

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of La Compagnie de la Guinée Portugaise v. J. Stadelmann and Company, from the Supreme Court of Sierra Leone; delivered the 10th November 1903.*

---

Present at the Hearing :

LORD MACNAGHTEN.

LORD ROBERTSON.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

[*Delivered by Lord Macnaghten.*]

The Appellants are a Belgian Shipping Company. They have a line of steam vessels plying between Freetown in Sierra Leone and other ports on the west coast of Africa. They were Defendants in the action. The Plaintiffs, who are now Respondents, are described as general merchants in Freetown.

In November 1899 the Plaintiffs shipped on one of the Defendants' vessels, called the *Alfred Roose*, 150 baskets of cola nuts, to be carried to Bissao in Portuguese Guinea and there delivered to a firm trading as B. Soller, Successor. That firm was to have the option of either buying the nuts on its own account or selling them on commission on account of the Plaintiffs.

When the cola nuts were landed in Bissao, after a voyage of about nine days, it was found that the bulk of the consignment was blackened and damaged by being heated or burnt, as it is called. Out of the shipment of 150 baskets the consignees made up  $55\frac{1}{2}$  baskets of merchantable

nuts. The rest they rejected and returned to the Plaintiffs as unsound and good for nothing.

The Plaintiffs then brought this action against the shipowners. Their case was that the mischief was due to the mode in which the Defendants had handled and stored the nuts on board the *Alfred Roose*. The nuts were stowed in a hold of the vessel between decks, a proceeding, as the Plaintiffs alleged, unusual and improper, and, in the present case, in violation of the terms on which the consignment was received.

The action was tried by Chief Justice Stallard. The trial lasted 15 days. At its conclusion the Chief Justice reserved judgment. Shortly afterwards he directed judgment to be entered for the Plaintiffs on their claim for the sum of 933*l.* 15*s.* with costs. No reasons were given by the Chief Justice for his judgment, and their Lordships have not been furnished with any note showing the grounds of the decision or the view which his Honour took of the credibility of the several witnesses examined on behalf of the contending parties.

The evidence is very contradictory. On some of the points at issue, and those the most material, the witnesses on the one side and on the other are in direct conflict. The main points of difference are (1) the terms of the arrangement under which the consignment was shipped; (2) the condition of the nuts when placed on board, and (3) the origin of the damage which occurred.

Mr. Eschborn, the Plaintiffs' agent, stated on oath that he arranged with Mr. Dutscher, the agent of the Defendants, that the cola nuts should be carried on deck. That was the usual and proper mode of carrying such a cargo, but he was, he said, particular in making or insisting on this condition, because it was the first time the *Alfred Roose* was to carry a cargo of cola

nuts. Mr. Dutscher, on the other hand, absolutely denied that any such arrangement was made, though he admitted that there was some conversation between Mr. Eschborn and himself as to the consignment of the 150 baskets of cola nuts. Mr. Eschborn's statement, however, seems to receive some confirmation from Mr. Dutscher's own conduct. It appears that Mr. Dutscher had provided himself with a book of printed receipts, each receipt containing these words, "Les colas sont mis sur le pont et sont aux risques de l'expéditeur." On the service immediately preceding that on which the *Alfred Roose* was advertised to sail the Defendants had employed a vessel called the *Corrina*. She was unable to carry any cargo on deck, and for that reason Mr. Dutscher on the unused receipts in his book struck out with a pen the words "sont mis sur le pont et." The 150 baskets of cola nuts were sent in lighters to the *Alfred Roose* in two parcels. The first, consisting of 113 baskets, was sent on board on 13th November 1899. On that occasion Mr. Dutscher gave the clerk in attendance a receipt out of his book in which the words that had been struck out were re-inserted in ink in his own handwriting. On the following day, 14th November, the balance of the consignment, consisting of 37 baskets, was sent on board, and then a receipt was given in which the words struck out were not reinserted. Both receipts were at once posted to B. Soller, Successor, at Bissao. Mr. Eschborn saw the first receipt, but not the second. He stated that his attention was not called by any one to the difference in wording between the two receipts, and that he had no reason to suppose that there was any intention on the part of Mr. Dutscher to depart from the arrangement he had made. Mr. Dutscher swears that the difference between the

two receipts was intentional, that in the first receipt he restored the words that had been struck out, because the captain gave him to understand that owing to some repairs or alterations the hold would not be ready for the reception of cargo on that voyage which was advertised for the 16th November, but that on the following day, before the second receipt was given, he learned that the alterations were completed, and that it would not be necessary to stow the cargo on deck. He does not say that he informed Mr. Eschborn of the change intended to be made in the mode of stowing the cargo. With this evidence before him their Lordships think that the learned Chief Justice may well have preferred Mr. Eschborn's account of what took place to that of Mr. Dutscher.

As regards the condition of the nuts, it seems that they were all or almost all new—not nuts of the last season which had become very scarce. There can be no doubt that new nuts are more delicate than old ones. But the evidence is that the nuts shipped on board the *Alfred Roose* were carefully picked and selected before they were tied up in baskets, and that they were ripe, full and strong.

In their statement of defence the Defendants alleged that the nuts “shipped by the Plaintiffs in the *Alfred Roose* were not in good condition when they were shipped by the Plaintiffs.” But they made no attempt to establish that allegation by direct evidence, or to prove that young colas, if ripe, full and strong, cannot safely be carried by sea on such a voyage as that from Freetown to Bissao. Their case was that the hold of the *Alfred Roose* was just the place to stow cola nuts in, and that therefore it must be inferred that the unsoundness which caused B. Soller, Successor, to reject the bulk of the

consignment was produced by some inherent quality or vice in the nuts themselves. Now the *Alfred Roose* had been Her Majesty's gunboat *Alecto*. She lay very low in the water. The hold in which the cola nuts were stowed was in the fore part of the vessel. It was 12 feet from the iron bulkhead of the engine room and about 7 feet 6 inches high. There were portholes, but at sea they were always kept shut. According to the ship's carpenter, who was a witness for the Plaintiffs, the hatchway was kept shut too (though this is denied by the captain), and "the temperature of the hold" he says "was very high." Even if the hatchway had been kept open there could have been no ventilation. The baskets, which are nothing more than bundles of nuts covered with leaves and tied up in canvas with cane ropes, weighing each about a cwt., were piled one on the top of another, and mixed up, as the carpenter says, with ginger starch in barrel, cases and barrels of flour. It is common knowledge that fruit will not keep without some ventilation, and the evidence in this case is overwhelming that cola nuts, old as well as new, will spoil with extraordinary rapidity in a hot place unless they are exposed to a current of air. But on this point again the strongest evidence in favour of the Plaintiffs' case is furnished by Mr. Dutscher's own conduct. After the disastrous voyage of the *Alfred Roose*, and in consequence of the complaints of the Plaintiffs and other shippers whose cola nuts were damaged on the same voyage, Mr. Dutscher gave the captain strict orders that in future "whatever happened" he was to carry the colas on deck.

In this conflict of evidence their Lordships, upon the materials before them, see no reason to differ from the conclusion at which the learned Chief Justice arrived, nor are they satisfied that the damages awarded are excessive.

They will therefore humbly advise His Majesty that the Appeal ought to be dismissed.

The Appellants will pay the costs of the Appeal.

---