Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Chartered Bank of India, Australia, and China v. *The British India Steam Navigation Company, Limited, from the Supreme Court of the Straits Settlements (Settlement of Penang), delivered the* 31*st March, 1909.*

Present at the Hearing:

LORD MACNAGHTEN.
LORD ATKINSON.
LORD COLLINS.
SIR ARTHUR WILSON.

[*Delivered by Lord Macnaghten.*]

The Appellants, the Chartered Bank of India, Australia, and China, were holders for value of bills of exchange drawn against bills of lading under which goods were to be carried to Penang and delivered there to order or assigns. The carrying vessel was the s.s. "Teesta," one of a line of steamers belonging to the Respondent Company. The bills of exchange, which were drawn upon S. Fareeth & Co., of Penang, had been discounted by the Bank, and the bills of lading endorsed in blank were held by the Bank as security for their advance.

The "Teesta" arrived at Penang on the 10th of August, 1905. On her arrival the cargo intended for Penang was delivered overside into lighters and taken to the wharf.

[12] P.C.J. 25. L. & M.—100—12/3/09. Wt. 243. A

It is the practice for the owners of steamers calling at Penang to appoint landing agents at that port. The business of the landing agents is to send lighters to meet an incoming vessel belonging to their employers on being furnished with a copy of the ship's manifest. The goods are discharged from the ship's tackle into the lighters. The landing agents give the master a clean receipt, if they are received in good order. The goods are then carried to jetty sheds, held under lease from Government, landed there, and assorted by the landing agents ready for delivery to the consignees on production of the bill of lading endorsed by the ship's agents with a delivery order. If the consignees apply for their goods within 96 hours they get them free of store rent; if not, the goods are either kept in the jetty sheds or removed to godowns. The landing agents make out their account of the landing charges and storage rent, if any, according to a scale of charges exhibited in the offices of the ship's agents. They receive payment direct from the consignees. The endorsement of the bill of lading by the ship's agents is required as a release of the ship's lien for freight and expenses incurred on the shipment. Without such endorsement the landing agents are not at liberty to deliver goods to consignees.

This practice, which is obviously for the convenience of all parties concerned, appears to be at present the subject of much controversy in Penang. The shipowners contend that the landing agents are the agents of the merchants. The merchants insist that they are not their agents, but the agents of the shipowners. Neither view perhaps is quite accurate. These landing agents rather seem to be in the position of intermediaries owing duties to both parties—agents for the shipowners as

long as the contract of affreightment remains unexhausted, agents for the consignees as soon as the bill of lading is produced with delivery order endorsed. The point, however, is not material for the determination of the question now at issue, and their Lordships therefore do not propose to discuss it further or to define the exact position of landing agents at the different stages of their employment.

The bills of exchange in the hands of the Bank were duly accepted by S. Fareeth & Co. on the arrival of the "Teesta." On presentation for payment they were dishonoured. Application was then made to P. Bob & Co., the landing agents of the Respondent Company. The Appellants produced the bills of lading, with delivery order endorsed, and claimed the goods. The goods were not forthcoming. They had been taken away without the production of a bill of lading or a delivery order by the representative of S. Fareeth & Co., acting in collusion with the representative of P. Bob & Co., and they had been already disposed of, in fraud of the persons entitled.

Having thus lost both their money and the goods which had been pledged to them as security, the Bank preferred their claim against the Respondents. The claim resulted in the present action. This appeal has been brought from the order of the Supreme Court, affirming the judgment of the Court of first instance, which dismissed the action with costs.

Both here and in the Courts below the Respondent Company disclaimed all liability, relying on conditions subject to which the bills of lading were expressed to be issued. They are printed at the foot of the bill of lading, and attention is called to them in the body of the bill. The only conditions material in the present case are those intended to be applicable on the

arrival of the carrying vessel at the port of destination. They are contained in the following clause :—

> The Company is to have the option of delivering these goods or any part thereof into receiving ship or landing them at the risk and expense of the shipper or consignee as per scale of charges to be seen at the agent's office, and is also to be at liberty until delivery to store the goods or any part thereof in receiving ship, godown, or upon any wharf, the usual charges therefor being payable by the shipper or consignee. The Company shall have a lien on all or any part of the goods against expenses incurred on the whole or any part of the shipment. In all cases and under all circumstances the liability of the Company shall absolutely cease when the goods are free of the ship's tackle, and thereupon the goods shall be at the risk for all purposes and in every respect of the shipper or consignee.

On behalf of the Respondents the contention was that the obligations they undertook were fulfilled by delivering the goods to the landing agents, and that at any rate their liability ceased when the goods were once "free of the ship's tackle."

On the other hand, it was said on behalf of the Bank that the landing agents were neither the assigns nor the agents of the shippers or consignees, and that the goods had never been delivered in accordance with the bills of lading. As regards the provision for cesser of liability, the suggestion was that it applied only to the interval between the removal of the goods from the ship and their being landed on the quay.

In addition to the arguments relied on in the Courts below, the learned Counsel on behalf of the Bank prayed in aid two recent decisions of the House of Lords in which the House had occasion to re-affirm and apply the wholesome rule that, if a shipowner wishes to relieve himself

Elderslie Steamship Co. Ltd., v. Borthwick, 1905 A.C. 93; Nelson Line (Liverpool) Ltd. v. James Nelson & Sons, Ltd., 1908 A.C. 16.

from liability to the shipper in case his vessel should be found to have been unseaworthy, he must say so plainly. That is an old rule. It has never been questioned or doubted. But their Lordships do not recognize any very close analogy between a case where it is sought to get rid of a legal obligation, which is presumed to be the basis of every contract of carriage by sea, and a case like this, where the parties are perfectly free to make any stipulation they please, unembarrassed by any implied condition, or any original underlying obligation.

In order to lay a foundation for their arguments the learned Counsel for the Appellants examined the bills of lading and the conditions attached to them, casting about everywhere for some contradiction or some ambiguity. They put cases suggested as occurring at other stages of the voyage in which the clause providing for cesser of liability could not apply. They found fault with the position of the provision in the particular clause where it occurs. They even took exception to its language. Liability was to cease when a certain thing was done; it was to cease "thereupon"; the word, they said, would have been "thereafter," not "thereupon," if the immunity stipulated for had been meant to be lasting. So minute and searching was the criticism. Now, it may be conceded that the goods in question were not delivered according to the exigency of the bills of lading by being placed in the hands of the landing agents, and it may be admitted that bills of lading cannot be said to be spent or exhausted until the goods covered by them are placed under the absolute dominion and control of the consignees. But their Lordships cannot think that there is any ambiguity in the clause providing for cesser of liability. It seems to be

perfectly clear. There is no reason why it should not be held operative and effectual in the present case. They agree with the learned Chief Justice that it affords complete protection to the Respondent Company.

Their Lordships therefore will humbly advise His Majesty that the Appeal should be dismissed.

The Appellants will pay the costs of the Appeal.

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