

27,1958

UNIVERSITY OF LONDON
W.C.I.
24 JAN 1959
INSTITUTE OF ADVANCED
LEGAL STUDIES

IN THE PRIVY COUNCIL

No.14 of 1957

ON APPEAL FROM

THE COURT OF APPEAL OF JAMAICA

52080

B E T W E E N

KINGSTON WHARVES LIMITED

... (Defendants) Appellants

- and -

REYNOLDS JAMAICA MINES LIMITED

... (Plaintiffs) Respondents

C A S E FOR THE APPELLANTS

CLIFFORD-TURNER & CO.,
11 Old Jewry,
London, E.C.2.

Solicitors for the Appellants

ON APPEAL FROM

THE COURT OF APPEAL OF JAMAICA

B E T W E E N KINGSTON WHARVES LIMITED
... (Defendants) Appellants

- and -

REYNOLDS JAMAICA MINES LIMITED
... (Plaintiffs) Respondents

C A S E FOR THE APPELLANTS

10 1. This is an Appeal from a Judgment of the
Court of Appeal of Jamaica reversing the judgment
of the Resident Magistrates' Court on a claim by
the Respondents' for £100 for money had and
received by the Appellants to the Respondents use
being the difference between money actually paid
under protest by the Respondents as wharfage to
the Appellants and the amount the Respondents
claimed was lawfully payable. By their Judgment
the Court of Appeal of Jamaica decided that the
20 Respondents were entitled to recover the sum of
£100.

Record

p.27
p.20

Final leave to appeal to Her Majesty in Council
was granted to the Appellants by the Court of
Appeal of Jamaica by Order dated 24th April 1957.

p.38

30 2. S.2 of the Wharfage Law, Cap.281 of the
Revised Laws of 1938, provides inter alia that
wharfage shall mean the payment authorised by
that law to be demanded and received by any
wharfinger for and in respect of the use of his
wharf by any person and for services rendered
thereat in respect of any goods of such person.
S.11 of the Wharfage Law as amended by Cap.412
provides that every wharfinger is obliged to the
extent of available accommodation to receive ship
or deliver all goods wares merchandise other than

Record

explosives brought to his wharf, and S.12 provides that every wharfinger shall, either personally or by his servant, on demand made during working hours by or on behalf of the person or persons whose names shall be entered in the books of such wharf as the person or persons to whom or on whose order any goods on such wharf are to be delivered, and on production of the bill of lading, ticket, receipt, or other voucher therefor, and on payment being tendered for the wharfage and storage (if any) of such goods, according to the rates fixed in one of the Schedules A, B, C or D to this Law as applicable to the same, deliver such goods or any part of them. 10

3. In Schedule A to the Wharfage Law there appear the items

"Carriages, four wheels, including
wheels, each 15/-

"Carts and carriages of two wheels,
including wheels, each 6/-" 20

By Law 30 of 1951 an increase of 50% wharfage was permitted to wharves at Kingston with effect from 12th September 1941.

4. S.16 (9) of the Wharfage Law provides that any goods not particularly enumerated and set forth in Schedules A, B, C and D shall be liable to be charged for in proportion to the rates therein fixed; provided, however, that in respect of machinery and other heavy packages exceeding two tons in weight that rates shall be fixed by special agreement. 30

5. S.2(2) of the Road Traffic Law Cap.346, provides that every motor vehicle shall be deemed for any purpose to be a carriage within the meaning of any Law of this Island and any rules regulations or bye-laws made under any law of the Island, and if used as a carriage of any particular class shall be deemed to be a carriage of that class, and the Law relating to carriages of that class shall apply accordingly; and that "motor vehicle" means any mechanically propelled vehicle intended or adapted for use on roads. 40

6. The Bauxite and Alumina Industries (Encouragement) Law, Cap.37, exempts from tonnage tax, customs duty and similar imposts and from licensing

under the Road Traffic Law vehicles imported into the Island for the transport of bauxite bearing earth on condition that such vehicles are inter alia not intended to be and will in no circumstances be used upon the public road.

10 7. On 28th November 1951 5 Euclid Tractors and 5 Trailers to be coupled to and used with the tractors consigned to the Respondents were landed by s.s. Alcoa Ranger at Kingston, 1 tractor and 2
20 trailers on No. 3 pier and 4 tractors and 3 trailers on Princess Street Wharf. Both wharves are the property of the Appellants. The tractors and trailers were imported for the transport of bauxite bearing earth and were not intended to be and would not be used upon the public road. The tractors, each weighing 18,000 lbs. are internal combustion engines mounted on 4 rubber tyred wheels, and the trailers which are specially
40 adapted to be coupled to and used with the tractors are dump wagons each weighing 17,000 lbs and supported on 2 rubber tyred wheels. Each tractor and trailer was landed separate and uncoupled.

30 8. The Appellants fixed the wharfage rates for these tractors and trailers at £139.6.5 upon the basis that they were within the proviso to S.16(9) of the Wharfage Law being machinery or heavy packages exceeding two tons in weight, and that such rates were fixed by special agreement namely the "heavy lift" rates of the Shipping Association fixed in 1944 and known to and applied to all users of the Wharves since that date. The Respondents who maintained that the correct wharfage was £1.2.6 for each tractor and 9/- for each trailer under Schedule A to the Wharfage Law as amended namely a total of £7.17.6 paid to the Appellants under protest the £139.6.5 demanded in order to obtain delivery of the tractors and
40 trailers.

9. By Plaint dated 24th February 1955 the Respondents then brought this action in the Resident Magistrates Court claiming £100 as money had and received by the Appellants to the Respondents' use abandoning the excess of their claim above £100 in order to bring the claim within the jurisdiction of the Resident Magistrates' Court.

p.1

10. The Respondents contended that both tractors and trailers were "carriages" within the meaning

Record

of Schedule A of the Wharfage Law, and that the tractors should be rated as four wheeled and the trailers as two wheeled carriages in accordance with the Schedule. They further contended that if the tractors and trailers must be considered as one unit with six wheels then either they fell to be rated under S.16(9) of the Wharfage Law in proportion to the rates set out in Schedule A and could not be rated by special agreement under the proviso to the subsection, since the words "heavy packages" in the proviso could not on their true interpretation apply to a carriage exceeding 2 tons in weight but could only be construed ejusdem generis to "machinery"; or even if the tractors and trailers did fall within the proviso the "heavy lift" rates of the Shipping Association could not be and were not a special agreement within the meaning of the proviso to S.16(9) and the Appellants in the absence of a special agreement were entitled only to reasonable rates of wharfage. 10 20

11. The Appellants contended that the tractors and trailers must be considered as one unit with six wheels and were within the proviso to S.16(9) of the Wharfage Law and were not "carriages" within the meaning of Schedule A: that the "heavy lift" rates of the Shipping Association amounted to a special agreement within the meaning of the proviso: or that if the "heavy lift" rates of the Shipping Association did not amount to a special agreement within the meaning of the proviso then they were entitled to reasonable rates of wharfage and the "heavy lift" rates of the Shipping Association were reasonable. 30

p.20 12. The Resident Magistrate held that the tractors and trailers were not "carriages" within the meaning of Schedule A of the Wharfage Law but that they must be considered as one unit of six wheels and fell to be rated within the proviso to S.16(9). He further held that the "heavy lift" rates of the Shipping Association amounted to a special agreement within the meaning of the proviso, and accordingly he entered judgment for the Appellants. 40

p.27 13. The Respondents appealed to the Court of Appeal of Jamaica who gave judgment on 13th January 1956 allowing the Appeal. The Court held that the Shipping Association had no authority to fix wharfage rates and that the rates fixed by the Shipping Association could not be a special agreement within the meaning of the proviso to S.16(9)

of the Wharfage Law. The Court said that having regard to the change from the wording "for each coach": "for each chariot": "for each chaise" in the Schedule of the first Wharfage Law in 1784, 25 Geo.III c.s., to the wording "Carriages of four wheels including wheels": "Carts and Carriages of two wheels including wheels" in the Wharfage Law of 1895 which repealed all previous wharfage legislation, the Legislature must have intended the term "Carriages" to comprehend wheeled vehicles used for carrying both passengers and goods, including motor cars which were in existence at that date. The Court held that the tractors and trailers were carriages within Schedule A of the Wharfage Law. The tractors and trailers had been landed separately and therefore each tractor was assessable to wharfage as a four wheeled carriage and each trailer as a two wheeled carriage. It was therefore not necessary to consider the position if they were to be considered jointly as six wheeled vehicles liable under S.16(9) to be charged as six wheeled carriages in proportion to the rates fixed in Schedule A. Because of this the Court did not deal with the Appellants' contention that the tractors and trailers fell to be assessed as machinery or other heavy packages exceeding two tons in weight within the meaning of the proviso to S.16(9) and that in the absence of a special agreement the Appellants were entitled to wharfage at a reasonable rate and that the rates fixed by the Shipping Association in 1944 were reasonable rates. The Court of Appeal therefore allowed the appeal and entered judgment for the Respondents for £100.

10

20

30

14. On 17th May 1956 the Court of Appeal made a conditional order granting special leave to appeal to Her Majesty in Council, and on 24th April 1957 gave final leave.

40

15. The Appellants submit:

- A. That on the true construction of Schedule A of the Wharfage Law neither the tractors nor the trailers in this case are "carriages" and assessable to wharfage as four wheeled carriages and two wheeled carriages respectively.
- B. That whether the tractors and trailers are considered separately or have to be considered jointly as six wheeled vehicles

they are in either case more than two tons in weight and fall within the proviso to S.16(9) of the Wharfage Law.

C. That the "heavy lift" rates of the Shipping Association fixed in 1944 and known to and applied to all users of the wharves since that date amount to a "special agreement" within the proviso to S.16(9) and that the Appellants are entitled to £139.6.5 as wharfage accordingly. 10

D. Alternatively that if the "heavy lift" rates of the Shipping Association do not amount to a "special agreement" within the proviso to S.16(9) nevertheless the tractors and trailers in this case fall within the proviso and in the absence of a special agreement the Appellants are entitled to wharfage at a reasonable rate and £139.6.5 being the "heavy lift" rate fixed by the Shipping Association in 1944 and known to and applied to all users of the wharves since that date is a reasonable rate. 20

16. The Appellants humbly submit that this Appeal should be allowed and that the judgment of the Court of Appeal of Jamaica was wrong and ought to be reversed for the following among other

R E A S O N S

1. BECAUSE the Court of Appeal was wrong in holding that the tractors were four-wheeled carriages and assessable to wharfage as such under Schedule A of the Wharfage Law. 30

2. BECAUSE the Court of Appeal was wrong in holding that the trailers were two-wheeled carriages and assessable to wharfage as such under Schedule A of the Wharfage Law.

3. BECAUSE upon the true interpretation of the proviso to S.16(9) of the Wharfage Law the tractors and the trailers each weighing more than two tons are assessable to wharfage thereunder and the Court of Appeal was wrong in deciding otherwise. 40

4. BECAUSE upon the true interpretation of the proviso to S.16(9) of the Wharfage Law the "heavy lift" rates fixed by the Shipping Association amount to a special agreement

within the proviso to the sub-section and the Court of Appeal was wrong in deciding otherwise.

Record

10

5. BECAUSE even if the "heavy lift" rates fixed by the Shipping Association do not amount to a special agreement within the meaning of the proviso to S.16(9) of the Wharfage Law and the Court of Appeal was right in so holding, in the absence of a special agreement the Appellants are entitled to a reasonable sum for wharfage in respect of the tractors and trailers and £139.6.5 the amount charged to the Respondents is a reasonable sum.

PETER BRISTOW

No.14 of 1957

IN THE PRIVY COUNCIL

ON APPEAL FROM

THE COURT OF APPEAL OF JAMAICA

KINGSTON WHARVES LIMITED

- v -

REYNOLDS JAMAICA MINES LTD.

C A S E FOR THE APPELLANTS

CLIFFORD-TURNER & CO.,
11 Old Jewry,
London, E.C.2.

Solicitors for the Appellants