The East and West Steamship Company, George Town, Madras

Vs

S. K. Ramalingam Chettiar (and connected appeal)

Civil Appeal No. 88 of 1956

(P. B. Gajendragadkar, K. N. Wanchoo, K. C. Das Gupta JJ)

03.05.1960

JUDGMENT

DAS GUPTA, J. –

These three appeals - Civil Appeal No. 88 of 1956, Civil Appeal No. 91 of 1958 and Civil Appeal No. 92 of 1958, of which one is from a decision of the High Court of Madras and the other two from decisions of the High Court of Bombay raise some common questions of general importance to carriers of goods by sea and of shippers as regards the 3rd clause of paragraph 6 of Art. III in the Schedule of the Carriage of Goods by Sea Act (hereinafter called "the Act"). This clause provides that "in any event the carrier and the shipper shall be discharged from all liability in respect of loss or damage unless a suit is brought within one year after the delivery of the goods or the date when the goods should have been delivered". In all the three appeals before us the carriers' main defence to claims of compensation by the owners of the goods was based on this clause and the courts had to consider whether this defence was available to the carrier.

The appeal from the Madras High Court was in respect of a consignment of 90 bundles of brass circles which were consigned to the respondent at Madras from Bombay to Madras per S. S. Fakira, a Steamer belonging to the East and West Steamship Co. The Ship arrived in Madras on August 1, 1948, and 78 out of the 90 bundles were delivered on August 25, 1948, to the appellant through his clearing agent, the second respondent. Five more bundles were delivered on September 25, 1948. After some correspondence between the Shipping Company and the first respondent regarding the seven bundles not delivered the appellant company repudiated finally the respondent's claim on March 24, 1950. The first respondent brought the present suit on June 27, 1950, claiming Rs. 1,023-5-0 as compensation - Rs. 974-13-0 for the value of the undelivered goods and Rs. 48-8-0 as the profit of which he had been deprived. The claim for this amount of profit was given up at the Trial. The appellant's defence was : (1) that the suit having been filed beyond the period prescribed in cl. 6 of Art. 3 of the Act; (2) that the suit was also barred as no claim had been made within the period of one month from the date of arrival of the vessel as stipulated in the bill of lading and (3) that the goods were insufficiently packed and therefore carrier was not liable for the alleged loss. The learned Judge of the Small Causes Court who tried the suit as also the Judge who heard the matter on a new trial application held that the plaintiff's right to claim compensation was extinguished before the date of the suit.

As regards the second defence based on the stipulation in the bill of lading that notice has to be given within one month the Trial Court held that this term in the bill of lading was void and of no effect. The learned Judges who heard the new trial application disagreed with this and accepted the defence on this point also. In the result they dismissed the new trial application and confirmed the

order of dismissal made by the learned Trial Judge. Against this order the High Court of Madras was moved by the plaintiffs under s. 115 of the Code of Civil Procedure. The learned Judge held that the term in the bill of lading as regards one month's notice was repugnant to Rule 8 to Art. III of the Schedule to the Act and was void. He was also of opinion that the date of the final repudiation of liability by the Shipping Company as regards the short delivery or non-delivery is the date "when the goods should have been delivered" within the meaning of the 3rd clause of the 6th paragraph of Art. III and so whether this clause provided for extinction of a right or only prescribed a rule of limitation, the defence based on this clause of the Act could not succeed. He expressed his own opinion, however, that this clause did not provide for extinction of the right but merely prescribed a rule of limitation. In view of his conclusions he set aside the decision of the lower courts and remanded the suit for further disposal to the trial court. After remand the trial court on May 4, 1954, decreed the suit for a sum of Rs. 974-13-0. Against that decree no steps were taken by the Shipping Company. It was after that date that the Shipping Company applied for and obtained from this Court special leave to appeal on October 11, 1954. It has to be noticed that as the decree made in the suit has become final and unassailable, this appeal is really of academic interest. In view however of the fact that the main question of law raised, viz., as regards the scope and interpretation of the 3rd Clause of para. 6 of Art. III of the Schedule to the Act is being raised before us in the other two appeals from the Bombay High Court also we have heard the counsel for both sides in this appeal in full.

Of the two appeals from Bombay - the one Civil Appeal No. 92 of 1958 is in respect of some consignments at Bombay by S. S. Tweedsmuir Park, S.S. Finnamore Hill and S. S. Ismalia - all vessels belonging to the first defendant, the British India Steam Navigation Company Ltd. S. S. Tweedsmuir and S.S. Finnamore Hill arrived in the port of Bombay on or about September 10, 1948, and steamer Ismalia arrived in Bombay on September 6, 1948. The vessels discharged their cargoes alongside on to the docks belonging to the Trustees of the Port of Bombay. The plaintiffs took delivery of the goods packed in bags which bore their distinctive and identifying marks, but were unable to obtain delivery of 164 bags out of the consignment sent by Ismalia, 869 bags out of the consignment sent by Finnamore and 1,657 bags out of the consignment sent by Tweedsmuir Park. The suit was brought on a claim of Rs. 1,10,323-8-0 as compensation for the bags not delivered. The Trustees of the Port of Bombay were also made defendants. We are no longer concerned with them as after the suit was dismissed by the Trial Judge against both the defendants the plaintiffs did not prefer any appeal against the order of dismissal as against the Trustees.

The main defence of the first defendant, the Shipping Company, was that the company was discharged from all liability in respect of the loss or damage alleged in the plaint by reason of the provisions of the Act inasmuch as the suit had not been brought within one year of the date "when the goods should have been delivered". Another defence was that the company was not liable as no notice within 3 days after discharge and before goods were removed from the quay or ship's side or place of discharge had been given and so in view of Clause 20 of the bill of lading the company was free from all liability. The trial judge held that in view of the fact that S. S. Finnamore Hill completed discharging her cargo on 19th September, 1948, S. S. Ismalia completed discharging her cargo on 25th September, 1948, and S. S. Tweedsmuir Park completed discharging her cargo on 27th September, 1948, the suit was clearly not brought "within one year" from the date "when the goods should have been delivered". He held therefore that the defendants were discharged from all liability by reason of the provisions of the Act. Accordingly he dismissed the suit. In appeal from this order of dismissal the plaintiffs contended that Art. III(6) did not deal with cases of loss or damage arising from non-delivery of goods; in the alternative it was contended that the expression "loss or damage" in Art. III(6) must be limited to the loss or damage to the goods themselves and if

the goods have not been lost this clause had no application. The learned judges of the High Court rejected both these contentions. They were of opinion that Art. III(6) deals with all cases of loss or damage whether the loss or damage is caused by the deterioration of the goods or is caused by the non-delivery of the goods and further that "the loss or damage" as used was used by the Legislature to include any loss or damage caused to shipper or consignee in respect of which he claims compensation from the shipping company. The learned judges also held that so far as the shipping company was concerned the delivery of goods is given or ought to be given as soon as the goods are landed and therefore in this case the goods with regard to the three ships having been cleared on September 19, 1948, September 25, 1948, and September 27, 1948, respectively. These were the dates on which the goods "should have been delivered" for the purposes of the application of the 3rd clause of paragraph 6 of Art. III. Accordingly agreeing with the Trial Judge that the liability of the shipping company was discharged and the suit was not maintainable they dismissed the appeal.

The other appeal from the Bombay High Court, viz., Civil Appeal No. 91 of 1958 is in respect of a consignment of 6,000 bags of cocoanut from Cochin and 4,733 bags of copra and cocoanuts from Badagara consigned to the plaintiffs for carriage to Bombay by the steamer "Bharatjal" belonging to the appellant, the Bharat Lines Ltd. The steamer arrived in Bombay Port some time in the middle of September, 1948. The plaintiffs however failed to obtain delivery of 596 bags from the Badagara consignment and 470 bags from the Cochin consignment. They brought the suit on December 5, 1949, against the shipping company, the Bharat Lines Ltd., and also against the Trustees of the Port of Bombay on a claim of Rs. 1,05,726-1-6 on which Rs. 45,725-7-5 appear to have been claimed as compensation in respect of the bags not delivered and the remainder as compensation for damage to the goods in the bags of which delivery was taken. We are no longer concerned with the second defendant, the Trustees of the Port of Bombay, as after the suit was dismissed by the Trial Court the plaintiffs did not pursue the claim against them.

The main defence of the first defendant, the shipping company, was that the suit was barred "by reason of the Indian Carriage of Goods by Sea Act". It was also urged that the suit was not maintainable as under the terms of the bill of lading the plaintiffs were bound to notify to the defendants their claim in writing about the alleged non-delivery within one month from the date of the arrival of the vessel which the plaintiffs had failed to do. It appears to have been conceded before the Trial Judge in the Bombay High Court that the suit had not been filed within one year after the delivery of the goods or the date on which the goods should have been delivered. The plaintiffs' counsel also appears to have conceded that cl. 6 of Art. III applied to the case. The learned Judge therefore held that the first defendant had been discharged from all liability in respect of the loss or damage alleged in the plaint and dismissed the suit. It appears however that in the appeal from this order of dismissal the plaintiffs urged that Art. III(6) of the Act did not apply to the facts of the case and also the date on which the goods should have been delivered should be construed to mean the date "when the loss was finally ascertained" and the shipping company was in a position to finally declare that they were or were not in a position to deliver the goods in question. In dismissing the appeal the learned judges of the High Court who heard the appeal did not give any separate reasons but stated that the appeal was being dismissed on the same ground as given in their judgment in Appeal No. 66 of 1954. This is the judgment from which Civil Appeal No. 92 of 1958 of this Court has been preferred.

From what has been said above it is clear as we have already indicated that the main questions in this appeal are as regards the interpretation of the 3rd Clause of paragraph 6 of Art. III in the Schedule to the Act.

The first and the most important of these questions is as regards the meaning of the word "loss" as used in the said clause. Does it mean only such loss as occurs when one says "the goods have been lost" or does it include also such loss as is sustained by the owners of the goods - whether the shipper or the consignee - when the carrier fails to deliver the whole or part of the cargo shipped ? The second question that arises for consideration is whether this clause only prescribes a rule of limitation or also provides for the extinction of the right to compensation after a certain period of time. The next question is as regards the ascertainment of the date on which the goods not delivered "should have been delivered" for the purposes of this clause. Apart from these questions as regards the interpretation of the 3rd clause of paragraph 6 of Art. III, it will be necessary to consider also whether the requirement in the bill of lading as regards the time within which the notice of claim must be made in order that the carrier may be responsible is void as being against the 8th paragraph of Art. III.

As has been mentioned in the preamable to the Act it was passed to give effect to the recommendation of the International Conference of Maritime Law at Brussels in October, 1922. The circumstances which led to the holding of the conference and were responsible for the recommendations have been stated by Scrutton on Charter Parties, 15th Edition, at p. 439, in these words :-

> "In recent years, as the terms of bills of lading became more diverse, the need for standardisation became more and more insistent and an increasing demand was made on the part of importers and exporters for the imposition by legislation, on the lines of the American Harter Act or the Australian Sea Carriage of Goods Act, 1904, or the Canadian Water Carriage of Goods Act, 1910, of certain minimum liabilities on sea-carriers who issued bills of lading".
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> "The movement in favour of legislation finally resulted in the decision of the delegates at the Diplomatic Conference on Maritime Law held at Brussels in October 1922, to recommend to their respective Governments the adoption of the Hague Rules with slight modifications as a basis of legislation."

It is this recommendation which has been referred to in the preamble to the Indian Act. It is important to mention that apart from our own country, U.K., Australia, Canada, Ceylon, Newfoundland, New Zealand as well as Belgium, France and U.S.A. have given statutory effect - wholly or partially to the Hague Rules. This international character of the provisions of law as incorporated in the articles to the schedule to the Act makes it incumbent upon us to pay more than usual attention to the normal grammatical sense of the words and to guard ourselves against being influenced by similar words in other acts of our Legislature.

It is helpful to remember in this connection the caution uttered by Lord Atkin in Stag Line Ltd. v. Foscold ((1932) A.C. 328) about the importance of giving words in these rules their plain meaning, and not to colour one's interpretation by considering whether a meaning otherwise plain should be avoided if it alters the previous law. After stating that this caution would be well founded if the Act merely purported to codify the law, he went on to observe :-

> "But if this is the canon of construction in regard to a codifying Act, still more does it apply to an Act like the present which is not intended to codify the English law, but

> is the result (as expressed in the Act) of an international conference intended to unify certain rules relating to bills of lading. It will be remembered that the Act only applies to contracts of carriage of goods outwards from ports of the United Kingdom; and the rules will often have to be interpreted in the courts of the foreign consignees. For the purpose of uniformity it is therefore important that the courts should apply themselves to the consideration only of the words used without any predilection for the former law...".

The House of Lords was in that case interpreting certain provisions of the English Carriage of Goods by Sea Act, 1924. Our own Act applies to contracts of carriage of goods outwards from the ports of India. Section 2 states that the rules set out in the Schedule shall have effect in relation to and in connection with the carriage of goods by sea in ships carrying goods from any port in India to any other port whether in or outside India. Though in the appeals before us we are concerned with only contracts of carriage of goods from one Indian port to another Indian port, it is necessary to remember that these rules will often have to be interpreted in the courts of the foreign consignees. That is an additional reason why we should be careful not to attach to the words used in the rules set out in the Schedule to the Act anything more or less than their normal meaning consistent with the context in which they appear and consistent with the scheme of the legislation.

Art. III of the Schedule with which we are specially concerned in the present case purports to mention the responsibilities and liabilities of the carriers. The first paragraph lays down the responsibilities and liabilities of the carrier in the matter of making ships seaworthy, properly manning, equipping and supplying the ship and making the holds and the different parts of the ship where goods are carried fit and safe for their reception, carriage and preservation. The second paragraph places on the carrier the duty of properly and carefully loading, handling, stowing, carrying, keeping, caring for and discharging the goods, subject to Art. IV. The 3rd paragraph provides for the issue of a bill of lading to the shipper of the goods showing among other things the identifying marks, the number of packages or pieces or the quantity or weight as also the apparent order and condition of the goods. Paragraph 4 provides that the bill of lading shall be the prima facie evidence of the receipt by the carrier of the goods as described in accordance with paragraph 3. The fifth paragraph provides that the shipper shall be deemed to have guaranteed to the carrier the accuracy as regards the details of marks, number, quantity and weight as furnished by him. It provides further that the shipper shall indemnify the carrier against all loss, damages and expenses arising or resulting from such inaccuracies. Then comes paragraph 6, the whole of which it is proper to set out :-

> "Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or if the loss or damage be not apparent, within three days, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading".
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> "The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection."
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> "In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after the delivery of the goods or the date when the goods should have been delivered."

> "In the case of any actual or apprehended loss or damage, the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods."

The seventh paragraph contains provisions as regards issue of a shipped bill of lading.

The eighth paragraph is in these words :-

> "Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect.
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> A benefit of insurance or similar clause shall be deemed to be a clause relieving the carrier from liability."

It has to be noticed that before providing in the 6th paragraph an immunity to the carrier from "all liability in respect of loss or damage" in certain circumstances the Legislature had in the earlier paragraphs laid on the carrier the duty of making the ships seaworthy, properly manning, equipping and supplying the ship, and making the holds and all other parts of the ship fit and safe for the reception, carriage and preservation of the goods; properly and carefully loading, handling, stowing, carrying, keeping and caring for and discharging the goods carried and provided that ordinarily the bill of lading should show the quantity or weight of the goods or the number of packages or pieces. "Loss or damage" which paragraph 6 speaks of should therefore reasonably be taken to have reference to such loss or damage which may result from the carrier not performing some or all of the duties which had been mentioned earlier. One of those duties is to discharge the goods carried in accordance with the quantity or weight or the number of packages or pieces as mentioned in the bill of lading. The shipper and the consignee of goods are more concerned with the duty of the carrier to discharge the goods in proper order and condition and in full than anything else. Indeed the other duties cast on the carriers so far as the owners of the goods are concerned, are really incidental to this duty of discharging the goods in full and in good order and condition. When in the context of the previous paragraphs of Art. III the 6th paragraph seeks to provide an immunity to the carrier "from all liability in respect of loss or damage" after a certain time, it is reasonable to think that it is loss or damage to the owner of the goods, be he shipper or the consignee, which is also meant, in addition to the "loss of the goods". When the goods themselves are lost, e.g., by being jettisoned, or by being destroyed by fire or by theft, there will be failure to discharge the goods in full and loss to the owner of the goods will occur. Even where the goods are not lost the carrier may fail to discharge the goods in full or not in proper order and there also loss will occur to the owner of the goods. In such a case, even though there may not have been "loss of the goods" the goods are lost to the owner. The word "loss" as used in paragraph 6 is in our opinion intended to mean and include every kind of loss to the owner of the goods - whether it is the whole of the consignment which is not delivered or part of the consignment which is not delivered and whether such non-delivery of the whole or part is due to the goods being totally lost or merely lost to the owner by such fact of non-delivery there is in our opinion "loss" within the meaning of the word as used in paragraph 6.

It is worth noting in this connection that while paragraph 5 makes it clear that loss there means loss to the carrier and paragraph 6 speaks of loss or damage to or in connection with the goods, the Legislature has in the 6th paragraph of this Article left the words "loss or damage" unqualified. The object of the rule however being to give immunity to the carriers and the shippers from claims of

compensation made by the owners of the goods in respect of loss sustained by them, it will be unreasonable to read the word "loss" in that paragraph as restricted to only loss "of the goods". When the object of this particular paragraph and the setting of this paragraph in the Article after the previous paragraphs are considered there remains no doubt whatsoever that the learned judges of the Bombay High Court were right in their conclusion that the loss or damage in this paragraph is a wide expression used by the Legislature to include any loss or damage caused to shipper or consignee in respect of which he makes a grievance and in respect of which he claims compensation from the shipping company.

The argument that loss due to failure to deliver the goods is not covered by this clause is merely to be mentioned to deserve rejection. The very use of the words "the date on which the goods should have been delivered" clearly contemplates a case where the goods have not been delivered. The clause gives the owner of the goods one year's time to bring the suit - the year to be calculated from the date of the delivery of the goods where the goods have been delivered and from the date when the goods have been delivered and from the date when the goods should have been delivered where all or some of the goods have not been delivered. The fact that the first clause of the 6th paragraph speaks of removal of the goods may be an argument for thinking as the Bombay High Court thought that that clause has no application when goods are not delivered. It may be mentioned that some authorities (See Carver's Carriage of Goods by Sea, 10th Edition, p. 191) have suggested that the first clause of this paragraph appears to have little meaning. That is a matter which need not engage our attention. It is sufficient to mention that the fact that the rule of evidence provided in the first clause of the paragraph may have no application to cases of non-delivery is wholly irrelevant in deciding whether the third clause applies to cases of non-delivery. As we have already said the date when the goods should have been delivered necessarily contemplates a case where loss has arisen because goods have not been delivered.

Reliance was sought to be placed on behalf of the appellants in the two Bombay appeals on Spens v. The Union Marine Insurance Co. Ltd. ((1868) L.R. 3 C.P. 427). What had happened in that case was that cotton belonging to different owners was shipped in bales specifically marked, including 43 bales belonging to the plaintiffs. In the course of the voyage the ship was wrecked; all the cotton was more or less damaged, some of it was lost, some was so damaged that it had to be sold before reaching the port and marks on a very large number of the bales were so obliterated by sea water that none of the cotton that was lost or sold and only a portion of what was carried to the port could be identified as belonging to any particular consignment. The plaintiffs had insured the goods with the defendant company against the usual risks. The question arose whether there was a total loss of a part of each owner's cotton or whether there was a total loss of the plaintiff's consignment. The court held that it could not be said that there was an actual total loss of the plaintiffs' consignment nor a constructive total loss of these, that the principle of proportion applied in cases of general average or jettison where it is not known whose goods are sacrificed should be properly applied to cases of this nature where because of the bales of different shippers being undistinguishable by reason of the action of the sea and without the fault of the respective owners it becomes impossible to ascertain to whom the goods actually lost belonged.

This case it has to be noticed had to consider in view of the special terms of an insurance policy, whether there was a total or partial loss for the purposes of claims under the policy and the argument that there was a total loss within the meaning of the policy because it was impossible for the ship-owner to deliver the plaintiffs' own bales of cotton to them was rejected. This case is of no assistance in the interpretation of the word "loss" in the Articles of the Schedule.

In cases of such mixture of cargo of different owners it was pointed out by Lord Moulton in Sandeman & Sons v. Tyzack and Branfoot Steamship Co. Ltd. ((1913) A.C. 680, 697) which was cited by the learned Solicitor-General himself :

> "It may well be that they could assert the position of joint owners in the mixed cargo, and as such take action against any person who sought to get possession of it or convert it to his own use. But it does not follow that the ship-owners would have performed their contract of carriage. Their duty is to deliver the goods entrusted to them for carriage, and they do not perform that duty if all that the consignee obtains is a right to claim as tenant in common a mixture of those goods with the goods of other people. No doubt, if such a right is of some value, and the consignee avails himself of it, the ship-owners are entitled to credit of whatever value the goods possessed if they were delivered mixed up with some extraneous substance which lessened their value or compelled the consignee to go to expense in separating it out."

There is nothing however to justify the conclusion that the consignee is bound to avail himself of the right to claim as tenant in common. The breach of contract remains and the claim for compensation for such breach is in no way affected. Neither authority nor principle therefore supports the contention of the learned Solicitor-General that where the goods are in existence but cannot be delivered because they have been mixed up with the cargo of other owners there has been no "loss" within the meaning of the third clause of the 6th paragraph of Art. III.

On the first question, therefore, we have come to the conclusion that the word "loss" in the third clause of the 6th paragraph of Art. III to the Act means and includes any loss caused to a shipper or a consignee by reason of the inability of the ship or the carrier to deliver part or whole of the goods, to whatever reason such failure may be due.

On the next question whether this clause prescribes only a rule of limitation or provides for the extinction of a right to compensation, it will be observed that the Bombay High Court has not discussed it at all, apparently because on the facts of the case before it, it would have mattered little whether the provision was one of limitation or of extinction of right. The question is however of some importance in the facts of the Madras Case. For if the provision is one of limitation there would be some scope for argument in the facts of that case that the period was extended by acknowledgments of liability within the meaning of Art. 19 of the Limitation Act. The question we have to decide is whether in saying that the ship or the carrier will be "discharged from liability", only the remedy of the shipper or the consignee was being barred or the right was also being terminated. It is useful to remember in this connection the international character of these rules, as has been already emphasised above. Rules of limitation are likely to vary from country to country. Provisions for extension of periods prescribed for limitation would similarly vary. We should be slow therefore to put on the word "discharged from liability" an interpretation which would produce results varying in different countries and thus keeping the position uncertain for both the shipper and the shipowner. Quite apart from this consideration, however, we think that the ordinary grammatical sense of "discharged from liability" does not connote "freed from the remedy as regards liability" but are more apt to mean a total extinction of the liability following upon an extinction of the right. We find it difficult to draw any reasonable distinction between the words "absolved from liability" and "discharged from liability" and think that these words "discharged from liability" were intended to mean and do mean that the liability has totally disappeared and not only that the remedy as regards the liability has disappeared. We are unable to agree with the learned Judge of the Madras High Court that these words merely mean that "that even though the

right may inhere in the person who is entitled to the benefits, still the liability in the opposite party is discharged by the impossibility of enforcement." The distinction between the extinction of a right and the extinction of a remedy for the enforcement of that right, though fine, is of great importance. The Legislature could not but have been conscious of this distinction when using the words "discharged from all liability" in an article purporting to prescribe rights and immunities of the shipowners. The words are apt to express an intention of total extinction of the liability and should, specially in view of the international character of the legislation, be construed in that sense. It is hardly necessary to add that once the liability is extinguished under this clause, there is no scope of any acknowledgment of liability thereafter.

This brings us to the question as to how the date "when the goods should have been delivered" should be calculated. References were made at the Bar to some of the numerous decisions in the different courts in India as regards the interpretation of somewhat similar words in Art. 31 of the Limitation Act in respect of suits for recovery of compensation for non-delivery. Indeed the learned Judge in the Madras High Court himself has based his conclusion on this question on the view of law he had earlier expressed as regards Art. 31 of the Limitation Act that the starting point of limitation there is the final repudiation of the liability by the company. With great respect to the learned Judge, we are of opinion that the cases as regards the ascertainment of the date when the goods "ought to be delivered" as used in Art. 31 of the Limitation Act are of no assistance for our present purpose. Most, if not all of the cases which have considered the question of the ascertainment of the date when the goods "ought to be delivered" for the purpose of Art. 31 deal with cases of transport by Railways where no date has been or can be specified in the contract for carriage. We cannot however ignore the fact that the conditions of carriage of goods by ship are essentially different from contracts of carriage of goods by Railways in one respect, viz., that whereas in contracts of carriage of goods by Railways there is ordinarily no knowledge as to by which particular train the goods will be despatched nor is there any undertaking by the Railways as regards such trains, there is ordinarily in contracts of carriage of goods by sea a distinct arrangement that the goods will be shipped by a particular vessel. Whether the bill of lading is in the older from beginning with the words "shipped on board the....." or in the form more recently employed by some shipping companies, beginning with the words "Received for shipment by...." (See Scrutton on Charter Parties, 15th Edition, p. 10) the name of the vessel is ordinarily indicated in the bill of lading itself. The duty of the carrier under the contract of carriage is to carry the goods by a particular ship and then to deliver the same on the arrival of the ship at the port. The manner in which the delivery will take place will depend on the particular terms of the bill of lading and on the custom of the port of destination. But whether the delivery has to be made to the consignee at the ship's side or is made on the quay side there can be little doubt that the carrier's duty is to start the delivery of goods as soon as the ship arrives at the port of destination and to complete the delivery before the ship leaves the port. In a particular case the carrier may not do his duty. That cannot however alter the fact of the existence of his duty to complete the delivery between the arrival of the ship at the port and the departure of the ship from the port. If as regards any particular goods this duty remains unperformed at the time when the ship leaves the port there can be no escape from the conclusion that the point of time when the ship leaves the port is the latest point of time by which the goods should have been delivered. On the records of both the Bombay appeals we find the bills of lading for these carriages of contract. Paragraph 10 of the bill of lading in Civil Appeal No. 92 of 1948 contains the terms as regards the discharge of cargo in these words :-

> "10. Discharge of goods : The goods may be discharged as soon as the ship is ready to unload and as fast as she is able, continuously day and night. Sundays and holidays included, and if the consignee fails to take delivery of his goods immediately the ship

> is ready to discharge then the company shall be at liberty to land the said goods immediately the ship is ready to discharge then the company shall be at liberty to land the said goods on to the wharf or quay or into warehouse, or discharge into bulk, lazaretto or craft or any other suitable place without notice and the goods may be stored..... The company shall have the option of making delivery of goods either over the ship's side or from lighter or store ship of hulk or custom house or warehouse or dock or wharf or quay at consignee's risk. In all cases the company's liability is to cease as soon as the goods are lifted from and leave the ship's desk.....".

In the Civil Appeal No. 91 of 1958 the terms of delivery are in paragraph 15 and is in these words :-

> "15. The company is to have the option of delivering these goods or any part thereof, into receiving ship or board or craft or landing them at the risk and expense of the shipper or consignee as per scale of charges to be seen at the Agents Offices..."

In these appeals we are not concerned with the facts of these terms of delivery of contract except that they show that it is clearly understood between the parties to the contract that delivery is to commence as soon as possible after the arrival of ship at port and completed before the ship leaves the port. Indeed even if there were not definite terms in the bill of lading as regards the delivery it would follow necessarily from the very nature of the carriage of goods by ship that the delivery of the cargo carried by the ship should be made between the date of the arrival at the port and its departure from the port. For our present purpose it is unnecessary to consider whether delivery to the dock authority in any of these cases was or would have been equivalent to the delivery to the consignee. That would depend upon the custom of the port of discharge or on statutory provisions or express stipulations in the bill of lading. But whether the delivery is to be made to the consignee or to anybody else on his behalf the duty of the ship's master is to start the delivery as soon as possible after the ship's arrival at the port and to complete it before the date of departure from the port. Before the ship has actually left the port it is not possible to say that the time when delivery should be made has expired. Once however the vessel has left the port it cannot but be common ground between the carrier and the consignee that the time when delivery should have been made is over. It is this point of time, viz., the time when the ship leaves the port, which in our opinion should be taken as the time when the delivery should have been made. The fact that after this point of time correspondence started between the carrier and the consignee as regards the failure to deliver and at a later point of time the carrier communicates his inability to deliver cannot affect this question. Nor can the ultimate repudiation of any claim that may be made by the shipper or the consignee affect the ascertainment of the date when the goods should have been delivered. The arrival at port of the vessel by which the goods have been contracted to be carried being known and the departure being equally an ascertainable thing and the duty of the carrier being necessarily to complete the delivery before leaving the port, the date by which the delivery should have been made is already a fixed point of time and later correspondence, claims or repudiation thereof can in no way change it.

We have therefore come to the conclusion that whatever be the proper mode of ascertaining the date when delivery "ought to be made" under Art. 31 of the Limitation Act - whether that be the reasonable time for delivery in the circumstances of the case or the date when after correspondence the carrier intimates its inability to deliver or the date of the final repudiation of the claim on a claim for compensation having been made or in the case of part delivery the date when the bulk of the consignment was delivered the date when the goods should have been delivered - for the purpose of the third clause of the 6th paragraph of Art. III of the Act is the date when the ship by

which the goods were contracted to be carried has left the port at which delivery was to be made.

Applying the above clause to the facts of the cases before us it is obvious that these suits for compensation were not maintainable. It is hardly necessary therefore to consider the additional defence raised in all the three suits by the shipping companies, viz., that the claim for compensation not having been made within thirty days from the date of arrival of the vessel in accordance with the terms of the bill of lading no compensation is payable. The learned Judges of the Bombay High Court did not think it necessary to consider this additional defence as they accepted the defence based on the third clause of the 6th paragraph of Art. III which has been discussed above. The learned Judge in the Madras High Court had however to consider this additional defence in view of his conclusions against the shipping company on the other defence. He held that the stipulation in the bill of lading that if no claim for compensation is made within thirty days from the date of arrival of the ship the shipping company will not be liable for compensation is void as it offends against para. 8 of Art. III. The relevant portion of this paragraph is in these words :-

> "8. Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect."

It cannot be seriously disputed that the stipulation under consideration does directly offend against the provisions of the 8th paragraph. For it seeks at least to "lessen", otherwise than provided in the rules in the Schedule the liability of the ship or carrier for loss or damage to goods or in connection with goods caused by the failure to deliver. This stipulation requiring claim for compensation being made within one month from the date of arrival of the ship is therefore null and void.

Though the additional defence raised by the shipping companies must therefore fail, the main defence, as we have already found, succeeds. None of the suits were brought within a year from the date when the ship carrying the goods left the port of discharge. We therefore dismiss with costs the Civil Appeals Nos. 91 and 92 of 1958 and confirm the order of dismissal made by the Bombay High Court. One set of hearing costs will have to be paid.

Civil Appeal No. 88 of 1956 is infructuous because of the fact, as already indicated, that after the order of remand now appealed from was made by the Madras High Court the suit was heard in the Small Causes Court and a decree was passed and that decree has become final. We therefore dismiss Civil Appeal No. 88 of 1956, as already ordered by this Court when giving leave to appeal; the appellant will pay the costs of the appeal to the respondent.

Appeals dismissed.

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