**SS. KNUTSFORD, LIMITED**

**v.**

**TILLMANNS AND CO.**

HOUSE OF LAORD

JULY 3 1908.

**LEX (1908) – A.C. 406**

**CITATION**

2PLR/1908/2 (HL.E)

[1908] A.C. 406

**HOUSE OF LORDS**

LORD LOREBURN L.C.

LORD MACNAGHTEN.

LORD JAMES OF HEREFORD., and

LORD DUNEDIN.

**ORIGINATING COURT(S)**

COURT OF APPEAL

**REPRESENTATION**

ATKIN, K.C., and LEWIS NOAD - for the appellants

J. A. HAMILTON, K.C., and ADAIR ROCHE - for the respondents

Solicitors: WILLIAM A. CRUMP & SON; BOTTERELL & ROCHE.

**MAIN ISSUES**

BANKING AND FINANCE – BILL OF LADING:- Instruction on a bill of lading – Satisfaction and construction of – Commercial usages – When would be deemed relevant –

INTERNATIONAL LAW – INTERNATIONAL TRADE:- Goods shipped to a foreign jurisdiction under Bills of Lading – Where instrument makes it competent for the master of ship to discharge the goods on the ice or at some other safe port or place if the designated port is inaccessible on account of ice, blockade or interdict, or if entry and discharge at a port should be deemed by the master unsafe in consequence of war – How construed – Length of journey – Estimation of what constitutes undue/inordinate delay within the circumstances in a commercial sense – Relevant considerations

SHIPPING AND ADMIRALTY LAW: Shipping – Bill of Lading – Construction of – Where instrument makes it competent for the master of ship to discharge the goods on the ice or at some other safe port or place if the designated port is inaccessible on account of ice, blockade or interdict, or if entry and discharge at a port should be deemed by the master unsafe in consequence of war- Port “inaccessible on account of Ice” for a few days – Whether enough to satisfy the clause – Whether length of journey and what constitutes reasonable delay in a commercial sense relevant - Application of the Ejusdem Generis Principle

TRANSPORTATION AND LOGISTICS – PORT:- Inaccessible port which renders discharge of goods from ship impossible – Implication for contracts and agreements pursuant to a bill of lading – Diversion of goods to another port – When would be deemed a breach of the terms of the bill of lading – Three days for an inter-continental ship voyage – Whether constitute inordinate delay – What constitutes unsafe port - How construed

**CASE SUMMARY**

ORIGINATING FACST AND CLAIMS

Goods were shipped on board a steamship for a foreign port under bills of lading providing that if a port should be inaccessible on account of ice, blockade or interdict, or if entry and discharge at a port should be deemed by the master unsafe in consequence of war, disturbance or any other cause, it should be competent for the master to discharge the goods on the ice or at some other safe port or place. This vessel went from Middlesbrough to Japan to deliver most of her cargo, and then sailed for Vladivostock. When she arrived within forty miles of Vladivostock she found she could not get into the port by reason of ice. There was some danger to her propeller, it is said, from ice. There was also some fear - rather a vague fear - of submarine mines, and there was some danger, if the wind changed, from a lee shore. The vessel tried for three days in vain to get through the ice and then went back to Nagasaki, and, by order telegraphed from England, there discharged her cargo. The next day after her turning back the ice cleared off, the access was safe, and other vessels entered. This vessel went back to Nagasaki, and it is claimed that she was entitled to do so. -

ISSUE FOR DETERMINATION OF APPEAL

Whether the ship master was justified, in the circumstance of the case, to discharge its cargo at a port different from the designated one, after waiting for just a few days.

DECISION OF THE HOUSE OF LORDS

1. Upon the true construction of the bills of lading, "inaccessible" and "unsafe" must be read reasonably and with a view to all the circumstances; that the words "or any other cause" must be read as being ejusdem generis with war or disturbance; and

2. That as a matter of fact the master was not justified under all the circumstances in this case in failing to deliver the goods at the port for which they were shipped merely because that port was at the moment of their arrival inaccessible on account of ice for three days only.

Decision of the Court of Appeal, [1908] 2 K. B. 385, affirmed.

**MAIN JUDGMENT**

July 2, 3.

LORD LOREBURN L.C.

My Lords, I am clearly of opinion that this judgment ought to be affirmed. This vessel went from Middlesbrough to Japan to deliver most of her cargo, and then sailed for Vladivostock. When she arrived within forty miles of Vladivostock she found she could not get into the port by reason of ice. There was some danger to her propeller, it is said, from ice. There was also some fear - rather a vague fear - of submarine mines, and there was some danger, if the wind changed, from a lee shore. The vessel tried for three days in vain to get through the ice and then went back to Nagasaki, and, by order telegraphed from England, there discharged her cargo. The next day after her turning back the ice cleared off, the access was safe, and other vessels entered. This vessel went back to Nagasaki, and it is claimed that she was entitled to do so.

(1) [1908] 1 K. B. 185.

Is this conduct justifiable within the terms of the fourth clause of the bill of lading? Was the port of Vladivostock "inaccessible" on account of ice? At the moment, and for two or three days, undoubtedly it was; but the meaning of this bill of lading, in my opinion, is that the port must be inaccessible in a commercial sense so that a ship cannot enter without inordinate delay. There is no ground for saying that a delay of three days on a journey so long could be regarded as inordinate delay.

The next point taken was that by the bill of lading she might discharge at some other safe port, "should the entry and discharge at a port be deemed by the master unsafe in consequence of war, disturbance or any other cause." My Lords, that also does not mean unsafe at the moment, but it means unsafe for a period which would involve inordinate delay. The master never decided that the port was unsafe in that sense, and never could have decided anything of the kind.

Then, my Lords, it was said there was an "error of judgment" of the master within the second clause of the bill of lading. I do not see that the master ever exercised his judgment within the meaning of that clause. He thought (no doubt acting in good faith) that he could go back, and he went back. He simply broke his contract, interpreting it erroneously.

The other point - namely, that one of the bills of lading was signed by Messrs. Watts instead of the captain - to my mind is destitute of validity in law and even more destitute of merits. If the captain had been directed to sign it he would have been obliged to sign it. The point is merely technical - that the proper signature was not there. I am not satisfied that the captain did not know perfectly well of this signature and sanction it.

Accordingly, I am of opinion that this appeal should be dismissed with costs.

**LORD MACNAGHTEN.**

My Lords, I agree with my noble and learned friend on the woolsack on all the three points. One of them I think ought not to have been raised, and about that I will not say anything more. With regard to the other two, after the very full and able arguments we have had I think that the judgments of Channell J. and the Court of Appeal are quite right.

I do not think that the port of Vladivostock was inaccessible within the meaning of the documents, although the captain could not make his way there through the ice for three days.

I do not think he was justified in giving up the attempt after so short a trial, considering that he had plenty of coal on board. I do not think that, having regard to the fact of the whole of the freight having been paid in advance, he was justified in landing the goods at Nagasaki. While the goods were still on board he learned that the port of Vladivostock was accessible, and I think he was bound to prosecute his voyage to the destination mentioned in the bills of lading.

As regards the last point, I think the rule of ejusdem generis applies as laid down in Thames and Mersey Marine Insurance Company v. Hamilton (1), and I prefer to take the rule on a point of that sort from a case which did deal with bills of lading and shipping documents rather than from cases that dealt with real property and settlements.

On the whole I think the appeal ought to be dismissed.

LORD JAMES OF HEREFORD.

My Lords, the main question in this case is entirely, I think, one of fact, and I concur in the judgment which has just been delivered by my noble and learned friend Lord Macnaghten on that point.

My Lords, it seems to me that the master when he gave up the attempt to enter Vladivostock for Japan and there delivered his cargo was acting in the interests of the shipowners so as to get rid of the burden of that cargo, and not in the interests of the charterers. He did not wait the time, which a person acting in the interests of the charterers would have waited, near the mouth of the river to see whether the ice did or did not pass away. If he had done so for a reasonable time none of this litigation would have arisen.

LORD DUNEDIN.

My Lords, the appellants were bound by at least three of the bills of lading to deliver this cargo at Vladivostock. Admittedly they did not do so, but delivered it at Nagasaki. They must therefore be liable in damages for the failure unless they can shew that they are excused in respect of any of the exceptions in the bill.

Their principal defence was based on the fourth clause, the terms of which I need not again read to your Lordships. They plead the protection of both members of the clause. As to the first, have they shewn that de facto Vladivostock was inaccessible on account of ice? It is obvious that inaccessibility must be judged of reasonably. Here the practical inaccessibility lasted but three days, and though the captain may have been right, in view of the danger of his anchorage under the lee of Askold Island, to give up the attempt to enter Vladivostock when he did, I see no reason why he should not have renewed his attempt when the weather conditions changed as they did on the very next day.

(1) (1887) 12 App. Cas. 484, at pp. 490, 501.

As to the second part of the clause, I have come after consideration to agree with the learned judges of the Court of Appeal in thinking that "any other cause" must be limited there to causes ejusdem generis as war and disturbance, and cannot apply to ice, which is especially dealt with in the first portion. But even were that not so, I think that the same considerations as to the facts which prevent the appellants sheltering themselves under the first portion apply here also; in other words, I should hold that the condition of unsafeness must at least endure until the delivery at the alternative port has been effected.

The other clause appealed to was the general enumeration in clause 2, in which, inter alia, figures "error in judgment of the master, &c., ... whether in navigating the ship or otherwise." I can only say that this seems to me to have no application. The non-delivery of the goods at Vladivostock was not due to an error in judgment of the captain. The proper application of the clause is sufficiently indicated by the words "in navigating the ship or otherwise." It seems to me fantastic to extend it to the idea of a captain forming a wrong legal opinion on the meaning of a clause in the bill of lading and then proceeding to act upon it.

The only point remaining is whether the appellants are bound in respect of the fourth bill of lading. I am content with the judgment of Channell J. I do not think that any new and dangerous liability, as was urged, is being imposed on owners, because it must be clearly understood that this was a bill of lading which the master could rightly have been called on to sign. Had the bill of lading contained stipulations of such an extraordinary character that the master might have refused to sign, then that defence would have been equally open upon the question of whether the signature of the charterers bound the owners.

Order of the Court of Appeal affirmed and appeal dismissed with costs.

Lords' Journals, July 3, 1908.