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(1879) 07 CAL CK 0007

Calcutta High Court

Case No: None

De Angelis and Co.

APPELLANT

Vs

Mayappa Setty

RESPONDENT

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Date of Decision: July 7, 1879

Citation: (1880) ILR (Cal) 578

Hon'ble Judges: White, J; Richard Garth, J; Pontifex, J

Bench: Full Bench

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#### Judgement

Richard Garth, C.J.

We are of opinion that, for the purpose of ascertaining the amount of damages sustained by the plaintiffs by reason of the defendant's breach of contract, the plaintiffs, although sub-charterers, must be considered as between themselves and the defendant to be subject to the same obligations as the owners of the ship.

2. The damages here cannot be measured quite upon the same principle as in the case of the non-acceptance of goods sold.

3. The plaintiffs let to the defendant a certain space in the ship for the carriage of his goods, with an implied undertaking that those goods should be safely conveyed to Tuticorin; and whether the plaintiffs worked the ship themselves, or procured it to be worked by others, they must presumably have had to pay in some shape or other for their cost of conveyance.

4. We are, therefore, of opinion, that, on the facts found, the plaintiffs are entitled to recover, as damages, a sum equivalent to the entire freight agreed to be paid by the defendant for 680 bags of rice from Calcutta to Tuticorin, after deducting therefrom a proportionate part of the expenses of carriage which has been saved by reason of the service not having been rendered.

5. It has been argued on behalf of the defendant, that the sum payable by the plaintiffs to Borradaile & Co. for the hire of the vessel for the intended voyage

should be deducted from the sum payable by the defendant; but we think this is clearly wrong. The damages payable by the defendant must depend upon his own contract with the plaintiff's, and not upon the terms of the bargain which the plaintiffs may have made with Borradaile & Co.

6. The ship in the present case is a steamer; and we think that, upon the facts found, she must be taken to have lain idle in port for want of a cargo. The expenses saved could, therefore, be little or nothing more than the cost of the coal that would have been consumed, if the steamer had made its intended voyage to Tuticorin.

7. The proportionate part of these expenses to be deducted from the freight must be ascertained by estimating [as a jury would do] the amount of tonnage which would have been occupied by the 680 bags of rice as compared with the amount of tonnage which the ship could carry.

8. If the parties cannot agree upon the sum to be deducted, it will be necessary to refer the case back to the Small Cause Court to ascertain the amount. As the plaintiffs have succeeded substantially in maintaining their claim in this Court, we think that they ought to have one-half of their usual costs from the defendant.