Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of John George White v. *James Leslie Williams, from the Supreme Court of the State of New South Wales; delivered the 3rd July* 1912.

PRESENT AT THE HEARING:

LORD MACNAGHTEN.
LORD ATKINSON.
LORD SHAW.
LORD MERSEY.

[DELIVERED BY LORD MERSEY.]

This is an Appeal from an order and judgment of the Supreme Court of New South Wales dated the 1st March 1911.

The question in the case turns entirely on the meaning to be given to the words "cost of stevedoring" as used in a contract for the sale by the Plaintiff to the Defendant (representing the Government) of two cargos of coal on c.i.f. terms.

The contract is contained in two letters of the 16th December 1909. The first of these letters is in the following terms:—

"I have the honour to offer to supply to your "Government . . . . from Japan a cargo of . . . lump "coal, about 6,000 tons . . . to be dispatched per "S.S. *Strathfillan* . . . price 28*s.* 9*d.* per ton c.i.f. Sydney "Harbour (and) about 4,700 tons of Indian coal . . . . "to be shipped per S.S. *Evandale* . . . . at Calcutta . . . . "price 31*s.* 6*d.* per ton c.i.f. Sydney. The Government to "guarantee to discharge the several vessels at not less than

" 500 tons per day, strike or no strike. The cost of steve-
" doring to be paid by the Government and vessels to have
" free wharfage."

The second letter, which was from the Government to the Plaintiff, contained an acceptance of this offer.

Before entering into this contract the Plaintiff had chartered the two vessels the *Strathfillan* and the *Evandale* by charter-parties dated the 14th and 15th December 1909. These charter-parties contained clauses relating to the discharge of the coal to be carried. The clause in the *Strathfillan's* charter-party was as follows :—

" Consignees to effect the discharge of the cargo, strike
" or no strike, steamer paying 1*s.* a ton . . . and providing
" only steam, steam winches, winchmen, gins, and falls."

And the clause in the *Evandale's* charter-party as follows :—

" The cargo to be taken from the steamer's tackles at
" the risk and expense of the charterers and consignees,
" who will bear all risk and expense of lighterage, if any,
" at port of discharge . . . . Consignees to effect
" discharge of steamer irrespective of strike or labour
" trouble, steamer paying 1*s.* per ton towards cost of
" same."

The wording of these two clauses differs slightly, but they both mean the same thing. The ship is to provide the discharging appliances and the steam power required for working them ; but all the other labour in the hold (which but for the clause would fall to the ship to provide) is to be found by those who receive the cargo, the ship paying 1*s.* per ton towards the cost.

It appears that these or similar clauses are printed as part of the common form of charter-party in use in the coal trade, a blank being left for the sum to be contributed by the ship, which may vary according to circumstances.

The cargos arrived and were taken delivery of by the Government who did all that part of the

work of discharging which is customarily done by the ship except in so far as that work consisted of providing gear and keeping up steam for winches. The Government paid the c.f.i. price to the Plaintiff, but claimed to have credit for the 1*s.* a ton. The question is, are they entitled to it? The learned Judge who tried the case held that they were and the Court of Appeal affirmed the Judge's decision.

It is said by the Appellant that the Government were no parties to the charter-party contracts and cannot therefore claim any benefit under them, and this no doubt is true. But it is upon the construction to be put on the contract of the 16th December for the sale of the coal that the Respondent relies. What is the "cost of stevedoring" which the Government are to pay? It is certainly not all the money which would have to be disbursed if the ship did not contribute, for if it were the Government would have to pay for the use of the discharging appliances and for the supply of steam for working them. These are as much part of the cost of stevedoring as the wages of the men who work in the hold. But the Plaintiff makes no claim to be paid either for the use of the appliances or for the steam. And why not? It is because when making the c.f.i. contract both parties knew that the ship was to contribute to the stevedoring by providing these things, and they contracted on that footing. They would also know of the practice or custom evidenced by the common form of charter-party that the ship would contribute towards the cost of wages, and they contracted on that footing also. Thus, when in the contract it is stipulated that the Government is to pay the "cost of stevedoring" the expression must in their Lordships' opinion be read as meaning so far as such cost

is not provided by the ship in the way of tackle or steam or in money. The Chief Justice in delivering the judgment of the Supreme Court says :—

" The possibility, however, of some part of the cost of " discharging being paid by the shipowners must have been " present to both parties, and although there was then no " certainty about it, they would have that possibility in con- " templation when bargaining about the cost of discharge."

This finding of fact by the Supreme Court is probably in accordance with the understanding on which business men contract in the trade. It appears clear from the terms of the two charter-parties that both the Plaintiff and the shipowners contemplated that the shilling a ton should be paid to those who undertook the work of discharge; and if the shipowners had paid the money to the Respondent they could as against the Plaintiff have justified the payment as being exactly in accordance with the charter-party contracts. As between Plaintiff and shipowner it was never contemplated that the Plaintiff, who did no part of the discharging, should receive and retain the ship's contribution towards the cost of it; and though it is true that the charter-parties create no privity as between Plaintiff and the Defendant, their terms which are in common use in the trade serve to throw light upon the meaning to be put on the words "cost of " stevedoring " as used in the contract of sale.

The question is more one of fact than of law and their Lordships do not think it right to interfere with the finding of the Courts below. They will therefore humbly advise His Majesty that the Appeal should be dismissed. The Appellant will pay the costs.

In the Privy Council.

JOHN GEORGE WHITE

v.

JAMES LESLIE WILLIAMS.

DELIVERED BY LORD MERSEY.

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