

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Phillipps and others v. Graham and others,
from the Supreme Court of the Colony of the
Cape of Good Hope; delivered November 7th,
1877.*

Present.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

The Plaintiffs in this suit are the directors of the joint stock association called the Union Steam Ship Company, Limited. The Defendants are sued in their capacity as the "Table Bay Dock and Breakwater Management Commission." The action is brought by the Plaintiffs to recover damages from the Defendants for the misdelivery of certain goods which had been carried by the Plaintiffs in their three several ships, called the "Anglian," the "Syria," and the "African." The goods were by bills of lading made deliverable to Sharpe and Co. Sharpe and Co. endorsed the bills of lading to the London and South African Bank, who claimed possession of the goods. The goods were not delivered to the bank, but to Messrs. Buettner and Co., who were the importers of the goods, and the persons to whom they had been invoiced. In consequence of this misdelivery, the bank brought an action and recovered damages against the Plaintiffs for the delivery of the goods to Buettner and Company. The question is, whether the Defendants are liable to make good to the Plaintiffs the damages which they had to pay to the bank. Two learned Judges, the Chief

Justice, and Mr. Justice Denyssen sat together and tried the case without the assistance of a jury, and they had to determine both the law and the facts of the case. The Chief Justice delivered the judgment of the Court. He fully stated all the circumstances of the case; and his judgment was concurred in by the other Judge. The goods were landed at the docks of which the Defendants were the Commissioners. By the 26th Regulation of the Commissioners, which was framed under the authority of an Act of the Legislature of the Cape and sanctioned by the Governor, it was declared that "Every vessel requiring a store shall be obliged to take that opposite or nearest to her berth, and have the use of the same at the following rates, viz.: Sailing vessels under 600 tons register, for seven clear days 5*l.*; sailing vessels of 600 tons register and over, for ten clear days 10*l.*; steamers for seven clear days 5*l.* No steamer to be charged more than once in the same month. On the expiration of the above periods all goods remaining in store will be subject to warehouse rent." It appears from the evidence that the goods were delivered within the seven days. The learned Judges held that the Defendants were not bailees of the goods; that the goods had never been delivered by the shipowner into the custody of the Defendants as bailees for the purpose of being taken charge of by them; and that the Plaintiffs were rather lessees of the store, under the 26th regulation, than bailors of the goods which had been placed in the store. Their Lordships do not think it necessary to come to any conclusion with regard to that question.

But another ground upon which the learned Judges decided was, that Hutton and Co., who were the landing agents, had, according to the invariable practice, been employed by the agents

of the owners of the ship, not only for the purpose of landing the goods, but for the purpose of delivering them to the persons entitled to receive them.

Their Lordships have read the evidence in the case, and they cannot say that the Judges are not fully warranted in coming to the conclusion at which they arrived, namely, that Hutton and Co. were employed by the Plaintiffs' agents for the purpose of delivering the goods from the store. Hutton and Co. did deliver the goods; and their Lordships think that under these circumstances the Judges were right in coming to the conclusion that the Defendants are not liable to the Plaintiffs for the misdelivery.

They will therefore humbly recommend Her Majesty to affirm the judgment of the Court below.

