

*Judgment of the Lords of the Judicial Committee of the Privy Council, on the Appeal of The River Steam Navigation Company, Limited, v. Choutmull Doogur and others, from the High Court of Judicature at Fort William in Bengal ; delivered 17th November 1898.*

Present :

LORD ASHBOURNE.

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD MORRIS.

SIR RICHARD COUCH.

[*Delivered by Lord Morris.*]

THEIR Lordships do not require to hear counsel in support of the decision of the High Court, as they are of opinion that there has been no case shown to alter the Judgment that was pronounced by that Court.

It appears that the jute in question was put on board the Appellants' vessel, and put on board, so far as can be ascertained, in a proper manner, in a proper flat, properly arranged, and under proper circumstances. It appears that upon the night in question, about half-past twelve, from some rather incomprehensible cause or other, the jute caught fire, and the whole cargo was burnt.

The Plaintiffs do not rely upon any special construction of the forwarding note other than that which is relied upon by the Defendants, who contend that they have brought themselves within the protection of the Carriers Act; that is, that they are exempt if they satisfy the onus which is imposed upon them of showing that there was no negligence on their part.

The Plaintiffs have also given up any question as to holding the Defendants liable on the ground of having deviated from the agreement, and therefore the question comes to the simple and—in form, at all events—narrow one: whether the Defendants have exonerated themselves by showing that there was no negligence on their part.

A fire took place, and it is the common case that it did not arise from spontaneous combustion. It, therefore, must have arisen from some cause either external to the flat or internal in the flat. If it occurred from a fire within, it would appear that the onus is not discharged by the Defendants, because they had the control of the flat. If the fire took place inside, they must have done something or other, or something must have happened on the vessel inside of the flat, which led to the fire. They are, therefore, driven to suggest causes for its occurring from something external to the flat; and it certainly is a very remote, and rather a fanciful, suggestion that it arose from some spark coming from certain dinghies or smaller boats that were in the neighbourhood.

In the first place, on the evidence of the Captain and of the Serang, the fires were put out in those small boats about 9 p.m. It was suggested that a man throwing the end of a cigar or lighting a pipe might have caused the fire. But that seems most improbable, because the flat was guarded by the corrugated iron at the top and bottom, and by a purdah or thick canvas all round about it, and it would have taken the fire a very considerable time to reach the jute if it had arisen externally. Therefore it appears that the fire must have originated from some cause inside. If the cause was inside, as has been said, the onus is not discharged, because the whole of the flat was under the control and management and care of the Defendants.

Again, they were bound to watch; that is their own case; and accordingly they allege that they did watch, and that about 12 o'clock, just shortly before the fire, two persons named Tamiz-ud-din and Omed Ali were the watchmen; that Tamiz-ud-din was to watch on the starboard side and that Omed Ali was to watch upon the port side. Tamiz-ud-din did not watch on the starboard side. If he had watched, and the fire had arisen from any external cause, he would have perceived it almost at once, and if he had not been for a very considerable time engaged in rather a curious sort of investigation (he appears, namely, to have been watching an accumulation of jungle upon an anchor that was hung up, and no way concerned in the anchoring of the vessel, or in directing its course, or in keeping it where it was) he would have seen the fire arise, and he could have given outcry at the time, and notice that would have led in all probability to its being extinguished. The fire, however, had taken such hold of the jute that it had gone too far by the time he noticed it, a notice which really arose not from his looking at the matter at all, but by the fire's being reflected by the water, which he appears to have been watching, instead of watching that which he was put there to watch, namely, the flat.

Then the absence of the other witness, as described by the Chief Justice of the High Court, is, to say the least of it, unfortunate. It is very unfortunate, because he might have shown that Tamiz was much longer absent than seven or eight minutes—a most peculiar time for him to select, as if anybody could distinguish between seven or eight minutes and a quarter of an hour, or 17, or 18, or four or five minutes, when their attention was not directed to investigating it at the time.

At all events the observation of Tamiz-ud-din was for such a substantial time withdrawn from the matter which it was his proper business to watch, that all the misfortune occurred, practically speaking, by reason of his not watching. If he had been walking up and down on the starboard side, as he ought to have been, he would have observed this fire coming against the purdah; or he would have observed the fire from within, and not have waited to observe it from the glare in the water. It appears that the Defendants have not at all exonerated themselves from the onus cast upon them of showing that the fire originated from causes over which they had no control, and could not have been expected to have had any control; and the evidence would really go to show that the fire must have originated from within the flat, and therefore from a place for which they were liable for its being in a proper position, and free from any inflammatory article that would have set the jute on fire when it could not have got on fire of itself.

In addition to that it also appears that when the fire did take place there was an utter absence of any power of extinguishing it, except by the primitive mode of the crew throwing buckets of water upon it. There were two pumps, and they were both useless—the pump in the fore part of the vessel was useless because the captain was alone there, and he could not work the pump by himself, and the men could not get there. Why had he not the men at his disposal? What is the use of having a pump if you have nobody to work it? Then there was a pump aft; and that pump could not be worked because it appears that the jute was piled up close to the bulkhead, and that the hose was too short; so both the pumps become utterly useless, and the conflagration goes on until, not alone is the jute destroyed, but the vessel sinks.

Their Lordships are clearly of opinion that there is no reason for disturbing the conclusion come to by the High Court upon both grounds.

Their Lordships will therefore humbly advise Her Majesty that the Judgment of the High Court should be affirmed. The Appellants will pay the costs.

