Privy Council Appeal No. 14 *of* 1957

Kingston Wharves Limited - - - - - - *Appellants*

v.

Reynolds Jamaica Mines Limited - - - - - *Respondents*

FROM

THE COURT OF APPEAL OF JAMAICA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 15TH DECEMBER, 1958

Present at the Hearing:

LORD MORTON OF HENRYTON
LORD COHEN
MR. L. M. D. DE SILVA

[*Delivered by* MR. DE SILVA]

The appellants, who are the defendants in the action, are wharfingers. The respondents, who are the plaintiffs, are a bauxite mining company. The respondents imported five Euclid tractors and trailers which were landed on the 28th November, 1951, on the appellants' wharves at Kingston in Jamaica. The appellants demanded a sum of £139 6s. 5d. as wharfage payable to them. The respondents contended that only £7 17s. 6d. was payable. The respondents, anxious to prevent delay in delivery, paid the sum demanded under protest and sued in this action for the difference between the two sums. They limited their claim to £100 so as to bring it within the jurisdiction of the Resident Magistrate's Court.

The Resident Magistrate held that the amount demanded by and paid to the appellants was due as wharfage and dismissed the action. On appeal the Court of Appeal set aside this order and entered judgment for the respondents as prayed for. This appeal is from the judgment and order of the Court of Appeal.

An Euclid tractor is propelled by an internal combustion engine and is mounted on four rubber tyred wheels. It weighs 18,000 lbs. A trailer weighs 17,000 lbs. and it is mounted on two rubber tyred wheels. In use it is coupled with a tractor and constructed with a contrivance which enables a load which it is carrying to be dumped down easily. These articles were imported for transporting bauxite bearing earth to the respondents' processing plant within the respondents' premises but not for use on a public road.

The Wharfage Law of 1895 (Cap. 281 of the Revised Laws of Jamaica 1938 Vol. IV. p. 3044) makes provision for the landing of goods and the payment of wharfage. Section 2 defines " wharfage " as 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 provides that every wharfinger shall be obliged, to the extent of available accommodation, to receive goods, other than explosives, brought to his wharf.

Section 12 enacts amongst other things for the payment of wharfage

> " according to the rates fixed in one of the Schedules A, B, C or D to this Law as applicable to the same ".

In Schedule A appears the following items—

> " Carriages, four wheels, including wheels, each ... ... 15s.
> " Carts and carriages of two wheels, including wheels, each ... 6s.

By Law 30 of 1951 the charges for these two items at the wharves in question were raised to 22s. 6d. and 9s. The respondents contend that these items were applicable to the goods, that the tractor was a " carriage " attracting wharfage at 22s. 6d. as it was on four wheels and the trailer was also a " carriage " attracting wharfage at 9s. as it was on two wheels. The appellants denied the correctness of this contention. The Resident Magistrate rejected the contention. The Court of Appeal accepted it.

The appellants arrived at the figure of £139 6s. 5d. on the basis of a scheme of charges drawn up in 1944 by an association known as the Shipping Association. No evidence was given as to the constitution and membership of this association other than that it comprises most of the shipping agents and wharfingers in Jamaica and that some of the directors of the appellant company are members. Under the scheme everything weighing one ton and upwards was classed under an item termed " heavy lift ". The Association is not a body to which the legislature has delegated the power to fix wharfage charges.

The scale of charges fixed by the Shipping Association for " heavy lift " was—

> " 1 ton up to under 2 tons ... 9d. per 100 lbs. plus 50 per cent.
> 2 tons and under 3 tons ... 9d. per 100 lbs. plus 75 per cent.
> 3 tons and upwards ... ... 9d. per 100 lbs. plus 100 per cent."

The appellants in the argument before their Lordships sought to sustain the validity of the charges demanded and received by them on the ground that the goods were not covered by any of the items in the Schedules to the Law of 1895 and consequently came within the provisions of subsection 9 of section 16 which says—

> " Any goods not particularly enumerated and set forth in the Schelules 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."

They argued further that the goods were " machinery " or " heavy packages " " exceeding two tons in weight " and that there had been a " special agreement " with regard to them.

It was said that the Shipping Association scale of charges was open and notorious to all persons importing goods, that they constituted an offer to importers of goods and that if goods were landed on a wharf without a contract relating expressly to the goods the offer of the wharfingers must be deemed to have been accepted by the importer, and that in this way a " special agreement " within the meaning of the subsection would be constituted.

At the end of the argument the parties desired, as a matter of agreement, that if their Lordships came to the conclusion that the articles were " goods not particularly enumerated and set forth in the Schedules " and that they were " machinery " or " heavy packages " within the meaning of the subsection 9 of section 16 but that there had been no " special agreement " within the meaning of the subsection the appellants should be declared entitled to a fair and reasonable charge for the use of the appellants' wharf and for the services rendered by the appellants in respect of the tractors and trailers landed.

For reasons which follow, their Lordships have formed the view that the tractors and trailers in question do not fall for payment of wharfage charges under the item relating to " carriages " in Schedule A, and that

they are goods " not particularly enumerated and set forth in the Schedules A, B, C and D " within the meaning of subsection 9 of section 16. They agree with the Court of Appeal that there has been no " special agreement " within the meaning of the subsection.

A " carriage " in its widest sense can be said to be something used for carrying persons, goods or something else. Their Lordships do not think the word " carriage " in the Law should be given this wide meaning having regard to the provisions of the Law and the schedules thereto, regarded as a whole. But even if this word is given this wide meaning their Lordships are of the view that a tractor cannot be said to be a carriage. The only thing it carries is the driver but the purpose for which a tractor is used is not the purpose of carrying a driver. Their Lordships do not think that that which carries a driver for the purpose of driving it can for that sole reason be said to be a carriage.

In the case of *Simpson* v. *Teignmouth and Shaldon Bridge Co.* ([1903] 1 K.B. 405) Lord Halsbury made an observation very relevant to the present case. He said that the word " carriage " in a statute should be interpreted to mean " 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 ". Their Lordships find it difficult to imagine that, in however wide a sense the word " carriage " was used in the Law of 1895, the legislature could have intended articles of the weight and complexity of the tractors and trailers under consideration to be covered by the term. In this connection another observation of Lord Halsbury in the same case has to be borne in mind. He was considering the word in a taxing statute and he said " it is not immaterial to observe what the taxation was ". In the wharfage Law wharfage corresponds to tax and it is not immaterial to consider how the matter stands in respect of wharfage. The item it will be seen makes no reference to weight. It is difficult to imagine that the legislature could have contemplated the same amount being paid for a horse-drawn carriage and for a tractor weighing 18,000 lbs.

The Court of Appeal after quoting a passage from the judgment in the *Teignmouth* case said—

> " It is true that there has been a considerable development in that type of carriage since the 1895 Law was passed, but if what is in the ordinary sense known as a carriage at the time the Legislature passed the Law is still substantially within that definition by whatever name it may now be called, we think that for purposes of the Wharfage Law it comes within the word carriage."

Their Lordships are unable to accept this reasoning. It appears to suggest that a tractor (and a trailer) would have been " in the ordinary sense known as a carriage at the time the Legislature passed the Law " if it had then been in existence. Their Lordships cannot accept this view. A suggestion that " wheels made all the difference " was made in the course of the argument and is illustrated in a passage from the evidence of a witness who said—

> " Plaintiff Firm contends that they are carriages. If a mechanical crane had four wheels I would regard it as a carriage. If it had no wheels I would regard it as machinery falling under heavy lifts. A caterpillar tractor would be heavy lifts. The wheels make the difference in my opinion."

Their Lordships are unable to agree.

It was argued that there would be nothing extraordinary in regarding tractors and trailers as carriages because motor vehicles sometimes weighing up to 4,000 pounds were rated as carriages. This happens as a consequence of section 2 (2) of the Road Traffic Law (Chapter 310) which enacts—

> " Every motor vehicle shall be deemed for any purpose to be a carriage within the meaning of any Law of this Island and of any Rules, Regulations or Bye-laws made under 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."

It would appear that for special considerations special provision was made for motor vehicles. The section just quoted gives some force to the argument that but for the statutory provision a motor vehicle would not be a "carriage".

It was sought for the first time on this appeal to argue that tractors and trailers were motor vehicles within the meaning of the Road Traffic Law.

A motor vehicle is defined thus in the Law:—

"'motor vehicle' means any mechanically propelled vehicle intended or adapted for use on roads".

It must be presumed that the question whether the tractors and trailers were "motor vehicles" within the meaning of the Statute had been considered by the respondents and their advisers for the purposes of the proceedings in Jamaica. It was not raised in the Courts there, possibly for good reason. It cannot be entertained on this appeal as it involves questions of fact in addition to questions of law.

The conclusions of the Court of Appeal were founded partly on an examination of the history of the legislation which had to be applied. The relevant law is to be found as Chapter 281 in the Revised Edition of the Laws of Jamaica which came into force on the 1st day of August, 1938. This edition of 1938 came into being as the result of provision for revision made in the Revised Edition (Laws of Jamaica) Law appearing as Chapter 2 in the Revised Edition. Section 7 provided that the powers of revision conferred on the revising commissioner "shall not be taken to imply any power in him to make any alteration or amendment in the matter or substance of any Act or Law or part thereof". Consequently the Court of Appeal considered the law applicable as one that had been passed in 1895.

In the two items

"Carriages of four wheels, including wheels
Carts and carriages of two wheels"

the word "carts" appears for the first time in 1895 in the series of Laws dealing with wharfage. Upon a line of argument which their Lordships do not think it necessary to repeat, the Court of Appeal came to the conclusion that the "intention of the Legislature was that carriages included carts" and that the word "carriages" was used as a generic term. As against this, an argument of great force arises—namely that if the word "carriages" included carts there was no need to use the word "carts" at all and that its use for the first time in 1895 would be unintelligible except upon the basis that the word "carriage" was not used as a generic term including carts. On a consideration of this and other instances their Lordships, though conscious that the history of legislation can often throw a great deal of light, are of opinion that it does not in the present case afford inferences sufficiently clear and unequivocal as to what was in the mind of the legislature when it adopted the language which has now to be applied.

It is not contended, and it does not appear, that the articles in question are covered by any other item in the Schedules, and their Lordships are therefore of opinion that the articles are "goods not particularly enumerated and set forth in the Schedules". Their Lordships find it unnecessary to decide whether or not the goods are "machinery" because they undoubtedly fall within the term "heavy packages".

There was no express agreement as to what wharfage should be paid for these articles. In one previous instance the respondents had been charged wharfage by the appellants for similar articles under the item relating to carriages. The appellants say that that charge has been made in error by one of their officers. The respondents had paid the "heavy lift" rates in the Shipping Association rates on other goods, but not on goods of the same description as those now under consideration. A tacit

agreement to pay the Shipping Association charges for these articles is not lightly to be inferred in these circumstances. The evidence is not strong enough to support the suggestion that the Shipping Association charges constituted an offer which the respondents must be deemed to have known and tacitly accepted. When the question of payment arose between the parties, the respondents at the very outset asserted that another basis of payment was the correct one. They had in fact been earlier charged on that basis. Their Lordships do not think that a " special agreement " within the meaning of subsection 9 of section 16 can be said to have been made.

As a consequence of the conclusions arrived at by their Lordships, and of the agreement between the parties, the appellants are entitled to reasonable remuneration for the use of their wharves and for the services rendered by them in respect of the tractors and trailers landed. The case should be sent back to the Resident Magistrate for this remuneration to be assessed on such material as may be put forward by the parties.

For the reasons which they have given their Lordships will humbly advise Her Majesty that the decree of the Court of Appeal be set aside and the case sent back to the Resident Magistrate's Court for that Court to assess what is a fair and reasonable charge for the use of the appellants' wharves and for the services rendered by the appellants in respect of the tractors and trailers landed on their wharves, and that judgment be entered on the basis that the sum so assessed was due to the appellants. The respondents must pay to the appellants two-thirds of their costs of this appeal and in the Court of Appeal. The Resident Magistrate, after determination of the sum payable to the appellants, will make such order as he thinks right as to costs in respect of the original trial and in respect of the further enquiry now directed.

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v.

REYNOLDS JAMAICA MINES LIMITED

DELIVERED BY
MR. L. M. D. DE SILVA

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