

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of  
the Owners of the French barque "Arabie,"  
and Paul Auschitzky & Co., of London,  
Merchants, the owners of her cargo v. the  
United Dry Docks ("The Arabie,") from  
the Vice-Admiralty Court of the Mauritius ;  
delivered 3rd March 1876.*

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Present :

SIR ROBERT J. PHILLIMORE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THIS is an appeal from the decree of the Judge of the Vice-Admiralty Court of Mauritius, made in a cause civil and maritime for repairs made and necessaries supplied to a French vessel, the "Arabie," instituted on behalf of the United Dry Docks Company of Port Louis, Mauritius, against the barque "Arabie," her tackle, apparel, furniture, cargo, and stores. The barque was a French vessel which sailed from Akyab and was bound to Havre, in France, with a cargo of rice, and she was compelled to put into Port Louis, Mauritius, for repairs on June the 8th, 1874. The judgment was delivered on the 2nd February 1875. Various surveys were had upon the vessel, and at last, with the approval of the Court, on the 27th February the parties to the suit agreed that three surveyors should be nominated. They made their report. It was to the effect that, so far as leakage was concerned, the "Arabie" was in a seaworthy state, and in a fit condition to

proceed on her voyage with the cargo. Objection was taken to certain items in the amount claimed, five in number. The sum amounted to 611 dollars and 86 cents. Deducting this amount, the sum awarded was 13,248 dollars and 46 cents, with costs, and decree was granted for the appraisement and sale of the said barque or vessel, her tackle, apparel, and furniture, and the goods and merchandise laden therein.

Now it has been admitted by the Appellants before their Lordships to-day that, so far as the decree concerns the ship, no objection can be taken to it, and that so much of the decree must stand. The objection which has been taken, and as to which the debate has taken place before their Lordships, has been as to the validity of the decree with respect to the sale of the cargo. Their Lordships have no hesitation in coming to the conclusion that this was an erroneous decree. It has been contended that their Lordships ought to go further than that, and that they ought to give both the costs and damages incurred by the owners of the cargo in this case. But their Lordships are not of that opinion. It appears from the whole evidence in the case that there was a total absence of the *mala fides* or *crassa negligentia*, which in former cases have been considered to entitle the parties to have damages, more especially in a case which has been often cited, the "Evangelismos," and in the more recent case of the "Strathnaver" before their Lordships in which the doctrine of the "Evangelismos" was fully upheld.

Now in this case the mistake seems to have been one which was shared by both the parties by their counsel and by the learned Judge himself, and the sale of the cargo in their Lordships' opinion, it being of a perishable character, was conducted for the interests of the cargo itself. There

appears, therefore, to be no reason whatever why damages should be awarded in this case.

With regard to the costs, their Lordships, after consideration, think that it would be impossible to separate the costs in this case, which have been incurred by the ship, from those which were incurred by the cargo, in the appeal. The appearance throughout has been by the same Proctor and the same Counsel, and seeing that the judgment of the Court below will be sustained with respect to the ship, and reversed only as regards the cargo, their Lordships are of opinion that no costs of the appeal should be given to either party. Their Lordships will humbly advise Her Majesty to affirm the judgment of the Court below so far as the ship is concerned, to reverse it so far as relates to the cargo, and that the case be remitted to the Court below.

