

James Scott Vs. James Finlay and ors.

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Court : Mumbai

Decided On : Aug-25-1883

Reported in : (1883)ILR7Bom386

Judge : Bayley, Acting, C.J. and ;Latham, J.

Appellant : James Scott

Respondent : James Finlay and ors.

Judgement :

Bayley, Acting, C.J.

1. The question referred to us for our opinion by the Chief Judge of the Small Cause Court is 'whether, on a true construction of the terms of the bills of lading held by the plaintiff, the delivery, under the circumstances set forth in the case, was a complete delivery to the plaintiff in accordance with the terms of the bills of lading.' The bills of lading were two, but are identical in form. The goods 'shipped in good order and condition are to be delivered, subject to the exceptions and conditions herein provided, in like good order and condition from the ship's tackles (where the ship's responsibility shall cease).' Then follow the exceptions and conditions referred to, only one of which is material to the present question, and that runs as follows: 'The ship-owner shall have the option of discharging in dock, and of making delivery of the goods under the bill of lading, either over the ship's side, or from lighters, or a store-ship, or custom house, or warehouse, at

merchant's risk.' The answer to the question referred to us depends' on whether certain charges, called 'landing charges', or 'cranage charges', which the consignee was required by the Port Trust to pay before he could remove his goods, are charges which, as between the consignee and the ship-owner, the ship-owner and not the consignee, was bound to pay. I am of opinion that, under the provisions of these bills of lading, and under the circumstances found by the case, those charges were charges, which the shipowner, and not the consignee, was bound to pay, and that, therefore, the judgment of the Small Cause Court was right. The shipowner has it in his own power, under these bills of lading, to discharge in the dock, or in the stream, as he thinks fit; Consulting his own convenience he goes into the dock, and employs the dock's cranes to land the goods. This was work which the ship-owner was bound by the bill of lading himself to perform; for his responsibility did not cease till the goods were delivered from the ship's tackles. These boilers were heavy goods, but on that very account the freight charged was exceptionally, high. They are landed by the only crane in the dock capable of landing them. This was done solely at the request of the ship-owners, and for their, convenience; where is there any evidence of any agreement, express or implied, on the part of the consignee, to pay the charges so incurred? In my opinion, they were charges incurred at the request and expense of the ship-owners. One test is, on whom--on the consignee or on the ship-owner--would the loss have fallen had the goods been damaged while in the process of being lifted out of the ship to be deposited on the wharf? The American case--*De Mott v. Laraway* 14 Wen 225 cited by Mr. Angel in his work on Carriers, 282, is exactly in point, and shows that the loss in that case would have fallen on the ship-owner. That indicates that the Port Trust were the agents of the ship-owners to do what the ship-owners were bound to do by the bill of lading, namely, deliver the goods. It is true the practice in, this dock has been for the Port Trust to obtain payment of these charges, as well as other charges for wharfage, &c., from the consignees; but that is a rule made solely for their own convenience, as the case finds--the goods always being there while the ship may go away--and cannot affect the question of the ultimate responsibility for the charge, as between the ship-owner and the consignee. The consignee pays it, in the first place, in order to get the goods; but if the charge is one, as in my opinion it is in this case which,

under the bill of lading, rightly falls on the ship-owner, the consignee is entitled to recover back from the ship-owner whatever has been so paid to the Port Trust. Freight in this case was paid in advance; but suppose it had been the ordinary case of freight payable on delivery, where payment and delivery are concurrent acts, could the ship-owner have claimed that he had earned the freight by such a delivery as this, not to the consignee, but to the Port Trust? Or could he have claimed to have retained a lien' on the goods, not only for the freight agreed on, but for the 'landing charges' as well? It is clear, I think, that he could not, The answer, therefore, which I return to the question referred to us by the learned Judge of the Small Cause Court is, that, on a true construction of the terms of the bills of lading, the delivery, under the circumstances set forth in the case, was not a complete delivery to the plaintiff, in accordance with the terms of the bills of lading. The present judgment will therefore stand.

Latham, J.

2. I agree with the Chief Justice. Mr. Farran's argument is really based upon the existence of a usage, or custom, in this dock, with reference to which the parties must be supposed to have contracted. But this argument is not open to him on the case, as stated by the learned Judge of the Small Cause Court. Moreover, if it were, I am by no means prepared to admit that such a custom--a custom affecting the question of: the amount to be paid for delivery--even if proved, could affect the contract between the parties as contained in the bills of lading. Such a custom would be of very a different nature to' those proved in the cases cited by Mr. Farran,

3. The question in this case is, after all, a simple one. The ship having elected to discharge in the dock, it was her duty to land the goods on the wharf, It seems to me that the ship-owner must pay every charge which has to be incurred before this is done. That was the principle of the decision in *Bishop v. Ware* 3 Cam. 360. These charges, whatever they were and whether they could have been avoided or not, were charges incurred at the moment that the goods touched the wharf; they were necessarily, therefore, charges incurred antecedently to delivery to the consignee. I think that consideration is sufficient to show that the liability for these

charges must fall upon the ship-owner. But, in truth, the charges would seem to have been charges in respect of work and labour done in and about the lifting and landing of these boilers. I think that appears clearly enough from the book of rates which the Port Trust issue to the public for their information and guidance See foot-note, ante, p, 390. This charge is there called a 'dock and cranage' charge. Half this 'dock and cranage' charge, and no 'wharfage', is charged for lifting from the hold of a vessel and placing on the deck.' 'Boilers lifted out of a vessel on to the wharf for repair, and then lifted back again, will be charged full rates for the first operation and half rates for the second.' From these passages alone it is clear, I think, that it is the work done by the dock cranes and appliances that is the subject of this charge. If that is the real character of these 'landing' or 'dock and cranage' charges then it cannot be contested but that they are charges which must be defrayed by the ship. The judgment of the learned Judge of the Small Cause Court was, therefore, in my opinion, right, and the verdict for the plaintiff must stand. Defendants to pay the plaintiff their costs of this reference.