

APPELLATE JURISDICTION. (a)  
*Special Appeal No. 198 of 1870.*

Messrs. MACKINNON and MACKENZIE, Agents of the British India Steam Navigation Company. } *Special Appellants.*

Mr. CHARLES MINCHIN, Attorney on behalf of Messrs. ARBUTHNOT and Company. } *Special Respondent.*

A. and Co. at Madras shipped by the B. I. S. N. Steamer "Mahratta" a box of coral to be delivered to their Agent M. at Bimlipatam. At the time of shipment they declared the value and paid enhanced freight on account of such value. By the bill of lading the Company undertook to deliver the case in good order at Bimlipatam to the consignee M. subject to certain conditions annexed. By one of those conditions if the consignee did not take delivery when the ship was ready to discharge, the goods might be warehoused at the merchant's risk, and the Company's liability was to cease when the goods left the ship's side. The consignee did not take delivery at the ship's side, and the Company's Agent at Bimlipatam took the case to the Custom-house as he was bound to do by the Regulations of the Port. If the Superintendent of the Custom-house had known that the case contained corals, it would have been placed in an inner room, but the Company's Agent did not know the contents of the case, and therefore was unable to give any such information to the Superintendent. While the case was laying at the Custom-house, application was made on plaintiff's behalf to the Company's Agent for delivery of the case upon the usual guarantee. The Agent refused to deliver the case without the production of the bill of lading. Afterwards the bill of lading was received from Madras and the case was delivered up. At some time between its leaving the ship's side and delivery to the consignee the case was opened and a portion of the contents stolen. *Held*, that the defendants were not liable.

THIS was a Special Appeal against the decision of E. C. G. Thomas, the Civil Judge of Vizagapatam, in Regular Appeal No. 145 of 1868, modifying the decree of the Court of the Principal Sadr Amin of Vizagapatam in Original Suit No. 22 of 1867.

1871.  
 July 17.  
 S. A. No. 198  
 of 1870.

*Handley*, for the special appellants, the defendants.

*Sloan*, for the special respondent, the plaintiff.

The Court delivered the following judgments in which the facts sufficiently appear:—

KINDERSLEY, J.—I understand the following to be the principal facts of the case. Arbutnot and Company at Madras shipped by the British India Steam Navigation Company's Steamer, "Mahratta," a box of coral to be delivered to their Agent Mackie at Bimlipatam. At the time of

(a) Present: Holloway and Kindersley, JJ.

1871.  
July 17.  
A. No. 198  
of 1870.

shipment they declared the value of the case to be Rs. 9,500 and paid enhanced freight on account of such value. By the bill of lading, the Company undertook to deliver the case in good order at Bimlipatam to the consignee Mackie, subject to certain conditions annexed. By one of those conditions if the consignee did not take delivery when the ship was ready to discharge, the goods might be warehoused at the merchant's risk, and the Company's liability was to cease when the goods left the ship's side. The consignee did not take delivery at the ship's side, and the Company's Agent at Bimlipatam took the case to the Custom-house, as he was bound to do by the Regulations of the Port. It appears that if the Superintendent of the Custom-house had been aware that the case contained corals, it would have been placed in an inner room and taken greater care of; but the Company's Agent did not know that the case contained corals, and therefore he was unable to give any such information to the Superintendent of the Custom-house. While the case was laying at the Custom-house Mr. Minchin applied on plaintiff's behalf to the Company's Agent for delivery of the case upon the usual guarantee. The Agent refused to deliver the case without the production of the bill of lading. Afterwards the bill of lading was received from Madras, and the case was delivered up. In the meantime, while lying at the Custom-house, the case had been opened and a portion of the contents stolen. The question is whether the defendants are responsible.

It appears from the conditions of the bill of lading that the defendants performed their duty as carriers by carrying the case to Bimlipatam, where the consignee ought to have taken delivery at the ship's side. And there appears to be no enactment, nor any rule of law in force in British India, which should prevent our giving effect to such conditions. If therefore, the defendants through their Agents landed the case at Bimlipatam, and lodged it at the Custom-house, they did so, not in the character of carriers, but as gratuitous bailees; and as gratuitous bailees they would be responsible only for what has been termed gross negligence. Now it seems impossible to maintain that the defendant's agent was guilty of such negligence. He was bound by the Regulations

of Government to convey the goods straight to the Custom-house, and he appears to have done so, and to have delivered the case in good order to the Superintendent.

1871.  
July 17.  
S. A. No. 198  
of 1870.

He was not bound to know the contents of the case, nor to declare it to the Superintendent. And it was while the case was in the custody of the Custom-house officers that the damage took place. I am therefore of opinion that the decree of the Civil Judge ought to be reversed, and the suit dismissed with costs.

HOLLOWAY, J.—I am of the same opinion for the reasons given by me at considerable length at the hearing, which I will shortly resume.

There is absolutely no evidence that the box was plundered while in the verandah. If it had been, it could not have been said that the violation of any duty imposed upon the defendants was the cause of the loss. There was a duty imposed by the Regulations of the Port to lodge in the Custom-house. Its continuance there was the result of no wrong, for defendants' agents were not bound to surrender the goods without the production of the bill of lading. The refusal may have been an unfriendly and capricious exercise of a legal right, but this is no injury. The defendants had a right by the contract to land and wharve the goods at the consignee's expense, and the rules of the Custom-house compelled the wharving in the place in which they were lodged. Whether the mode of meeting the convenience of steamers should not be the putting of the Custom-house manager to a little inconvenience for the public benefit, rather than the loose mode which appears to be adopted at Vizagapatam, is a question which it appears to me that the authorities may advantageously consider. In the capacity of carriers, the evidence is that the duty of the defendants was fulfilled; the duty which their mode of procedure imposed upon them as boatmen and carriers is not proved to have been violated. That the loss resulted from such violation is of course, therefore, unproved. How or when it happened is wholly unproved.