract (that is, a contract by the agent personally) shall be presumed to exist," where any of the three specified conditions exist. I think that means that such a contract shall be presumed to exist unless the contrary appears.

5. That seems to me the natural meaning of the words. And further it is legitimate here to refer to the Indian Evidence Act, an Act passed in the same year as the Contract Act, and an Act having specially to do with presumptions. Section 4 says: "Whenever it is directed by this Act that the Court shall presume a fact, it shall regard such fact as proved unless and until it is disproved."

6. We may, I think, properly apply the same construction to the section of the Contract Act, and presume the agent to be personally liable, unless in any of the specified cases an intention to the contrary is shown. Now, one of the specified cases is, where "the agent does not disclose the name of his principal."

7. Two meanings have been proposed for those words. Mr. Hill says, they mean (in the case of a written contract), where the name of the principal is not disclosed on the face of the contract. Mr. Phillips says, that any disclosure is sufficient. I am inclined to think Mr. Hill's view is right, though it is not necessary, for the reasons I shall state, to decide the point. But I incline to think that these words must be read subject to the provisions of Section 92 of the Evidence Act, and that if, on the face of a written contract, an agent appears to be personally liable, he could not escape liability by the evidence of any disclosure of his principal's name apart from the document.

8. Still, if this be so, if this is a contract on behalf of an undisclosed principal, so as to bring the case within the second clause of the section, I think the defendants are, nevertheless, secured against personal liability, because the prima facie presumption of an intention to contract personally is rebutted by the language of the contract itself.

9. If Mr. Phillips contention be right, and the disclosure of the principal may, to satisfy the section, be in the document or outside it, then the matter is clear. The agents did disclose the names of their principals at the time of the contract, and the case falls under the first, not the second, clause of the section. Upon any view I think the defendants are entitled to have the suit dismissed, on the ground that the contract is not personally binding upon them; they are also entitled, in my opinion, to have the suit dismissed, on the ground that the claim is not one which the plaintiff is entitled to make under the contract. The complaint is, that the defendants

refused to employ stevedores to load and unload the ship, and insisted on loading by captain and crew; and it is plain from the evidence, that this was the real controversy from first to last. The captain said, "I and my crew are entitled to load and unload. "The plaintiff said:" No, your crew is short. You are not loading with proper despatch, but you are bound to place the loading and unloading in the hands of independent stevedores, for that is the method of loading in ordinary use in Calcutta and Bombay."

10. Now, it is matter of common knowledge that two methods of loading and unloading are in use--by the crew, and by stevedores--and people may contract for either way. The charter-party is a time charter to commence on arrival at Calcutta, and to terminate at one of five named ports; but in the interim, the steamer may ply to and from any port the charterers please. They may send her on any number of voyages. They may carry what freight they like--passengers, pilgrims, and troops, who can walk on board; or cargo in bags, which is easy to load, or cargo in bulk, which is troublesome. The voyages then being unlimited in number and as to place, and as to the kind of cargo to be carried, it seems unlikely that the owners would put themselves entirely in the power of the charterers by binding themselves to load and unload any kind of cargo any number of times according to the usages of any number of unknown ports, and accordingly the matter is specially dealt with by a clause in the charter-party. The agents covenant that the steamer shall be provided "with a proper and sufficient crew of officers seamen, engineers, stokers, firemen, and other necessary persons for working cargo with all despatch."

11. They expressly contemplate the method of unloading by the crew and not by stevedores, and they go on to say, the steamship shall receive and take on board her all such persons, troops, invalids, passengers, pilgrims, horses, cattle, stores, provisions, cargo, specie, bullion, treasure, and whatever else may be ordered to be put on board, and shall carefully stow and properly dunnage and mat such cargo, &c.; and they go on to make provision, that in the performance of all such services the master and his crew, with his boats, shall be aiding and assisting to the utmost of their power. They are to provide, not stevedores, but crew for loading. The loading is to be with all despatch,--that means, I think, all despatch consistent with the method of loading contemplated. And this view is confirmed by a later clause which provides that the owners or agents shall be liable for loss, &c., which may arise from any incapacity, want of skill, insobriety or negligence, not of stevedores, but on the part of the master, officers, engineers, stokers, firemen, or crew.

12. It seems to be clear, for these reasons, that the plaintiffs were not entitled to call on those responsible for the ship to unload by stevedores instead of by the crew; and that, on the other grounds also, this suit cannot be sustained.

13. The suit must be dismissed with cost on scale No. 2.