

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
E. D. Sassoon and Company v. The Western
Assurance Company, from His Britannic
Majesty's Supreme Court for China : delivered
the 17th May 1912.*

PRESENT AT THE HEARING :

LORD MACNAGHTEN.

LORD ATKINSON.

LORD SHAW.

LORD MERSEY.

[DELIVERED BY LORD MERSEY.]

This is an Appeal from a judgment of His Majesty's Supreme Court for Shanghai, dated the 28th January 1911, dismissing the Plaintiffs' claim.

The facts of the case are as follows:—The Plaintiffs were the owners of a wooden hulk moored in the river Whaupoo, which they used as a store. In this hulk they placed some opium on which they effected an insurance with the Defendants against marine risks. The policy was a time policy running from the 6th July to the 6th August 1908. On the 20th July the hulk sprang a leak and the opium was damaged by the percolating water. The leak was wholly due to the rotten condition of the hulk. The condition of the hulk was unknown to the Plaintiffs, the weak place being covered up by some copper sheathing. In these circumstances the Plaintiffs brought their action. The Defendants by their plea denied that the damage to the opium was by the perils insured against. This denial raised the only question in the case.

[36.] J. 140. 80.—5/1912. E. & S.

The risks covered by the policy were the risks usually described in such a contract, namely, “perils of the sea and all other perils, losses, and misfortunes that have or shall come to the hurt, detriment, or damage of the said . . . goods.” It was not contended on the Plaintiffs’ behalf (nor could it have been) that these words covered any risk except the risk of damage by perils of the seas; but it was said that the loss was due to such a peril. The learned Judge held that the damage was not due to a sea peril at all, but was solely due to the weakness of the hulk, and he thereupon dismissed the action. Their Lordships are of opinion that the learned Judge was right. There was no weather, nor any other fortuitous circumstance, contributing to the incursion of the water; the water merely gravitated by its own weight through the opening in the decayed wood and so damaged the opium. It would be an abuse of language to describe this as a loss due to perils of the sea. Although sea water damaged the goods, no *peril* of the sea contributed either proximately or remotely to the loss. There is ample authority for so holding, but it is sufficient to cite the judgment of Lord Herschell, in *The Xanthé* reported in 12 App. Cases where he says (at page 509):—“I think “it is clear that the term ‘perils of the sea’ does “not cover every accident or casualty which “may happen to the subject matter of the “insurance on the sea. It must be a peril ‘of’ “the sea. Again it is well settled that it is not “every loss or damage of which the sea is the “immediate cause that is covered by these words. “They do not protect, for example, against that “natural and inevitable action of the winds and “waves which results in what may be described “as wear and tear.”

An attempt was made during the argument to attribute a different meaning to the expression

“perils of the sea” when used in a policy on goods from that which it bears when used in a policy on ship: but no authority was cited for the distinction nor would it be right in principle to make any such distinction. In the case above cited an attempt was made to draw a distinction between the meaning to be given to the words when used in a bill of lading and in a policy of insurance, but Lord Herschell said “It would in my opinion be very objectionable unless well settled authority compelled it to give a different meaning to the same words occurring in two maritime instruments.”

In this case the damage though doubtless proximately due to sea water was not in any sense due to sea peril. It does not therefore fall within the policy.

Their Lordships are of opinion that the Appeal should be dismissed, and they will advise His Majesty accordingly. The Appellants must pay the cost of the Appeal.

In the Privy Council.

E. D. SASSOON AND COMPANY

2.

THE WESTERN ASSURANCE COMPANY.

DELIVERED BY LORD MERSEY.

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