

[REDACTED]

*Privy Council Appeal No. 47 of 1945*

The Free Press of India (Madras) Ltd. - - - *Appellant*

*v.*

James Finlay & Co. Ltd. - - - - - *Respondent*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 17TH DECEMBER, 1945

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*Present at the Hearing :*

THE LORD CHANCELLOR (LORD JOWITT)

LORD GODDARD

SIR JOHN BEAUMONT

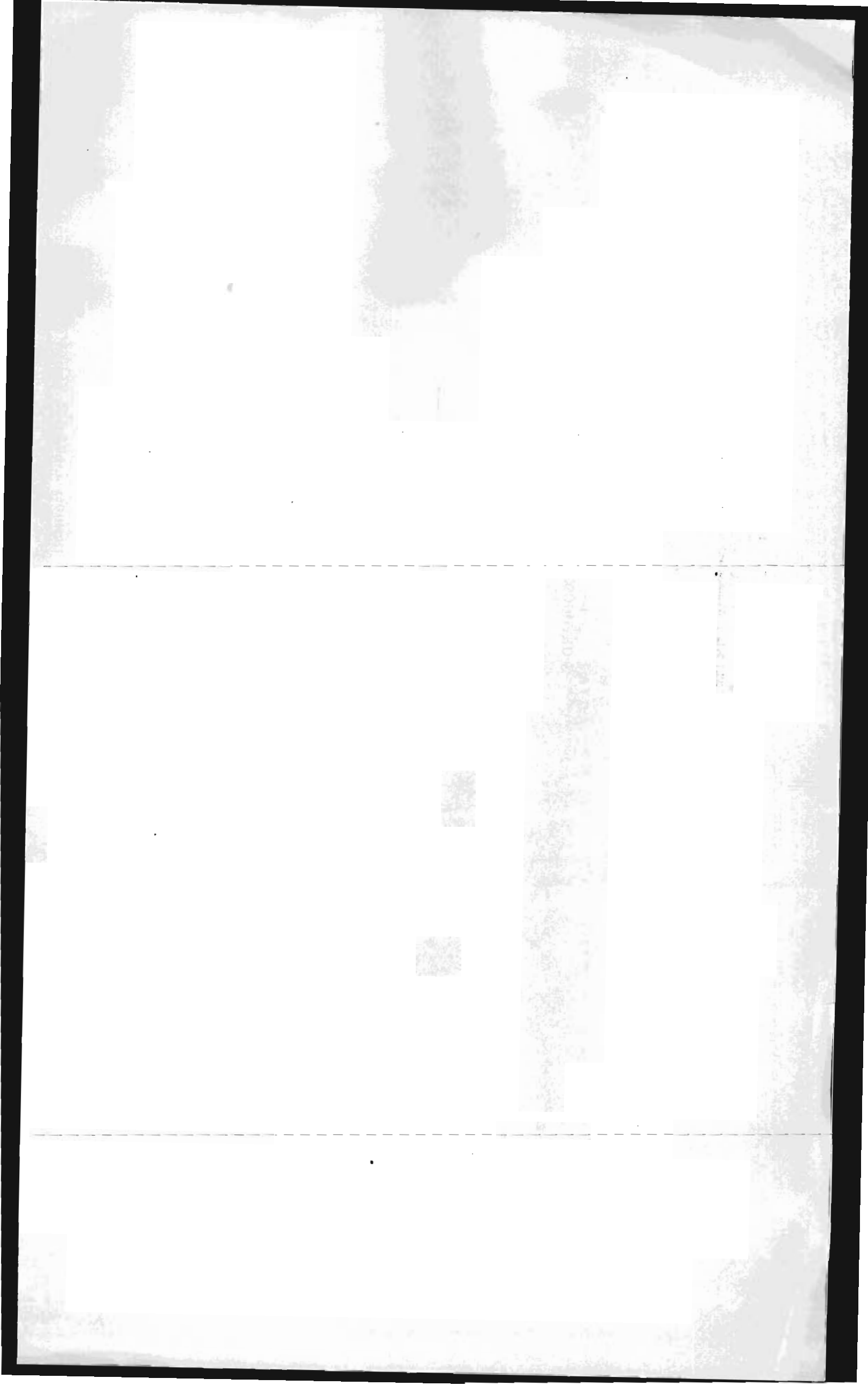
[*Delivered by* LORD GODDARD]

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The appellants were the plaintiffs in an action brought by them in the High Court of Madras in its ordinary original civil jurisdiction for damages for breach of a contract dated 24th December, 1940, for the sale to them by the respondents of 200 long tons of Canadian newsprint shipment in one lot, preferred in January, but in any case before the end of March, 1941. They also claimed damages for the wrongful detention of certain licences for the import of newsprint granted to them by the Government of India. The action was tried by Bell J. who dismissed the action so far as it related to the breach of contract, holding that all the respondents had undertaken to do was to use their best endeavours to place the order with suppliers according to the appellants' wishes. On the claim for detention of the licences he found for the appellants and assessed the damages at Rs.1995.6.0. On appeal to the High Court of Madras in its appellate jurisdiction the appeal was allowed as regards the breach of contract and the respondents were held liable, the damages being assessed at Rs.18440. The appellants also appealed as to the amount of damages awarded for the detention of licences and this appeal was dismissed. The appellants now appeal solely on the amount of damages contending that they were awarded on a wrong basis and ought to be largely increased. There is no cross appeal by the respondents. Their Lordships find it unnecessary in this case to set out the facts relating to the sale or the breach of contract found by the High Court to have been committed, because on the hearing of the appeal it appears that the Advocate General who appeared for the appellants agreed that the basis for the assessment of damage submitted by the counsel for the respondents was correct. On that basis it is not disputed that the amount awarded by the High Court is right. Before this Board it was sought to be contended that the basis on which the damages were assessed was wrong, but Their Lordships are clearly of opinion that they cannot advise His Majesty to entertain an appeal where the court from which the appeal is brought acted as they were invited to do by both counsel and in so doing made no mistake in the calculation.

With regard to the damages for the detention of the import licences, it appears that on 17th April, 1941, when the respondents were already in default, having shipped nothing, newsprint was included in the list of goods for which import licences were required and a notification to that effect was given by the Government. On 30th April and 1st May the appellants obtained two licences, one authorising them to import from Canada 146 tons 17 cwt. for shipment during May/June, 1941, and another for the import of 36 tons 14 cwt. during April, 1941. These licences they gave to the respondents in the hope that they would enable the latter to get other paper to take the place of that which they had failed to deliver. But the respondents neither got other paper nor did they return the licences to the appellants when asked to do so and the consequence was that the licences expired. Meanwhile the appellants were buying paper locally produced in India for which no licences were required and so managed to keep their works going. In respect of these purchases they have recovered damages in the amount awarded by the High Court on appeal. But to enable them to get further supplies they desired to get the licences extended, and this they would have had to do whether the respondents had returned the licences during their currency or not. Both courts in India have accordingly held that this damage is confined to the trouble and expense to which they were put by not having the licences in their hands at the time when they demanded their return, and to some demurrage which they had to pay on a steamer which arrived when the matter was in doubt. The High Court agreed with the findings of fact by Bell J. on this matter and on the facts found by him Their Lordships see no ground for interfering with the amount of damages that he awarded.

They will humbly advise His Majesty that this appeal should be dismissed with costs.



In the Privy Council

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(MADRAS) LTD.

v.

JAMES FINLAY & CO. LTD.

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DELIVERED BY LORD GODDARD

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