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that the person making the representation of soundness, was ignorant of the fact of unsoundness, and the same rule applies to a charter-party. In Abbott on Shipping, 304, it is laid down that, "in a charter-party, the person who lets the ship covenants that it is tight, staunch, and sufficient;" and, "if it is not so, the terms of the covenant are not complied with, and the ignorance of the covenantor can never excuse him;" and in a note it is said that "the law of the United States is the same, so also is the Scotch law. Such ordinary hazards as occur, not by stress of weather, or any extrinsic accident, but only from the ship and her furniture, be not upon the merchant, nor are relevant to free the shipper, who must have the ship sufficient at his peril."

The case must go back to the Judge of the Small Cause Court, who will deal with it with reference to the above remarks, if the parties consent to its being decided on the present state of the record; or if the parties do not consent, there must be a new trial of the case, the Judge keeping the remarks of this Court before him.

Attorneys for the plaintiffs : *Messrs Watkins & Co.*

Attorneys for the defendants : *Messrs. Berners & Co.*

Before Sir Barnes Peacock, Kt., C. J., and Mr. Justice Macpherson.

GIRISH CHANDRA DAS v. GILLANDERS, ARBUTHNOT & Co.

*Trespass—Ratification.*

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 Feb. 17.

The plaintiff let a cargo boat to U C, who had been employed by the defendants to land certain goods. During the landing of the goods, a dispute as to the terms of hiring arose, and U C refusing to pay what was alleged by the plaintiff to be due to him for the hire of his boat, the plaintiff refused to give up 53 bales then remaining unlanded from his boat. U C communicated the circumstances to an assistant in defendants' firm, who afterwards went with U C, and forcibly took the goods from the plaintiff's boat, without satisfying the plaintiff's lien thereon, and the defendants received them into their godowns. It was proved that U C and the assistant acted without the knowledge or authority of the defendants, and that the defendants received the goods without any knowledge of how they had been obtained. *Held*, that, in the absence of such knowledge on their part, the receipt of the goods by them did not amount to a ratification of the wrongful act of their assistant and U C, so as to render them liable in an action by the plaintiff for damages for the same.

THE following case was submitted by the first Judge of the Small Cause Court, for the opinion of the High Court, under section 7 of Act XXVI. of 1864 :—

“ This was an action brought by Girish Chandra Das against the members of the firm of Messrs. Gillanders, Arbutnot and Co.

“ The plaintiff is a cargo-boat owner, residing in Calcutta, and the defendants carry on business as merchants at Clive Street, in Calcutta.

“ The suit was brought to recover rupees 517. The cause of action was stated in the summons to be for that sum ‘ as damages sustained by the plaintiff in consequence of the defendants having forcibly seized and taken, or caused to be seized and taken, out of the plaintiff’s possession, and carried away 53 cases or packages of merchandize which had been received by the plaintiff from the *Oriana*, for the purpose of landing the same, on behalf of one Umesh Chandra Banerjee ; the said goods being at time of such forcible seizure lying in a cargo boat belonging to the plaintiff, within the limits of the port of Calcutta.’

“ The defendants pleaded (*first*) not guilty ; (*second*) that the plaintiff was not in possession ; and (*third*) that the damages claimed were excessive.

“ The following were the circumstances of the case, as I find them upon the evidence :—Umesh Chandra Banerjee, a landing sircar, entered into an engagement with one Loya Gazi, a ghaut manji in the employ of the plaintiff, for the hire of a cargo boat belonging to the plaintiff, for the purpose of receiving certain goods from the ship *Oriana*, and landing them at the Custom House ghaut. A dispute having occurred between Loya Gazi and Umesh Chandra Banerjee while the goods were being landed, Loya Gazi refused on 28th July to land 53 cases or packages then remaining on board the plaintiff’s boat. He had landed 49 cases on the same day, which were entered by Umesh Chandra in the ordinary way in the Custom House, in the name of the defendants’ firm, they being the consignees. Umesh Chandra Banerjee was unable to prevail upon the plaintiff to deliver up the remaining goods, on repeated tender of what he (Umesh Chandra

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Banerjee) contended, but erroneously contended, was all that was due to the plaintiff; and the Collector of Customs stated to Umesh Chandra, on Umesh Chandra making a complaint to him of their detention in the boat, that he would confiscate them if they were not landed. Umesh Chandra related the circumstances to a Mr. D'Aubrey, a clerk or assistant of the defendants', whom Umesh Chandra met at the Custom House, and thereupon, on the 14th August, Mr. D'Aubrey went without the knowledge of the defendants to the Superintendent of River Police, to whom he was known, and told him that he was a clerk or assistant of the defendants; that the plaintiff, or Loya Gazi, was wrongfully detaining goods consigned to the defendants; and that he was going with Umesh Chandra Banerjee to try to obtain possession of them, and stating that he feared a breach of the peace, asked that a jemadar of Police might be ordered to go with them to prevent a disturbance. A corporal of Police was, accordingly, ordered to go with them, and they went together to the boat, which was then anchored by the Custom House ghat. Loya Gazi, who was at the boat, feeling overpowered, as he stated, by the presence of the Police, did not make any active resistance to the goods being taken out of the boat, as they were under the orders of Umesh Chandra Banerjee and Mr. D'Aubrey. Mr. D'Aubrey stated in evidence that he did not act under the order of the defendants, nor with their knowledge in this matter, nor had he any authority from them so to act, and that he only acted as a friend of Umesh Chandra; and I find that he did not act under their orders, nor with their knowledge, nor professedly for their benefit, nor did it appear that he was in any way concerned as their servant or otherwise in the goods being duly landed and delivered to the defendants; and it was proved that Umesh Chandra Banerjee was himself liable to the defendants for the landing of the goods in a proper way, and would have had to make good to them any loss sustained by loss of time, &c. The goods were taken to the Custom House, and entered in the name of the defendants' firm by Umesh Chandra Banerjee. On the 15th August, the following letter was written and sent by the plaintiff's attorneys to the defendants who admitted the receipt of it:—

1, Hare Street, 15th August 1868.

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DEAR SIRS,—We have been consulted by Baboo Girish Chandra Das with reference to your having yesterday trespassed on his cargo boat, and taken forcible and wrongful possession of the 53 packages of goods landed therein, being the number of packages remaining undelivered out of 102 packages of goods received from the *Oriana*, under instructions from Umesh Chandra Banerjee, who, as I am informed, is a sircar in your employ, and as to the goods per *Oriana* a contractor with you for landing same. You were well aware that our client had a lien on such goods for the hire and demurrage of his boat in respect of 102 packages, and must, therefore, have known that the act complained of was most unjustifiable.

Our client states that you have taken 53 packages to the Custom House and, no doubt, have entered them in your name.

Under these circumstances, we are instructed to inform you that, unless the said 53 packages are transferred from your name, or the name of such person or persons as you have caused the same to be entered in at the Custom House before 2 o'clock on Monday next, our client will take such proceedings in respect thereof, and also in respect of the illegal act above referred to, as he may be advised.

(Sd.) JUDGE AND HECHLE.

“No reply to this letter was received or sent, and no notice was taken of it. The defendants, without knowledge of the circumstances, except so far as Mr. D'Aubrey's knowledge may be held to have been their knowledge, and so far as the letter of the 15th August may have conveyed knowledge to them, received the goods into their godown. I am of opinion, upon the evidence, that the plaintiff had such possession of the goods as to entitle him to maintain this action.

“I find that, on the 29th July, the plaintiff had a lien to the extent of rupees 165. I also find that a trespass was committed by Umesh Chandra Banerjee and Mr. D'Aubrey; and that the defendants received the goods with only such knowledge of the circumstances as above stated; and I hold that the plaintiff is entitled to receive the sum of rupees 165 as damages

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from the defendants, subject to the opinion of the High Court on the point, whether the suit is maintainable against them. I think it is not. It has been contended for the plaintiff that the defendants are liable on the ground that Mr. D'Aubrey was their servant; that, though he may have acted, as I find he did without the orders and without other knowledge of the defendants than as aforesaid, he nevertheless, held himself out as acting for the defendants; that the goods were landed at the Custom House for and in the name of the defendants; that they were cleared and taken to the godown of the defendants, who were the consignees of the same; and that the defendants, therefore, had the benefit of the wrongful act that notice of the wrongful seizure was immediately, namely, on the 5th August, served upon the defendants, yet they, with knowledge of the circumstances, never repudiated having trespassed on his (the plaintiff's) cargo boats, and taken forcible possession of the goods, and, therefore, they must be taken to have participated in and ratified the wrongful act. I am, however, of opinion that the case came within the principle of the decision in *Wilson v. Barker* (1), and that the benefit of the illegal act to the defendants was too remote for them to be held liable. Umesh Chandra Banerjee was in my opinion the person immediately benefited. He was not the servant of the defendants, but was a landing sircar, employed by them occasionally under contracts, and by other merchants he had contracts with the firms, who employed him for landing their goods from the ships and, by the terms of his contract with the defendants, he was bound to deliver the goods to the defendants in their godown; and had he failed in doing so, he would have been liable to the defendants as for a breach of contract. He was not entitled to any payment, until the goods were in the defendants godowns. The benefit to the defendants, if any, was not intended at the time of the trespass, and was secondary to that to Umesh Chandra Banerjee; and in my opinion too remote to make them liable in this action. I would, therefore, dismiss the suit, but I have consented to refer the following question for the opinion of the High Court, namely:—Under the circumstances stated, can the defendants be held to be liable in damages to the plaintiff?

(1) 4 B. & A., 614.

for the acts of Umesh Chandra and Mr. D'Aubrey in wrongfully and forcibly taking the goods out of the possession of the plaintiff, on 14th August, whereby the plaintiff lost his lien in respect of the hire for the carriage of the same?"

Mr. Goodeve for the plaintiff contended, that the defendants were liable by reason of their subsequent ratification of the wrongful taking of the goods. The question was not whether the act was committed expressly for the benefit of the defendants at the time, but whether the defendants were in a situation at the time that the trespass was committed, to have authorised or commanded trespass, and afterwards derived an advantage from it. Here the defendants were in such situation in regard to both Umesh Chandra and D'Aubrey, and they derived a benefit by the wrongful act of U C and D, namely, U C received the goods into their godowns, without having had first to discharge the plaintiff's lien. He referred to Coke's 4th Inst., section 317, and cited the following cases:—*Hagedorn v. Oliverson* (1), *Hull v. Pickersgill* (2), *The Eastern Counties Railway Company v. Broom* (3), *Roe v. The Birkenhead, Lancashire, and Cheshire Railway Company* (4), *Goff v. Great Northern Railway Company* (5), *Giles v. Taff Vale Railway Company* (6), *Roe ex. d. Dean and Chapter of Rochester v. Pierce* (7), *Smith v. The Birmingham Gas Company* (8), *Buron v. Denman* (9), *Wilson v. Barker* (10), *Nicoll v. Glennie* (11), *Wright v. Crookes* (12), *Blöholm v. Oldham, cited in case of Coeper v. Chilty* (13), *Wilson v. Tummon* (14), *Haseler v. Lemoyne* (15), *Barker v. Braham* (16), *Woollen v. Wright* (17), *Vere v. Ashby* (18), *Ancona v. Marks* (19), *Blewitt v. Hill* (20), *Coleman v. Riches* (21), *Udell v. Atherton* (22).

- (1) 2 M. & S., 495.
- (2) 1 B. & B., 292.
- (3) 6 Exch., 314.
- (4) 7 Exch., 36.
- (5) 50 D. J., Q. B., 148.
- (6) 3 B. & B., 1822.
- (7) 2 Camp., 26.
- (8) 1 Ad. & E., 526.
- (9) 2 Exch., 167.
- (10) 4 B. & A., 612.
- (11) 1 M. & S., 538.

- (12) 1 Scott N. B., 685.
- (13) 1 Burr., 22.
- (14) 6 Scott N. B., 904.
- (15) 5 Scott N. B., 530.
- (16) 3 Wilson, 368.
- (17) 31 L. J. Exch., 515.
- (18) 10 B. & C., 208.
- (19) 7 H. & N., 686.
- (20) 13 East, 12.
- (21) 16 C. B., 104.
- (22) 7 H. & N., 172.

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Mr. *Marindin*, *contra*, was stopped by the Court.

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[PEACOCK, C. J., referring to the letter of Messrs. Judge and Hechle, conveying notice to the defendants of the alleged trespass, called upon Mr. Goodeve to shew that it affected the defendants, with sufficient knowledge of the wrongful act of Umesh Chandra and Mr. D'Aubrey to put them in a position to ratify that act.]

Mr. *Goodeve* contended that, though the letter might, with advantage, have been more explicit, it was legally sufficient, and cited in support of such contention, *Buron v. Denman* (1), *Haseler v. Lemoye* (2) *Lewis v. Read* (3), *Freeman v. Rosher* (4), and *Collett v. Foster* (5).

The opinion of the High Court was delivered by

PEACOCK, C. J.—This case has been very well argued by Mr. Goodeve, who has collected nearly all the cases on the subject of ratification. But it appears to me that, on the facts found by the learned Judge of the Small Cause Court, he came to a right conclusion that the suit ought to be dismissed. He asks, “under the circumstances stated, can the defendants be held to be liable in damages to the plaintiff for the acts of Umesh Chandra Banerjee and Mr. D'Aubrey in wrongfully and forcibly taking the goods out of the hands of the plaintiff on August 14th, whereby the plaintiff lost his lien in respect of the hire for the carriage of the same?” It appears from the finding that Umesh Chandra was employed by the defendants to land certain goods from the ship *Oriana*, and the defendants would expect to find that those goods would be carried by Umesh Chandra to the Custom House, and that they would be so far dealt with that in their paying the duty, or having them passed as not liable to duty, they would be entitled to receive them into their godowns. But it is found that the plaintiff had acquired a lien on the goods in respect of the hire of a cargo boat, which he had let to

(1) 2 Ex., 167.

(2) 5 Scott., N. S., 530.

(3) 13 M. &amp; W., 884

(4) 13 Ad. &amp; El., 780.

(5) 2 H. &amp; N., 356.

Umesh Chandra for [the purpose of landing the goods. There is no doubt that Umesh Chandra and Mr. D'Aubrey committed a trespass in taking the goods out of the hands of the plaintiff; but it is clear, according to the finding, that trespass was committed without the knowledge of the defendants, and without any authority from them. The question is whether the receipt of the goods by the defendants, under the circumstances found, amounted to a ratification of the trespass which Umesh Chandra and Mr. D'Aubrey committed.

It is found that the defendants, without knowledge of the circumstances (except so far as Mr. D'Aubrey's knowledge may be held to have been their knowledge, and so far as the letter of the 15th of August 1868 may have conveyed knowledge to them) received the goods into their godowns. We may lay aside the knowledge of Mr. D'Aubrey, because I think his knowledge was not the knowledge of the defendants, and the question then resolves itself into this, whether the letter which was written on August 15th, 1868, did convey such knowledge to the defendants as would render their subsequent receipt of the goods a ratification by law of the trespass which had been committed. According to the finding which I have read *verbatim*, they had no knowledge whatever that Umesh Chandra had hired a cargo boat of the plaintiff, nor that anything was due to the plaintiff for such hire, nor that the plaintiff had acquired a lien on account of the goods. They did not even know that Mr. D'Aubrey and Umesh Chandra had taken the goods forcibly out of the plaintiff's possession. The letter does not state or inform them of the circumstances under which the goods had been taken out of the plaintiff's possession, but merely tells them that Messrs. Judge and Hechle, who were the plaintiff's attorneys, had been consulted with reference to the defendants having trespassed on his cargo boat, and taken forcible and wrongful possession of the goods. The letter tells them that they were well aware that the plaintiff had a lien on the goods for the hire and demurrage of his boat, and must have known that the act complained of was most unjustifiable. The defendants knew they had not committed any trespass on the plaintiff's cargo boat; and this letter gave them no such

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knowledge or notice of the circumstances as rendered their subsequent receipt of the goods a ratification of the trespass. It might have put them to an inquiry as to the circumstances under which the goods had been taken ; but they were not bound to make that inquiry, and the fact of their not inquiring could not convert their subsequent receipt of the goods, without knowledge of the real state of facts, into a ratification of what they did not know. There is no finding that they did inquire ; on the contrary, there is a finding that they received the goods without knowing of the seizure. Our answer to the Judge of the Small Cause Court will be that he was right in dismissing the suit ; and that, under the circumstances, there was no ratification by the defendants, and that the defendants are not liable. We think that the plaintiff, having failed ought to pay the costs which have been incurred in reserving the question, and stating the same for the opinion of this Court, and otherwise arising thereout or connected therewith, such costs to be taxed by the Taxing Officer of this Court on a reasonable scale.

Attorney for the plaintiff : *Mr. Hechle.*

Attorneys for defendants : *Messrs. Stack Collis and Mirfield.*

Before *Mr. Justice Phear.*

ANDREWS v. JOAKIM

*Will—Bequest—Masses.*

A bequest in a will of a sum of money for the performance of masses in Calcutta is valid.

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*Das Mercedes v. Cones* (1) followed, and its application extended.

THIS was a special case submitted for the opinion of the High Court, under section 328 of Act VIII. of 1859. The material facts are as follows :—One John Cooper Owen died on the 4th November 1856, leaving a will dated the 21st August 1846, which, among other provisions, contained the following bequest :—  
“ And I do hereby further direct that my said trustee (the defendant) do from and out of my said personal estate lay out and invest in his name, upon Government<sup>s</sup> Securities, the sum of

(1) 2 Hyde, 65.