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UNIVERSITY OF LONDON
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INSTITUTE OF ADVANCED
LEGAL STUDIES

IN THE PRIVY COUNCIL No. 14 of 1958

ON APPEAL

FROM THE COURT OF APPEAL OF JAMAICA

52079

B E T W E E N

KINGSTON WHARVES LIMITED (Defendants)
Appellants

- and -

REYNOLDS JAMAICA MINES LIMITED
(Plaintiffs) Respondents

CASE FOR THE RESPONDENTS

RECORD

1. This is an appeal from the judgment of the Court of Appeal of Jamaica (Carberry C.J. Rennie and Cool-Lartigue J.J.) dated the 13th January, 1956, setting aside the judgment of the Resident Magistrate's Court for the Parish of Kingston, Jamaica (His Honour Mr. N.A. Peterkin) dated the 24th June 1955, in an action for monies had and received to the Respondents' use, in which the present Respondents were plaintiffs and the present Appellants were defendants. P.27 P.20 P.1

2. The Appellants are wharfingers carrying on business at Kingston Jamaica; the Respondents carry on the business of a bauxite mining company in that island. The questions raised in the Action and in the present Appeal relate to the legality or otherwise of wharfage charges demanded by the Appellants and paid, under protest, by the Respondents on five Euclid tractors and trailers consigned to the Respondents and landed on the Appellants' wharves at Kingston Harbour, ex S.S. "Alcoa Ranger", on the 28th November 1951. P.46

3. The questions in issue depend upon the true construction of the Wharfage Law of Jamaica in force

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on the 28th November 1951. The Wharfage Law regulating the rates chargeable on the Appellants' wharves in Kingston on the relevant date was contained in The Wharfage Law which came into force on the 1st July 1895 (chapter 281 of the Revised Laws of Jamaica of 1938) and in an amending law entitled the Wharfage (Amendment) Law 1951 (Law 30 of 1951) given the Governor's assent on the 19th October 1951 and which came into operation, retrospectively, on the 12th September 1941. The effect of the amending law was to increase the rates of wharfage set forth in the Schedules A, B, C and D of the principal law by 50 per centum in respect of the rates appearing in the first column therein and by 25 per centum in respect of the rates appearing in the second column therein.

4. The relevant statutory provisions are Sections 2, 11, 12, 15, 16(1) and 16(9) of the Wharfage Law as amended as aforesaid and Schedule A thereto, the provisions whereof (so far as material for the purposes of this Appeal) are as follows:-

Section 2. "In this Law the following expressions shall have the meaning hereby assigned to them:-

"Wharfage" shall mean the payment authorised by this 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"

Section 11. "Every wharfinger is hereby obliged, to the extent of the accommodation available, to receive, ship or deliver all goods, wares and merchandise, other than explosives, brought to his wharf ...."

Section 12. "Every wharfinger shall ..... on demand made during the 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 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:

Provided nevertheless that nothing in this section shall be deemed to deprive or affect the general lien conferred by law on wharfingers on goods received into their custody or possession for wharfage dues payable by the owner thereof, whether before or after the passing of this Law."

Section 15. "If any wharfinger ..... shall ask, demand or receive any greater or larger rates than are fixed by law, he shall be guilty of an offence under this law and shall on prosecution by the party aggrieved and on conviction, forfeit a sum not exceeding ten pounds for every such offence."

Section 16. "The following shall be the rates of wharfage payable under the provisions of this Law, that is to say -

(1) A wharfinger in Kingston shall in the case of the goods enumerated in Schedules A and B to this Law which shall be landed or received at his wharf, be entitled to demand and receive wharfage at and after the rate stated in the first column of the said Schedules A and B respectively, opposite to such goods ....."

Section 16(9) "Any goods not particularly enumerated and set forth in the Schedules A, B, C and D annexed to this Law 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 the rates shall be fixed by special agreement."

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"Schedule A

	Column No.1 £. s. d	Column No.2 £. s. d.
-	-	-
-	-	-
Carriages, four wheels including wheels, each	1. 2. 6	-
Carts and carriages of two wheels, including wheels, each	0. 9. 0	-
-	-	-
-	-	- "

P.14 LL.9-12 / P.15 LL.16-17 / P.45 / P.14 LL.15-23 / P.14 LL.12-15 / P.14 LL.26-28

5. Each of the five tractors in question is an internal combustion engine weighing about 18,000 lbs. (7.9 tons), mounted on four rubber-tyred wheels, and each of the five trailers is a dump wagon, weighing about 17,000 lbs. (7.5 tons), supported by two rubber-tyred wheels. Thus the total weight of one tractor and one trailer is approximately 15½ tons. The tractors and trailers are specially adapted for use with each other, but any trailer can be detached from its tractor and used with another Euclid tractor. The tractors and trailers are used by the Respondents for transporting bauxite-bearing earth.

P.15 L.48 / P.16 L.4 / P.15 L.5 et seq / P.15 LL.18-19

6. At the hearing before the Learned Resident Magistrate no direct evidence was given of the unloading of the said tractors and trailers save that two trailers and one tractor were landed at No. 3 Railway Pier and the remaining three trailers and four tractors at the Princess Street Wharf. Harold Lowe, the chief customs clerk to the Respondents' customs brokers, testified that he saw the five tractors and trailers on the Appellants' wharves in November 1951, when all the trailers were detached from the tractors.

P.15 L.19 et seq / P.15 L.40 et seq / P.46

7. The Appellants refused to deliver the tractors and trailers to the Respondents unless the sum of £139. 6. 3. (which the Appellants claimed to be the amount properly payable for wharfage) were first paid. On the 12th November 1951 the Respondents accordingly paid this sum under protest, in order to obtain delivery; but the Respondents claimed that

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the sum due for wharfage amounted to only £7. 17. 6 (being £1. 2. 6. for each four-wheeled tractor and 9s. Od. for each two-wheeled trailer, as carriages under the Schedule A to the Wharfage Law). On the 24th February 1955 the Respondents instituted the present proceedings to recover the difference between £139. 6. 3. and £7.17. 6., but limited their claim to £100. in order to bring the matter within the jurisdiction of the Resident Magistrate's Court. P.1

8. The Appellants computed their charge of £139. 6. 3. on the basis that pursuant to section 16(9) of the Wharfage Law the tractors and trailers in question were goods not particularly enumerated and set forth in the Schedules A, B, C or D (i.e. they were not 'carriages' within Schedule A) and they were machinery or other heavy packages exceeding two tons in weight in respect of which the rates had been fixed by special agreement within the proviso to that sub-section. The 'special agreement' relied upon by the Appellants was a scale of charges fixed in the year 1944 by a body called the Shipping Association. No evidence was given as to the organisation constitution or membership of the Association save that it was an association of shipping agents and wharfingers and that some of the directors of the Appellant Company were members of this association. It was not suggested that the Respondents were, or any of their directors was, a member thereof. The rates thus fixed by the Shipping Association were based upon the inwards manifest of the ship landing the goods and the charge upon items in excess of three tons in weight was 9d per 100 lbs. plus 100%. Upon this scale of rates (called 'heavy lift' rates) the charge for the five tractors and five trailers in question in this appeal would amount to a total sum of £139. 6. 3.

P.18
P.19
P.18
P.15 L.30

9. The Appellants contended that these so-called 'heavy lift' rates were binding upon the Respondents because having been fixed by agreement between the members of the Shipping Association such an agreement constituted a 'special agreement' within section 16(9) of the Wharfage Law. The Court of Appeal rejected that contention holding that:-

P.31 LL.33-37

"In the context special agreement clearly refers to one reached by the wharfinger and the person liable to pay wharfage dues."

P.31 LL. 38-40

It is submitted that this view of the Court of Appeal is plainly correct.

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P.31 L.41 - P.32 L.5

10. In the alternative the Appellants contended that if a special agreement within the section 16(9) of the Wharfage Law meant an agreement between the wharfinger and the importer then such an agreement was to be inferred from the circulation of the schedule of rates fixed by the Shipping Association as constituting a standing offer by the wharfingers to handle imported goods at those rates accepted by the importer by making use of the services of the

P.32 LL.5-9

wharfingers. It was argued on behalf of the Appellants that if the importers did not wish to pay wharfage according to the rates fixed by the Shipping Association their remedy was to abstain from importing the goods. It is submitted that this alternative contention of the Appellants is also plainly incorrect for reasons which may be summarised thus:-

(a) The Appellants were only entitled to demand wharfage as authorised by the Wharfage Law and by section 15 of that Law it is an offence rendering a wharfinger liable to a penalty if he should demand any greater rates than are so authorised. The Appellants could only justify the rates in fact demanded by them if they could establish a special agreement fixing those rates made between themselves and the Respondents. No evidence was called to show that the Respondents had ever entered into an agreement with the Appellants with regard to the rates of wharfage payable on Euclid tractors or trailers. In particular, it was not suggested by the Appellants that the Respondents had been members of the Shipping Association at any material date, or that the Shipping Association had been authorised to act as agents for the Respondents.

(b) On the contrary the evidence showed that on the 21st July 1951 (i.e. about 4 months prior to the import of the tractors and trailers in question in this appeal) the Respondents imported 3 similar Euclid tractors and trailers through the

P.14 LL.7-11
P.17 LL.14-18
P.48

Appellants' wharves and were charged by, and paid to, the Appellants the rates fixed by the Wharfage Law as for "carriages" and not at the

P.18 LL.31-35

rates fixed by the Shipping Association. Victor Pilliner the secretary and co-manager of the Appellants said that this was due to a mistake on his part. There was evidence that the Res-

P.19 LL.46-49

pondents had paid wharfage at the rates fixed by the Shipping Association upon articles other than tractors and trailers.

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(c) The rates fixed by the Shipping Association were not such as could have been fixed by special agreement under section 16(9) because such rates purported to apply to any item over one ton in weight. Rates may only be fixed by special agreement under that section in respect of goods which are not particularly enumerated and set forth in the Schedules annexed to the Wharfage Law and which are heavy machinery or other heavy packages exceeding two tons in weight. P.18 LL.14-16

11. For the foregoing reasons it is submitted that the Appellants could not lawfully have made any charge by way of wharfage at the rates fixed by the Shipping Association in respect of the tractors and trailers in question in this appeal.

12. The Respondents primarily contended that each tractor was a four-wheeled carriage and each trailer a two-wheeled carriage liable as such under section 16(1) and Schedule A of the Wharfage Law. If this contention were upheld then the total wharfage charge recoverable by the Appellants would be a sum of £7.17. 6. being £1. 2. 6. for each tractor and 9s.0d for each trailer. The Court of Appeal (it is submitted per incuriam) held that the Respondents were liable to pay wharfage of £1.13. 9. in respect of each tractor and 13/6d in respect of each trailer a total wharfage of £11. 6. 3. Since the Respondents have limited their claim to £100 they are not concerned to contest these last mentioned amounts but in so far as it may be necessary will submit that they are taken, in error, from the rates for carriages landed outside Kingston after 1954 under Chapter 412 of the Revised Laws of Jamaica of 1953 as amended by the Wharfage (Amendment) Law 1954. P.12 L.20 P.13 L.37 P.35 LL.21-24

13. The Respondents' main contention depends upon whether the tractors and trailers in question in this appeal are 'carriages' within the meaning of the following words in Schedule A of the Wharfage Law:-

	£. s. d
"Carriages, four wheels, including wheels, each	1. 2. 6
"Carts and carriages of two wheels, including wheels, each	9. 0."

These words first appeared in the Wharfage Law 1895 (Law 15 of 1895) which came into force on the 1st July 1895.

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14. The Court of Appeal observed that in the Schedule to the first Wharfage Law (Act 5 of 1784)
P.33 LL.12-14 rates were fixed "For each coach","For each chariot" and "For each chaise". These words appear to have been apt at the time to describe well-known passenger carrying vehicles. This law was repealed by the Wharfage Law 1869 (Law 29 of 1869) wherein the following items appeared in the Schedule of rates "Coach or chariot including wheels" and "Chaise or Cart" instead of the items mentioned above in the 1784 Law. In its turn this law was repealed by the Wharfage Law 1895 wherein the words set out in paragraph 13 of the foregoing were substituted. It is submitted that the intention of the Legislature was to employ the word "carriage" generically so as to include passenger carrying as well as load carrying vehicles and to differentiate between the two groups of vehicles according to the number of wheels and
P.33 LL.44-46 not according to weight. The Court of Appeal noted that in 1895 mechanically driven carriages were well known and, it is submitted, correctly stated:-

P.33 LL.46-49 "The motor car was in existence then and it seems reasonable to conclude that the generic term carriages was adopted so as to include this new type of horseless carriage".

15. It is submitted that the principle to be followed when seeking to construe the relevant language in the Wharfage Act is to be found in the following words taken from the judgment of Lord Halsbury in Simpson v. Teignmouth and Shaldon Bridge Company 1903 1 K.B. 405 at pages 413 and 414:-

"The broad principle of construction put shortly must be this: What would, in an ordinary sense, be considered to be a carriage (by whatever specific name it might be called) in the contemplation of the Legislature at the time the Act was passed? If the thing so sought to be brought within the Act would substantially correspond to what the Legislature meant by a carriage (called by whatever name you please), I think that the tax would apply; but if not, it is not for the Court to make an effort by ingenious subtleties to bring within the grasp of the tax something which was not intended in substance by the Legislature at that time to be the subject of taxation".

It is further submitted that the plain and ordinary meaning of the word "carriage" was in 1895 and is a wheeled vehicle or means of conveyance of any kind and is wide enough to include a tractor and a trailer.

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16. In so far as it may be proper to consider what was the practice of the Appellants in carrying out the provisions of the Wharfage Law it will be noted that Victor Pilliner, the Appellants' Secretary and Co-manager, said in evidence that motor cars and trucks under two tons were rated as carriages and that trailers towed by cars were also rated as carriages. This witness also stated that tractors had been imported since 1947 and were rated as 'heavy lifts' (pursuant to the scale laid down by the Shiping Association as hereinbefore mentioned) save upon the occasion in July 1951 when tractors imported by the Respondents were rated as carriages. At the hearing before the Court of Appeal it was common ground between the parties that motor vehicles were rated by the Appellants as carriages. The Appellants sought to argue that motor vehicles would not have fallen within the ambit of the word 'carriages' in the Schedule to the Wharfage Law except that section 2(2) of the Road Traffic Law coming into force on the 1st April 1938 (Chapter 310 of the Revised Laws of Jamaica of 1938) provided so far as is relevant to this appeal:-

P.18 LL.23-27
P.19 LL.33-34
P.18 LL.28-29
P.18 LL.31-33
P.32 LL.29-30
P.32 LL.31-33

"Every motor vehicle shall be deemed for any purpose to be a carriage within the meaning of any Law of this 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."

17. It is submitted that the provisions of the Road Traffic Law support the Respondents' contention that the tractors and trailers in question in this appeal are 'carriages' within the meaning of the Wharfage Law. Section 2(1) of the Road Traffic Law contains the following definitions:-

"2(1) In this Law unless the context otherwise requires the following expressions have the meanings hereby respectively assigned to them

.....

"Motor vehicle" means any mechanically propelled vehicle intended or adapted for use on roads"

.....

""Road" means any main or parochial road and includes bridges over which a road passes, and any roadway to which the public are granted access."

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In order to establish that the tractors and trailers were motor vehicles within the Road Traffic Law it must therefore be shown that the tractors and trailers were either (a) intended for use on roads (as defined by that Law) or (b) were adapted for use on roads (as defined by that Law). As to (a) the evidence of the Respondents' accountant Mr.William Tell Gilmore showed that the tractors and trailers were
P.14 L.27 not licensed for use on the highway (such vehicles are required to be licensed if "kept for use on a road" by section 9(1) of the Road Traffic Law) and
P.14 LL.28-31 that they had been admitted duty free under the Bauxite and Alumina Industries (Encouragement) Law (Chapter 37 of the Revised Laws of Jamaica of 1953). No evidence is recorded as to the ground upon which the tractors and trailers were admitted duty free but it appears probable that they were treated as being "trucks and cars not intended to be and in no circumstances used upon a public road and not required to be licensed under the Road Traffic Law" within Part II of the Schedule to the Bauxite and Alumina Industries (Encouragement) Law. Accordingly the Respondents for the purposes of this appeal concede that the tractors and trailers were not at any material time intended for use on roads. As to (b) it is submitted that there was ample evidence that the tractors and trailers were adapted for use on
P.14 P.20 P.45 roads. Their nature and use is described in the evidence of Mr. Gilmore and in that of Mr. Cyril Anton Clare and in the descriptive pamphlet marked exhibit W.T.G.1. The evidence of Mr. Gilmore and Mr. Clare shows that the Respondents used the tractors and trailers for transporting earth entirely
P.14 L.13 P.14 L.26 P.20 LL.7-8 within the Respondents' compound and Mr. Clare described them as "off the highway units". An examination of the descriptive pamphlet however shows that the tractors and trailers were in all respects capable of being used on roads and that the tractors of the same kind were capable of travelling at 32 miles per hour upon "a hard smooth dirt and gravel road
P.45 surface free of loose gravel" (see page 6 of the pamphlet). It is therefore submitted that the tractors and trailers being adapted for use on roads were motor vehicles within the Road Traffic Law and are therefore deemed by section 2(2) of that Law to be carriages within the Wharfage Law.

18. The Respondents argued both in the Court of first instance and upon appeal that if (contrary to their contentions) each tractor and trailer is to be treated together as a single unit the wharfage falls

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to be determined under section 16(9) of the Wharfage Law in proportion to the rates fixed in the said Schedule A on the footing that the combined unit was a six-wheeled carriage. For the reasons shortly given by the Court of Appeal it is submitted that each tractor and trailer was not a single unit. But the Respondents will, if necessary, contend that wharfage is to be calculated proportionally pursuant to section 16(9) as for six-wheeled vehicles. P.35 LL.10-20

19. In the Court of first instance the Respondents' Counsel argued that if the tractors and trailers were not 'carriages' within the Schedule to the Wharfage Law and if no special agreement fixing the wharfage rate were established then the Appellants were entitled to reasonable rates. In support of this contention that the Appellants, as bailees for reward, were entitled (in the absence of any applicable statutory provision or special agreement) to make only a reasonable charge for their services, the Respondents adduced (with the leave of the Court) affidavit evidence as to the rates of wharfage payable in ports other than ports in Jamaica. It appeared from this evidence that the wharfage dues payable on each tractor and trailer (taken together) would have been approximately $9.00 at the Port of Los Angeles, California, $9.00 (together with various other charges assessed against the unloading vessel) at various ports in San Francisco Bay, California, £14. 11. 3. (including storing charges, as increased by 40% in the year 1953) in Trinidad and £7.11. 6. (including £3.15. 9 port dues assessed on the owner or operator of the carrying vessel, but customarily passed on to the persons paying the freight charges) in Ghana. P.13 LL.20-23 P.5 et seq P.5 L.29 et seq P.7 L.32 et seq P.9 L.26 et seq P.10 L.34 et seq

20. In view of the judgments in the Court of first instance and in the Court of Appeal it was not necessary for a decision to be made as to whether this alternative means of fixing the applicable wharfage was legally open and, if it were open, what method should be adopted to arrive at a reasonable rate. The Court of Appeal when referred to the Wharfage Law said:-

> "We are unaware of any method outside of this statute of determining the wharfage due to a wharfinger" P.31 LL.3-5

The Wharfage Law provides the following three methods of determining wharfage:-

(a) under section 12 by reference to the rates fixed in respect of goods enumerated in one of the Schedules A, B, C, or D to the Law

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(b) under section 16(9) if (1) the goods are not particularly enumerated and set forth in the Schedules A, B, C, and D, and (2) if the goods are not machinery or other heavy packages exceeding two tons in weight then the wharfage may be charged in proportion to rates fixed by the Schedules.

(c) under section 16(9) if (1) the goods are not particularly enumerated and set forth in the Schedules and (2) are machinery or other heavy packages exceeding two tons in weight the rates are to be fixed by special agreements.

In the case of the tractors and trailers in question in this appeal and which exceed 2 tons in weight it appears that no method is provided for fixing the rate of wharfage unless they are enumerated in Schedule A or unless a special agreement fixing the rate is shown to exist. Sections 2 and 12 of the Wharfage Law permit the wharfinger to demand payment for wharfage only such rates as are authorised by that Law and section 15 makes it an offence for a wharfinger to demand or receive any greater rates than are fixed by the Law. It may therefore not be legally open upon this appeal for reasonable rates to be fixed even by consent of the parties. If such a course be legally open then the Respondents will, as an alternative to their main contention, respectfully submit to the fixing of a reasonable rate upon the evidence available.

P.16 et seq
P.22 LL.41-45
P.21 L.43 et seq
P.23 LL.14-19
P.23 L.20 et seq

21. On the 24th June 1955 His Honour Mr. N.A. Peterkin, in the Resident Magistrate's Court, entered judgment for the Appellants, on the grounds (i) that "both common sense and good reason" dictated that each tractor with its trailer should be regarded as a single unit, and not as two units; (ii) that neither the tractors nor the trailers, nor the combined unit, were "carriages" within the meaning of the Wharfage law; (iii) that the proviso to subsection (9) of Section 16 of the Wharfage Law was accordingly applicable; and (iv) that the words "special agreement" in that proviso meant "agreement by treaty rather than individual contract", and that the "agreement" of the Shipping Association in 1944, determining the "heavy lift" rates, had constituted such a treaty, and was binding on the Respondents.

22. In the course of his judgment the Learned Resident Magistrate stated that tractors and trailers

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of the type in question "have always been treated as heavy lifts by those whose duty it has been to rate them". He also stated when speaking of the heavy lift rates fixed or purported to have been fixed by the Shipping Association: "They are open and notorious to all persons who deal with the importing of goods, including the Plaintiff, on all items of heavy lifts, and I am satisfied that they have been lawfully imposed in this instance". He did not specifically find as a fact that an agreement as to wharfage rates had been made between the Appellants and the Respondents. P.22 LL.45-48 P.23 LL.31-36

23. On the 18th July 1955 Notice of Appeal against the judgment of the Learned Resident Magistrate was served on the Appellants on behalf of the Respondents. Judgment upon the said Appeal was given on the 13th January 1956 when the Court unanimously set aside the Judgment of the Learned Resident Magistrate and ordered Judgment to be entered for the Respondents for £100 with costs and Solicitors' costs and the costs of the Appeal. PP.24-26 P.35 L.25

24. The Judgment of the Court of Appeal was delivered by Carberry C.J. and the reasons for the decision of the Court (shortly summarised) were (i) that no method existed, outside of the Wharfage Law of determining the wharfage due to a wharfinger; (ii) that the tractors and trailers in question were carriages within the meaning of the Wharfage Law; and (iii) that they appeared to have been landed not as five single units of six wheels each, but separately as four-wheeled tractors and two-wheeled trailers, and were therefore assessable to wharfage as four-wheeled carriages and two-wheeled carriages respectively, under the provisions of Schedule A to the Wharfage Law. The Court of Appeal also held that the words "special agreement" in Section 16(9) of the Wharfage Law meant an agreement between the wharfinger and the person liable to pay the wharfage dues, that no such agreement had been made between the Appellants and the Respondents and that the rates fixed by the Shipping Association had been imposed rather than agreed, and were invalid. P.27 et seq P.31 LL.3-5 PP.33-35 P.27 LL.34-39 P.35 LL.8-20 P.13 LL.38-40 PP.28-33

25. In dealing with the evidence in the case the Court of Appeal accepted the evidence of Harold Lowe on behalf of the Respondents to the effect that some four-wheel motor trucks weigh as much as 4,000 lbs., some six-wheel trucks weigh even more and that such six-wheel trucks were rated by the Respondents as carriages up to March 1954 and also the evidence summarised in sub-paragraph (b) of paragraph 10 hereof. The court also found that it would be "a rather rash assumption" to assume "that every prospective importer is familiar with the rates fixed by the Shipping Association." P.16 LL.44-48 P.29 LL.18-21 P.29 LL.6-13

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26. The Respondents humbly submit that the Judgment of the Learned Resident Magistrate was wrong and that the Judgment of the Court of Appeal of Jamaica is right and ought to be affirmed for the following (among other)

R E A S O N S

(1) Because the wharfage payable to the Appellants in respect of the Respondents' tractors and trailers fell to be determined exclusively under the provisions of the Wharfage Law, in force in November 1951

(2) Because the tractors and trailers were carriages for the purposes of Section 16(1) and Schedule A of the Wharfage Law.

(3) Because it is a proper inference from the evidence that the tractors and trailers were landed on the Appellants' wharves as separate units, and accordingly the tractors and trailers fell to be assessed for wharfage as four-wheeled carriages and two-wheeled carriages respectively, under the provisions of Schedule A to the Wharfage Law.

(4) Because even if each tractor should have been assessed together with its trailer as one unit that unit should have been assessed as a six-wheeled carriage, pursuant to the first part of Section 16(9) of the Wharfage Law, and at a rate proportionate to the appropriate rates set out in Schedule A to the Wharfage Law.

(5) Because even if the tractors fell to be assessed as "machinery and other heavy packages exceeding two tons in weight", within the meaning of the proviso to Section 16(9) of the Wharfage Law, the trailers fell to be assessed as two-wheeled carriages.

(6) Because the special agreement required by the proviso to Section 16(9) of the Wharfage Law is an agreement between the wharfinger in question and the person liable to pay wharfage dues.

(7) Because the purported determination of "heavy lift" rates made by the Shipping Association of Jamaica in 1944 was not a "special agreement" for the purposes of the proviso to Section 16(9)

of the Wharfage Law and was never binding on the Respondents, either in respect of the said tractors and trailers or at all.

(8) Because even if the tractors and trailers (regarded separately or together) could and should have been rated by special agreement, the onus was on the Appellants to prove such an agreement, and they failed to do so.

(9) Because the Appellants have had and received monies amounting to at least £100 to the use of the Respondents.

(10) Because the reasoning and conclusions of the Court of Appeal of Jamaica were correct and ought to be affirmed.

STANLEY REES.

ARTHUR BAGNALL.

No. 14 of 1957

IN THE PRIVY COUNCIL

ON APPEAL
FROM THE COURT OF APPEAL OF JAMAICA

KINGSTON WHARVES LIMITED

v.

REYNOLDS JAMAICA MINES LIMITED

CASE FOR THE RESPONDENTS

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5 Lincoln's Inn Fields,
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Respondents' Solicitors.