CASES

DECIDED BY

THE SUPREME COURT OF CYPRUS

AND BY THE ASSIZE COURTS.

[TYSER, C.J. AND BERTRAM, J.]

TYSER, C.J. & BERTRAM, J. 1908 Jan. 3

JEAN VERGOPOULOS, *Plaintiff*,

v.

THE LIMASSOL SS. Co., *Defendants*.

FOREIGN ACTION—CARRIAGE BY SEA—BILL OF LADING—EXCEPTIONS—PERILS OF THE SEAS—NEGLIGENCE—ONUS OF PROOF.

Bales of Tobacco, shipped under a bill of lading, containing an exception o "perils of the seas" were damaged through the breaking of barrels of oil stowed in the same part of the vessel. The breaking of the barrels of oil was caused by tempestuous weather.

HELD: By the Supreme Court, reversing the decision of the District Court of Larnaca, that the bales of tobacco were damaged by "Perils of the Seas."

The exceptions in a bill of lading do not relieve the ship-owner of his obligation to exercise reasonable care and skill in the stowage and carriage of the goods entrusted to him, unless he so expressly stipulates.

When in an action on a bill of lading for damage to a cargo, it is proved by the ship-owner that the damage was due to a cause within the exceptions, the onus lies upon the freighter (if he alleges negligence) to establish the existence of such negligence.

Where the alleged negligence is improper stowage, it should, if possible, be proved by persons conversant with the stowage of cargoes.

The evidence of negligence relied on was the statement of the officers of the ship that owing to the holds being full the barrels of oil were stowed between decks near the tobacco, being secured to stanchions by ropes and that the ropes were broken owing to the violence of the storm.

No evidence was tendered by the freighters to show that this was improper.

HELD: Insufficient evidence of negligence.

This was an appeal from a judgment of the District Court of Larnaca.

The Plaintiff was the owner of certain bales of tobacco shipped to Larnaca on the Defendants' SS. Salamis. The bill of lading contained an exemption of "perils of the sea."

The tobacco was stowed "between decks," and, the hold being full, certain barrels of oil, for which no room had been found in the hold, were also stowed "between decks" at some distance from the tobacco. These barrels of oil were secured to stanchions by ropes, but on the voyage, owing to what was alleged to be exceptionally tempestuous weather, the ropes gave way, the barrels were broken and the oil from the barrels damaged the tobacco.

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At the settlement of the issues the Plaintiff alleged negligent stowage, but at the trial no definite evidence of negligence was tendered. The only evidence relied on by the Plaintiff was that given by the officers of the ship, who said that they inspected the cargo before the vessel sailed and directed the barrels to be secured to the stanchions by ropes.

The action being a foreign action was tried by the President alone. The bill of lading was in Greek and the ship sailed under the Greek flag, but there being no evidence that Greek law on the matters in question differed from English law, the action was tried according to English law. (See *Nivogosian* v. *The Phocéenne SS. Co.* (1907) 7 C.L.R., 51.)

The President held that the damage was not caused by perils of the sea, and gave judgment for the Plaintiff. Under the circumstances he made no finding on the issue of negligence.

The Defendants appealed.

Bucknill, K.A., and *Demetriou* for the Appellants.

Rossos for the Respondent.

Judgment. CHIEF JUSTICE: In this case it was agreed by both parties that the English law was the law by which the contract was governed.

The Plaintiff contended that the loss was caused by negligent stowage and asked us to hold that the fact that the tobacco was stowed in the same hold with some barrels of oil was sufficient proof of negligent stowage.

Whether or not this was negligent stowage is a pure question of fact, and as no competent witness conversant with the stowage of cargoes has been called to enlighten as to whether this was negligent stowage or not, it is impossible for the Court to find that the cargo was negligently stowed.

The evidence shows that the damage was done during a storm of exceptional severity.

During the storm the barrels of oil broke loose from their lashings, the barrels were broken and the oil damaged the tobacco.

If the cargo was properly stowed it is clear that by English law the loss would be due to perils of the seas and within the exceptions (*Lawrence* v. *Aberdein*, 5 B. and A. 107, *Montoya* v. *The London Assurance Company*, 6 Ex., 451).

A peril of the sea, that is to say a storm, caused the loss. Perils of the seas are an exception in the bill of lading. The loss therefore is shown to be occasioned by a peril excepted in the contract, and the ship-owner is exempt from liability unless the Plaintiff can prove that the damage might have been avoided if there had been no negligence on the part of the Defendants or their agents.

In this case it is not shown that the barrels were not properly stowed, or that any damage would have arisen if there had not been exceptionally bad weather. Therefore the onus of proving negligence which was on the Plaintiff has not been discharged by him.

One other point raised by Mr. Rossos for the Plaintiff was that the damage was caused by the oil and tobacco being near each other and that therefore the Defendants were liable, because the ship is liable for damage by proximity. He cited Carver on "Carriage by Sea," Sec. 95.

It is true that if a ship-owner knowingly places so near to each other two articles which from their nature will damage each other when placed so near, it would be negligent stowage for which the ship-owner would be liable.

But in this case it is not shewn that any damage would have been caused to the tobacco by the oil if they had remained in their places, or indeed unless the storm had dislodged the barrels of oil from their place.

This case does not come within the rule.

The appeal must be allowed with costs both in this Court and in the Court below.

BERTRAM, J.: The first question in this case is whether the tobacco was damaged by "Perils of the Seas."

That question seems to me conclusively settled by the English authorities cited by the Chief Justice. In *Lawrence* v. *Aberdein* the cargo consisted of live stock, and some of these died through injuries caused by the rolling of the ship in a storm. The damage was held to have been caused by "Perils of the Seas." It is clear therefore that it is not essential that the damage should have been caused by the actual incursion of sea-water. In *Montoya* v. *London Assurance Company*, the cargo consisted partly of hides and partly of tobacco. The hides were damaged by the incursion of water in a storm and became putrefied. The putrefaction spoiled the flavour of the tobacco. The injury to the tobacco was held to be due to "Perils of the Seas." It is clear therefore that damage to goods may be caused to goods by "Perils of the Seas" even though that damage has been communicated indirectly through damage done to other goods.

The damage being caused by perils of the seas the only other question that remains is whether there was negligence on the part of the ship-owner.

It has long been established that the exceptions in a bill of lading do not relieve the ship-owner of his obligation to exercise reasonable care and skill in the stowage and carriage of the goods entrusted to him unless he so expressly stipulates.

The rule, therefore (as cited with approval by the Privy Council in *The Freedom* (1871) L.R., 3 P.C. on p. 63), is this—that where the ship-owner has brought his case within an exception in the bill of lading, this shifts the onus of proof, and the onus then lies upon the freighter to prove that the damage might have been provided against and prevented by reasonable care and skill on the part of the ship-owners.

Now in this case the Plaintiff set up the plea of negligence at the settlement of the issues, but offered no evidence in support of it. The only evidence he relied on was that of the officers of the ship who said that owing to the holds being full the barrels of oil were stowed between decks, and that for the sake of security they directed them to be lashed to stanchions by ropes, which snapped in the storm.

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No evidence was given as to whether the lashing was properly done, nor whether the ropes were of a reasonable thickness, nor whether there were any more adequate precautions that might have been taken.

I cannot say, in the absence of expert evidence to that effect, that the mere stowing of the oil in the same part of the vessel as the tobacco was itself negligence. Those who allege that a cargo is improperly stowed ought, wherever possible, to prove their plea by the evidence of persons conversant with the subject.

Under the circumstances I do not think that the cargo-owner has given sufficient evidence of negligence and I agree that the appeal must be allowed.

Appeal allowed.

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REX

v.

TOGLI NICOLA.

CRIMINAL LAW—CRIMINAL LAW AND PROCEDURE AMENDMENT LAW, 1886, SEC. 20—POSSESSION OF PROPERTY REASONABLY SUSPECTED OF BEING STOLEN—BURDEN OF PROOF—STATEMENT BY ACCUSED PERSON—CYPRUS COURTS OF JUSTICE ORDER IN COUNCIL, 1882, ART. 124.

A person charged with being in possession of property, which in the opinion of the Court is reasonably suspected of being stolen, must prove that he came by it lawfully.

In determining whether the property is reasonably suspected of being stolen, the Court may take into consideration the fact that the accused made contradictory statements as to how he came by the property when he was found in possession of it.

In determining whether the accused has proved that he came by it lawfully, the Court may take into consideration the fact that he neglected when called upon for his defence to make any statement to explain his possession of the property.

This was an appeal from the District Court of Paphos.

On the 2nd January, 1908, the prisoner was charged under Sec. 20 of the Criminal Law and Procedure Amendment Law, 1886, with being in possession of certain goat's meat and a goat skin reasonably suspected of being stolen property.

It appeared that a man called Redif Rejeb having missed certain goats from his flock, the Police, after making enquiries, visited the house of the accused.

They found the door of the house bolted, and on obtaining admission discovered the accused eating goat's meat. On being asked where he obtained it, he said that he had bought it from a man whom he did not know.

Next day the accused informed the Police that he had given a false account of the manner in which he came by the goat's meat. He now said that he had slaughtered a goat of his own flock, but, that having done so without a teskere, he had been afraid to admit the fact to the Police on the previous day. He added that he had sold some of the meat of the slaughtered goat to a forest officer at