

~~C.L.C. 2~~

16, 1955

1954

Supreme Court of Ceylon
No. 240 (Final) of 1951.

District Court, Colombo,
No. 21162.

IN HER MAJESTY'S PRIVY COUNCIL
ON AN APPEAL FROM
THE SUPREME COURT OF CEYLON

BETWEEN

ODHAVJI ANANDJI & Co. Ltd.

of Mombasa.....*Plaintiff—Respondent*

AND

1. ABDUL HAMID and

2. ABDUL LATIFF, both carrying on business in partnership under the name
style and Firm of "Abdul Latiff Abdul Hamid" at 123, Bankshall
Street in Colombo.....*Defendants—Appellants.*

RECORD
OF PROCEEDINGS

-4 JUL 1956

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Supreme Court of Ceylon
No. 240 (Final) of 1951.

District Court, Colombo
No. 21162.

IN HER MAJESTY'S PRIVY COUNCIL
ON AN APPEAL FROM
THE SUPREME COURT OF CEYLON

BETWEEN

ODHAVJI ANANDJI & Co. Ltd.

of Mombasa..... *Plaintiff Respondent.*

AND

1. ABDUL HAMID and
2. ABDUL LATIFF, both carrying on business in partnership under the name style and Firm of "Abdul Latiff Abdul Hamid" at 123, Bankshall Street in Colombo,..... *Defendants—Appellants.*

RECORD
OF PROCEEDINGS

PART I

No. 1 Journal Entries

No. 1
Journal
Entries.
16-5-49 to
27-3-53.

IN THE DISTRICT COURT OF COLOMBO

No. 21,162/M

ODHAVJI ANANDJI & Co., LTD. *Plaintiff.*

Vs.

A. HAMID and Others *Defendants.*

Journal

10 The 16th day of May, 1949.

Mr. S. A. S. Hamid files appointment and plaint together with document marked "A" writing and power of attorney.

Plaint accepted and summons ordered for 15-7-49.

Sgd. H. A. DE SILVA,
District Judge.

24-5-49.

Summons issued on 1st and 2nd defendants W.P.

15-7-49 Summons served.
Proxy of both defendants filed.
Answer on 16-9-49.

20

Intld. H. A. DE S.,
D. J.

16-9-49 Mr. S. A. S. Hamid for plaintiff.
Mr. S. Somasundaram for defendants.
Answer not filed.

Proctor asks for a long date to file answer as he has to get some documents from India.

Answer on 30-9-49.

Intld. H. A. DE S.,
D. J.

30 30-9-49 Answer filed.

Trial for 13-6-50.

Vide motion by defendants' Proctor for security for costs.

Proctor for plaintiff moves to file objections.

Objections on 18-11-49.

Intld. H. A. DE S.,
D. J.

No. 1
Journal
Entries
16-5-49 to
27 3-53.
—continued

31-10-49 Proctor for plaintiff moves for a voucher for Rs. 500 being security for costs of defendants.

Proctor for defendants consents.

Issue voucher.

Intld. H. A. DE S.,
D. J.

1-11-49 Voucher for Rs. 500 issued.

18-11-49 Mr. S. A. S. Hamid for plaintiff.

Mr. S. Somasundaram for defendants.

Bond with Kachcheri receipt for Rs. 500 filed.

10

Intld. S. S. J. G.

Kachcheri Receipt No. 58,460 dated 5-11-1949 for Rs. 500 being security filed.

26- 4-50 Proctor for plaintiff files plaintiff's list of witnesses and documents and moves for summons on the witnesses.

Proctor for defendants received notice with copy.

Allowed.

Re witness No. 7 obtain certified copy. No summons unless states that his personal attendance is necessary.

Intld. K. D. DE S.,
A. D. J. 20

23- 5-50 As the plaintiff and witnesses have to come to Colombo from Mombasa Proctor for plaintiff moves that this case be specially fixed on 13-6-50 or any other date convenient to Court.

Proctor for defendants consents.

Case is fixed for 13-6-50

If the plaintiff and witnesses have come specially for this case from Mombasa, that fact can be mentioned to me on 13-6-50 when I will consider the taking up of the case on that day before other work is taken up.

30

23-5-50.

Intld. H. A. DE S.,
D. J.

29- 5-50 Proctor for plaintiff files plaintiff's additional list of witnesses and documents and moves for summons on the witnesses.

No. 1
Journal
Entries
16-5-49 to
27-3-53.
—continued

Proctor for defendants received notice with copy.

Re 3 obtain certified copies subject to this allowed.

Intld. H. A. DE S.,
D. J.

10 2- 6-50 As the defendants and one Yakoob Abubaker, a material witness who were in Calcutta cannot be contacted owing to the recent riots in West Bengal, Proctor for defendants moves to postpone the trial fixed for 13-6-50 for another date.

Proctor for plaintiff received notice for 2-6-50.

Vide proceedings.

Intld. H. A. DE S.,
D. J.

13- 9-50 Proctor for plaintiff files plaintiff's 2nd additional list of witnesses and documents and moves for summons.

Proctor for defendants received notice with copy.

Allowed.

Re witness No. 3 obtain certified copy.

20 Intld. H. A. DE S.,
D. J.

18- 9-50 Summons issued on 5 witnesses by plaintiff.

27- 9-50 Proctor for plaintiff files plaintiff's 3rd additional list of witnesses and documents and moves for summons.

Proctor for defendants received notice with copy.

Allowed.

Intld. H. A. DE S.,
D. J.

27- 9-50 Summons issued on one witness by plaintiff.

No. 1
Journal
Entries
16-5-49 to
27-3-53
—continued

4-10-50 Trial.

Mr. S. A. S. Hamid for plaintiff.

Mr. S. Somasunderam for defendants.

Vide proceedings.

Trial 13-11-50.

Intld. V. M.

5-10-50 The Director, Bosanquet & Skrine, Ltd., submits, that they have never acted as Agents for the ss. "June Crest". They never had in their possession, or seen the documents that have to be produced.

They therefore suggest that the summons against them be withdrawn 10 and be served on Messrs. J. D. McLaren & Company (Ceylon) Ltd., who have confirmed to them that they acted as agents for the above named vessel.

Proctor to note.

Intld. V. M.,
A. D. J.

11-10-50 Proctor for plaintiff files plaintiff's 4th additional list of witnesses and documents and moves for summons.

Proctor for defendants received notice with copy.

Allowed.

20

Re witness No. 1 obtain Certified Copy.

Intld. V. M.,
A. D. J.

14-10-50 Proctor for defendants with notice to Proctor for plaintiff files additional list of witnesses and documents and moves for summons.

Allowed.

Re witness No. 6 obtain certified copy.

Intld. V. M.,
A. D. J.

- No. 1
Journal
Entries
16-5-49 to
27-3-53.
—continued
- 23-10-50 Summons issued on 3 witnesses by plaintiff.
- 23-10-50 Summons issued on 7 witnesses by defendants.
- 30-10-50 Proctor for plaintiff files plaintiff's 5th additional list of witnesses and documents and moves for summons.
- Proctor for defendants received notice with copy.
- Allowed.
- Intld. V. M.,
A. D. J.
- 31-10-50 Proctor noticed for 13-11-50.
- 10 2-11-50 Summons issued on one witness by plaintiff.
- 7-11-50 Proctor for plaintiff, with notice to Proctor for defendants, moves to file the plaintiff's 6th additional list of witnesses and documents and moves for summons on the witnesses.
- Allowed.
- Intld. V. M.,
A. D. J.
- 8-11-50 Summons issued on one witness by plaintiff.
- 10-11-50 Proctor for defendants files further lists of witnesses and documents and moves for summons.
- 20 Proctor for plaintiff received notice.
- Allowed.
- Re list obtain certified copies.*
- Intld.
A. D. J.
- 10-11-50 Summons issued on 3 witnesses by defendants.
- 13-11-50 Trial.
- Mr. S. A. S. Hamid for plaintiff.
Mr. S. Somasundaram for defendants.
- Vide proceedings.*
- 30 Trial 22/11 and 27/11.
- Intld. V. M.,

No. 1
Journal
Entries
16-5-49 to
27-3-53
—continued

Secy.—Please have me gazetted for these days as A.D.J. without reference to any particular case.

Intld. V. M.

16-11-50 Summons issued on one witness by defendant.

16-11-50 Proctor for defendants with notice to Proctor for plaintiff files additional list of witnesses and documents and moves for summons.

Allowed.

Intld. V. M.,
A. D. J.

22-11-50 Trial—(contd.)

10

Mr. S. A. S. Hamid for plaintiff.

Mr. S. Somasunderam for defendant.

Vide proceedings.

Trial adjourned for 27-11 and 11-12-50.

Intld. V. M.

Secy.—Please have me gazetted for 11/12.

Intld. V. M.

24-11-50 Summons issued on one witness by defendant.

27-11-50 Trial—(contd.)

Mr. S. A. S. Hamid for plaintiff.

20

Mr. S. Somasunderam for defendant.

Vide proceedings.

Trial adjourned for 11-12-50.

Intld. V. M.

11-12-50 Trial—(contd.)

Same appearances.

Vide proceedings.

Intld. V. M.

Judgment reserved.

I shall inform the Proctors of the date of judgment as soon as it is ready.

No. 1
Journal
Entries
16-5-49 to
27-3-53
--continued

Intld. V. M.,
A. D. J.

11-12-50 Proctor for plaintiff tenders documents marked P1 to P22.

Check and file.

Intld.
A. D. J.

10 12-12-50 Proctor for defendants tenders documents marked D1 to D23.

Check and file.

A. D. J.

30- 1-51 Notice Proctors that judgment will be delivered on 6-2-51.

Intld. V. M.,
A. D. J.

6- 2-51 Mr. S. A. S. Hamid for plaintiff.

Mr. S. Somasunderam for defendant.

Judgment delivered in open Court.

Enter decree accordingly.

20

Intld. V. M.,
A. D. J.

Decree entered.

6- 2-51 Proctor for defendants files Petition of Appeal of the defendants against the judgment of Court dated 6-2-51 and tenders stamps to the value of Rs. 42 for S.C. Decree and Rs. 21 for Certificate in Appeal.

Stamps affixed to blank form and cancelled.

Accept.

Intld. V. M.,
A. D. J.

30

No. 1
Journal
Entries
16-5-49 to
27-3-53
—continued

- 6- 2-51 Proctor for defendants moves that on the Petition of Appeal being accepted by Court he would on 21-2-51 deposit a sum of Rs. 250 as security for costs of appeal and tender a sufficient sum of money to cover the expenses of serving notice of appeal to Proctor for plaintiff. Received notice with copy of petition of appeal and copy of his notice.

Call on 21/2.

Intld. V. M.,
A. D. J.

- 6- 2-51 Proctor for appellants tenders application for 2 typewritten briefs 10 and moves for a voucher for Rs. 50.

Issue.

Intld. V. M.,
A. D. J.

- 7- 2-51 Voucher for Rs. 250 and Rs. 50 issued.

- 21- 2-51 Case called.

Accept security. Perfect bond.

Intld. K. D. DE S.,
A. D. J.

- 21/22-2-51 Proctor for defendant-appellant files security bond together with 20 Kachcheri Receipt and notice of appeal.

(1) File.

(2) Issue notice for 27/4.

Intld. N. S.,
D. J.

Kachcheri Receipt No. 2622/20584 dated 21-2-51 for Rs. 250 being security filed.

- 23- 2-51 Notice of appeal issued.

Kachcheri Receipt No. 2623/20585 dated 21-2-51 for Rs. 50 being copying fees filed.

- No. 1
Journal
Entries
16-5-49 to
27-3-53
—continued
- 9- 4-51 Vide memo from Appeal Brief to call for fees from.
Proctor for defendant-appellants Rs. 150/-
„ „ plaintiff-respondent Rs. 100/-
Call for
Intld..... *D.J.*
- 23- 4-51 Vide J. E. of 9-4-51 Issued 2 Vs. with covering letters.
- 27- 4-51 Mr. S. A. Seyed Hamid for plaintiff-respondent.
Mr. S. Somasundram for defendants-appellants.
- 10 Notice of appeal served on Proctor for plaintiff-respondent.
Forward record to Supreme Court.
Sgd. *D. J.*
- 28- 4-51 Proctor for respondents files application for a typewritten copy
and moves for a Voucher for Rs. 25/-
Issue.
Sgd. *D. J.*
- 30- 4-51 Voucher for Rs. 25/- issued.
Sgd.
- 20 1- 5-51 K.R. G/9 No. 2642/67394 of 27-4-51 for Rs. 50/- filed.
3- 5-51 K.R. G/9 No. 2691/67443 of 28-4-51 for Rs. 100/- filed.
4- 6-51 Record forwarded to Registrar Supreme Court with two briefs.
Sgd.
Secy.
- 30 27- 3-53 Registrar Supreme Court returns record together with the Supreme
Court Judgment.
The Appeal is dismissed with costs.
Proctors to note.
Sgd..... *D. J.*

Plaint of the Plaintiff

IN THE DISTRICT COURT OF COLOMBO

ODHAVJI ANANDJI & Co., LTD. of Mombasa *Plaintiff.*

No. 21,162/M.

Vs.

- (1) ABDUL HAMID, and
 (2) ABDUL LATIFF, both carrying on business in partnership under the name, style and firm of " Abdul Latiff Abdul Hamid " at 123, Bankshall Street, Colombo *Defendants.*

On this 16th day of May, 1949.

10

The plaint of the plaintiff abovenamed appearing by S. A. Seyed Hamid his Proctor states as follows :

1. (a) The plaintiff is a corporation limited in liability and has been duly registered in Mombasa.

(b) The defendants are carrying on business in partnership under the name, style and firm of " Abdul Latiff Abdul Hamid " at 123, Bankshall Street, Colombo, within the local limits of the jurisdiction of this Court.

(c) The defendants reside in and the cause of action hereinafter set forth arose in Colombo within the jurisdiction of this Court.

(d) At all times material to this action and in particular in November 20 and December, 1946, one M. Y. Aboobucker was the agent of the defendants ; the defendants represented to the plaintiff that the said Aboobucker was their agent.

2. By agreement or writing dated 24th December, 1946, the defendants agreed to buy from the plaintiff 60 tons cowpeas as per sample approved at the price of £51 per ton c.i.f. Colombo to be shipped per ss. " June Crest ", which was loading then ; the defendants further agreed to pay for the same by an irrevocable letter of credit. A copy of the said writing is filed herewith marked " A " and is pleaded as part and parcel of this plaint.

3. (a) In pursuance of the said agreement the plaintiff shipped per 30 ss. " June Crest " 646 bags of cowpeas with sample approved weighing 60 tons on or about 28th December, 1946, in conformity with the said agreement.

(b) The defendants were duly informed that the said goods were shipped in terms of the contract aforesaid.

4. The said ss. " June Crest " came into Colombo harbour on or about 14th January, 1947, and the relative Bill of Lading and other relative documents and/or the said goods were tendered to the defendants. The defendants wrongfully, unlawfully and in breach of the said contract refused and neglected to take delivery of the said documents and/or the said goods.

No. 2
Plaint of the
Plaintiff
16-5-49
—continued

5. The plaintiff drew upon the defendants a Bill of Exchange for £3,134 3s. 1d. equivalent to Rs. 41,934.12 in Ceylon currency being value of 60 tons of cowpeas at the agreed rate of £51 per ton which the defendants failed to honour.

10 6. The plaintiff with due notice to the defendants sold the said goods at their risk by private treaty at the then available market rate for Rs. 5,609.12. In this connection the plaintiff incurred expenses amounting to Rs. 1,000.

7. By the said refusal, neglect or breach of contract aforesaid, the defendants have caused plaintiff loss or damage in the sum of Rs. 37,525, to wit :—Rs. 36,325 being difference between the said Rs. 41,934.12 and Rs. 5,609.12 and the said sum of Rs. 1,000 which said sum of Rs. 37,325 or any part thereof the defendants have failed and neglected to pay though thereto often demanded.

Wherefore the plaintiff prays for judgment against the defendants jointly and severally—

- 20 (a) in the said sum of Rs. 37,325 with legal interest thereon from date hereof to date of decree and thereafter on the aggregate amount of the decree till payment in full ;
- (b) for costs ; and
- (c) for such other and further relief as to this Court shall seem meet.

Sgd. S. A. SEYED HAMID,
Proctor for Plaintiff.

Documents Filed with the Plaintiff :

Copy of writing marked " A " referred to above.

Sgd. S. A. SEYED HAMID,
Proctor for Plaintiff.

30 Settled by :
MR. V. A. KANDIAH,
Advocate.

" A "

Copy.

Mombasa, 24th December, 1946.

No. 2
Plaint of the
Plaintiff
16-5-49.
-continued

Contract.

Sellers : Odhavji Anandji & Co., Ltd., Mombasa
Buyers : Messrs. Abdul Latiff Abdul Hamid, Colombo
Quantity : Sixty (60) tons
Quality : Cowpeas as per sample approved
Price : £51 (Pounds Fifty-one) c.i.f. Colombo
Packing : In sound single bags.
Tare : Usual
Shipment : ss. " June crest " loading at present
Marks : ALAH/COLOMBO
Payment : By an irrevocable Letter of Credit

10

Confirmed by Sellers :

Confirmed by Buyers :

ODHAVJI ANANDJI & Co., LTD.

FOR ABDUL LATIFF ABDUL HAMID

Sgd. V. A. MANEK,
*Secretary.*Sgd. M. Y. ABOOBAKAR
Colombowalla

24/12

Proctor for plaintiff.

True Copy

Sgd. S. A. SEYED HAMID,
Proctor for Plaintiff.

20

No.

To All to Whom these Presents shall Come :

Odhavji Anandji & Company, Limited of Mombasa, in a Company incorporated under the Laws of Kenya Colony and having its registered office at No. F222, P. M. Lois Road, Mombasa (hereinafter referred to as " the Company ").

Sends Greetings :

Whereas the Company is desirous of appointing some fit and proper person as its attorney in Ceylon for the purpose of attending to all its affairs in Ceylon for recovering all moneys due or payable to the Company by persons in Ceylon and of filing actions if necessary for the recovery of moneys due to the Company from any and all persons in Ceylon.

Now know ye and these presents witness that the said Odhavji Anandji & Company, Limited, hath made nominated and appointed and by these presents doth hereby make, nominate and appoint Ravji Anandji of Bombay its true and lawful attorney to act for it and on its behalf and in its name or otherwise for all and each and every or any of the following purposes, that is to say :—

To ask, demand, sue for, recover and receive of and from all persons liable now or hereafter to pay and deliver the same respectively all sum and sums of money debts, legacies, goods, effects and things whatsoever now owing, payable or belonging or which shall or may at any time hereafter be due owing and payable coming or belonging to the Company and on payment or delivery thereof to give, sign and execute receipts, releases and other discharges for the same respectively and thereupon to manage, employ and deal with the same as the Company could or might lawfully do and on non-payment or non-delivery thereof or any part thereof to commence, carry on and prosecute any action or actions suit or suits or other proceedings whatsoever before any Court or Courts in the said Island for receiving and compelling the payment or delivery thereof.

No. 2
Plaint of the
Plaintiff
16-5-49
—continued

10

To state finally settle and adjust all accounts reckonings and demands whatsoever between the Company and any person or persons whatsoever and to compromise disputes and differences and to refer matters to arbitration and to sign and execute all necessary bonds, submissions and references therefor and to enforce any award.

20

To appear for the Company before any Court or Courts in the said Island either as plaintiff defendant or intervenient and to sign and grant all necessary proxy or proxies to any proctor or proctors of the said Courts and the same from time to time to recall and revoke and to prosecute or defend any suit or suits or other proceedings now or hereafter to be brought by or against the Company and to proceed to judgment thereon or to suffer judgment by way of default to be entered against the Company and to admit any claim or claims which may be brought against the Company in such Court or Courts as the said Attorney shall think fit and against any judgment order or decree of any of the said Courts to appear and prosecute such appeal before the Supreme Court of the said Island and from any judgment order or decree of the said Supreme Court to appeal to His Majesty The King in Council and give all necessary securities and sign all necessary bonds for the prosecution of such appeals.

30

To prove any debt or debts to the Company by any person who shall be adjudged an insolvent in any Court or Courts in the said Island and to vote in the election of assignees and to accept any offer or composition and otherwise to represent and act for the Company in such Insolvency Proceedings.

To open an account or accounts with any bank or banks in the said Island sign and endorse cheques for the purpose of paying in and drawing money out of any bank in the said Island.

40

Generally to do execute and perform all such further and other acts, deeds, matters and things which the said attorney shall think necessary or proper to be done in and about or concerning the business of the Company claims, demands, debts or affairs as fully and effectually to all intents and purposes as the Company might or could do the Company allowing all matters and things respecting the same under the full management control and direction of the said attorney.

No. 2
Plaint of the
Plaintiff
16-5-49.
—continued

And for more effectually doing, effecting, executing and performing the several matters and things aforesaid the Company doth hereby give and grant unto the said attorney full power and authority from time to time to appoint one or more substitute or substitutes to do, execute and perform all or any of the matters and things aforesaid, and such substitute or substitutes at pleasure to remove and to appoint another or others in his or their places the Company hereby promising and agreeing to ratify, allow and confirm all and whatsoever the said attorney or his substitute or substitutes shall lawfully do or cause to be done in the premises by virtue hereof.

And the Company doth hereby direct that all acts which shall be had made 10 or done by the said attorney or his substitute or substitutes before he or they shall have received notice of revocation of the authority contained in these presents shall be as binding and valid to all intents and purposes as if the same has taken place before such revocation any rule of law or equity to the contrary notwithstanding.

And it is hereby declared and agreed that as against the Company and any person claiming under the Company every act, deed, matter or thing which the said attorney or his substitute or substitutes shall execute or cause to be executed or done in relation to the premises subsequent to the revocation of the powers expressed to be hereby conferred or any of them shall be binding on the 20 Company and conclusive in favour of every person claiming the benefit of such act, deed, matter or thing who shall not prior to the execution or doing thereof have received express notice of such revocation and that no such person shall be bound to inquire or ascertain whether these powers or any of them have or has been revoked, lapsed or otherwise determined or are or is still in full force and operation.

In witness whereof the said Odhavji Anandji & Company, Limited, has set its common seal to these presents at Mombasa, on this 18th day of April, 1947.

Seal in the presence of us :

(1) Sgd. VASUNJI ANANDJI, *Secretary*
(Odhavji Anandji & Co., Ltd.)

Seal of :

30

ODHAVJI ANANDJI & Co., LTD.,

(2) ODHAVJI ANANDJI (*Managing Director*)

Mombasa

Witnesses :

(1) Sgd. C. R. DASANI of Chagamlal R. Dasani, Box 274, Mombasa.

(2) Sgd. A. M. ISSA of Abdulla M. Issa, Box 274, Mombasa.

Sgd. CHIMANLAL AMBALAL PATEL,
Notary Public, Mombasa.

Stamp 2 and Seal of C. A. Patel, Advocate, Notary Public.

I, Chamanlal Ambalal Patel of Mombasa, Kenya Colony, Notary Public do hereby certify and attest that the foregoing instrument was duly sealed with the Common Seal of Odhavji Anandji and Company Limited, a Company duly incorporated under the laws of Kenya Colony and having its registered office at Mombasa Kenya in the presence of (1) Vasundji Anandji, the Secretary of the Company and (2) Odhavji Anandji, Managing Director of the said Company and the said instrument was signed by the said two officers in the presence of C. R. Dasani and A. M. Issa the subscribing witnesses thereto both of whom are known to me the same was signed by the said two Officers of the Company both of whom are also known to me and by the said witnesses and also by me the said Notary in my presence and in the presence of one another all being present at the same time at Mombasa this 18th day of April, 1947.

No. 2
Plaint of the
Plaintiff
16-5-49
—continued

Date of Attestation : 18-4-47.

(Seal)

Sig. of the Notary : CHIMANLAL AMBALAL PATEL,
Notary Public, Mombasa.

True copy bearing a stamp of Re. 1.

20 Colombo, 16th April, 1949.

Sgd. S. A. SEYED HAMID,
Notary Public.

(Seal)

No. 3

Answer of the Defendants

No. 3
Answer of the
Defendants
30-9-49

IN THE DISTRICT COURT OF COLOMBO

ODHAVJI ANANDJI & Co., LTD., of Mombasa

Plaintiff..

No. 21,162/M.

Vs.

(1) ABDUL HAMID and
 (2) ABDUL LATIFF, both carrying on business in partnership
 under the name, style and firm of " Abdul Latiff Abdul
 30 Hamid " at 123, Bankshall Street, in Colombo *Defendants.*

On this 30th day of September, 1949.

The answer of the detendants abovenamed appearing by Sabapathy Somasunderam and his Assistant, Sinnatambypillai Thuraisingam, their Proctors states as follows :

No. 3
 Answer of the
 Defendants
 30-9-49
 —continued

1. The defendants admit the averments in paragraph 1 of the plaint save and except that any cause of action has accrued to the plaintiff to sue the defendants.

2. Answering to paragraph 2 of the plaint—

(a) The defendants admit the execution of the agreement dated 24th December, 1946, and marked “ A ” and referred to in the said paragraph.

(b) The contract contained therein was for the sale of cowpeas and in accordance with sample.

(c) The plaintiff is a dealer in grains and was well aware of the purpose to which the said goods were intended,—to wit, for human consumption.

3. Answering to paragraphs 3 and 4 of the plaint the defendants state :—

(a) That the plaintiff committed a breach of the said contract in that the goods shipped and tendered by the plaintiff to the defendants did not correspond to the sample in quality and were not of merchantable quality and were not fit for human consumption and were not in terms of and in accordance with the said contract.

(b) That the defendants in the circumstances lawfully rejected the 20 said goods and refused to take delivery and pay for the same.

4. The defendants admit the averments in paragraph 5 of the plaint. The defendants state that they were entitled under the circumstances not to honour the said Bill.

5. The defendants put the plaintiff to the strict proof of the averments contained in paragraph 6 of the plaint.

6. The defendants deny the averments in paragraph 7 of the plaint.

7. The defendants deny all the allegations in the plaint which are contrary to or inconsistent with the averments contained herein. The plaintiff's claim if any is prescribed.

30

Wherefore the defendants pray—

(a) that plaintiff's action be dismissed,

(b) for costs of this action, and

(c) for such other and further relief as to this Court shall seem meet.

Sgd. S. SOMASUNDARAM,
Proctor for Defendants.

Settled by :

P. NAVARATNARAJAH, Esquire,
Advocate.

Issues Framed

2- 6-50
D.C. Colombo, 21,162/M.

Mr. Seyed Ahamed for plaintiff.
Mr. Somasunderam for the defendants.
Mr. Somasunderam asks for date.
Proctor for plaintiff consents.

He has set out the grounds upon which the application for postponement 10 is made. He says that the defendants and one Aboobucker who are material for the defence are in Calcutta and cannot be contacted owing to the recent riots in East Bengal.

Trial is postponed for 4th October, 1950, before Mr. Manickkasagar, A. D. J.

Sgd. H. A. DE SILVA,
D. J.

2-6-50

4 -10-50
D.C. Colombo, 21,162/M.

20 Plaintiffs present.
Defendants absent.

Mr. Adv. Kandiah with Mr. Adv. Kanagarayar for the plaintiffs.
Mr. Adv. Kumarasingham for the defendants.

Mr. Kumarasingham asks for an adjournment on the ground that the second defendant is ill at Karachi, and the witness, Aboobucker, who is the agent who entered into the contract, the subject matter of this transaction is ill at Calcutta. He submits a telegram in regard to the second defendant, and a medical certificate in regard to the first defendant. Mr. Kumarasingham points out that with regard to the second defendant the telegram states that the medical certificate has been posted by air-mail yesterday ; he states that the first, 30 defendant had nothing to do with this transaction, and was not residing in the Island at the time ; his brother, the second defendant was the person who was carrying on the business at the time.

Mr. Kandiah states that this case has been specially fixed for today and he objects to an adjournment. He states that so far as the defendants are concerned there is no reasonable explanation for their absence. In regard to the witness, Aboobucker, the defendants list of witnesses was filed at 4-25 p.m. yesterday ; and his Proctor has objected to the list being filed at that time. He states that this is an endeavour on the part of the defendants to gain time.

No. 4
Issues
Framed
—continued

Mr. Kandiah suggests that the case in any event be proceeded with so far as the plaintiffs are concerned. The Secretary of the plaintiff's company and a Director have come all the way from Mombasa for this case ; they have incurred considerable expense and he moves that if the Court is satisfied that an adjournment be granted the case be nevertheless proceeded with in so far as the plaintiff's case is concerned.

Mr. Kumarasingham has no objection to the plaintiff's case being heard today.

Order :

I will accede to this application and hear as much of the plaintiff's case as I could today and at the end of this I shall consider the question whether the defendant is entitled to a postponement.

Mr. Kandiah opens the case and refers to the nature of the evidence. He suggests the following issues :

- (1) Did the plaintiffs and defendants enter into a contract as stated in paragraph 2 of the plaint.
- (2) Did the plaintiffs ship in ss. " June Crest " 60 tons of cow-peas referred to in paragraph 2 of the plaint.
- (3) (a) Were the relative bills of lading and documents tendered to the defendants ? (b) Were the said goods tendered to the 20 defendants.
- (4) Did the plaintiffs draw upon defendant's Bill of Exchange as stated in paragraph 5 of the plaint.
- (5) Did the defendants wrongfully, unlawfully and in breach of the said contract refuse and neglect to accept the said documents and/or the said goods ?
- (6) Did the plaintiffs give due notice to the defendants to sell the said goods by private treaty at the available market rate ?
- (7) (a) Did plaintiffs realise a sum of Rs. 5,609.09 by the sale of the said goods ? (b) Did plaintiffs incur expenses amounting to 30 Rs. 1,000 in connection with the said transaction and sale ?
- (8) Is the plaintiff entitled to claim from the defendant a sum of Rs. 41,934.12, and the said sum of Rs. 1,000 less the said sum of Rs. 5,609.09?

Mr. Kumarasingham has no objections to the issues. He suggests the following further issues :—

- (9) Were the goods contracted for human consumption ?
 (10) Did the goods correspond to the sample in quality ?
 (11) Were the goods of merchantable quality ?
 (12) If issue 1 is answered in the affirmative and issue 10 and/or 11
 in the negative is the plaintiff entitled to judgment ?
 (13) Were the goods shipped in terms and in accordance with the said
 contract ?
 (14) Is the claim of the plaintiff prescribed ?

No. 4
 Issues
 Framed
 —continued

I ask Mr. Kumarasingham what exactly he means by issue 13. He says
 10 that the goods were not in accordance with the sample and not fit for human
 consumption, and this is a general issue to catch up these two points and anything
 else outside it.

Mr. Kandiah objects to issue 13.

I rule out issue 13 ; Counsel states that this issue is raised to cover what
 is already in issue 9 to 12, and also any other matter not covered up by these
 issues ; he is unable to state what the other matters are. This is far too vague,
 for that reason I disallow the issue. Parties will go to trial on issues 1 to 12
 and 14.

No. 5

Plaintiff's Evidence

No. 5
 Plaintiff's
 Evidence
 V. A. Manek
 Examination

20

Mr. Kandiah calls :—

VASANJI ANANDJI MANEK—Affirmed, 26 years, Secretary, Othabji
 Anandji & Co., Ltd., living at Mombasa.

I have come here in connection with this case. I have no other business
 in Ceylon. My Company are wholesale importers and exporters. Before
 December, 1946, we had dealt with the defendants. The defendants sent us a
 letter dated 20-12-1946, which I produce marked P1. M. Y. Aboobucker brought
 this letter to us at Mombasa. He is a brother of the two defendants. He came
 there and asked us whether we have any cow-peas for sale. About the middle
 30 of December, 1946, we had cow-peas for sale for export. We had 85 tons of
 the same quality.

Q.—Were they of the same quality ?

(Mr. Kumarasingham objects to question which is allowed).

No. 5
Plaintiff's
Evidence
V. A. Manek
Examination
—continued

A.—The 85 tons were of the same quality. They were lying in the port warehouses at Mombasa.

Q.—Why were they lying in the port warehouses ?

A.—Because it is the usual practice for consignors in the up-country where the cow-pea is produced to send them by train to Mombasa and the wagons are taken up to the warehouses where they are stored. Cow-peas are produced in Kenya and Uganda.

Q.—Did you examine the 85 tons ?

A.—Yes.

Q.—Was there any difference between one bag and another ? 10

A.—No. I got the 85 tons from various people in Kenya and Uganda. The cow-peas produced in Kenya and Uganda are of the same quality. They are harvested about the same time in both places. There was a great demand for cow-peas about the time. When I told Mr. Aboobucker that we had cow-peas for sale he asked me if we could supply 60 tons and I said yes. I told him that the goods were in the warehouses he wanted to examine them. Then I went with him to the warehouses. The 85 tons were in the same warehouse and he examined them.

Q.—Was there any difference between quality of cow-peas in one bag and another ? 20

A.—No.

Q.—Did he examine the goods ?

A.—Yes.

Q.—Thereafter what happened ?

A.—He approved the goods. And we agreed upon the price and other terms.

Q.—What was the nature of the contract ?

A.—We were to export the goods by the ss. " June Crest " which was then in the harbour. Thereafter we entered into a contract. The price is £51 c.i.f., Colombo. I proposed the contract marked P2. It is dated 24th December, 1946. 30 Later there was a talk between me and Aboobucker for a further 25 tons of cow-peas and 35 tons of field-peas. Field-peas are small round peas.

Q.—You produce a copy of a telegram sent by Mr. Aboobucker to the defendants and which he handed to you ?

(Mr. Kumarasingham objects to the document being produced because it is a copy of a telegram which was sent not by the witness but by another person to the defendants.

No. 5
Plaintiff's
Evidence
V. A. Manek
Examination
—continued

Mr. Kumarasingham admits that the other party is the agent of the defendants.

Mr. Kandiah states that he notified the plaintiff's Proctor to cause the particular telegram to be made available to him for production. Mr. Kumarasingham admits the receipt of the notice. Mr. Kumarasingham states that he is calling Mr. Aboobucker.

10 I allow the document to be produced.

The witness' evidence is that this was a copy granted him by Mr. Aboobucker.

Mr. Kandiah reads out the telegram. Mr. Kumarasingham states that he has the telegram of 24-12-46 but it is slightly different to what has been read out.)

Examined :

I produce marked P3 copy of a telegram handed to me by Aboobucker. Aboobucker told me that he despatched a similar telegram to the defendants. On the 27th December, 1946, Aboobucker wanted us to send the 25 tons of cow-peas sent by the " June Crest " and 35 tons of field-peas sent by the " Caberilla ". The terms were the same for the 25 tons of cow-peas in regard to price and shipment. Aboobucker handed to me a copy of a telegram regarding the 25 tons of cow-peas and the 35 tons of field-peas. I produce it marked P4. He told me a similar telegram was sent to the defendants. Then a contract was entered into in respect of the 25 tons of cow-peas and the 35 tons of field-peas. In terms of the contract I put on board the " June Crest " 85 tons of cow-peas. Mr. Aboobucker was present when I put them on board. The 60 tons of cow-peas was covered by contract P2 and was put on board ship on 28-12-1946. I produce marked P5 the Bill of Lading dated 28-12-46 for 646 bags of cow-peas, total weight being 59 tons 19 cwt. 1 qr. 24 lbs. as being handed to the ship. The shortage was 2 qrs. 4 lbs. P5 covers nearly 60 tons. My signature is on the reverse of the Bill of Lading. I endorsed it and delivered it to the bank to be delivered to the consignees. I also effected insurance in respect of the 60 tons. I produce policy of insurance in respect of the 646 bags marked P6 to cover loss on the ship ss. " June Crest ". The policy on insurance gives the value of the goods, of 60 tons cow-peas. I also made an invoice for the value of the goods, which I produce marked P7, dated 30-12-40 for a sum of £3,134 3s. 1d. at the rate of £51 per ton on the total tonnage of 61 tons 9 cwt. After I put the goods on the ship and effected the necessary insurance on P6 and drew the invoice P7 I received a telegram from the defendants dated 1-1-47, which I produce marked P8. " June Crest " left Mombasa on the 28th December, 1946. P8 refers to

No. 5
Plaintiff's
Evidence
V. A. Manek
Examination
—continued

Chora. Chora is a cow-pea. Chora is a Gujerati word. On receipt of P8 I sent the defendants a telegram on 2-1-47. I produce a copy of it marked P9.

(Mr. Kumarasingham has no objection to the copy being marked.)

P8 was sent from Colombo on 31-12-46. I did not receive any reply to my telegram P9. Thereafter I came to know that the defendants refused to honour the Bill and to accept the documents. On the 30th December, 1946, I drew a bill on the Defendants for the value of the 60 tons, I produce it marked P10. The Bill of lading, the policy of insurance the invoice and the Bill of Exchange were handed to the manager of the National Bank, Mombasa, to be sent to the defendants through the National Bank, Colombo. The defendants did not honour the bills. On P5 and P6 I find the stamp of the National Bank, Mombasa, and the National Bank, Colombo. On P10 there is an endorsement made for non-payment dated 29-1-47 as "contrary to instructions". The National Bank at Mombasa wrote to us about the non-acceptance of the bills. Then on the 4th February, 1947, I sent a telegram to the defendants. I produce a copy of it marked P11.

(Mr. Kumarasingham at this stage says that he has no such telegram in his file ; he is unable to say whether his clients received the telegram or not because his clients are not present in Court.)

20

Examined.

I sent the telegram myself at the Telegraph Office at Mombasa. I handed it myself personally. (Mr. Kumarasingham admits that the telegraphic address of the defendants is "Reliable".) I received information about import licences from the National Bank, Mombasa.

Q.—You produce a letter from the National Bank, Mombasa dated 30th January, 1947.

(Mr. Kumarasingham objects to this letter being produced unless it is proved.

Mr. Kandiah says that he is not calling a representative of the National Bank, Mombasa. The document is rejected.)

Examined.

I did not receive a reply to P11. Thereafter I was in correspondence with the National Bank in Ceylon. On the 5th March, 1947, I instructed our proctor to write to the defendants letter dated 5-3-47. Copy produced without objection from the defendants' Counsel marked P12. In March, 1947, I was not in Colombo.

My elder brother, Cowsaji Anandji, also a Director of the firm, was here. The letter P12 was sent by registered post and I produce the receipt of the registered letter marked P12a. Now I know what happened to the goods. The National Bank has handed the goods over to Popatlal and Company to sell. They sold the goods for about Rs. 5,609.09 cts. and sent the accounts to my brother at Bombay. A sum of Rs. 1,000 was spent in connection with this sale. On the basis of the contract P2 and the relative documents P5, P6, P7, and P10, we are entitled to claim from the defendants a sum of Rs. 41,934.12 cts. being the value of 60 tons of cow-peas and the sum of Rs. 1,000 less the sum of 10 Rs. 5,609.09 cts. We are asking for judgment in a sum of Rs. 37,325/- with legal interest against the defendants.

No. 5
Plaintiff's
Evidence
V. A. Manek
Examination
—continued

I also sent to the defendants a telegram on 29-1-47 (Mr. Kumarasingham has no objection to a copy of this telegram being produced as his clients have received it.).

Examined.

I produce a copy of the telegram marked P13. I did not receive any replies to the telegrams or letters sent to the defendants. My proctor sent letter P14 to the defendants dated 9-12-47. It was sent under registered cover and I produce the receipt marked P14a.

20 (Copy of letter produced without objection.)

Mr. Kumarasingham states that the original is not in his file.

Cross-Examined :

V. A. Manek
Cross-Exami-
nation

My firm has been in business at Mombasa since 1936. We are importers and exporters. We do not have our own stores. We have an office in the business quarters in Mombasa. I came to know the defendants for the first time in the middle of 1946. We had obtained some addresses and we wrote to them. They wrote in reply to my letter. I have not brought those letters here with me. As a result of that contact we commenced to do business with the defendants.

30 I have no books of accounts here to show when we had dealings with the defendants for the first time. We have day books and ledgers which will show when we commenced to do business with the defendants. We sent some consignments of goods to the defendants prior to the 60 tons sent on the June Crest. I cannot say what the goods were, or the value of the goods. Letters of credit were opened for that. Prior to 1946 we had dealings with Messrs. Mackwoods, Popatlal, K. M. Mohideen. Prior to this we got payments from the defendants when they opened letters of credit. We sent the goods at that time after we were informed by the National Bank that letters of credit had been opened by the defendants.

No. 5
Plaintiff's
Evidence
V. A. Manek
Cross-Exami-
nation
—continued

Q.—As far as the defendants were concerned you followed the same practice up to this shipment ; you sent the goods after the National Bank informed you that letters of credit were opened ?

A.—Yes. We obtained these goods from Kenya and Uganda. We do not have contacts at Uganda. We buy these goods through local brokers.

Q.—Cow-peas are of different qualities ; there are white and red cow-peas.

A.—No, they are of the same colour. They are red. That is the only colour of cow-peas we know. We have never seen any other colour of cow-peas. Cowpeas are liable to be attacked by weevils. They cannot be stored for more than 4 or 5 months. Cow-peas are harvested in Uganda in November, and in Kenya about the same time. The harvesting season starts in November. It will however depend on the rains. If the rains start earlier the harvesting will also be earlier.

Q.—The size of the pulse is also determined by the fertility of the soil and also by the variety.

A.—In appearance the peas look almost the same.

Q.—To protect cow-peas from being attacked by weevils you have them treated ?

A.—No. I am not aware whether the producers have the cow-peas treated against weevils. I have been in the export trade since 1941. We have exported cow-peas to Ceylon, nowhere else. In 1946 we exported 85 tons of cow-peas to Ceylon. Before that we have exported other pulses. We have exported green-gram, chillies, etc. During the course of our business this is the quantity of cow-peas we handled 85 tons. This is the only consignment of cow-peas we exported from Mombasa. In Mombasa we sell only grains locally. We sell locally green-gram, gram and urid. In Mombasa we do not deal in cow-peas. Aboobucker came and saw me in Mombasa about the 20th December, 1946. He mentioned the possible lines of business that could be done between his firm and us. He did not tell that he will have to get instructions from his principals in Ceylon. He brought with him an introductory letter. He showed me from time to time copies of telegrams he sent to his principals.

Q.—Did you enter into more than one contract with Aboobucker ?

A.—Yes.

Q.—How many contracts did you enter into with Aboobucker ?

A.—Only this one,

Q.—In the normal course when a party wants to send a consignment of pulses or grains how long does it take between the entering into the contract and the despatch of the goods ?

No. 5
Plaintiff's
Evidence
V. A. Manek
Cross-Examination

A.—It depends on the shipping. Aboobucker told us that letters of credit would be opened before the goods were sent.

Q.—You sent the goods to the defendants without letters of credit being opened.

A.—Yes. We referred to them and inquired about the party and if they passed the party as sound we would send the goods. On the 23rd December, I referred to the National Bank, Mombasa in regard to the financial position of the defendants. Prior to this there were letters of credit opened when there was no representative of the defendants was present in Mombasa. This was the first occasion there was a representative at Mombasa.

Q.—Would you have sent these goods on payment against documents ?

A.—Yes.—We want a letter of credit because we want to be sure of the money. We bought the cow-peas from Thika and Masaka in Kenya and Uganda. Our books will show when the cow-peas were bought, what quantity, from where and at what price we bought them. We did not purchase this consignment of cow-peas before November. I do not personally know when they were purchased. I had examined the goods earlier and on the 20th December, Aboobucker examined them.

Q.—How did you examine the hundreds of bags.

A.—After the receipt of the goods and before we take them we examine the bags by inserting a piece the width of two fingers and draw out the cow-peas by pricking into the bags. We examine about two bags out of ten. I received the consignment about the beginning of December on different dates. Only two consignments made up the 600 odd bags. They were stacked one on top of the other. About ten bags are stacked one on top of the other. I could reach them. When Aboobucker came we went and examined the bags in the same way. He examined two out of ten bags. I gave a sample to Aboobucker. I do not know what he did with the sample. He remained at Mombasa about one month. He went to Dar-Es-Salem. I do not know when he left Mombasa. He arrived about the middle of December. He may have left about the middle of January. I do not know the date.

Interval.

4-10-50.

Sgd. V. MANICKKAVASAGAR,
A. D. J.

No. 5
Plaintiff's
Evidence
V. A. Manek
Cross-Exami-
nation
—continued

After Lunch :

V. AVANJI MANEK. Re-called—affirmed.

I do not remember whether I advised the defendant as to the departure of the "June Crest". I have no correspondence in my files which speaks to whether I advised the defendant or not. I know what letters of credit are. I have entered into a series of contracts with consignees in terms of letters of credit. Sometimes I used the word "irrevocable letter of credit" as in the case of P2. which means once letters of credit are opened it cannot be revoked by the, consignee.

P3 is a telegram sent by Aboobucker (Counsel reads contents of P3). 10

Q.—What do you understand by the word "why not reply" in P3?

A.—The defendant must have received some other offers from exporters in Mombasa. He does not refer to us because he had no other cow-peas at the time.

Q.—Or is it that Aboobucker asked the defendants why they were not replying to his communication he sent to them?

A.—Yes, Aboobucker's communication. On the 1st of January, I received P8. On the 1st of January, I knew because of P8 that the defendants were not taking delivery of the cow-peas which had already been shipped.

Q.—Then that is why on the 2nd of January, you sent P9? 20

A.—Yes. I knew by the 1st and 2nd of January, that the sixty tons would not be accepted by the defendants. I made no arrangements to sell the 60 tons of cow-peas. On the 2nd of January, in order to clear any misunderstanding, I sent the defendant a cable referring to Aboobucker's telegram of the 2nd January.

I came to know that the "June Crest" arrived on the 14th of January. For the telegram of the 2nd of January, I did not receive a reply. On the 4th of February, I sent a further cable (Counsel reads the cable). The draft was unpaid.

Q.—Did you make arrangements for selling the consignments earlier? 30

A.—I wrote to the Bombay Office. Ultimately the consignments were sold about three months later towards the end of March.

Q.—Can you explain why this consignment that was worth Rs. 41,000/- odd fetched only Rs. 5,000 odd?

A.—I cannot give an explanation. I do not know market conditions.

Q.—Was it due to the market conditions prevailing at the time or due to deterioration of the cow-peas ?

No. 5
Plaintiff's
Evidence
V. A. Manek
Cross-Exami-
nation
—continued

A.—I cannot say because I have come here for the first time. Every day's delay would mean deterioration in the cow-peas. I cannot say whether if this consignment was sold in the first week of January whether it would have fetched a better price.

Re-Examination :

V. A. Manek
Re-Exami-
nation

I entered into two terms of contracts. One condition was that the defendants should open letters of credit before the two consignments were put on board they had opened letters of credit for 25 tons. I received this information by telegram dated the 31st of December. This telegram reached me on the 1st of January. With respect to the 60 tons I received P8. I saw my manager about it and he asked me to draw the sight draft P2. Aboobucker sent the telegram P3 after the contract was signed.

No treatment was given to the cow-peas by us, when it was despatched from Mombasa.

Q.—Was the cow-peas in good and sound condition when it was shipped from Mombasa ?

A.—Yes. I came to Ceylon for the first time on the evening of the 2nd of 20 October, 1950. I came from Mombasa to Bombay and from there to Ceylon.

Sgd. V. MANICKKAVASAGAR,
A. D. J.

4-10-50.

M. I. M. ISMAIL—affirmed. 30, Bank Clerk, National Bank, Ceylon.

M. I. M. Ismail
Examination.

I have been working at this Bank for the last 13 years. I work in the department of the bank that attends to bills that come from abroad. I am fairly conversant with the work concerning my department. (Shown P10 Bill of Exchange dated the 30-12-46). This bill was sent to us from the National Bank, Mombasa. The words National Bank, Mombasa appear on the bill. Along with P10 we received P5 the Bill of Lading, P6 the Policy Insurance and 30 the Invoice P7. The defendants did not honour the Bill of Exchange P10. They did not accept P5, P6 or P7. When parties against whom bills are drawn do not honour the bills we get the bills noted for non-payment by our lawyers.

Cross-examined :

M. I. M. Ismail
Cross-Exami-
nation.

I dealt with these matters. I sent notices out to the consignees requesting them to pay and when the bills were not taken I instructed the firm of E. B. Creasy & Co., Ltd., to clear the goods. I cannot remember the day. I cannot say whether I did it on anyone's instructions but as a general rule when bills are

No. 5
Plaintiff's
Evidence
M. I. M. Ismail
Cross-Exami-
nation
—continued

not taken away we instruct the firm of E. B. Creasy & Co., Ltd., who are our clearing agents to clear the goods. They (E. B. Creasy) hold the goods in their stores at our disposal or dispose of the goods on our instructions. We may have received instructions from the plaintiff in connection with this matter. I have not brought the files pertaining to this transaction, because they were destroyed. Normally after four or five years the files are destroyed, but since the Bank was undergoing alterations some of the recent files were also destroyed. This file was destroyed.

Q.—Can you from your own knowledge say whether you received instructions from the plaintiff with regard to the disposal of the goods? 10

A.—I cannot remember.

M. I. M. Ismail
Re-Exami-
nation. *Re-examined :*

At this distance of time I cannot remember matters concerning this consignment. In the course of my dealing with Mombasa I received about five or six letters a day.

Q.—In this case are you aware that these goods were sold?

A.—Yes.

Q.—Would E. B. Creasy & Co., Ltd. have sold the goods or passed the goods on to somebody else without instructions from the Bank?

A.—No. 20

Q.—Did you in this particular case after the goods were sold have reason to write to your Branch at Mombasa?

A.—We had to write to Mombasa. That is normally a part of our duties. In this particular case I remember I wrote to Mombasa, that the goods had been sold.

Q.—Do you remember who sold the goods?

A.—We must have got instructions from Mombasa. The goods were sold by us in Colombo.

Sgd. V. MANICKKAVASAGAR,

4-10-50.

A. D. J. 30

R. K. Subra-
maniam.
Examination.

R. K. SUBRAMANIAM—affirmed, 53, Kotahena, Registrar Customs.

In 1946-47 I was a landing waiter of the Customs Department. As such my duties were to see that correct customs duties were levied on the cargo that

was shipped to this country. For that purpose we maintained a large number of documents. For instance there is a book maintained by the Customs Department in which are entered the number of packages that are accommodated in the warehouses. The Customs Department recovers duties on all goods that are housed in their warehouses on the basis of *ad valorem* and weight. Where pulses are concerned duties are charged according to weight. In 1947 this was the practice. Even today it is the same. When bags come into the warehouses we get them weighed. We do not weigh all the bags individually because this is impracticable but we carry out a test weight which means that we select a sound bag, i.e. a bag which is sound in respect of it being packed well and what appears to be the heaviest bag and we weigh it. The weight of this bag is taken as the standard weight for the bags containing the particular product, and we multiply this weight by the number of bags that are to be housed and then arrive at total weight of the bags to be housed and we calculate the duties on the total weight. I am not the landing waiter who worked the "June Crest". Mr. Pullanayagam worked the "June Crest". He is now in Jaffna. He will be resuming duties in Colombo next month.

No. 5
Plaintiff's
Evidence
R. K. Subra-
maniam
Examination
—continued

Q.—But you know what happened to the "June Crest" ?

A.—Usually they come and unloaded. In January, 1947, there was a strike.

Q.—Is it correct to say that is why the loading of cargo was fairly slow in the early part of January, 1947 ?

A.—This vessel "June Crest" in particular landed its cargo in three or four different places. I mean in three or four different warehouses. I cannot say whether there was a delay in landing the cargo of this vessel. I was also working in the wharves in 1947. I was working at No. 7 wharf.

Q.—Can you from personal knowledge say what conditions were prevailing in the wharves in 1947 ?

A.—I cannot recollect. The "June Crest" discharged amongst other things a certain number of bags of cow-peas. I personally had no idea of what the "June Crest" brought, but I looked into the manifest. The manifest is available but I have not brought it because I was not summoned to produce it. I have brought the Custom entry forms with me.

Q.—Is there an entry made in respect of 646 bags of cow-peas in the entries you have brought with you ?

A.—Yes. I have the Custom entry forms of Messrs. E. B. Creasy & Co., the party who cleared the goods from the wharves.

Q.—Were these bags test weighed in this particular case ?

No. 5
Plaintiff's
Evidence
R. K. Subra-
maniam
Examination
—continued

A.—Mr. Pullanayagam dealt with the test weighing. I produce the Custom entry form marked P15. P15 is a copy of the Custom entry form filled in by E. B. Creasy & Co., Ltd., in respect of 646 bags of cow-peas. I cannot say whether the 646 bags of cow-peas were landed at the warehouses.

Q.—But duties have been paid on the basis that 646 bags of cow-peas had been landed at the warehouses ?

A.—Yes. P15 shows that warehouse rent, harbour duties, and Customs duties had been paid in respect of the cow-peas on the 14th of February. If goods are not cleared from the warehouses within three days they become chargeable for double rents and single dues and harbour duties. 10

Q.—In respect of the goods appearing on P15 what were the charges paid in respect of each bag ?

A.—For the three days the charge for each bag was 10 cents and thereafter it was 15 cents per bag. I have a record of payment made in respect of this shipment.

R. K. Subra-
maniam
Cross-Exami-
nation. *Cross-examined :*

“ June Crest ” is a big vessel. This vessel could carry from fifty-thousand to sixty thousand bags. I do not know the tonnage of this vessel. I do not know how long it stayed in the Colombo harbour. Normally a ship could land about twenty five thousand bags a day. 20

Q.—So that it must have been in harbour (reference is made to the “ June Crest ”) about two or three days ?

A.—Yes.

R. K. Subra-
maniam
Re-Exami-
nation. *Re-examined :*

I cannot say how long the “ June Crest ” was in harbour.

Sgd. V. MANICKKAVASAGAR,
A. D. J.

4-10-50.

It is now 3-25 p.m. and Mr. Kandiah states that he intends calling the Director of the plaintiff's firm, but the witness is unable to express himself in English clearly. He speaks Gujerati and Hindustani, and he has not made 30 arrangements to have his evidence interpreted. He asks for an adjournment. I do not propose in view of this application, to make order in regard to the application made by the defendant for an adjournment this morning, as it is unnecessary to do so. Mr. Kumarasingham states that the defendant is suffering with typhoid, and asks for a date during the course of next month.

I adjourn the case for 13-11-50.

Further hearing on 13-11-50.

No. 5
Plaintiff's
Evidence
—continued

4-10-50.

Sgd. V. MANICKKAVASAGAR,
A. D. J.

13-11-50

Same appearance as at last date.

Mr. Adv. E. C. R. Coomaraswamy for defendants.

Mr. Kumarasingham brings to my notice that as regards P11 he made some statements which are recorded at page 7 of the typescript. His clients are 10 now in Court and he is in a position to state that the original is entrusted to him by his clients.

Mr. Kandiah moves that the defendants be caused to mark in evidence the originals of the telegrams of which he had marked copies :

The original of P3 is marked P3A

Do P4 do P4A

Do P9 do P9A

Do P11 do P11A

Do P13 do P13A

Do P14 do P14A

20

Do P12 do P12A

Mr. Kandiah calls :

G. G. PEIRIS.

G. G. Peiris
Examination.

Mr. Kumarasingham objects to this witness being called as his name does not appear in the list of witnesses filed after the case was adjourned after the last trial date.

Mr. Kandiah concedes this argument and point out that the list of witnesses had been filed so far back as 4-4-50 and the purpose for which his name was included in the subsequent list was to obtain summons on the witness.

Mr. Kumarasingham points out that in the list of 4-4-50 and 26-5-50 30 the witness was caused to produce the letter of 3-3-47 and the purpose for which the additional list was filed was to cause all the material and documents to be placed before Court.

Order :

I allow the application to call the witness.

Sgd. V. MANICKKAVASAGAR,
A. D. J.

G. G. PEIRIS—affirmed, 56, Assistant at E. B. Creasy & Co., Ltd.,
No. 100 Dematagoda Road.

I act as a warehouse agent. Mr. Kumarasingham now objects to questions being put to this witness other than for the purpose for which he was cited in the list of 4-4-50.

Order :

10

I allow questions to be put to this witness because I find that E. B. Creasy & Co., appears on the list of 26-5-50 in which they are cited to give evidence as well.

Sgd. V. MANICKKAVASAGAR,
A. D. J.

We act as clearing agents for the National Bank. In January, 1947, the ship "June Crest" came into Colombo harbour. (Shown P15). An entry has been made in P15 by E. B. Creasy & Co. in respect of 646 bags of cow-peas bearing the mark "A.L.A." and the amount due under this was paid on 14th February. Those goods were cleared by us and stored in our stores. The 20 "June Crest" came into the harbour on 13th January. I have no idea of the Customs warehouse at the time this ship came to Colombo. I have no idea of the number of ships that came into the Colombo harbour during this time. I cannot give the dates relating to these goods because some of the papers have been destroyed. I had seen these bags when they were stored in our warehouse. I had not seen these bags but our Store-keeper had seen them. Most of these bags were in a good condition and some of them were not. In some bags the contents were not full but short. (Shown letter dated 2nd April, 1947, P16). This letter was written by E. B. Creasy's to Popatlal & Co. The amount due on P16 was paid by cheque—Rs. 4,969.40. Thereafter I gave delivery of the 30 646 bags to Popatlal & Co. I acted on instructions from the National Bank. In connection with this matter I have a copy of a letter. (Shown copy of letter dated 15th February, 1947, written by E. B. Creasy's to the Ceylon Wharfage Co.

M.r Kandiah states that E. B. Creasy's wrote a letter to the Wharfage Co. and also sent a copy of that letter to the plaintiff at the same time. I find on examination that the copy has not been filed.

Mr. Kumarasingham objects to the document as being a copy only.

Mr. Kandiah maintains that it is an original.

Order :

The document is rejected.

No. 5
Plaintiff's
Evidence
G. G. Peiris
Examination
—continued

We had handled 2,672 bags from the "June Crest". I happened to handle these bags on instructions from the National Bank. Besides the 646 bags of cow-peas, I cannot remember whether there were other bags of cow-peas shipped in the "June Crest" and handled by us in Colombo. I do not know the circumstances under which the National Bank gave us instructions to handle these goods.

Cross-examined.

G. G. Peiris
Cross-Exami-
nation.

10 We had no instructions from the plaintiffs in this matter. I do not know whether Popatlal were brokers. When the Bank sent us the release orders to deliver these bags we carried out those instructions. I am not in charge of the stores. I am a clerk in the office. On rare occasions I go to the stores. My office is in Prince Street and the stores are in Skinner's Road South. I am in charge of the clearance department. Whenever any cargo has to be seen and inspected I go to the stores. On 30th January, 1947, the National Bank asked us to receive the goods. I cannot say when the goods were delivered to Poptlal & Co. But I find a cheque was given on 2nd April. I cannot say whether the delivery was before or after the payment by cheque. Normally the delivery
20 would be about the 2nd of April. I saw the goods about the time the goods were cleared from the wharf to our stores. I saw the goods after they reached the stores. Whenever the store-keeper required me I went to the stores to examine the goods and to report on the condition of the goods, and in this case the condition of the bags. There was no request by the store-keeper to examine the goods landed from the "June Crest". I did not examine the bags in the stores. I examined the exterior of the bags in the stores because I had to report to the National Bank on the condition, and I made such a report. We do not examine the bags that are full, i.e., the bags that appeared to be full. They are removed without examination. I cannot say how many bags were bad or how many
30 were good. I was not concerned with the contents of the bags.

Re-examined.

G. G. Peiris
Re-Exami-
nation.

I made a report to the National Bank on 12-2-47. (The witness refers to a document and states that the report was made on 12-2-47.) That was a report with regard to the goods landed by us from the "June Crest."

Counsel moves to mark copy of the report made by E. B. Creasy & Co. to the National Bank.

Mr. Kumarasingham states that he consents to this being marked.

The document is marked P17 dated 12-2-47. I think P17 refers to the cargo from the "June Crest". I cannot remember whether at this time I was
40 clearing goods from the other ships on instructions from the National Bank. I

No. 5
Plaintiff's
Evidence
G. G. Peiris
Re-Exami-
nation
—continued

cannot remember whether we received an acknowledgement to P16, because most of the letters had been destroyed. We also wrote letter dated 18th February, 1947, to the National Bank. I am having in my file a copy of a letter dated 18-2-47.

Mr. Kumarasingham objects.

Mr. Kandiah withdraws the documents.

Sgd. V. MANICKKAVASAGAR,
13-11-50. A. D. J.

R. M. Suppiah
Examination.

R. M. SUPPIAH—affirmed, 33, Manager, Popatlal & Co., No. 164/2,
Wolfendhal Street. 10

I have been working for Popatlals for last 18 years. For the last four or five years I have been their manager. In 1947, I was their manager, I am not quite sure Popatlal's dealt in perishable goods among other business. There are various managers in the different offices. We have an office in No. 184, Wolfendhal Street. In 182, Main Street we carry on a textile business. In 1946, during the early part, grains and pulses were in great demand. In the early part of 1946 there were short-supplies of these goods from India and other countries. Cow-peas is a new grain to the market. As there were no other pulses available, cow-peas was in great demand in this country. We had direct contracts with the Department of Food Supplies. We also supplied to whole-
sale dealers at wholesale rates in the market. I remember "June Crest" coming to the Colombo harbour on 13th January, 1947. At about the same time within a week or so there were other ships also that came to Colombo. Before their arrival there was a great demand for cow-peas. At the time of the arrival of all these vessels the demand was not as great as it was before. The "June Crest" and some other vessels had brought in large quantities of various grains to this country. As a result of these large consignments of grains the demand went down. Cow-peas is a whole grain. When there is a great demand they are sold as whole grains. Otherwise they are converted into dhal and sold. There was no demand for cow-peas because there was a demand for green-gram, 30
dhal and other grains. Cow-peas was a new commodity to the market. Mysore dhal was being imported from Aden in whole grains. And so were grains like urid were imported. That was in the early part of 1947. Full grains like green-gram were also available at this time in these markets.

Q.—Were the warehouses full at this time ?

A.—Yes. As warehouses were full landing of cargo was slow because they had to be spread over several warehouses. (Shown P16). This letter was written to us by E. B. Creasy & Co. In terms of P16 we gave E. B. Creasy & Co. a cheque in February. After that cheque we received a consignment of goods which we later sold. 40

Q.—Did you sell them at the highest prices available ?

A.—I sold at the highest possible price. Later, I sent a statement of the sale. (Shown P18, statement of sale sent to the plaintiff.) This is a statement of sales in respect of 646 bags that bore various marks. 530 bags were received on 3rd April, 1947, and another 116 bags. P18 gives the particulars like, the number of bags, the total weight and the rates at which we were selling. The best rates that were available at the time were : Rs. 25/, 25/ and 24/- per cwt. We also sold by private negotiation at Rs. 46/- per cwt. and realised a sum of Rs. 560. The expenses amounted to Rs. 4,969.49 which was paid by cheque to E. B. Creasy's. In P18 the expenses incurred is shown as Rs. 7,477.98. A sum of Rs. 5,909/- was collected. This amount was forwarded to the plaintiff by bank draft. The net amount realised was Rs. 5,909.09. We had not started selling earlier because of the fact that there were no buyers earlier. I wrote out P18 in my handwriting. I saw the bags when they came into the stores. They were slack bags and some of them were smaller than the rest. I saw the cow-peas received. We sold them to various customers. There were no complaints from any of the customers because they were inspected before the goods were bought. When we sold the goods they were good but about fifty per cent. were damaged by weevils. If goods are stored for about four or five months usually weevils attack them. 530 bags were received on 3rd April, and they were in good condition. The bags that were received in July were all slack and their contents consisted of a mixture of sweepings. The condition of the goods were good.

Cross-examined :

Popatlal and the plaintiffs are Gujeratis. I am in charge of the grains department at Popatlal's. I have long experience in handling grains. In case of "mung" weevils begin to attack them shortly after the harvest. In the case of cow-peas weevils begin to attack within two or three months of the harvest. E. B. Creasy's asked us to take delivery of a consignment from their stores. They asked us to sell these goods on a five per cent. commission on the proceeds of the sale. I am unable to say whether we wrote to E. B. Creasy's on the 1st of April. I have nothing to do with correspondence. The contractors took delivery of these goods. There are four partners of Popatlal & Co. The arrangements with regard to the 649 bags were made with E. B. Creasy's earlier by the proprietor. It is on the instructions of the proprietors that I sell. Usually there is a discussion between the parties and on the advice of the manager the sales are put through. On the 2nd we sent a cheque to E. B. Creasy's as charges for store rent. The purpose for which the cheque had been sent was stated in P16. On P18 we received 536 bags on 3rd April, 1947. P18 is from a commission sales bill book. On receipt of the 530 bags on 2-4-50 this form was entered. As the bags were torn and as they had been reconstituted no marks were visible. I do not know whether the bags bore the marks of the consignee. Most of the bags were old and torn. In P18 the sum of Rs. 573.50 was the rent for the stores. The demand that existed for grains in 1946 lasted only for two or three months. In October and November there was a big demand. In December,

No. 5
Plaintiff's
Evidence
R. M. Suppiah
Examination
—continued

R. M. Suppiah
Cross-Examination.

No. 5
Plaintiff's
Evidence
R. M. Suppiah
Cross-Exami-
nation
—continued

1946, two or three vessels came to Colombo with large consignments of grains. I do not know their names. We received several items of pulses and grains at this time. The books showing the receipt of those consignments are not in Court. I have not been summoned to produce that book. I have no books in Court to show at what prices cow-peas were sold in August to December, 1946. Nor have I the books to show the sales of the cow-peas. Cow-peas if damaged, would only be useful as fodder for cattle. I do not know if cow-peas are treated chemically in order to prevent being attacked by weevils. But pulses from Rangoon are fumigated in this harbour. There are cow-peas of various colours and of different sizes. Cow-peas are imported from Ethiopia also. Other 10 countries are Aden, India, East Africa. I cannot remember the collection of the 649 bags of cow-peas. Very often fully damaged cow-peas are sold as fodder. Even other grains unfit for human consumption are sold for purposes of feeding cattle. The prices of such grains would be very low.

Q.—The prices of pulses were controlled in 1946 and 1947 ?

A.—I am not quite sure there was any control of the prices with regard to cow-peas. There may have been control of the prices with regard to the usual grains. I am not in a position to say whether in February and March, 1947, the wholesale price of a cwt. was Rs. 36. On reference to books I would be able to say. Excepting 530 bags I refused to take delivery of the rest of the 20 bags received on 3rd April were slack bags. The 530 bags appeared to be good. I took delivery of the remaining number of bags in July. It is possible that we might have been requested by E. B. Creasy & Co. to do so. I do not know whether the plaintiffs asked us to sell the cow-peas. All the arrangements with regard to the sale lay with the proprietors. We had sent a bank draft to the plaintiff for the amount shown in P18. That was in settlement of the account.

Sgd. V. MANICKKAVASAGAR,
A. D. J.

13-11-50.

(After Lunch) :

R. M. SUPPIAH—Recalled, affirmed. (Cross-examination continued). 30

The weight of the 646 bags of cow-peas is shown as 891 cwts. 3 qrs. 25 lbs. I cannot account for the difference between 60 tons and the weight shown in the Bill of Lading, viz., 891 cwts. odd, P18. There may be an appreciable difference in the weight if the grain is attacked by weevils. I do not know whether the marks in the 600 bags were "various". There were no marks to be seen. I am unable to say anything about the sum Rs. 500 entered as expenses in P18 unless I refer to books. The Rs. 125 paid as Income Tax in P18 refers to the Income Tax on this transaction, i.e., the tax earned by Papatlal & Co. The normal procedure is to collect the Income Tax from the plaintiff. We always collect one per cent. on the total sales for purposes of Income Tax. The brokerage 40 charges contained in P18 refers to the brokerage given to the brokers who sold the consignment.

Re-examined :

We are commission agents also. That is parties from abroad ask us to sell goods for them and we charge a commission on the sales. The Rs. 125 would represent commission at one per cent. on Rs. 12,000. On whatever goods we sell on commission the Income Tax Department wants us to pay Income Tax. At the time we sold these goods they were of merchantable quality. The shippers do not guarantee the best quality without weevils. They only say "F.A.Q." (fair average quality). There will always be one or two per cent. of the goods attacked by weevils. We have a commission bill book. I cannot remember
 10 whether we sold cow-peas from January to May, 1947. I have not been able to trace the book during the interval. Usually when a consignment of pulses comes into the market it would take two or three months to be attacked by weevils. If it is a new crop of "Chola" it would take six months for such a consignment to be attacked by weevils. If shipment is delayed then it would take about two or three months for "Chola" to be attacked by weevils.

No. 5
 Plaintiff's
 Evidence
 R. M. Suppiah
 Re-Exami-
 nation
 —continued

Q.—Did you understand the word "harvest" before the lunch interval?

A.—I did not understand it at first.

To Court :

It will take about 5 to 6 months after harvesting for weevils to attack
 20 cow-peas.

Sgd. V. MANICKKAVASAGAR,
 A. D. J.

13-11-50.

P. R. SITTAMPALAM—sworn, 35, Proctor, S.C., of the firm of F. J. & G. de
 Saram. P. R. Sittam-
 palam
 Examination.

I acted for the National Bank of Colombo. I had occasion to note bills for non-payment (shown P10). This was noted for non-payment by me. The endorsement in P10 is signed by me. When a bill like this comes to me for action I take it and present it to the drawee and obtain payment, and also note the answer I received. In this particular case I may have taken the normal course
 30 and endorsed it. The endorsement in P10 is correct (shown P19). This document is signed by me and is dated 29th January, 1947. This document was also written by me. That is a memo. that we attach to the bill and send to the bank.

Q.—It was the defendant who is present in Court to whom you presented the bill?

A. I cannot remember.

Cross-Examined.—Nil.

Sgd. V. MANICKKAVASAGAR,
 A. D. J.

13-11-50.

No. 5
Plaintiff's
Evidence
W. J. Pulle-
nayagam
Examination.

Mr. Kandiah marks P20 the manifest in respect of " June Crest ".

W. J. PULLENAYAGAM—sworn, 50, Sub-collector, Customs, Jaffna.

In December, 1946, and the early part of 1947 I was landing waiter and working at the Colombo warehouse. I remember the ship " June Crest " coming into Colombo Harbour in January, 1947. (Shown P20 the manifest of the " June Crest " on the basis of the manifest brought 57 thousand bags of green grams and pulses. About that time the warehouses were congested. At that time certain other ships also came to Colombo Harbour with similar cargo as the " June Crest " —" Inchanga ", " Cabarita ", etc. All these ships brought consignments of grains. After these ships came to Colombo the warehouses became 10 congested.

Q.—When bags of grain are carried from the ships to the warehouse, losses and shortages arise as a result of damage ?

A.—Yes, they get torn off and are seen " sweeping ". It is usual to find sweepings in the warehouses. They are formed into bags.

Q.—With the rest of the pulses and grains we usually find loose bags, but not necessarily shortages ?

A.—Yes. Any pilferage is very often detected. Very often we receive information. I am unable to say for how long the " June Crest " was in Colombo Harbour. But certainly it was there for more than a couple of days. 20

Q.—Do you know that the " June Crest " was in the harbour for more than two weeks ?

A.—I do not know, I am unable to say.

W. J. Pulle-
nayagam
Cross-Exami-
nation

Cross-examined :
Each bag has a stencilled mark. Usually they are marked by the consignees. These goods have to be stacked in the warehouse according to marks. When marks cannot be identified they are put in a group called " various " and when the marks cannot be deciphered they are marked " nil ". " Various " means " cannot be deciphered."

W. J. Pulle-
nayagam
Re-Exami-
nation.

Re-examined :
Whenever a landing company gives a receipt to a ship, i.e., boat-note in respect of grains, potatoes, dry-fish, etc., they need not on the boat note indicate the marks ?

A.—Yes. That is in view of the large number of packages and bags. With regard to bags of grain brought to the warehouse, they are stacked by the

various marks classified. All the bags of cow-peas would be put together and so with other goods. They would be stacked together by the class. Whenever marks are undecipherable they would be stacked under the "nil" mark.

No. 5
Plaintiff's
Evidence
W. J. Pulle-
nayagam
Re-Exami-
nation
—continued

Sgd. V. MANICKKAVASAGAR,

13-11-50.

A. D. J.

T. NAGARAJAH—sworn, 33, Clerk, J. D. MacLaren & Co., Kotahena.

T. Nagarajah
Examination.

(Shown P20). This is a manifest in respect of the "June Crest". P20 was handed to me by Counsel during the lunch interval. According to P20, 57,731 bags were consigned by the ship "June Crest". That ship was in the Colombo 10 harbour for 15 days.

Cross-examined :

T. Nagarajah
Cross-Exami-
nation.

The discharge of the cargo was completed on 27th January. The ship arrived in Colombo on 13th January, 1947. I am in the boat department dealing with orders and manifests. Item No. 13 in P20 is a consignment to the plaintiff. The marks of the 640 bags of goods were "A.L.A.H." Colombo. The nett weight of the consignment was 59 tons 19 cwts. 1 quarter and 34 lbs. The dead weight is identical with the weight of the consignment shown in the "weight" column in the manifest.

Re-examined :

T. Nagarajah
Re-Exami-
nation.

20 When I get a manifest I also get bills of lading and the correspondence on each item. I have a bill of lading with regard to 640 bags cow-peas. When the consignee comes to take delivery he produces his copy of the bill of lading. I take charge of and issue the delivery order (shown P5a). This is a bill of lading in respect of 646 bags of cow-peas.

Cross-Examined.—(With permission)

E. B. Creasy's took delivery of this consignment.

Sgd. V. MANICKKAVASAGAR,

A. D. J.

Mr. Kandiah closes his case reading in evidence P1 to P20.

30

Sgd. V. MANICKKAVASAGAR,

A. D. J.

Defendant's Evidence.

DEFENDANT'S CASE.

Mr. Kumarasingham calls :

M. Y. ABOOBUCKER—affirmed, businessman, Karachi.

I came from Karachi last Saturday. The defendants in this case are my brothers. In December, 1946, I went to East Africa. I was given a letter of introduction to the plaintiff by the defendants. With that letter I went to Bombay and from there to Karachi. From there I went to Cairo. From Cairo I went to Nairobi. I reached Nairobi on 20th December. I have got my 10 pass-port. From Nairobi I went to Mombasa. I left Mombasa on 21st by train and reached Nairobi on 22nd morning. About 7-30 or 8 a.m. on my arrival at Nairobi I went to see several merchants. Amongst others I went and saw the plaintiffs. I went with the letter P1 and showed them the letter. On 22nd December, the plaintiff offered 60 tons of cow-peas. I despatched the telegram D1 and D2 on 22nd from Mombasa to the address "Reliable", which is the telegraphic address of the defendants. The defendants instructed me to go to Nairobi from Dares Salam and see if it was possible to obtain an extra quantity cow-peas from there. My brother Latiff the 2nd defendant instructed me. I was to offer it by telegram and the sales was to be confirmed after the letters 20 of credit were opened. On 22nd I sent this telegram giving some particulars with regard to certain other matters also, which I was directed to attend. On 23rd or 24th the plaintiffs offered 60 tons of cow-peas. On 23rd I sent a cable D2 and on 26th I sent the cable D3. D3 is with regard to some other consignment. On 25th I sent P3a (Shown P3a to the defendant). At the time I sent P3a I had already discussed matters with the plaintiff. At that time the plaintiffs offered 60 tons of cow-peas. Later they offered another 25 tons. After I sent the telegram a further offer of 25 tons was made. Then I wired to the defendants to open credit. Then I sent P4a on 28th December. I was in Mombasa on the 28th morning. From Mombasa I went to Dares-Salam which took me 30 about 1¼ hours. During my stay at Mombasa from the 22nd to 28th I do not know if 60 tons or the 25 tons were shipped. I do not remember the exact time. but I arrived at Dares-Salam for my lunch. I went to Mombasa again on 6th January (Shown P2a letter). I signed D2.

Mr. Kandiah objects to some of the questions that have been put to this witness. He says that the contract is admitted. The parties proceeded to trial on that basis. I ask Mr. Kumarasingham what the purpose of these questions is. He says that he intends raising issues as to the validity of the contract in the sense that it was subject to the confirmation by the defendant on the letters of credit being opened. He says he had been handicapped by 40 the absence of the defendants in Karachi. For that reason he had not raised these issues.

Mr. Kumarasingham says that issues he proposes to raise are as follows :—

- (15) Was the contract referred to in issue 1 subject to the confirmation by the defendant by the opening of irrevocable letters of credit ?
- (16) Were the plaintiffs aware that Abubucker, the representative of the defendants could contract only subject to such confirmation ?

No. 6
Defendant's
Evidence.
M. Y. Abou-
bucker
Examination.
—continued

Mr. Kandiah objects to the issues on the grounds that the defendants had 3½ months' time to file answer and the answer was settled by counsel. Counsel refers to para 1 of the plaint and 1a and the entirety of that paragraph is referred to in the defendants' answer.

The defendants have admitted the execution of a contract. He submits that thus an endeavour is made to dispute the existence of a contract that had been admitted. The only defence taken up in the answer is that the goods shipped are not according to sample. He states that the defendants' Counsel seeks to put forward a new case.

Mr. Kumarasingham states that the 2nd defendant was called off due to the death of his brother in Calcutta and did not return to the Island till November 1949. Instructions were given by the employees who were not too conversant with the facts. He states that the second defendant arrived in Ceylon for the first time today. I asked him why he did not instruct him in November, 1949. He says that it was a short visit and that he returned to Calcutta. The person who looks after his business now in Colombo was not aware of these transactions.

Order.

The issues suggested are rejected. They reveal a complete departure from the case that has been presented up to now ; the plaintiff in this case proceeded on the footing that the contract was admitted ; the defence sought to escape liability on another ground ; the issues now raised dispute the existence of a contract ; Counsel for the defendants states that the answer was filed on the instructions of the local employees, and that up to date, his clients were not in Ceylon to get instructions, surely their presence in Ceylon was not necessary to give instructions ; they could have been put down on paper and transmitted from Calcutta ; they were given three months' time to file answer ; and many months had elapsed between the filing of the answer and the trial date to amend the answer, if amendment became necessary. I am not convinced that the issues suggested are raised bona fide for the adjudication of the real dispute between the parties.

No. 6
Defendant's
Evidence.
M. Y. Aboobucker. Exmi-
nation.
—continued

It is now 4 p. m. Further hearing on 22-11-50 and 27-11-50.

13-11-50.

Sgd. V. MANICKKAVASAGAR,
A. D. J.

22-11-50.

Trial Resumed.

Same appearances as before.

All corrections made in ink and signed by me under date 22-11-50 of the proceedings of the last date are made by and with the consent of Counsel in the case.

Mr. Kandiah moves that the figure Rs. 560 which I have underlined in 10 blue, appearing on page 6 of the last day's proceedings, should be amended to Rs. 12,560.99.

Mr. Kumarasingham objects to it and the amendment is not made.

Mr. Kumarasingham moves that word "parties" appearing at page 7 of the last date's proceedings, which I have underlined in blue pencil should be amended to "partners" or "proprietors".

Mr. Kandiah objects.

It is also recorded with the consent of Counsel that the witness R. M. Suppiah gave the entirety of his evidence in the English language. This note is made on the application of Mr. Kumarasingham. 20

Also on the application of Mr. Kumarasingam I make a record of the fact that in moving to amend the issues just before the adjournment on the last date, he offered to pay the plaintiff the entire costs incurred by them up to that date.

Mr. Kandiah wants it recorded that he observed that the costs incurred including air passage was Rs. 8,000 to Rs. 9,000 but he did not agree to the acceptance of the issues suggested by Mr. Kumarasingam on the costs being paid. Mr. Kumarasingam was not willing to accept that figure. He was not willing to pay that amount.

Mr. Kumarasingam states he offered to pay the rates of the passage by sea and all taxed costs. 30

I may say that the foregoing statements made by Counsel are correct except in regard to the last observation of Mr. Kumarasingam, about which I have no recollection.

22-11-50,

Sgd. V. MANICKKAVASAGAR,
A. D. J.

Mr. Kumarasingam calls :

M. Y. ABOOBUCKER—(Recalled)—affirmed.

No. 6
Defendant's
Evidence.
M. Y. Aboobucker.
Examination.
—continued

Examination continued.

The dates I gave in regard to my movements between India and Mombasa were by looking into my Pass Port. I asked the plaintiffs whether they had cow-peas to offer and they told me that they had 60 tons and showed me samples which were on the table. The cow-peas they showed me were white. White cow-peas are in great demand. I do not know whether there is a difference in price between the white and red cow-peas. I approved of the samples I saw. I left the samples there. I did not inspect the stocks of cow-peas. I did not go to the warehouse and inspect the stock of cow-peas there. (Shown P2) I have signed this. The packing was to be done in sound single bags and I gave the marks of the defendants. Thereafter I advised the defendants by cable of what I had done, by telegram P3a. On the 28th of December, in the morning I left for Mombasa. Then I did not know that the shipment was being shipped. I sent cable P4a and D4 on the 28th of December, 1946. I came back to Mombasa from Dares—Salam on the 7th of January, 1947. I then met the plaintiff. The plaintiff told me nothing. On the 9th of January 1947 from Mombasa I sent a cable to the defendant D5 ; on the 9th of January, 1947 I sent D6. On the 9th of January, 1947, I left for Mombasa and went to Nairobi and from there to Cairo and then back to Karachi. I remained in Karachi for about a month and then proceeded to Calcutta. Ever since that day I remained in Calcutta till I arrived here on the 11th November, 1950. I was never in Ceylon till then.

Cross-Examined :

M. Y. Aboobucker.
Cross-Examination.

I did not come to Colombo in 1947. During the whole of 1947 I did not come to Colombo. I left Colombo in November, 1946. After November, 1946 I came to Colombo on the 11th of this month. I went to East Africa in order to buy grains, because grains were in great demand. I cannot say whether before November, 1946 also grains were in great demand. I was not in Colombo in December, 1946. In November, 1946, there was a very great demand in Ceylon for grains. Ordinary pulses were in short supply with the result there was a very big demand even for cow-peas in November, 1946. When I went to Africa I wanted to buy cow-peas also. I saw Cassim Jibrah. I cannot say what I bought for them, but I concluded one or two bargains. I cannot say whether I bought cow-peas from them in East Africa. We bought Bajiri and cow-peas in East Africa. We may have bought other things also. I do not know whether in normal times Ceylon does not buy Bajiri, Juwari and cow-peas. The defendant asked me to send them offers. I had authority to contract provided it was confirmed by the defendants and confirmation was to be by letters of credit. The defendants have entered into contracts without going through me. They were known to the plaintiffs and several other merchants. The defendants had got down goods from East Africa by telegrams followed by letters of confirmation. I took a fair number of letters of introduction. When goods are bought

No. 6
Defendant's
Evidence.
M. Y. Aboobucker.
Cross-Examination.
—continued

from foreign countries contracted to from here, there is no question of samples being shown and examined because we rely on a quality and weight certificate. When goods are sent from abroad on a c. i. f. contract in 1947, the documents expected in Ceylon would be the invoice, the quality certificate, the weight certificate and insurance policy. We had got the quality certificate. From the plaintiffs we bought altogether 85 tons of cow-peas. The earlier contract entered into was for 60 tons and subsequently another 25 tons. I examined the samples before entering into the contract. They were of the same quality. But I cannot say whether they were the produce of the same season. I was told that they were of the same quality. I examined one sample before I entered into the 60 ton contract. The plaintiffs accepted the document of the 25 ton contract under protest and had the goods surveyed. They honoured the bill of exchange and got the relevant documents from the Bank. I do not know what documents they received here. There ought to have been a quality certificate too. A certificate of origin should also be there for purposes of tariff. I do not know whether in respect of the 25 tons which were cleared by the defendants there was any complaint made by them to the plaintiffs. For the work I did for the defendants in East Africa, they met all my expenses such as travelling. Ismail Asman was indebted to me. That was a personal matter. That was a sum of £300. I had lent him £300. I went to East Africa to collect the amount. I took no document from him. I did not tender a bill for the travelling expenses, etc., to the defendants. It cost me about Rs. 3,000 for the trip to East Africa. The entire trip to East Africa would have cost Rs. 4,500 or Rs. 5,000. All these monies were paid by the defendants. They spent for me because I was going to buy goods on their behalf. I do not think these expenses are entered in their books of accounts. While I was in Africa I did not receive any cables from the defendants asking me not to negotiate for any cow-peas. I did not know that the price of cow-peas came down. (Shown P2).

Q.—Did the defendant authorise you to sign contracts on their behalf ?

A.—They did not. By P2 I have signed a contract. By “Colombo 30 walla” means from Colombo. That is Hindustani language. On the 24th December, 1946, I confirmed this contract P2. This was after I examined the samples. As far as I am concerned, the contract P2 was concluded on the 24th December, 1946, but I also told them not to ship the goods till the letters of credit were opened. The words “by irrevocable letter of credit” conveys that meaning. The ship was in Port at the time. It was agreed that the goods were to be shipped by “June Crest”. Whether the ship is loading or unloading, once she comes into the harbour we say she is loading at present—so long as she is in harbour. The contract in regard to the 25 tons was the same as that of P2. I cannot say whether the 25 tons were loaded into the “June Crest” about the same time that the 60 tons were loaded.

Q.—If the 60 tons had been shipped before the letter of credit had been opened what is the position of the buyer ?

A.—If the buyer liked it he would take it, otherwise not.

There is no question of a letter of credit being opened where the goods had already been shipped before the letter of credit had been opened. There are provisions as to many things with regard to a contract. The question of payment is provided to enable the seller to recover his money. If the goods have been delivered to the buyer approves of the goods, he takes delivery. If a buyer accepts the goods he will pay for it. In respect of goods sent from abroad there is always a clause provided for payment. Where goods are sent on credit, there will be no provision for payment on the contract itself. The contract will show that the goods are sold on credit. The contract will provide the payment by letters of credit ; payment against documents D. P. or D. A. documents against acceptance.

No. 6.
Defendant's
Evidence.
M. Y. Aboobucker.
Cross-Examination.
—continued

In contract P2 there is a provision for payment and the payment was to be by irrevocable letter of credit. (Shown P3).

Q.—In this telegram you do not ask for confirmation by the defendant ?

A.—This was an arrangement between me and my brother that unless letters of credit were opened, the contract was not to be confirmed and I told the plaintiffs that. (Shown D6)

Q.—In this telegram you state : “ These goods bought and confirmed by me, therefore open letter of credit telegraphically ” ?

20 A.—Between different merchants we have different ways of dealing. Sometimes I can use my discretion and confirm.

It is not that the defendants had given me any authority but I had the right to confirm the contract. I had the discretion to confirm the contract wherever I felt the bargain was to our advantage. (Shown P3) This was sent by me after I sent P2. The reference to 60 tons in P3 is the identical cow-peas referred to in P2, but they were bothering me to send a cable to my brother to open the letters of credit soon. The words in P3 relate to the contract on P2. The words in P3 up to the end of “ June Crest ” refer to the contract of P2. In regard to the words subsequent to “ June Crest ”, what I meant is “ Shall I 30 buy ”. I asked them whether I could buy the 70 tons. I cannot say off hand whether I had bought cow-peas from any other person in East Africa. Cow-peas whether they were white or red, I would have bought them if they were of good quality. I bought white, because white was in demand at the time.

Sgd. V. MANICKKAVASAGAR,
A. D. J.

22-11-50.

INTERVAL

Trial Resumed.

Same appearances.

No. 6.
Defendant's
Evidence.
M. Y. Aboobucker.
Cross-Examination.
—continued

Cross-Examination continued. (Shown D1)

In the cable D1 there is reference to 25 tons cow-peas to be shipped per "June Crest". This 25 tons of cow-peas has nothing to do with the plaintiffs. These are cow-peas bought from somebody else. At the time D1 was sent, the cow-peas had been sent. On the 22nd of December, the 25 tons of cow-peas contracted for by me on behalf of this shipment had been put on board in another port and not at Mombasa; it may have been at Dares-Salam. On the 22nd of December, I landed at Mombasa. Before that I was at Nairobi. The goods may have been shipped at Beirut or at Lorencos Marques. Before I gave my last answer I referred to my Pass Port. This shipment of 25 tons was definitely not shipped from Mombasa. Cassim Jibrajah & Co., are traders in Mombasa and therefore these cow-peas would have been supplied from Mombasa. I arrived in East Africa on the 22nd December. Till Nairobi I came by plane. The first port I touched was Mombasa. I cannot say the first port "June Crest" touched before coming to Mombasa. I say that the contract was entered into after the goods were shipped.

Q.—I put it to you that the "June Crest" was loading at Mombasa on the 22nd of December?

A.—I cannot say that these goods were not loaded at Mombasa.

I say that these goods were shipped at Beirut. Of course this ship would have touched at Beirut before it touched at Mombasa. (Shown P4 and P4a) The reference here is to the 25 tons of cow-peas. In respect of the 25 tons of cow-peas I asked them to open credit unconditionally. In regard to the 50 tons of field-peas I asked them to open credit, if they liked. (Shown P8) In P8 there is reference to the credit opened in respect of the 25 tons. This cable originated from Colombo on the 31st of December. I do not know whether the goods had been shipped before the 31st of December. In P8 the defendant says "Balance unrequired" I do not know whether "June Crest" left the harbour on the 28th of December. I do not think I saw the cable P8.

M. Y. Aboobucker.
Re-Examination.

Re-examined.

30

The defendants are my brothers. My father is at Karachi. He is in business. I do business in Calcutta. I do export and import business. I have a factory there. I have interest in the business at Karachi. I have no interest in the defendants' business in Colombo. In 1946, I was in Colombo for a few days—for 8 or 10 days—in November, 1946. I told the defendants that I had to go to East Africa and my brother Latiff the 2nd defendant told me that he had some contracts there. He then asked me to attend to this work. He wanted me to see the market conditions there and to make personal contacts and to offer him goods if there was a chance of his doing business there. He gave me a list of business persons there. He said that he had received 10 tons of beans. All contracts are subject to confirmation on opening letters of credit. I had no discretion to conclude any contract.

To Court :

Q.—In the forenoon you said you were given a certain amount of discretion with regard to contract. What do you mean by that ?

A.—I would use my pressure on the defendants to open letters of credit. That is what I meant by discretion.

No. 6
Defendant's
Evidence,
M. Y. Aboobucker.
Re-Examination.
—continued

Re-examination—(Continued)

On the 22nd of December, I landed at Mombasa at 8 a.m. (Shown P3a)
By the words “ why not replying ” in P3 I ask whether letter of credit was being sent or not.

10

22-11-50.

Sgd. V. MANICKKAVASAGAR,
A. D. J.

H. D. MARKER—Affirmed.

H. D. Marker.
Examination.

Mr. Kandiah objects to this witness being called as his name appears for the first time on a list filed on the 11th November, 1950 and the case was taken up for trial on the 4th October, 1950 and evidence led.

Mr. Kumarasingam states that on the list filed on the 8th November the initials were wrongly put and then on the 11th November, the list with the corrected initials was put in.

Mr. Kandiah states that Marker on the first list was the father of this
20 witness.

Mr. Kandiah submits that this witness's name is in a list filed after the first date of hearing. On the 2nd trial date the witnesses called by him were just formal witnesses except R. M. Suppiah. It is not a question of his not being ready to cross-examine this witness who he is instructed is to speak to the price of cow-peas in the market. His contention is that he is placed at a disadvantage and he is prejudiced that he has been prevented by calling witnesses who could speak to the price. Had this list been filed as provided by section 121, he would have been himself in a position to place evidence in regard to the price. He submits the Court use its discretion and reject the witness. He points out that
30 his Proctors objected to the list being filed.

Mr. Kumarasingham submits that the witness will speak to two matters ; the price relating, during this period of time to cow-peas and secondly that he was present at the time the goods were surveyed by the Chamber of Commerce along with Latiff, the 2nd defendant. He did not file his list prior to trial date because the defendants were not in Ceylon. He also submits that there is no element of surprise in this case. The question as to what the market price is, is necessary to enable the Court to assess the damages. In assessing the damages, the market price is relevant data. The plaintiffs anticipated the need to produce

No. 6
 Defendant's
 Evidence.
 H. D. Marker.
 Examination.
 —continued

this evidence before the Court, for in their additional list filed on 9th September, they have listed the Director of Food Supplies and several documents regarding the market value of cow-peas. They have not called them.

He cites : 51 *N.L.R.* page 519 ; he refers to page 522.

He points out that the special circumstances of this case is, the defendants were ill in India and even on the first date of trial they asked for an adjournment of the trial but on the application of Mr. Kandiah to proceed with the plaintiff's case, the case proceeded. The defendants came to Court only on the last date of hearing.

Mr. Kandiah submits that this is a c.i.f. contract and the question of the 10 market price is irrelevant. In answer to me he states that the National Bank had the goods sold and he had given credit to the net amount realised less deductions and he has come into Court for the balance.

Mr. Kumarasingham refers me to paragraph 6 of the plaint.

Order :

I allow this witness to be called.

Objection is taken to the witness being called on the ground that his name was on a list filed after the trial in this case had begun. It is submitted, and correctly too, that his name should have been included in a list, and in reasonable time before the hearing, with notice to the other side. This seems to be as 20 provided by Section 121 of the Civil Procedure Code ; but the discretion is vested in the Court to call the witness whose name is not included in such a list provided there are special circumstances which make it necessary to do so in the interests of justice. One of the matters which the Court will consider is whether there is any surprise and consequential prejudice to the opposing party ; it has been said that the paramount consideration, in allowing a witness whose name does not appear in the list filed before the hearing to be called, is the ascertainment of truth ; in this case the Counsel for the defendants has explained that his Proctor has not had the benefit of consultation with his clients who are outside the Island. As a matter of fact on the first date of hearing he asked for an 30 adjournment on the ground of the defendants' absence. It can well be that in such a detail as the summoning of a witness to speak to a particular matter, the defendants' proctor could not have been able in the absence of his clients and without consultation with them to ascertain the need for calling a particular witness so that the circumstances stated by Counsel for not putting the witness's name on a list filed before the hearing can be regarded as special to this case. It has been also urged that evidence in regard to the market price of cow-peas was a matter on which the plaintiffs had themselves listed both witnesses as well as documents ; this particular witness is being called to speak to the market price of cow-peas ; it is submitted that the evidence in regard to 40

the market price is relevant in order to enable the Court to arrive at a decision as to what amount, if any, would be due to the plaintiffs. Counsel for the plaintiffs pressed on me the argument that it is irrelevant ; it is a moot question whether the evidence is relevant or irrelevant and I do not feel justified in considering this question at this stage ; rather I would assume the relevancy of the evidence at this stage and if after hearing Counsels' addresses at the end of the case, I hold that it is irrelevant, then all the evidence regarding the market price can be shut out. I think this is a desirable course to follow in this case ; so that in as much as this witness is being called to speak to the market price
 10 of cow-peas, I do not think the plaintiffs can be said to be surprised ; because they themselves at one stage realised that evidence of market price may be useful ; that is why they filed lists of witnesses and documents relating to this case ; therefore both in regard to the element of surprise and in regard to the special circumstances, I am of the view that no prejudice will be caused to the plaintiffs by calling this witness.

No. 6.
 Defendant's
 Evidence.
 H. D. Marker.
 Examination.
 —continued

22-11-50 Sgd. V. MANICKKAVASAGAR,
 A. D. J.

H. D. MARKER—Affirmed. 33 years ; Partner of D. H. Marker & Co.,
 Flower Road, Colombo.

20 We are Commission Agents & Brokers and Estate Suppliers. We maintain regular books of accounts.

At this stage trial adjourned for 27th November, 1950.

22-11-50 Sgd. V. MANICKKAVASAGAR,
 A. D. J.

27-11-50

Trial Resumed.

Same appearances as before.
 Mr. Kumarasingam calls :
 H. D. MARKER—(Recalled) Affirmed.

30 *Examination continued.*

I have brought the books of account to Court. By reference to the books I can say that in January, 1947, we had no transactions in regard to cow-peas. Without reference to the books I can say from memory that in February, 1947 the price was round about Rs. 43 to Rs. 45 per bag of 200 pounds. In March, it was Rs. 45 to Rs. 50.

Q.—Could you by reference to the books say what the price was ?

No. 6.
Defendant's
Evidence.
H. D. Marker.
Examination.
—continued

Mr. Kandiah objects to this question.

To Court :

My brother keeps the books and I check them daily.

Mr. Kandiah says he has no objection to the books being produced.

Mr. Kumarasingham states that the witness is only referring to the books to refresh his memory.

As the transaction took place a long time ago I would like to look into the book to refresh my memory.

Order :

I allow the witness to look at the book and refresh his memory. 10

27-11-50

A. D. J.

(The witness refers to the book)

Q.—What was the price in February, 1947 ?

A.—It was Rs. 43 per bag of 200 pounds. In March 1947, it was Rs. 50 a bag of 200 pounds. We sold white quality cow-peas in March, 1947. There is always a demand for the white cow-peas. If the white variety is Rs. 50 for a bag of 200 pounds, in the case of the red quality there would be a difference of Rs. 5 to Rs. 10 per bag. Cow-peas and other pulses would get mildew in two or three months and they get attacked by weevils. If the goods are attacked by weevils there will be no demand for the goods, because only the empty shells 20 would remain and the goods lose weight. If the goods are slightly damaged they would be alright for human consumption. If they are badly damaged such goods will be fit only as cattle food. Cow-peas are generally used by estate labourers. In February and March we sold the cow-peas of A. M. A. Hamid & Dawoodbhoy Bagasobhoy. I had occasion to see these cow-peas in the stores of Bagsobhoy & Hamid.

Q.—Prior to that had you seen these cow-peas ?

A.—Before we purchase we inspect the goods.

Q.—Prior to the inspection—prior to this transaction did you examine the cow-peas ? 30

A.—Yes. Mr. Glacebrook is a surveyor for the Chamber of Commerce. He is today in Bangkok. Mr. Glacebrook, I and Hamid inspected the goods. By Hamid I mean the 2nd defendant. As the goods were not up to the sample

we surveyed the articles. We went to the store room and went and looked out for the bags with A. L. A. H. mark. We were not able to inspect all the 600 bags. They had been unloaded and mixed up with other bags. Samples were shown to me and I found that they had been attacked by weevils. The cow-peas were brown and white mixed. Some bags were brown and some white. The majority of the bags were brown. At the time I saw the cow-peas along with Glacebrook, over 50% of the contents of each bag had been attacked by weevils. I went with Mr. Glacebrook and examined the goods about the first week of February.

No. 6.
Defendant's
Evidence.
H. D. Marker
Examination.
—continued

Cross-examined :

H. D. Marker
Cross-Exami-
nation

10 We are not traders in pulses. We are commission agents and largely estate suppliers. We sell to the estates. The prices are F.O.R. "F.O.R." means free on railway. The price appearing in the books are what we have bought at. We buy at the wholesale rates. We have bought pulses and cow-peas from Hamid & Bagsbhoy. We buy against orders from the estates. Orders are placed with us sometimes months ahead. We are regular suppliers to some estates. We were regular suppliers to estates in 1947. Whenever they required any goods they inquired from us and we gave them our prices and if the prices were satisfactory they placed the orders with us. Orders were never placed with us months ahead. We used to buy from other traders also. For a number
20 of years we have been supplying to estates. I myself used to go to the warehouse. Our office is at Bankshall Street. The defendants and we occupy the same building. We pay half the rent of the premises to the defendants. The defendants are the tenants of the premises. We know the defendants very well. We generally buy goods from them provided they are in good condition. They give us the goods at favourable rates. We never inspected the goods at the warehouse with the defendants. If we get the goods surveyed we get the defendants also to accompany us. We work for Steel Brothers who are also agents. At the time we went to the warehouse, it may be that the defendants had 646 bags
30 there on "June Crest" for the defendants.

Q.—Did you know that the defendants had 25 tons of cow-peas from Ibrajh per "June Crest" ?

A.—No. The defendants did not tell me that they had cow-peas from the plaintiff, per "June Crest". The defendant told me that he was getting a shipment of cow-peas but no name was mentioned. They did not tell me the number of bags they were expecting. I have no idea of the number of bags of cow-peas the defendants had from "June Crest". In January, 1947, 4 or 5
40 ships landed in Colombo bringing in pulses. They were landed in a number of warehouses. There were different steamers and they were landing the goods in different warehouses. I went only to the Pettah warehouse and inspected the goods. In this case I was unable to locate the full number of 640 bags of cow-peas because they were mixed up. All the bags mentioned as 200 pounds are not of the same size. Usually the bags come in 200 pounds from abroad. I was able to locate 70 or 80 bags when I went to the warehouse. "June Crest"

No. 6.
Defendant's
Evidence.
H. D. Marker
Cross-Exami-
nation
—continued

brought a very large number of bags of cow-peas to various merchants. The price of cow-peas came down because the quality was bad. The quality right round was bad. The price of pulses were high. About April the price of pulses came down. The price of cow-peas came down about April. After "June Crest" I have no idea whether any other steamers brought in cow-peas. I do not know what was done with the cow-peas that came in "June Crest". We have not bought any cow-peas from Aden. I know the difference between Mombasa cow-peas and Aden cow-peas. Aden cow-peas are very much superior. The difference in price between Mombasa cow-peas and Aden cow-peas is Rs. 5 or Rs. 10. If the Mombasa cow-peas are good we would buy them. We give the 10 estates boat samples with different prices and they select. I cannot say whether the consignment in January, February and March were Mombasa cow-peas or cow-peas from Aden. The price of East African cow-peas is the same irrespective of whether they were white or brown. In April we bought cow-peas in the market at the rate of Rs. 42 per bag of 200 pounds. We bought that from the defendants. In and before December, we were not dealing in cow-peas at all. In January we were not dealing in cowpeas at all. In February, 1947, we were buying cowpeas, and all the cowpeas we bought were from the defendants and also from Dawoodbhoy Bagsobhoy. In March, 1947, we bought cowpeas from the defendant only. In April we bought from the defendant only. In May, 20 1947, the price of red quality cowpeas was Rs. 32. In May we bought from Hadji Habib. In June also we bought cowpeas at the rate of Rs. 42. That was cowpeas dhal and cowpeas at Rs. 40. We bought at 3 and 5 bags. With respect to bags of grain I do not know whether the ship does not hand over to the Landing Company according to the marks. I have no idea about it. If the bags are inferior when the goods are landed, the bags burst. A large number of bags were slack in January and February. That is a very common thing. The book in Court has entries up to the end of September, 1950. From bills they are posted into the book which is in Court. My brother makes the entries in the book. I did not see the samples in Africa. I cannot speak anything in regard 30 to the sample shown. I can only speak as to the quality shown to me. The quality shown to me was not good. They were attacked by Weevils. It was round about the first week of February that we examined the goods at the warehouse. I think we inspected the goods about the beginning of February. At the time we inspected these cowpeas I do not know whether there were other cowpeas in the warehouse brought in by other steamers. We were looking for the packages bearing the marks A.L.A.H. I was only interested in the bags bearing the marks A.L.A.H. I was not interested to know in what steamer they came or the quantity that came in. A.L.A.H. represents the initials of the defendant firm. When Weevils attack the weight also decreases. When 50% 40 is attacked by Weevils in a bag of 200 pounds, the reduction in weight would be 30 to 35 pounds. If good bags of peas lie by the side of bags attacked by weevils, the peas of the good bags also would be attacked.

H. D. Marker *Re-examined* :
Re-Exami-
nation.

Steel Brothers are importers. They dealt mainly in rice before the war. At present they are doing some indenting work. Glacebrook was attached to

the firm of Steel Brothers. When I, Mr. Glacebrook and the defendant went to the warehouse the defendant only gave us the marks of the goods.

No. 6.
Defendant's
Evidence.
H. D. Marker
Re-Exami-
nation.
—continued

27-11-50.

Sgd. V. MANICKKAVASAGAR,
A. D. J.

U. K. MITRAPALA—Affirmed.

U. K. Mitra-
pala. Exami-
nation.

I am a clerk in the Food Control Office, Colombo. The defendants' Proctor wrote to the Controller on the 11th of October asking us to give the price that were obtaining between January, 1947 and 31st March, 1947, for cowpeas in Colombo. (Shown a document).

10 Q.—Who signed this letter ?

A.—This was written by A. Mohideen an Assistant in the Food Control Office.

Q.—How is the maximum price fixed by the Food Controller ?

A.—I can give a rough idea how it is fixed. We get the c.i.f. price from several merchants. During the war period we had a war risk allowance of 10%. Then we add on to it our idea of the present day profit and thereafter the price is fixed. Price orders are made by the Price Control Department and the prices are published in the *Ceylon Government Gazette*. In the *Ceylon Government Gazette* of 31st May, 1946, the price of cowpeas is given as Rs. 35 Importers' maximum price. Those prices were rescinded on the 8th of August, 1947, by 20 Gazette Notification No. 9,746. In this *Gazette* there is specific reference to cowpeas.

Cross-examined :

U. K. Mitra-
pala. Cross-
Examination.

The control price of cowpeas was Rs. 35 per cwt. It does not give the quality or the source of origin. I have the file in Court and I am reading from a sheet from the file. Price orders are changed from time to time on the basis of c.i.f. price. I cannot say whether on the 24th of February, 1947, the price of cowpeas was Rs. 42 to Rs. 45 per bag of 200 bags. I do not know whether the price of cowpeas went down in Colombo after January, 1947. I have records to 30 show the price of cowpeas in February, 1947, but it does not show any particular variety. The market price on 1st February, 1947, was 60 cents for 2 pounds of cowpeas and Rs. 65 wholesale price for a bag of 200 pounds.

Q.—Have you any record to show that in February, 1947, the market price of a bag of 200 pounds of cowpeas was Rs. 42 or Rs. 45 ?

A.—I have no document to say this. I have no document which gives the market price of cowpeas during March, 1947. I do not know the market price of cowpeas in February or March, 1947. (Shown a document).

No. 6.
Defendant's
Evidence.
U. K. Mitra-
pala Cross-
Examination.
—continued

Mr. Kumarasingam objects to this document.

Order

Objection disallowed.

Sgd. V. MANICKKAVASAGAR,
A. D. J.

I think the signature on this document is that of Mr. Alvapillai.

Mr. Kandiah moves to produce in evidence a document bearing the signature of Mr. Alvapillai in proof of the fact that he has signed it but not as regards its contents.

Mr. Kumarasingam objects to it.

10

In answer to me Mr. Kandiah says he is seeking to produce this document as proof of the fact that Mr. Alvapillai issued a document containing market value of cowpeas on different dates in his capacity as Director of Food Supplies.

Order

I reject the document.

Sgd. V. MANICKKAVASAGAR,
A. D. J.

The evidence I gave is from a document I have in the file.

Re-examined.—Nil.

Sgd. V. MANICKKAVASAGAR, 20
A. D. J.

27-11-50

K. B. Bagsobhoy. Examination

KAREEM BHOY BAGSOBHOY—Affirmed. 52 years. Merchant, 4th Cross Street.

I am in business for over 35 years. I deal in grain and pulses. In the pre-war years I was an importer of rice, flour and sugar. During the war I started importing pulses. From 1941, onwards, I have been importing pulses chiefly from India, Mombasa, Aden, Burma. I know the plaintiffs in this case. I do not know them personally but I know the name of the firm. I know the defendants. The defendants are Memons. I am a Borah. I have got goods from the plaintiff. My imports from abroad come to about 1½ lakhs of rupees a 30 month. I know the market conditions in Colombo for many years. In 1946 I had not imported cowpeas from Mombasa, but I have imported other pulses. I get the prices of grain and pulses but I have not imported cowpeas. I have received a number of cables from the plaintiffs in connection with my business. As far as I can recollect the price of cow-peas in 1946 October, must have been

about £43 per ton from Mombasa. The price obtaining in November, 1946, must have been at £48 a ton. About April and May you cannot give a fixed price for this period because there was no good quality stuff. There was no good price between January and March, 1947.

No. 6.
Defendant's
Evidence.
K. B. Bago-
bhoy. Exami-
nation
—continued

Green-gram could be kept in good condition for 4 or 5 months after the harvest. In the case of cow-peas they cannot be kept for more than 3 months. Weevils would attack it. After the lapse of a certain period, the cow-peas themselves breed the weevils. Then the cow-peas lose weight. Cow-peas attacked by weevils will be fit for feeding cattle. I have imported goods from
10 the plaintiffs on letters of credit.

Q.—If you do not open letters of credit you expect them to despatch the goods ?

A.—No. They will not send the goods if letters of credit are not opened.

Q.—How did you find the plaintiffs as business people ? Did they act by you fairly ?

Mr. Kandiah objects to this question.

Order

I allow it.

Sgd. V. MANICKKAVASAGAR,
A. D. J.

20

A.—The plaintiff is not a fair dealer to have transactions with. If the price go up he will not despatch the goods but if the price went down he sent the goods.

Cross-examined :

K. B. Bago-
bhoy. Cross-
Examination.

Q.—Do you know any of the directors of the plaintiff firm personally ?

A.—No.

Q.—Have you any documents to show that you had dealings with the plaintiffs ?

A.—Yes.

30 Q.—In any one of them have you made complaints about the transactions between yourself and the plaintiffs ?

A.—I have written letters to that effect.

No. 6.
Defendant's
Evidence.
K. B. Bagso-
boy. Cross-
Examination.
—continued

Q.—Did they fail to send you any goods which they contracted to send to you ?

A.—I booked 20 tons of green grams with the plaintiffs but they sent me only 5 tons.

Q.—When was this ?

A.—This was in November, 1946. I did not follow this up with any action. On the last trial date, the defendants' Proctor asked me to attend Court today. In December, 1946, I was in Ceylon. From January to April, 1947, I was in Ceylon. Between November, 1946 and April, 1947, I did not deal with the plaintiffs in cow-peas. From Aden I got some cow-peas in January, 10 1947. The shipment arrived in January, 1947. In January, 1947, three steamers came from Africa with pulses, the "June Crest", "Cabita" and "Espingo". I cannot remember the name of the steamer that came from Aden. One or two steamers must have come from Aden. The price of good quality pulses did not come down between January and April but the price of inferior quality came down. I opened a letter of credit with the plaintiffs for 20 tons and they refused and asked me to amend the letters of credit for 5 tons.

Re-examined : Nil.

27-11-50

Sgd. V. MANICKKAVASAGAR,
A. D. J.

20

A. L. Aboobucker.
Examination.

ABDUL LATIFF ABOOBUCKER—Affirmed. 31 years ; trader ; 123, Bankshall Street ; Colombo. 2nd defendant.

The first defendant is my brother. The witness Yakoob is another brother of mine. I have known the plaintiffs firm from 1946, October or November. The plaintiffs sent us a cable or letter and I placed an order for 10 tons of cow-peas. D7 was the cable the plaintiffs sent to me, dated 6th October, 1946. On the 17th of October, 1946, I received a further cable which I produce D8. We dealt with the plaintiff by letter of credit. Apart from the 10 tons of cow-peas we got from the plaintiff in October, 1946, we did not get any other cow-peas from the plaintiffs. About the 10th of November, 1946, my brother Yakoob 30 came to Ceylon. He then stated he had an intention of going to Africa on some business and I asked him to find out the price of white cow-peas and offer me prices. We were to bear the expenses of Yakoob's trip to Africa. I gave letters of introduction. (Shown P1). I sent this through Yakoob. Yakoob sent me a cable on his arrival in Mombasa. I received D1. On the 23rd of December, 1946, I received the cable D2. Yakoob was merely to go to Africa and send me the stuffs. I also instructed him to go and collect the price offers and send them on to me. It was entirely my business to order what I wanted and I ordered by opening letters of credit.

Q.—What were your instructions to Yakoob with regard to the cow-peas ? 40

Mr. Kandiah desires me to note that he formally objects to this question on the ground that it is irrelevant.

No. 6.
Defendant's
Evidence.
A. L. Aboobucker.
Examination.
—continued

Mr. Kumarasingam points out that these questions are relevant to the issue of sample and merchantable quality.

Order

The question is allowed.

Sgd. V. MANICKKAVASAGAR,
A. D. J.

A.—I asked Yakooob to get me white best quality cow-peas. I received
10 the cable P3A. Subsequently the plaintiff sent me cable P4A. On receipt of the
cables I opened letters of credit for 25 tons of cow-peas and said that the balance
was unrequired. I sent P8 on the 31st of December, 1946. At the time I sent
P8 I had not heard about the departure of the "June Crest" from Mombasa either
from the plaintiff or from any one else. The plaintiff did not at any time advise
me of the departure of the "June Crest" from Mombasa. On receipt of P8 the
plaintiffs did not reply to it. They sent me the reply P9A on the 2nd of January,
1947. In P9A the plaintiffs do not say that the goods had already been shipped.
On the 29th of January, Proctor Chittambalam presented to me bill P10 and
I told him that the goods had been sent contrary to instructions. On the 29th
20 of January, I received the cable P13A. On receipt of P10 and P13A I went to
the warehouse and had a look at the goods and got the goods surveyed by the
Chamber of Commerce. The goods were absolutely rotten.

Mr. Kumarasingam seeks to produce the report of the Surveyor.

Mr. Kandiah objects.

Mr. Kumarasingam states that the person who surveyed the goods is not in the Island.

Order

I uphold the objection.

Sgd. V. MANICKKAVASAGAR,
A. D. J.

30

I opened letters of credit for the 25 tons. The 25 tons were also of the same quality and I had to take delivery of them. If I did not take delivery of them the Bank would have black-listed me. I wanted to sell the goods at the best available price. I consulted my lawyer in regard to filing an action against the plaintiffs. I had to leave my business here and go to Mombasa to file action. This I could not do. I sold this consignment of cow-peas in the open market.

Sgd. V. MANICKKAVASAGAR,
A. D. J.

No. 6. 27-11-50
 Defendant's
 Evidence.

A. L. Aboobucker. (*Interval*)

Examination.
 —continued *Trial Resumed.*

ABDUL LATIFF ABOOBUCKER.—(Recalled)

Examination continued.

On the 1st of November, 1946, we have sold certain cow-peas at Rs. 35 per bag of 200 pounds. The cow-peas sold were a mixture of many varieties of cow-peas. They were cow-peas of different sizes and colours all mixed together. I produce D9 our ledger and the translation D9a. D9 is for the period 1-4-46 to 31-7-47. D9a is the translation of page 181 of D9. The next sale 10 was on the 17th of February, 1947. We sold 86 bags. The rates have not been marked. We sold per bag of 200 pounds at about Rs 50. The quality of those sold on the 17th February, 1947 was of the same quality as those previously sold. On the 8th March, we sold 125 bags of 200 pounds each ; 100 bags I sold at Rs. 47 and 25 bags at Rs. 45. I produce D10, the cash memo. dated 6th March, 1947. This shows that the transaction was at Rs. 47. I produce D11 dated 6th March, 1947, for the 25 bags sold on the 10th of March 1947, 40 bags were sold at Rs. 48 on bill D12. The next sale was on the 11th of March, 1947 on bill D13 ; 3 bags at the rate of Rs. 50 were sold. On the 11th of March, 1947 25 bags were sold at Rs. 48 a bag vide bill D14. On the 24th of March, 1947 on 20 Bill No. D15, 30 bags were sold at Rs. 43.50 per bag. All the prices we have given is for the unit of 200 pounds. There is a greater demand in the market for white cow-peas. During the period January, 1947, the price of white cow-peas was Rs. 65 per bag of 200 pounds. According to the contract P2 packing ought to have been in sound single bags i.e., strong new bags without holes, tears or seams, they were to be gunny bags. When torn gunnies are used they are put into another bag and that is why we wanted single gunnies which should be new gunnies. We expected the goods to be covered with certificates of quality, certificate of weight, Invoice Bill of lading and full insurance policy covering all losses against damages. Our Bankers for opening letters of credit were the 30 Eastern Bank and also the Exchange Bank. No import licence was necessary for the import of cow-peas. At that time I had nothing to do with the National Bank. On the 5th of March, 1947 I received P12a from the plaintiff's proctor. I was in Ceylon at that time. I caused a reply to be sent to P12a. I produce D16 a copy of the letter my proctor sent. I have had no transactions with the plaintiffs after this consignment. On the 28th of April, 1948, I received the cable D17 from the plaintiffs. On the 7th of June, 1948, I received a further cable D18 from the plaintiffs. I did not take any goods from them thereafter. I had difficulty in selling this shipment. They were not marketable nor fit for human consumption. I was present at the time the survey was done. 50 or 60 40 bags with the defendant's initials were examined. These bags had my initials on them.

Cross-examined :

No. 6.
Defendant's
Evidence.
A. L. Aboobucker
Cross-Examination
—continued

I am in the pulse trade from 1928. I first started in No. 151, Prince Street. I shifted to Bankshall Street in 1946. I always carried on the pulse business. I share the premises with Marker. Marker is a supplier of pulses etc., to estates. He buys good stuffs. He buys all kinds of things. I myself had sold cow-peas to him. By the "June Crest" I had the cow-peas.

The ledger produced by me D9 there are folios for different kinds of pulses. It gives the number of bags sold, the amount realised and the respective dates. D9a is an extract from the ledger from 1st April, 1946 to 31st March, 1947. 10 This contains all the cow-peas that I have dealt with. The first sale by me is on the 1st of November, 1946 ; the 2nd sale on 30th November, 1946 and the the 3rd on the 9th of February, 1947. The first two sales consisting of 102 bags are the 10 tons that I had already bought from the plaintiffs in October, 1946. The total bags sold by me is 561 bags on D9a, of which 102 bags were sold in 1946 so that 459 bags were sold in the year 1947, up to 31st March, 1947. I produce the ledger D19 with translation D19a for the period 1st April, 1947 to 31st March, 1948. For the year 1947 we had sold on D9a, 459 bags and on D19a, 202 bags making a total of 661 bags. The 661 bags were bought by me from Mombasa. I bought 25 tons from the plaintiffs and 50 from Wagani. We 20 did not buy anything from Careem Jibrajah. The cow-peas came by "June Crest". I did not deal in any cow-peas in 1947 apart from these two consignments by one ship. All the sales shown in D9 and D9a and D19 are ex-"June Crest". I have been selling cow-peas to Marker. These sales are also entered in D9 and D19. I have the bill books relating to sales on D19a in Court. I have a bill of 6-3-47 for 50 bags white cow-peas which I produce D20. On D11 I sold 27 bags of cow-peas ; on D12, 40 bags white cow-peas. I produce D21 bill dated 8-3-47 for 50 bags cow-peas at Rs. 48 a bag. In D21 I have not mentioned whether the peas are white or brown. D13 is for the sale of 3 bags of white cow-peas at Rs. 50 a bag to Marker. On D14 I have sold 25 bags white 30 cow-peas. These are bags of 200 pounds. (Shown bill D22) This is for 30 bags of white cow-peas—Chola, means cow-peas. (The bill of 21-3-47, D23 shown to the witness) This is for the sale of 40 bags of white cow-peas. (shown D15) This is for the sale of 30 bags of cow-peas. I cannot say whether they were white or brown. There is a greater demand for white cow-peas and they were selling at better prices. (Shown D19a) These bags were sold for Rs. 249.24. The weight is not given here. For an average bag the price would be Rs. 41.50. I cannot say whether the prices in April, 1947, were lower than the price in March. The estate population buys any inferior stuff. My brother bought for me these goods in Africa. He saw the samples. He did not come to Ceylon 40 in 1947. In January, 1947, 3 ships brought pulses from East Africa. One or two ships may have come from Aden also. The stuff that came from the "June Crest" during this period was rotten. The price had come down because the quality was poor but for good quality the market was good. (Shown invoice P21) I do not know whether this is the invoice dated 30th December, 1946 for the 25 tons of cow-peas.

No. 6.
Defendant's
Evidence.
A. L. Aboobucker.
Cross-Examination.
—continued

Mr. Kumarasingam objects to this production.

He says he has not been noticed to produce the original.

Mr. Kandiah says he withdraws the document for the present.

(Shown P7) I cannot say whether this is the original invoice sent to me. P7 is dated 30th December, 1946 per ss. "June Crest". Sometimes the certificate of origin and the certificate of value are on the reverse of the form, Invoice of Goods. (Shown the reverse of P7) On the reverse of P7 there is a certificate of value ; but that is not a certificate of value ; because it should be from the Chamber of Commerce. The certificate given by the shipper on the reverse of P7 is for the purpose of the Customs Duty. My Banker was the Eastern Bank 10 and they had instructed Barclay's Bank to open the letters of credit.

(Shown a document.) The witness reads the document.

Mr. Kumarasingam is objecting to this document.

Mr. Kandiah withdraws the document.

I opened letters of credit. On the 31st of December I asked the Bank to open the letter of credit telegraphically. I do not know for what amount the letter of credit was opened.

Mr. Kumarasingam now consents to the document that was withdrawn being marked in evidence.

Mr. Kandiah produces it marked D21 the letter of Credit dated 2nd 20 January, 1947.

The Bank can be the consignor only if the conditions mentioned at the back of it are fulfilled. D21 does not mention the certificate of quality. After "June Crest" and "Cabrita" came into the harbour, I sent the telegram D22 dated 15th January, 1947. On the 15th January, 1947, when I sent D22 I do not remember whether I had seen the goods. I did not know that the other 60 tons of cow-peas were on the ship "June Crest".

Q.—How did you know that the 25 tons referred to in D22 had been carried in "June Crest"?

A.—Because I had opened letters of Credit.

30

I do not know whether the 60 tons had come in the "June Crest". Because at the end of December when I sent the telegram "balance unrequired" I expected them not to ship. That is the telegram P8. By P8 I stated that I did not require the 60 tons and asked them not to ship them. I said I did not want it and asked them not to ship it for me. Contrary to my instructions the plaintiffs had shipped them to me. Mr. Chittampalam saw me on the 29th of January, 1947. That was after the goods had arrived and I had seen the goods

and found that they were not up to sample. If I wanted cow-peas of white colour, I should have had that inserted in the contract. I did not refer to this contract P2 at all because my brother had my authority to sign this contract. P2 does not state that the quality should be white cow-peas. Where cow-peas are not referred to by any particular colour, it means brown cow-peas. The 200 bags that were cleared was part of the total bags which comprised the 85 tons. Some of the bags I cleared contained brown and some white cow-peas. Of the cow-peas I cleared more were brown than white. In D9a or D19a I cannot say the aggregate weight of the cow-peas I had sold. In respect of grains, a number of bags got burst in the ware-house. I did not take the sweepings. I claimed from the Insurance Co., for the shortage. (Shown D16) Prior to D16 I have not complained to the plaintiffs that the quality was bad and weevil eaten. I now remember complaining to a representative of the plaintiffs in Ceylon about this matter. (Shown P11.)

No. 6.
Defendant's
Evidence.
A. L. Aboo-
bucker,
Cross-Exami-
nation.
—continued

Q.—Did you suggest to the Bank that unless the import licence was given you would not pay for this draft ?

A.—I did not suggest. I cannot understand the reference in P11 to the import license. I did not reply to P11. (Shown P11 and P11A). These state that I am trying to get import licences. I cannot understand this.

20 *Re-examined :*

A. L. Aboo-
bucker.
Re-Exami-
nation.

By P8 I said that the 60 tons balance was unrequired. I was not concerned thereafter with regard to the 60 tons. The plaintiffs did not inform me that the 60 tons had been shipped to me. Sometimes when the goods are in transit and the prices are good we can sell the goods on the documents. In the case of the 60 tons of cow-peas, if the quality was good, although there was no contract, I would still have taken them. The samples shown to my brother were white cow-peas. The set of documents sent to me did not contain the certificate of quality and weight. I cannot remember from where the representative of the plaintiff to whom I complained came.

30

Sgd. V. MANICKKAVASAGAR,

27-11-50.

A. D. J.

Mr. Kumarasingam closes his case reading in evidence D1 to D23.

Mr. Kandiah further reads in evidence P19 to P22.

For addresses on 11th December, 1950.

Sgd. V. MANICKKAVASAGAR,

27-11-50.

A. D. J.

Judgment of the District Court.

JUDGMENT

6-2-51.

This is a claim by the plaintiff company for damages in a sum of Rs. 37,325 in consequence of a breach of a contract alleged to have been committed by the defendants.

The plaintiff is a limited liability company carrying on business at Mombasa, in East Africa.

The 1st and the 2nd defendants are in partnership engaged in business at 10 Bankshall Street, Colombo.

On 24-12-46 at Mombasa the plaintiff company entered into a contract (document P2) with the defendants who were represented by their brother, the witness M. Y. Aboobucker, whom I shall hereinafter refer to as Yakoob ; Yakoob was on a trip to certain parts of East Africa, partly, according to him, to recover some moneys that were due to him, and also as a business representative of the defendants (*vide* document P1 of 30-11-46).

By the contract P2 the plaintiff company agreed to sell 60 tons of cow-peas as per sample approved at a price of £51 c.i.f., Colombo ; shipment was to be by the ss. " June Crest " loading at present at Mombasa, and payment was to be by an irrevocable letter of credit. The plaintiff company in accordance with the contract P2 caused 646 bags of cow-peas, weighing a little over 59 tons and bearing the marks " A.L.A.H., Colombo ", to be loaded on 28-12-46 on the ss. " June Crest " (*vide* Bill of Lading dated 28-12-46, P5 and P5A) ; the plaintiff Company obtained the Bill of Lading dated 28-12-46 from the Master of the vessel ; they also insured the cargo with the South British Insurance Co., Ltd., and obtained a Policy of Insurance dated 30-12-46 (P6) ; they also made out an invoice of the goods shipped (*vide* P7 of 30-12-46) ; which had on the reverse of it a certificate of value and of origin issued on behalf of the plaintiff Company, and signed by its Secretary ; these documents were sent by the Mombasa office of the National Bank of India, Ltd., to the local Bank here and were tendered to the defendants at their place of business along with a Bill of Exchange for £3134 3s. 1d. (*vide* document P10) ; the defendants declined to accept the documents and the bill was noted for non-payment on 29-12-46 by Mr. P. R. Sittampalam, Notary Public ; the plaintiff Company thereafter caused the goods to be sold by the National Bank of India, Ltd., Colombo, after duly apprising the defendant of the steps it intended to take (*vide* P12) ; the goods were sold by Poptlal & Co. (*vide* document P18) and after debiting the defendants with the expenses incurred in connection with the sale and crediting them with the net balance proceeds the plaintiff Company claimed the sum of Rs. 37,325 from the defendants.

The defendants in their answer admitted the execution of the contract P2, but sought to justify their refusal to accept the documents on the ground that the plaintiff Company had committed a breach, in that the cow-peas shipped were not : (1) in accordance with the sample in quality ; (2) of merchantable quality ; (3) fit for human consumption ; and (4) in accordance with the terms of the contract.

No. 7.
Judgment of
the District
Court.
6-2-51.
—continued

Before I embark on a consideration of the defences set up, it is necessary to have a proper appreciation of the contract (P2) entered into betwixt the parties ; as I observed hereinbefore, the execution of the contract, and the authority of the agents to execute it, were not denied by the defendants ; though on the second day of the hearing—it was about a month after the first day—
10 and after the plaintiff Company's case had been completed, an endeavour was made to limit the scope of the agent's authority in regard to the power to confirm the contract ; certain issues towards achieving this defence were raised, and objection being taken, and after inquiry, they were rejected, and the hearing proceeded on the issues which had been already accepted.

The contract entered into is a c.i.f. (cost-insurance-freight) contract ; performance of such a contract is satisfied not by the physical delivery of the goods contracted for, but by the delivery of certain documents to the buyer ;
20 the documents are an invoice showing the cost of the goods, a bill or bills of lading for the carriage of the goods, and a Policy of Insurance covering the reasonable value of the goods ; it is the duty of the seller to tender these documents soon after the goods had been put on board the ship and destined to the buyer ; on these documents being tendered to the buyer, the latter is bound to accept them, and honour the bill by paying the amount stated therein ; he is not entitled in law, unless of course he denies the contract to refuse the documents ; or to await arrival of the goods at the port of destination ; and by honouring the bill he is not estopped from subsequently rejecting the goods if they are not in
30 accord with the contract ; if the goods are lost or damaged in transit, he would ordinarily have his remedy against the underwriter under the policy of insurance, or even against the carriers ; this remedy would, however, depend on the terms of the Policy of Insurance, and the Bill of Lading.

In this case the contract P2 provided for the goods being shipped by the " June Crest ", which was loading in Mombasa harbour ; it is common ground that the goods contracted for were put on board the " June Crest " ; prior to doing so the plaintiff Company had obtained the necessary documents which are necessary for a compliance of a c.i.f. contract ; there was a Bill of Lading of 28-12-46 (P5) showing that a little over 59 tons comprising 646 bags were put on board the vessel " June Crest " and accepted by the Master of the vessel ;
40 there was also the Policy of Insurance covering the goods shipped and executed on 30-12-46 (P6) ; and then there was the Invoice (P7) of 30-12-46 stating the total cost of the goods ; this document P7 had on the reverse of it a certificate of value and of origin from the shippers ; the goods under the contract P2 which were loaded in the ss. " June Crest ", left Mombasa harbour on 28-12-46 and arrived in Colombo on 13-1-47 ; the relative documents were presented to the

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defendants at their place of residence and they refused to accept them on the ground that the goods had been sent contrary to instructions ; the bill was noted for non-payment on 29-1-47 ; the plaintiff Company thereafter through their bankers had the goods sold by Poptlal & Company and the sale realised a sum of Rs. 12,550.99 ; expenses amounted to Rs. 7,441.90 (*vide* document P8). It must be borne in mind that the reasons given by the defendants for refusing the documents is not one of the defences set up in their answer.

I shall now proceed to consider the defence that the goods were not up to sample, in quality, were not merchantable and were unfit for human consumption ; in regard to “ human consumption ” there is no evidence that the plaintiff Company knew or were apprised that the goods were meant for human consumption ; no doubt cow-peas are ordinarily meant for human consumption, but there is nothing to prevent a purchaser from selling it as cattle fodder if he so desired ; the point I wish to emphasize is that there is no evidence that in entering into the contract P2 the plaintiff company was made aware that the goods were needed only for human consumption. The burden of proving that the goods shipped were in accord with the sample and of merchantable quality is on the plaintiff ; and in a c.i.f. contract it is sufficient if the Court is satisfied that at the time of shipment the goods shipped were in accord with the sample and of merchantable quality ; on this question there is, on behalf of the plaintiff company, the evidence of its secretary Manik ; there is really no direct evidence contradicting his statement that the goods which were put on board the “ June Crest ” were in quality merchantable, and in accord with the sample shown to Yakoob ; in view of Manik’s evidence, the burden of proving that the goods were not up to sample and not of merchantable quality shifts to the defendants ; in regard to the sample, no sample of what was sent was in the hands of the buyers in order to compare it with the bulk ; Manik stated that the sample was handed to Yakoob at Mombasa, but the latter did not accept that statement. In regard to the question whether I believe Manik’s evidence or the evidence of Yakoob, I shall deal with it later in its proper place ; but what must be kept in mind is that the person who saw the goods at Mombasa was Yakoob ; and he did not see the goods that had been shipped either at the time of shipment or at any time after they arrived in Colombo ; and the defence that the goods shipped were not in accord with the sample shown to Yakoob depends entirely on the evidence of Yakoob alone and no other, and, as I have just observed, his evidence on the point seems to be of no value at all for the reason that he had not seen the goods at Colombo. In regard to the merchantable quality of the goods, it is necessary to observe that the “ June Crest ” arrived in Colombo harbour on 13-1-47 ; on 29-1-47 the defendants declined to accept the documents ; in the first week of February the 2nd defendant inspected the goods in the Pettah warehouse along with the witness, Markar, and Glacebrook ; the latter is a surveyor for the Chamber of Commerce, and it is of the utmost significance that the goods were inspected about 3 weeks after their arrival ; it is equally important that no representative of the plaintiff company was present at the examination by Glacebrook ; nor is there any evidence that the plaintiff company or its agents were notified that an examination is to be carried out ; the evidence in regard to merchantable quality is also not the best evidence ; Glacebrook was not called ;

he is said to be at Bangkok ; and his report was shut out on an objection being taken by Counsel for the plaintiff ; Glacebrook would appear to be the most competent person who could have testified to the condition in which he found the goods when he examined them; the best evidence is therefore not before the Court and what is left in regard to this question is the evidence of Markar and the 2nd defendant ; the latter's evidence is that the goods were rotten ; it must be borne in mind that he being a defendant is not unnaturally, vitally and keenly interested in the success of the defence he has put forward ; in regard to Markar, his evidence too is liable to be criticised ; he occupies the same premises as the defendants and is a tenant under them ; his firm has considerable business dealings with the defendants and he admitted that the defendants' Company gave his firm goods on favourable terms ; so that his evidence can be liable to the just criticism that he may have a bias in favour of the defendants, and against the plaintiff company ; I must confess that human nature being what it is there can arise even an unconcious urge to stretch a point in favour of a friend as against a person who is a stranger ; I have made this reference to Markar because the defence that the goods were not of merchantable quality rests mainly and considerably on his evidence ; and in considering his evidence it is necessary to bear in mind his relationship with the defendants ; Markar's evidence is that he found 50 per cent. of each bag of cow-peas that he examined attacked by weevils ; he examined only 70 or 80 bags out of a quantity of 646 bags ; so that if 50 per cent. of each of the bags of cow-peas had been attacked by weevils I certainly do not think that what Markar examined was of merchantable quality ; but his evidence on unmerchantable quality can only apply to 70 or 80 bags of cow-peas ; he also stated that if a good bag of peas lies alongside a bag which had been attacked by weevils, the peas in the good bags would also be soon attacked, I refer to this because it is in evidence and that position has not been controverted. that a very large consignment of pulses arrived in Colombo in three or four ships at about the same time that the " June Crest " came into the Colombo Harbour, and several consignments belonging to various people were stocked in the warehouse ; the " June Crest " alone brought 57,731 bags and the process of unloading of goods took about 15 days. To get back to Markar's evidence, what is remarkable is the fact that his examination covered only about one-seventh of the cow-peas sent to the defendants. It is therefore difficult to reach a conclusion from his evidence that the cow-peas consigned to the defendants and comprising 646 bags were all of unmerchantable quality ; besides, there is one other matter which struck me as I listened to Markar's evidence ; he seemed to be in some doubt in regard to the identity of the 70 or 80 bags he examined ; that is to say, he was not quite certain that these bags were part of the cargo shipped by the plaintiff company to the defendants ; he stated that he did not even know that this consignment was brought by the " June Crest " ; the defendants did not tell him that they had cow-peas shipped by the plaintiff company by the " June Crest ", nor did they give any idea of the number of bags that had been shipped to them by the " June Crest " ; so that on the evidence of Markar and the 2nd defendant it is not possible for me to conclude that the 646 bags were of unmerchantable quality ; there is no other evidence in support of this defence ; at this stage I would refer to the letter written by E. B. Creasy to whom the National Bank of India consigned the various consignments, the delivery of

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which had not been taken by the respective consignees ; this letter (P17) of 12-2-47 refers to the condition in which the representative of E. B. Creasy found the bags in which the pulses were stored ; Creasys dealt with 2,672 bags from the " Junc Crest " and there is no evidence at all to show that the condition of the bags to which they refer to in P17 was in any way applicable to any of the 646 bags consigned to the defendants.

I shall now go back to the defence that the goods that were shipped were not in accord with the sample ; the evidence of Manik, the secretary of the plaintiff company, is that after he had told Yakoob that he was in a position to supply 60 tons of cow-peas, the latter expressed a desire to examine the goods ; he accom- 10
 panied him to the warehouse where the cow-peas were stored in bags, and examined them ; two bags out of ten were examined by inserting a sharp piece of wood or metal and drawing out the peas ; Yakoob approved of the goods and was given a sample of cow-peas when the contract (P2) was entered into. Yakoob's evidence is that he was shown a sample of white cow-peas which lay on a table, and he was satisfied ; his instructions were to buy white cow-peas and not brown ; the peas that were sent here were brown cow-peas, and Manik's evidence is that he had only brown cow-peas, samples of which were seen by Yakoob ; there is therefore a sharp conflict between the evidence of Manik and Yakoob in regard to this matter ; it must be borne in mind that the contract was a large one of the 20
 value of £ 3,134 ; the transaction was in Mombasa which is far distant from Ceylon ; the commodity was cow-peas which is liable to be attacked by weevils some time after harvested ; having regard to these circumstances it is likely that Yakoob would have approved of the quality after examining a sample that lay on the table ; Yakoob did not appear to me to be a novice in the field of business ; he struck me as intelligent, and quick, and certainly not careless or indifferent to business methods ; but even without these very useful qualities, it is not likely and reasonable that he would have carried out a test check of the bulk ; the evidence of Manik seems so reasonable, so probable, even to the handing of a sample to Yakoob ; on the other hand, the evidence of Yakoob is unreasonable, 30
 so unbusinesslike, so contrary to what one would expect of a prudent man in business, and, if I may add, so contrary to his business qualities to which I have referred to ; I accept Manik's evidence as to the examination of the bulk and the handing over of the samples ; I also accept his evidence that what was contracted for was brown cow-peas ; no doubt the contract did not stipulate for brown or white, but the 2nd defendant admitted that where cow-peas were not referred to by any particular colour, it meant brown cow-peas ; so that if white cow-peas was agreed upon, the contract should have said so. Markar's evidence is that he saw white and brown cow-peas, a large majority of which was brown ; but his evidence is subject to those deficiencies to which I have 40
 already referred, particularly his uncertainty in regard to the identity of the goods consigned to the defendants.

Therefore the defences of goods being not in accord with the sample and of unmerchantable quality cannot be sustained on the evidence adduced on behalf of the defendants ; and it is not without reason that I suspect that these pleas are nothing more than a desperate bid to escape liability, because

even before the defendants saw the goods they had made up their minds to reject ; the evidence of this can be inferred from the reason “ sent contrary to instructions ” given by the defendants as a ground for refusing to accept the documents relating to cost, insurance and freight.

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The observation I have just made has been influenced by reason of the opinion I have formed that there is no *bona fides* in the defences set up ; I say this for two reasons ; firstly, because if the cow-peas consigned to the defendants were found on arrival in Colombo to be of unmerchantable quality and unfit for human consumption, the defendants would have lost no time in bringing it to the notice of the plaintiff company or their agents in Colombo ; in the first week of February, according to the evidence they have led in this case, they were aware that the cow-peas consigned to them were rotten and unsafe ; this was more than 3 weeks after the consignment had arrived in Colombo ; nevertheless they kept silent on the matter and not a word was said to the plaintiff company or to their agents in Colombo ; the first time that they took up the position that the goods were not merchantable, and not the goods contracted for, was on 17-3-47 by their letter D 16 ; and this letter was in reply to a letter (P12) sent on 15-3-47 by Mr. Seyed Hamid, Proctor, acting for the plaintiff company ; in that letter Mr. Hamid stated that inasmuch as the defendants had failed to take delivery of the goods, it would be sold on account of, and at the risk of the defendant by private treaty ; though Mr. Hamid asked for a reply within 24 hours the defendants' reply came only, nearly 2 weeks later. I am of the opinion that the conduct of the defendants is a matter which should be taken into consideration in assessing the genuineness of the defences they have set up.

The second reason adduced is due to the attitude taken up by the defendants in not accepting the documents in regard to the c.i.f. contract tendered to them ; the reason they gave Mr. Sittampalam was that the goods had been sent contrary to instructions. Having regard to the circumstances of this case I can say that there is no justification for the non-acceptance of the documents. By “ contrary to instructions ” the defendants rely on two matters ; one is, there is a cable sent by them (P8) to the plaintiff Company on 31-12-46 which was received at Mombasa on New Year's day in 1947 ; by this telegram the defendants informed the plaintiff Company of the opening of a letter of credit for 25 tons of cow-peas per ss. “ June Crest ” and, *inter alia*, stated that the balance was unrequired ; I may here mention that the 25 tons referred to was the subject of another contract and had no connection whatsoever with the 60 tons contracted for by the contract P2 ; long before the cable P8 was received at Mombasa the contract P2 had been executed by both parties and the defendants had no right to say that the balance was unrequired ; further the plaintiff Company had, even before the cable was received, obtained all the documents that go with a c.i.f. contract, and as a matter of fact the “ June Crest ” had sailed from Mombasa on 28-12-46. ; it may be that at the time P8 was despatched the defendants were not aware that the “ June Crest ” had left Mombasa, but even ignorance of this fact does not entitle them to cancel the contract ; there is the further fact that on 24-12-46, Yakob had despatched a cable (P3) to the defendants asking them to open credit

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telegraphically for 60 tons of cow-peas at £51 c.i.f. in favour of the plaintiff Company, shipment per ss. "June Crest"; the defendants received this telegram on 25-12-46; they sent no reply to this; if they did not want any more than 25 tons they could have even at that stage informed the plaintiff Company or Yakoob of it by cable; instead the first intimation that they did not want anything more than 25 tons was sent a week later. The other reason is the endeavour made in the course of these proceedings to show that the contract entered into by Yakoob was dependent on confirmation by the defendants, and this confirmation was by opening an irrevocable letter of credit; it was urged that the goods should not have been shipped until an irrevocable letter of credit was opened in favour of the plaintiff Company; Yakoob's evidence was that he told the plaintiff Company that the goods were not to be shipped till letters of credit were open, and it was an arrangement between him and the defendants that unless letters of credit were opened, the contract was not to be confirmed; the 2nd defendant's evidence on this is that Yakoob had not his authority to sign the contract P2; he stated in the course of his evidence that he had instructed Yakoob, whilst he was in Africa, to collect prices of goods and send them on to him; he further added that it was entirely his business to order what he wanted; if this was a true state of affairs it is indeed surprising that this defence which goes to the root of the matter should not have been pleaded by the defendants in their answer; I have no hesitation in saying that this is just an after thought, just another attempt to escape liability. If the instructions were as stated by Yakoob and the 2nd defendant, I cannot understand why Yakoob should have signed the contract (P2); nothing would have been easier than to state, as a term of the contract, that shipment was to be only after the sale was confirmed by the principals in Colombo, and confirmation was to be inferred by opening of an irrevocable letter of credit; instead the contract provided that the shipment was by the "June Crest" loading at present and payment was to be by an irrevocable letter of credit; in my opinion a shipment and payment were not interdependent on each other; as I understand the contract P2, the shipment of the goods had no connection with the opening of a letter of credit and I cannot accept the oral evidence of Yakoob and his brother, the 2nd defendant, that there was a separate oral arrangement in addition to what was put down in P2. Now, in the absence of any particular clause in regard to payment, the payment should be within reasonable time of the acceptance of the goods; in the case of a c.i.f. contract the acceptance of the goods is symbolised by the acceptance of the documents; and it would have been sufficient if an irrevocable letter of credit had been opened within reasonable time of the acceptance of the documents, but to say that confirmation of the sale and the shipment of the goods were to follow only on the opening of the letter of credit is contrary to the plain meaning of the contract; that Yakoob had a free hand in signing contracts without recourse to his principals is made clear by the cable (D6); "these goods bought and confirmed by me" states this cable; and it reveals the extent of the authorisation given to him by his principals; and, if I have not emphasized it before, it must be borne in mind that he was the brother of the 2nd defendant. He admitted at a later stage in his evidence that he had the right to confirm contracts and he almost confidently stated that sometimes he could use his discretion and confirm; if he had not the authority

he certainly would not have signed the contract (P2) ; nor would he have sent the cable P3 in that form ; in it he asks for no confirmation ; as I have observed earlier, Yakooob did not strike me as a fool ; on the other hand, he seemed to me to be a very sensible businessman ; such a man does not go about signing contracts like P2 if he did not have the authority to do so.

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I think I have said enough to indicate that the defences lacked candour, but even if I ignore this aspect of the matter, I have expressed my view that there is no evidence to support the defences that have been made in this case, and for that reason the plaintiff must succeed in this action.

10 Before I conclude I wish to make the following observation. Even if the entirety of the goods consigned to the defendants were found in the first week of February to be rotten, damaged and unsaleable, I am of the view that the plaintiff Company cannot be held liable therefor ; because once a seller in a c.i.f. contract has obtained all the necessary documents and had put the goods on board ship which are in accord with the sample shown to the buyer and are merchantable, he has done all that law expects of him ; if the goods are damaged in transit the buyer's remedy may be against the underwriter, if the Policy of Insurance provides for compensation for any kind of damage caused to the goods ; in this case, as I stated earlier, the goods were of a perishable nature ; the
20 evidence of almost every witness is that weevils which germinate in the peas itself begin to attack in about 2 or 3 months of the harvest ; this was also the evidence of the witness Suppiah, though when he continued his evidence on resumption after the luncheon interval he foolishly sought to extend the period to 5 or 6 months ; it is not difficult to conclude that this witness's evidence after the luncheon interval in regard to this particular matter was of no value and unsafe to act upon ; whatever his evidence may be there is other definite evidence which fixes the beginning of the period of the attack by weevils to about 2 or 3 months of the harvest ; the evidence of Manik is that the peas shipped to the defendants were from the November harvest ; so that by the end of January
30 the peas would have been in danger of being attacked by the weevils ; the opinion of Marker in regard to the condition of the goods was on an inspection early in February ; so that it is not unlikely that at that point of time the attack by the weevils had begun ; the plaintiff Company cannot be blamed for this ; the delay was the defendants' ; besides, there is evidence of thousands of bags of pulses including cowpeas having been stored in the warehouse ; these had been unloaded from the " June Crest " and three or four others ; it was stated that even good quality pulses were liable to be attacked by weevils if they were stacked alongside weevil-ridden pulses ; I have referred to this merely to emphasize that apart from the legal position which I have stated above there
40 are even other facts which show that the plaintiff Company cannot be blamed if the cow-peas they had sent were in damaged condition at the beginning of February due to attack by weevils. Whatever way one looks at this case the plaintiff Company must succeed in this action. I answer the issues as follows :—

- (1) Yes.
- (2) Yes.

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- (3) (a) Yes.
(b) Yes.
- (4) Yes.
- (5) Yes.
- (6) Yes.
- (7) Yes. On the statement appearing on P18 the goods realised a sum of Rs. 12,550.99; the expenses incurred by the plaintiffs in regard to the sale of the goods was Rs. 7,441.90 leaving a balance of Rs. 5,109.09.
- (8) The plaintiff is entitled to Rs. 41,934.12 less the sum of 10 Rs. 5,109.09; that would be Rs. 36,825.03; to this I think must be deducted a sum of Rs. 125.50 which appears in the statement of accounts (P18) as payment on account of Income Tax; Poptlal & Co., are not entitled to Income Tax; so that the amount due to the plaintiff Company would be Rs. 36,699.53.
- (9) No evidence of this.
- (10) Yes.
- (11) Yes.
- (12) Does not arise.
- (13) This issue was rejected. 20
- (14) No.

In the result plaintiff will have judgment in a sum of Rs. 36,699.53, legal interest from the date of action till date of the Decree, and thereafter on the aggregate amount till payment in full; the plaintiff will also be entitled to the cost of this action.

6-2-51. Sgd. V. MANICKKAVASAGAR,
Additional District Judge.

Pronounced in open Court in the presence of Proctors for the parties.

6-2-51. Sgd. V. MANICKKAVASAGAR,
Additional District Judge. 30

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No. 8.
Decree of the District Court.

IN THE DISTRICT COURT OF COLOMBO.

ODHAVJI ANANDJI & Co., LTD. of Mombasa *Plaintiff.*

No. 21, 162/M.

Vs.

- (1) ABDUL HAMID and
- (2) ABDUL LATIFF, both carrying on business in partnership under the name, style and firm of " Abdul Latiff Abdul Hamid ", at 123, Bankshall Street, Colombo *Defendants.*

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This action coming on for final disposal before V. Manickavasagar Esqr., Additional District Judge, Colombo on the 6th day of February, 1951, in the presence of Proctor on the part of the plaintiff and of Proctor on the part of the defendant, it is ordered and decreed that the defendants do jointly and severally pay to the plaintiff the sum of Rs. 36,699.53, together with legal interest from 10 16-5-49 till date hereof, and hereafter on the aggregate amount till payment in full, and costs of suit.

The 6th day of February 1951
Sgd. V. MANICKAVASAGAR,
A. D. J.

No. 9

Petition of Appeal of the Defendants to the Supreme Court.

IN THE HONOURABLE SUPREME COURT OF THE ISLAND
OF CEYLON.

No. 9.
Petition of
Appeal of the
Defendants
to the
Supreme
Court.
6-2-51.

D.C. Colombo, Case No. 21,162/M.

ODHAVJI ANANDJI & Co., LTD., of Mombasa *Plaintiff.*

20 D.C. (F) 240 M/1951. Vs.

- (1) ABDUL HAMID and
- (2) ABDUL LATIFF, both carrying on business in partnership under the name, style and firm of " Abdul Latiff Abdul Hamid ", at 123, Bankshall Street, in Colombo *Defendants.*

- (1) ABDUL HAMID and
- (2) ABDUL LATIFF, both carrying on business in partnership under the name, style and firm of " Abdul Latiff Abdul Hamid ", at 123, Bankshall Street, in Colombo *Appellants.*

And

30 ODHAVIJI ANANDJI & COMPANY, LTD., of Mombasa *Respondent.*

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Petition of
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Defendants
to the
Supreme
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To THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUDGES
OF THE HONOURABLE THE SUPREME COURT OF THE
ISLAND OF CEYLON.

On this 6th day of February, 1951.

The petition of appeal of the defendants-appellants abovenamed appearing by Sabapathy Somasunderam and his Assistant Sinnathambiappillai Thurai-singham, their Proctors states as follows :—

1. The plaintiff-respondent Company instituted the above styled action against the defendants-appellants alleging *inter alia*—

- (a) that the appellants represented to the respondent Company that 10 one Aboobucker was their agent,
- (b) that by agreement dated 24th December, 1946, the appellants agreed (1) to buy from the respondent 60 tons of cow-peas as per sample approved at the price of £ 51 per ton c.i.f. Colombo and (2) to pay for same by an irrevocable letter of credit ;
- (c) that in pursuance of the said agreement to sell, the plaintiff-respondent shipped per “ SS. June Crest ” 646 bags of cow-peas with sample approved weighing 60 tons on 28th December, 1946 ;
- (d) that the appellants were duly informed that the said goods were shipped in terms of the aforesaid contract ; 20
- (e) that the relative Bills of Lading and documents and/or the said goods were tendered to the appellants and that the appellants had wrongfully in breach of the said contract refused and neglected to take delivery of the said goods and/or documents ;
- (f) that the respondent had drawn upon the appellants a Bill of Exchange for £3,134. 3. 1, equivalent to Rs. 41,934. 12 which the appellants had failed to honour ;
- (g) that the respondent had sold the said goods at the then available market price of Rs. 5,609. 12 less expenses amounting to Rs. 1,000;
- (h) that the respondent by the breach of contract had suffered 30 damages in a sum of Rs. 37,325.

2. The defendants-appellants contested the claim of the respondent and denied liability to pay any sum of money as damages.

3. On the date of trial, 4th October, 1950 the appellants who were out of the Island through their Counsel made an application for a postponement

on good and sufficient grounds and this application was refused by the Court and the trial on that date proceeded in their absence. The parties went to trial on the following issues :—

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- (1) Did plaintiffs and defendants enter into a contract as stated in paragraph 2 of the plaint ?
- (2) Did the plaintiffs ship in ss. " June Crest " 60 tons of cow-peas referred to in paragraph 2 of the plaint ?
- (3) (a) Were the relative Bills of Lading and documents tendered to the defendants ?
- 10 (b) Were the said goods tendered to the defendants ?
- (4) Did plaintiffs draw upon defendants a Bill of Exchange as stated in paragraph 5 of the plaint ?
- (5) Did defendants wrongfully unlawfully and in breach of the said contract refuse and neglect to accept the said documents and/or the said goods ?
- (6) Did the plaintiffs give due notice to the defendants to sell the said goods by private treaty at the available market rate ?
- (7) (a) Did the plaintiffs realise a sum of Rs. 5,609.09 by the sale of the said goods ?
- 20 (b) Did plaintiffs incur expenses amounting to Rs. 1,000 in connection with the said transaction and sale ?
- (8) Is the plaintiff entitled to claim from the defendants a sum of Rs. 41,934.12 and the said sum of Rs. 1,000 less the said sum of Rs. 5,609.09 ?
- (9) Were the goods contracted for fit for human consumption ?
- (10) Did the goods correspond to the sample in quality ?
- (11) Were the goods of merchantable quality ?
- (12) If issue 1 is answered in the affirmative and issues 10 and/or 11 in the negative is the plaintiff entitled to judgment ?
- 30 (14) Is the claim of the plaintiff prescribed ?

4. On the adjourned date of hearing and subsequently the 2nd defendant-appellant and his principal witness Aboobucker were present. The appellants' Counsel raised the following further issues :—

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- (15) Was the contract referred to in issue 1 subject to the confirmation by the defendant by the opening of irrevocable letters of credit ?
- (16) Were the plaintiffs aware that Aboobucker, the representative of the defendants could contract only subject to such confirmation ?

These issues were rejected by the Court and the appellants have been thereby prejudiced.

5. After hearing all the evidence and the arguments of Counsel the learned District Judge by his judgment dated the 6th February, 1951, has held against the appellants and has ordered them to pay Rs. 36,699.53 as damages.

6. Being aggrieved with the said order and judgment the appellants beg 10 to appeal to Your Lordships' Court on the following among other grounds that may be urged by their Counsel at the hearing of this appeal—

- (a) the said order is contrary to law and the weight of evidence adduced at the trial ;
- (b) the writing dated 24th December, 1946, which was an agreement to sell was subject to confirmation by the appellants by their opening an irrevocable letter of credit ;
- (c) the respondent had contrary to the arrangement between the parties and their course of dealing shipped the said goods and had not even informed the appellants about such shipment ; 20
- (d) even if there was a valid contract the goods shipped were not according to sample and were unfit for human consumption ;
- (e) the respondent had not acted reasonably in disposing of the goods which were perishable and has failed to minimise the loss that might result by the alleged breach of contract ;
- (f) all the relevant and necessary documents were not tendered and there was no proper and legal tender of documents.

Wherefore the appellants pray—

- (1) that the said order and judgment be set aside ;
- (2) that the respondent's action be dismissed with costs ; and 30
- (3) for such other and further relief as to Your Lordships' Court may seem meet.

Settled by :

Sgd. S. SOMASUNDARAM,
Proctor for Defendants-Appellants.

N. KUMARASINGHAM, ESQUIRE,
Advocate.

Judgment of the Supreme Court.

No. 10.
Judgment of
the Supreme
Court.
9-3-53.

S.C. No. 240/M of 1951.

D.C., Colombo, No. 21,162/M.

MESSRS. ABDUL LATIFF ABDUL HAMID of 123,
Bankshall Street, Colombo *Defendants-Appellants.*

Vs.

ODHAVJI ANANDJI & Co., of Mombasa *Plaintiff-Respondent.*

Present : GRATIAEN, J. AND GUNASEKERA, J.

Counsel : C. THIAGALINGAM, q.c. with N. KUMARASINGHAM and S.
SHARVANANDA, for the defendants-appellants.

10

H. V. PERERA, q.c. with V. A. KANDIAH and S. THANGARAJAH
for the plaintiff-respondent.

Argued on : 20th February, 27th February and 2nd March, 1953.

Decided on : 9th March, 1953.

GRATIAEN, J.—

The plaintiff is a Company with limited liability carrying on business at Mombasa in East Africa. The defendants are merchants carrying on business in partnership in Colombo. On 24th December, 1946, a c.i.f. contract was entered into at Mombasa between the Company, as seller, and the defendants, as
20 buyers, in respect of 60 tons of pulses known as “cow-peas”. The terms of the contract were as follows :—

“ Sellers : Odhavji Anandji & Co., Ltd., Mombasa.
Buyers : Messrs. Abdul Latiff Abdul Hamid, Colombo.
Quantity : Sixty (60) tons.
Quality : Cow-peas as per sample approved.
Price : £51 (Pounds Fifty-one) c.i.f. Colombo.
Packing : In sound single bags.
Tare : Usual.
Shipment : ss. “ June Crest ” loading at present.
Marks : ALAH/Colombo.
Payment : By an Irrevocable Letter of Credit.”

30

The contract was negotiated and signed on the defendants' behalf by their accredited agent M. Y. Aboobucker who was in Mombasa at the time. The

No. 10.
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the Supreme
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9-3-53.
—continued

obligation of the seller was to ship goods corresponding to a sample previously approved by Aboobucker and to tender to the buyers within a reasonable time thereafter the relative documents, namely, the Bill of Lading, the Insurance Policy and the Invoice ; in exchange for those documents, the seller was entitled to claim the price from the buyers and, should default, to sue them for damages for breach of contract.

The document provides, as a condition precedent to the Company's obligation to perform the contract, for " payment by an irrevocable letter of credit ". In point of fact, the defendants did not take steps, either within a reasonable time or at all, to have such a letter of credit established in favour of the Company. 10 Their failure to comply with this condition entitled the Company to treat the contract as repudiated ; in that event, an action for damages for breach of contract could immediately have been maintained against them. On the other hand, it was equally open to the Company to waive the condition which was inserted for its benefit, and to ship the goods without protection of an irrevocable banker's credit. *Panoutsos vs. Raymond Hadley Corporation* (1917) 2 K.B. 473. It was the latter alternative that the Company elected to adopt. In the result, the contract was kept alive, and the Company continued to be liable to perform its obligations as seller notwithstanding the defendants' earlier default. Mr. Thiagalingam very properly dissociated himself from the untenable argument 20 suggested at the trial to the effect that the defendants, by relying on their own breach of the condition, could claim that the contract had automatically ceased to be operative for any purpose whatsoever.

Certain interesting submissions were raised before us as to other alleged implications of the clause stipulating for " payment by an irrevocable letter of credit ". These involve issues which were not raised at the trial, and cannot properly be regarded as introducing pure questions of law. I am not disposed to entertain at this stage of the litigation any fresh defences, involving mixed questions of fact and law, which had not been pleaded or put in issue at the proper time in the Court below. 30

Goods corresponding in quality to the stipulated sample were shipped in ss. " June Crest " which sailed from Mombasa on 28th December 1946 and arrived in Colombo on 13th January 1947. The relative documents were duly tendered to the defendants by the Colombo branch of the National Bank of India Ltd. on instructions from the Company. The tender was rejected on the false pretext " that the goods had been sent contrary to instructions ". This information was passed on to the Company who notified the defendants by cablegram on 4th February, 1947 that, unless payment was made within 24 hours, the goods would be sold at their risk in the open market. No reply was sent to this cablegram. The Bank thereupon employed on the Company's behalf 40 a reputable firm to clear the goods from the Customs warehouses in which there was considerable congestion at the time. This operation commenced on or about 12th February, 1947 and, owing to the prevailing conditions in the port, took a fairly considerable time. On 5th March, 1947 the Company's proctor in Colombo wrote to the defendants to the following effect :—

“ As you have failed to take delivery of, and pay for, the goods in spite of my clients’ requests, my clients will now dispose of the goods on your account and at your risk, according to their earlier intimations to you, and file action against you for the recovery of any deficit.

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9-3-53.
—continued

As the quantity of goods is very large the sale of the whole in bulk at an auction sale may not be as advantageous as a sale by private treaty, and so my clients intend to have the goods sold by private treaty unless you prefer a sale by public auction, in which event you must inform me forthwith.

Before doing so, I am giving you a final opportunity of fulfilling your 10 obligations under the contract.

If I don’t hear from you within 24 hours agreeing to meet the draft and take the goods, my client will proceed to dispose of the goods as stated above.”

It was not until 12 days later that the defendants’ lawyer replied stating that his clients were not prepared to accept the goods because “ they were not the goods contracted for . . . and the same were found to have been attacked by weevils and been subject to some treatment before they were shipped and which has adversely affected the quality of the goods.”

On 2nd April, 1947, the Bank’s clearing agents, acting on instructions received, made arrangements to hand over the goods to a firm of wholesale 20 dealers, who had considerable experience in the trade, to dispose of the rejected consignment by private treaty at the defendants’ risk. The nett amount realised, after deduction of storage charges, commission, etc., was Rs. 5,109.09. The Company accordingly sued the defendants for the recovery of Rs. 37,325 representing the difference between the contract price and the amount so realised.

After trial, the learned District Judge entered judgment in favour of the Company for Rs. 36,699.25 which was the amount claimed less a small item of Rs. 125.50. The present appeal is from this judgment.

The defendants had pleaded at the trial that they were entitled to reject 30 the consignment because the goods shipped did not correspond in quality to the stipulated sample and were not of merchantable quality. These defences were rejected by the learned Judge and were abandoned by Mr. Thiagalingam in appeal. In the course of the trial the defendants also sought to raise certain additional defences to the effect that (a) their contract was “ subject to confirmation by the defendants by the opening of irrevocable letters of credit”, and (b) that their agent in Mombasa had no authority to negotiate the contract except subject to such confirmation. These pleas were also rejected by the learned Judge and have since been abandoned.

In the result, we are left only with one outstanding ground of appeal 40 raised in the petition of appeal, namely, that the plaintiff “ had not acted reasonably in disposing of the goods which were perishable, and failed to minimise the

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the Supreme
Court.
9-3-53.
—continued

loss resulting from the alleged breach of contract". In other words, the argument is that the quantum of damages awarded in the judgment is too excessive.

The learned Judge has taken great pains to consider the grounds on which the defendants sought to escape liability under the contract. He held that the Company had fulfilled all its obligations as seller, and that there was "no *bona fides* in the defences set up". On the issue as to damages, however, he has not discussed the evidence in quite so much detail, but it is safe to assume, I think, that in his opinion the Company was reasonably entitled to claim the whole of the loss which it had in fact sustained in the transaction.

The basis on which damages should be assessed in cases of this nature is 10 well settled. The innocent party is entitled to be compensated for pecuniary loss naturally flowing from the other party's breach ; but subject to the qualification that he is under a duty to take all reasonable steps to mitigate the loss consequent on the breach, and is debarred from claiming any part of the damage which is due to his neglect to take such steps. *British Westinghouse Co. vs. Underground Railways of London* (1912) A.C. 673. Where it is the buyer who has defaulted, and there is an available market for the goods, the loss to be ascertained is *prima facie* the difference between the contract price and the market price prevailing at the date of the breach. "If at that date the (seller) could do something, or did something which mitigated the damage, the defendant is 20 entitled to the benefit of it." *Jamal vs. Moola Darwood Sons & Co.* (1916) 1 A.C. 175. These principles have received statutory recognition in the provisions of section 49 of the Sale of Goods Ordinance.

Can it be said that, having regard to the learned Judge's findings of fact and also to the findings which are implicit in his judgment, there was evidence upon which he could properly have decided that the Company's claim was excessive? As was pointed out in *Payzu vs. Saunders* (1919) 2 K.B. 581, "the question what is reasonable for a person to do in mitigation of his damages cannot be a question of law, but must be one of fact in the circumstances of each particular case". 30

It is necessary to ascertain in the first instance the date on which the defendants must be regarded as having finally committed a breach of their contract. Mr. Thiagalingam informed us that he would accept 5th or 6th February, 1947 as the decisive date—that being the date on which his clients, having received the cablegram P11 from Mombasa, ignored the demand for acceptance and payment within the 48 hours allowed them for the purpose. I am content to approach the problem on this basis.

How should the Company have acted in this situation? It was carrying on business in Mombasa, without the advantage of a branch office in Colombo where the breach of contract had occurred. I consider that it acted perfectly 40 reasonably in the circumstances in authorizing a local Banker to take such steps as were necessary to clear the goods from the Customs warehouses and to arrange thereafter for their sale, unless of course the defendants were prepared

in the meantime to reconsider their attitude. There was a great deal of congestion, and indeed confusion, in the warehouses at this point of time, and the consequent deterioration in the quality of the goods before they could be moved to private stores was in no way attributable to neglect on the part of the Company or of those who were acting for it at this end. After the goods had been cleared from the warehouses, the defendants, were expressly informed that, owing to adverse market conditions which had developed since the end of 1946, it was considered advisable to conduct the proposed sale by private treaty. They were requested however to state forthwith whether they would prefer the entire consignment to be sold by public auction, but this invitation to make a prompt contribution to the solution of the problem was not accepted. In due course, the goods were sold by the firm of Poptlal & Co., at the defendants' risk, in instalments, at what the manager of that establishment described as "the highest possible prices". He further explained that the completion of the sales was delayed "because there were no buyers earlier". It is safe to assume that this evidence was accepted as true by the learned trial Judge. The goods had certainly continued to deteriorate during the interval, but that result was, as I read the evidence, not only inherent in "cow-peas" of the particular quality stipulated for in the contract, but had been aggravated by the difficulties of the market and the conditions obtaining in the Customs warehouses at the time. All these were risks which the defendants, who were conversant with local conditions, undertook and must have appreciated when they decided to repudiate the contract. In all these circumstances it would be quite unreasonable in my opinion to impute blame to the Company for the comparatively small price which the goods ultimately realised.

The market value of the goods at the decisive date, namely, 5th or 6th February, 1947, was not capable of precise ascertainment. They were perishable goods lying scattered about, and mixed up with other consignments from the "June Crest" and several other vessels, in three or four different congested warehouses under the control of the Customs authorities; the evidence of Sub-Collector Pullenayagam and of the Landing-waiter Supramaniam explains the additional risks of shortages, pilferage and deterioration from contamination which notoriously arise in such a situation. It seems to me that a prospective buyer invited to make an offer for the consignment at that time would, before making a bid, have been considerably influenced by these factors, apart from his knowledge that there was little demand at the time for "cow-peas" of the particular quality which the defendants, in a mood of earlier optimism, had chosen to order from Mombasa. The market for "cow-peas" of even the best quality had seriously declined; "cow-peas" of the contract quality were still less in demand, and, from a commercial point of view, there was virtually no "ready market" for a quantity of 60 tons at all. In fact, the defendants' Proctor had been instructed to state on 17th March, 1947, that "the goods cannot be marketed in Colombo or elsewhere."

There is another aspect of the matter which is relevant to the issue of damages. The defendants had admittedly taken delivery from "June Crest" of a consignment of 25 tons of "cow-peas" corresponding in quality with the

No. 10.
Judgment of
the Supreme
Court.
9-3-53.
—continued

consignment with which we are now concerned. If therefore it was their position that the Company's agents in Ceylon could reasonably have realised a higher price for the rejected goods than they actually did, the defendants should at least have proved, by way of comparison, how precisely they dealt with that smaller consignment and how much they themselves had realised (and over what period of time), from its resale in the local market. The evidence of the second defendant falls far short of convincing proof in this respect.

In all the circumstances of this case, I take the view that the learned District Judge was fully justified in awarding to the Company the full difference between the contract price and the nett sums actually realised by the resale of the consignment in the local market through a reputable firm of commission agents who were employed for the purpose. Having regard particularly to the situation in which the Company was placed when the defendants wrongfully rejected the goods at a time when market conditions were admittedly unsettled, it cannot be said that the Company had not taken "all reasonable steps to mitigate the loss consequent on the breach."

It would be quite wrong to place too heavy an *onus* on a foreign seller who is placed in such a situation through a local buyer's default. Indeed, *Cheshire & Fifoot on Contracts* (1st Edn.) p. 498, appears to indicate that the burden of proving that the innocent party "has discarded a reasonable opportunity to mitigate the damage" rests upon the defaulter.

I see no reason to modify the learned Judge's assessment of damages or to order a re-trial on this issue after 6 years have elapsed since the contract was repudiated. The justice of the case requires that the defendants' appeal should be dismissed with costs and I would make order accordingly.

Sgd. E. F. N. GRATIAEN,
Puisne Justice.

GUNSEKERA, J.—I agree.

Sgd. E. H. T. GUNASEKERA,
Puisne Justice. 30

No. 11.
Decree of the
Supreme
Court.
9-3-53.

No. 11.
Decree of the Supreme Court.

ELIZABETH THE SECOND, QUEEN OF CEYLON.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

ODHAVIJI ANANDJI & COMPANY, LTD. of Mombasa. . *Plaintiff-Respondents.*

Against

- (1) ABDUL HAMID, and
- (2) ABDUL LATIFF, both carrying on business in partnership under the name, style and firm of " Abdul Latiff Abdul Hamid ", at 123, Bankshall Street in Colombo *Defendants-Appellants.*

No. 11.
Decree of the
Supreme
Court.
9-3-53.
—continued

Action No. 21,162/M.

District Court of Colombo.

This cause coming on for hearing and determination on the 20th and 27th February and 2nd and 9th March, 1953, and on this day, upon an appeal preferred ¹⁰ by the defendants-appellants before the Hon. Mr. E. F. N. Gratiaen, Q.C., Puisne Justice and the Hon. Mr. E. H. T. Gunasekera, Puisne Justice of this Court, in the presence of Counsel for the appellants and respondents.

It is considered and adjudged that this appeal be and the same is hereby dismissed with costs.

Witness the Hon. Mr. E. F. N. Gratiaen, Q.C., Puisne Justice, at Colombo, the 17th day of March, in the year of our Lord One thousand Nine hundred and Fifty-three and of Our Reign the Second.

Sgd. N. NAVARATNAM,
Deputy Registrar, S.C.

20

Seal.

No. 12.

Application for Conditional Leave to Appeal to the Privy Council.

IN THE HONOURABLE THE SUPREME COURT OF THE
ISLAND OF CEYLON.

No. 12.
Application
for Condi-
tional Leave
to Appeal to
the Privy
Council.
19-3-53.

S.C. No. 240 of 1951 (Final) In the matter of an application for Conditional
D.C. Colombo, 21,162 (M) Leave to appeal to Her Majesty the Queen-in-
Council from the judgment of this Court in
S.C. No. 240 of 1951 District Court (Final)
Colombo, 21,162 (M).

30

Between

- (1) ABDUL HAMID, and
- (2) ABDUL LATIFF, both carrying on business in partnership under the name, style and firm of " Abdul Latiff Abdul Hamid " at 123, Bankshall Street in Colombo *Defendants-Appellants.*

And

No. 12.
Application
for Condition-
al Leave to
Appeal to the
Privy Council.
19-3-53.
—continued

ODHAVJI ANANDJI & COMPANY, LIMITED of Mom-

basa *Plaintiff-Respondent.*

To THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUDGES OF THE
SUPREME COURT OF THE ISLAND OF CEYLON.

On this 19th day of March, 1953.

The petition of the defendants-appellants above-named appearing by Sabapathy Somasundaram and his assistant Sinnathambiapillai Thuraisingam their Proctors states as follows :

- (1) That feeling aggrieved by the judgment and decree of this Honourable Court pronounced on the 9th day of March, 1953 in the above action, the defendants-appellants are desirous of appealing therefrom to Her Majesty the Queen-in-Council. 10
- (2) That the said judgment is a final judgment and the matter in dispute on the appeal amounts to or is of the value of five thousand rupees or upwards.
- (3) The defendants-appellants on the 11th March, 1953 gave the plaintiff-respondent notice of this intended application by cable and by Registered Air Mail letter and notice of the application has also been served on the plaintiff-respondent on the 14th March, 1953 by the modes prescribed by this Court on the 13th March, 1953 under Section 5a of the *Appellate Procedure* (Privy Council) Order 1921 addressed to its Registered Office No. F 222 P.M. Lois Road, Mombasa on the 14th March, 1953. 20

Wherefore the defendants-appellants pray for conditional leave to appeal against the said judgment of this Court dated the 9th day of March, 1953 to Her Majesty the Queen-in-Council.

Sgd. S. SOMASUNDARAM,
Proctor for Defendants-Appellants.

No. 13.
Decree
Granting
Conditional
Leave to
Appeal to the
Privy Council.
30-3-53

No. 13.

Decree Granting Conditional Leave to Appeal to the Privy Council.

30

ELIZABETH THE SECOND, QUEEN OF CEYLON.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON.

- (1) ABDUL HAMID, and
 (2) ABDUL LATIFF, both carrying on business in partnership under the name, style and firm of " Abdul Latiff Abdul Hamid " at 123, Bankshall Street in Colombo, petitioners *Defendants-Appellants.*

No. 13.
 Decree
 Granting
 Conditional
 Leave to
 Appeal to the
 Privy Council.
 30-3-53.
 —continued

Against

ODHAVJI ANANDJI & COMPANY, LIMITED of Mombasa, respondent (*Plaintiff-Respondent.*)

Action No. 21,162 (S.C. 240 (Final).) District Court of Colombo.

10 In the matter of an application dated 24th March, 1953, for Conditional Leave to Appeal to Her Majesty the Queen in Council by defendants-appellants abovenamed against the decree dated 9th March, 1953.

This matter coming on for hearing and determination on the 30th day of March, 1953, before the Hon. Mr. E. H. T. Gunasekara, Puisne Justice and the Hon. Mr. M. F. S. Pulle, q.c., Puisne Justice of this Court, in the presence of Counsel for the petitioner.

It is considered and adjudged that this application be and the same is
 20 hereby allowed upon the condition that the applicant do within one month from this date :—

1. Deposit with the Registrar of the Supreme Court a sum of Rs. 3,000 and hypothecate the same by bond or such other security as the Court in terms of Section 7 (1) of the Appellate Procedure (Privy Council) Order shall on application made after due notice to the other side approve.

2. Deposit in terms of provisions of Section 8 (a) of the Appellate Procedure (Privy Council) Order with the Registrar a sum of Rs. 300 in respect of fees mentioned in Section 4 (b) and (c) of Ordinance No. 31 of 1909 (Chapter 85).

30 Provided that the applicant may apply in writing to the said Registrar stating whether he intends to print the record or any part thereof in Ceylon, for an estimate of such amounts and fees and thereafter deposit the estimated sum with the said Registrar.

Witness the Hon. Mr. C. Nagalingam, q.c., Senior Puisne Justice at Colombo, the 1st day of April, in the year of our Lord One thousand Nine hundred and Fifty three and of Our Reign the Second.

Sgd. W. G. WOUTERSZ,
Deputy Registrar, S.C.

No. 14.
Application
for Final
Leave to
Appeal to the
Privy Council.
4-4-53.

No. 14.

Application for Final Leave to Appeal to the Privy Council.

IN THE HONOURABLE THE SUPREME COURT OF THE
ISLAND OF CEYLON.

S.C. 240 Final of 1951 In the matter of an application for Final Leave to
D.C. Colombo, 21,162 (M) appeal to the Privy Council from the judgment
 of this Court in S.C. No. 240 of 1951, District
 Court (Final) Colombo, 21,162 (M).

Between

- (1) ABDUL HAMID, and 10
- (2) ABDUL LATIFF, both carrying on business in part-
nership under the name, style and firm of " Abdul
Latiff Abdul Hamid " at 123, Bankshall Street in
Colombo *Defendants-Appellants.*

And

ODHAVJI ANANDJI & COMPANY, LIMITED of Mom-
basa *Plaintiff-Respondent.*

To THE HONOURABLE THE CHIEF JUSTICE AND THE OTHER JUDGES OF THE
SUPREME COURT OF THE ISLAND OF CEYLON.

On this 4th day of April, 1953. 20

The petition of the defendants-appellants abovenamed appearing by
Sabapathy Somasundaram and his Assistant Sinnathambiapillai Thuraisingam,
their Proctors, states as follows :—

1. That the defendants-appellants on the thirtieth day of March, 1953,
obtained conditional leave from this Honourable Court to appeal to Her Majesty
the Queen-in-Council from the judgment and decree of this Court pronounced on
the 9th day of March, 1953.
2. That the defendants-appellants have in compliance with the conditions
on which such leave was granted deposited with the Registrar of this Court a
sum of Rupees Three thousand (Rs. 3,000) and hypothecated such sum by bond 30
dated the first day of April, 1953.
3. That the defendants-appellants have further deposited with the said
Registrar a sum of Rupees Three hundred in respect of fees mentioned in section
4 (2) (b) and (e) of the Appeal (Privy Council) Ordinance.

4. The defendants-appellants have given notice of this application for final leave to the plaintiff-respondent by sending same by Registered Air Mail post addressed to plaintiff-respondent's registered office at Mombasa. A true copy of the notice and the Post Office receipt for the despatch of the notice by Registered Air Mail are annexed hereto marked " X1 " and " X2." No. 14. Application for Final Leave to Appeal to the Privy Council. 4-4-53. —continued

Wherefore the defendants-appellants pray that they be granted final leave to appeal from the said judgment and decree of this Court pronounced on the 9th day of March, 1953, to Her Majesty the Queen-in-Council.

10 (Sgd.) S. SOMASUNDARAM,
Proctor for Defendants-Appellants.

No. 15.

Decree Granting Final Leave to Appeal to the Privy Council.

ELIZABETH THE SECOND, QUEEN OF CEYLON AND OF HER
OTHER REALMS AND TERRITORIES, HEAD OF THE
COMMONWEALTH.

No. 15.
Decree
Granting
Final Leave
to Appeal to
the Privy
Council.
3-6-53.

IN THE SUPREME COURT OF THE ISLAND OF CEYLON

(1) ABDUL HAMID, and
(2) ABDUL LATIFF, both carrying on business in part-
nership under the name, style and firm of " Abdul
20 Latiff Abdul Hamid " at 123, Bانشall Street, in
Colombo, petitioner *Defendants-Appellants.*

Against

ODHAVJI ANANDJI & COMPANY, LIMITED of Mom-
basa, respondent *Plaintiff-Respondent.*

Action No. 21,162 (S.C. 240-Final). District Court of Colombo.

30 In the matter of an application by the defendants-
appellants abovenamed dated 10th April, 1953,
for Final Leave to Appeal to Her Majesty the
Queen-in-Council against the decree of this Court
dated 9th March, 1953.

This matter coming on for hearing and determination on the 3rd day of
June, 1953, before the Hon. Sir Alan Edward Percival Rose, K.T., Q.C., Chief
Justice and the Hon. Mr. M. F. S. Palle, Q.C., Puisne Justice of this Court, in the
presence of Counsel for the petitioners,

No. 15
Decree
Granting
Final Leave
to Appeal to
the Privy
Council.
3-6-53.
—continued

The applicants having complied with the conditions imposed on them by the order of this Court dated 30th March, 1953, granting Conditional Leave to Appeal.

It is considered and adjudged that the applicant's application for Final Leave to Appeal to Her Majesty the Queen-in-Council be and the same is hereby allowed.

Witness the Hon. Sir Alan Edward Percival Rose, Kt., Q.C., Chief Justice at Cclombo, the 9th day of June, in the year of our Lord One thousand Nine hundred and Fifty-three, and of Our Reign the Second.

Sgd. W. G. WOUTERSZ, 10
Deputy Registrar, S.C.

PART II.**EXHIBITS.****D 7****Cable from Plaintiff to Defendants****D 7**

CABLE & WIRELESS, LIMITED,
 "Via Imperial"

Office of Issue :

CABLE & WIRELESS LIMITED,
 Colombo

10

6 OCT. 1946.

SECOORD 402/F/DP 131/F MOMBASA 10 6 0945 —LC—
 RELIABLE COLOMBO — OPEN CREDIT SHIPMENT
 PROBABLY TENTH INSTANT — ODHAVJILTD.

Exhibits
 —
 D 7.
 Cable from
 Plaintiff to
 Defendants.
 6-10-1946.

D 8**Cable from Plaintiff to Defendants****D 8**

CABLE & WIRELESS LIMITED,
 "Via Imperial"

D 8.
 Cable from
 Plaintiff to
 Defendants
 17-10-1946.

20

Office of Issue :

CABLE & WIRELESS LIMITED
 Colombo

17, OCT., 1946.

SEOO 328/T DP 43/T MOMBASA 14/13 1145 16th—LC
 RELIABLE COLOMBO — SHIPPING TEN TONS COW-
 PEAS MILLET FORTY POUNDS CIF REPLY—ODHAVJI-
 LTD.

Exhibits
 P 1.
 Letter from
 Defendants to
 Plaintiff.
 30-11-1946.

P 1

Letter from Defendants to Plaintiff

P 1

ABDUL LATIFF ABDUL HAMID,
 Merchants & Commission Agents

Tele { grams : RELIABLE
 { phone : 2479

161, Prince Street,
 Colombo, 30th Nov., 1946.

MESSRS. ODHAVJI ANANDJI & Co., LTD.,
 P.O. Box 704,
 Mombasa

10

Dear Sirs,

This is to introduce bearer Mr. M. Y. Aboobucker, our representative who is leaving for Mombasa and Daresalaam, in connection with the procurements of our requirements.

We shall feel much obliged, if you will be good enough to oblige him with all possible assistance and co-operation to obtain the maximum results. Thanking you.

Yours faithfully,
 Sgd. (Illegibly). 20

D 1.
 Cable from
 Yakoob to
 Defendants.
 22-12-1946.

D 1

Cable from Yakoob to Defendants

D 1

CABLE & WIRELESS, LIMITED,
 "Via Imperial"

Office of Issue :
 CABLE & WIRELESS, LIMITED,
 Colombo Branch

Colombo, 22 Dec. 46. 30

DS 126/V MOMBASA 66/64 22 0955 — NLT RELI-
 ABLE COLOMBO — RECEIVED TODAY 100 TONS BAJREE
 FROM KASSAM JIVRAJ SHIPPED LIMBURG CREDIT ONLY

RECEIVED FOR 50 TONS OPEN BALANCE CREDIT OFFER- Exhibits
 ING ONE HUNDRED TONS COW-PEAS 52/- 200 TONS D 1.
 JOOWAREE 44/- 200 TONS MILLET 48/- STERLINGS Cable from
 CIF SHIPMENT BY LIMBURG REPLY URGENTLY MEET Defendants.
 25 TONS COWPEAS DRAFT SHIPPED PER JUNE CREST 22-12-1946.
 KKETX AT 52/- STERLINGS CONFIRM WIRE CARE —continued
 KASSAM JIVRAJ NO HOPE ISMAIL COMPANY CON-
 TRACT YAKOOB.

D 2

10

Cable from YakooB to Defendants

D 2.
 Cable from
 YakooB to
 Defendants.
 23-12-1946

D 2

CABLE & WIRELESS, LIMITED,
 "Via Imperial"

Office of Issue :

CABLE & WIRELESS, LIMITED,
 Colombo Branch

23 DEC., 1946.

DS 4/BI MOMBASA 37/34 23 1215 RELIABLE CO-
 LOMBO — PURCHASED THIRTYNINE TONS JUWARI
 20 L 41 ONEHUNDRED TONS BAJRI L 43 ONEHUNDRED
 TONS TOOR L 46, OPEN CREDIT ACCOUNT BHATIA
 BY CABLE SHIPMENT FROM MOZAMBIQUE COLONYS
 PORT VALID JANUARY SHIPMENT POSSIBLE LIMBURG
 — YACOOB CARE BHATIA

P 2

Contract

P 2
 Contract
 24-12-1946.

P 2

Shipped per ss. "June Crest,
 29-12-46

30

Mombasa, 24th December, 1946.

Contract

Sellers : Odhavji Anandji & Co., Ltd., Mombasa
 Buyers : Messrs. Abdul Latiff Abdul Hamid, Colombo
 Quantity : Sixty (60) tons
 Quality : Cow-peas as per sample approved

Exhibits
 P 2.
 Contract
 24-12-46.
 --continued

Price : £51/- (Pound Fifty-one) c.i.f. Colombo
 Packing : In sound single bags
 Tare : Usual
 Shipment : ss. " June Crest " loading at present
 Marks : ALAH/COLOMBO
 Payments : By an Irrevocable Letter of Credit

Confirmed by sellers : - Confirmed by buyers :

ODHAVJI ANANDJI & Co., LTD. for ABDUL LATIFF ABDUL HAMID,

Sgd. (Illegibly)
 Secretary

Sgd. (Illegibly)
 Colombowallas
 24/12

10

P 3.
 Copy of Cable
 by Aboobucker
 to Defendants.
 24-12-46.

P 3

Copy of Cable by Aboobucker to Defendants

Copy of the Cable Despatched by Mr. M. Y. Aboobucker

Ledger A/C
 24-12-46

LC RELIABLE
 COLOMBO

OPEN CREDIT URGENT SIXTY TONS ACCOUNT
 ADHAVJILTD COWPEAS FIFTYONE CIF STERLING 20
 SHIPMENT JUNECREST MAY BUY JANUARY SHIPMENT
 SEVENTY TONS FORTYEIGHT C.I.F. WHY NOT REPLYING.

P 3A
 Original of
 Cable by
 Aboobucker
 to Defen-
 dants.
 25-12-1946.

P 3A

Original of Cable by Aboobucker to Defendants

CABLE & WIRELESS, LIMITED,
 " Via Imperial "

Seal :

CABLE & WIRELESS, LIMITED,
 Colombo Branch

25 DEC., 1946. 30

DS 27/B1 MOMBASA 29/27 1000 24 — LC RELIABLE
 COLOMBO — OPEN CREDIT TELEGRAPHICALLY SIXTY

TONS ACCOUNT ADHAVJILTD COWPEAS FIFTYONE C.I.F. Exhibits
 STERLING SHIPMENT JUNECREST MAY BUY JANUARY P 3a
 SHIPMENT SEVENTY TONS FORTYEIGHT C.I.F. WHY Original of
 NOT REPLYING Cable by
 Aboobucker
 to Defendants
 25-12-1946.
 —continued.

D 3**Cable from Yakoob to Defendants**

D 3
 Cable from
 Yakoob to
 Defendants.
 26-12-1946.

CABLE & WIRELESS, LIMITED,
 "Via Imperial"

Office of Issue :

10

CABLE & WIRELESS, LIMITED,
 Colombo Branch

26 DEC., 1946

DS 59/B1 MOMBASA 20/19 26 1000 — LC RELI-
 ABLE COLOMBO — BOUGHT BHATIAS TWENTYFIVE
 TONS VATANA L 50 C.I.F. OPEN CREDIT IMMEDIATELY
 IF NOT CANT SHIP LIMBURG — YACOOB.

P 4**Copy of Cable by Aboobucker to Defendants****Copy of the Cable Despatched by Mr. M. Y. Aboobucker**

P 4
 Copy of Cable
 by Aboobucker
 to Defendants.
 26-12-1946.

20

RELIABLE,
 COLOMBO

27-12-46

OPEN CREDIT TELEGRAPHICALLY ODHAVJILTD
 TWENTYFIVE TONS COWPEAS JUNECREST THIRTYFIVE
 TONS FIELDPEAS CABRITA BOTH FIFTYONE C.I.F.
 AVAILABLE FIFTY TONS FIELDPEAS CABARITA £51
 C.I.F. IF YOU LIKE OPEN CREDIT.

Exhibits.
 P 4A
 Original of
 Cable by
 Aboobucker
 to Defendants
 28-12-1946.

P 4A

Original of Cable by Aboobucker to Defendants

P 4A

CABLE & WIRELESS, LIMITED,
 "Via Imperial"

Office of Issue :

CABLE & WIRELESS, LIMITED,
 Colombo Branch

28 DEC., 1946.

DS 71/B1 MOMBASA 34/30 27 1215 — LC RELI-10
 ABLE COLOMBO — OPEN CREDIT TELEGRAPHICALLY
 ODHAVJILTD TWENTYFIVE TONS COWPEAS JUNECEST
 THIRTYFIVE TONS FIELDPEAS CABARITA BOTH FIFTY-
 ONE C.I.F. AVAILABLE FIFTY TONS FIELDPEAS CABARITY
 L 51 C.I.F. IF YOU LIKE OPEN CREDIT TELEGRAPHI-
 CALLY SOC

P 5
 Bill of Lading.
 28-12-1946.

P 5

Bill of Lading

NORTHWARDS

INDIAN-AFRICAN LINE

20

THE BANK LINE LIMITED, LONDON

Agents :

Voyage
 B/L No. 113

Durban	..	John T. Rennie & Sons, Mauritius	..	Adam & Co.	
Cape Town	..	Thomson Watson & Co., Madagascar	..	Edwin Mayer & Co., Ltd., Tananarive	
Mossel Bay	..	Searles, Ltd., Calcutta	..	Graham's Trading Co. (India) Ltd.	30
Port Elizabeth	..	Machie Dunn & Co., Ran- goon	..	The Bank Line (Burma) Ltd.	
East London	..	John T. Rennie & Sons, Madras	..	The Bombay Co., Ltd.	

Lourenco Marques	John T. Rennie & Sons, Colombo	..	J. D. McLaren & Co. (Co- lombo), Ltd.
Beira	.. Manica Trading Co., Ltd., Singapore	..	Boustead & Co., Ltd.
Mombasa	.. African Mercantile Co., Ltd. Bangkok	..	The Anglo-Thi Corporation, Ltd.
Zanzibar	.. African Mercantile Co., Ltd. Saigon	..	Export & Import Co.

Exhibits
P 5
Bill of Lading.
28-12-1946.
—continued

Hong Kong and Shanghai The Bank Line (China) Limited .

AL AH 646 Bags Cow Peas (Chola)
COLOMBO (1 Feb. 1947)

Tons 59.19.1.24

Freight at shs. 66/- per ton of 20 cwts. : £197.18.3

Freight paid in Mombasa.

Accountable for leading marks only.

Single Second hand bags.

..... Bags torn and repaired.

20 Bags slack.

..... Bags patched.

Rates	}@.....	per ton of
of	@.....	per ton of
Freight	@.....	per ton of

**FREIGHT IS DUE AND PAYABLE ON SHIPMENT OF CARGO
LOST OR NOT LOST**

Shipped in good order and condition by Odhavji Anandji & Co., Ltd., in
and upon the Screw Vessel/steamer June Crest and now lying in the Port of
Mombasa and bound for Colombo

30 (646) Six hundred and forty-six packages merchandise
being marked and numbered as above and are to be delivered subject to the
exceptions and conditions hereinafter mentioned in like good order and condition
at or off Colombo unto order
or to his or their Assigns, freight as per margin, for the said goods to be paid
before delivery, or the ship to have a lien upon the said goods until freight is
paid. Average according to York-Antwerp Rules 1924.

IN WITNESS whereof the Master or Agents of the said ship hath
affirmed to Two Bills of Lading all of this tenor and date one of which Bills
being accomplished, the others to stand void.

Exhibits
 P 5
 Bill of Lading.
 28-12-1946.
 —continued.

Dated in Mombasa the 28th day of December, 1946.

FOR THE AFRICAN MERCANTILE Co., LTD.,
 Sgd. (Illegibly)
Agent for Master.

Penalty imposed by the " Merchant Shipping Acts " for shipping goods of a dangerous nature without notice is £100 but shippers are warned that in the event of destruction of or damage to other property arising from the fraudulent transmission of dangerous articles the parties making such false declaration are liable by law for the full amount of all the damages that may be sustained, through their misconduct and in case of fatal results would be exposed to a criminal prosecution.

The following are the exceptions and conditions referred to on the reverse side :—

1. The act of God, the King's Enemies, Pirates or Robbers by Sea or Land, Restraint of Princes, Rulers and People rising of Passengers, Strikes and Lockouts Vermin Barratry Fire on Board, in bulk or Craft or on shore and all accidents, loss or damage whatsoever from Explosion, Collision, Heat, Machinery, Boilers, Coal Dust, Fuel and Steam Navigation, Perils of the Sea or of land or Rivers of whatever nature or kind soever, or any act neglect or default whatsoever of the Pilot, Master, Officers, Crew, Engineers, Stokers or any Agents or Servant of the Owners or any person or persons, in providing, despatching and navigating the Ship or otherwise or detention, delay or deviation however caused, being excepted, and the Owners being in no way liable for, or for the consequences of any such case or occurrence however caused.
2. It is expressly declared that the Owners are not liable for loss or damage occasioned by any defects whatsoever in the Hull, Machinery or equipment of this vessel or any other vessel or vessels to which the goods may be transferred under the Bill of Lading whether the said defect existed before the commencement of or arose or developed during the vessel's voyage, provided all reasonable means have been taken to make the vessel or vessels seaworthy.
3. The Owners are not responsible for any detentions or non-delivery consequent upon the terms and conditions imposed by any Contracts entered into or that may be entered into by them.
4. The ship has liberty to sail with or without Pilots and to tow and assist vessels in all situations also either before or after proceeding towards the port of discharge to proceed to and stay at any ports or places whatsoever (although in a contrary direction to, or out of, or beyond, the route to the said port of discharge) once or oftener, in any order, backwards or forwards for the purpose of drydocking (even with cargo on board) or loading or discharging cargo or passengers for any purpose whatsoever. All the

said liberties, exceptions and conditions shall apply (any warranty, implied term, custom or rule of law to the contrary notwithstanding) although the vessel may have deviated from the contract voyage, and although such deviation may amount to change or abandonment of the voyage, all such deviations being deemed within the voyage, and notwithstanding unseaworthiness or unfitness of the Ship at the commencement or at any period of the voyage, and whether the goods are carried on or under deck, nothing in this Bill of Lading, whether written or printed or implied therefrom, shall limit or affect the provisions of this clause.

Exhibits
P 5
Bill of Lading.
28-12-1946.
—continued.

- 10 5. The Ship is not liable for delays in delivery arising from inaccuracies or absence of marks, numbers or address of goods or inaccurate description of goods shipped ; nor of leakage, breakage, loss or damage by seas, sweat, rust, decay, destruction, damage or vermin, unless occasioned by improper stowage ; nor for chipped edge split ends of dimensions of timber. The owners will not be responsible for the due delivery, unless each package is distinctly marked with the name of the Port for which it is destined.
6. The Ship will not be liable for gold, silver, bulion, specie, jewellery, precious stones, precious metals, or for indigo, opium or other valuable goods, or beyond the amount of One Hundred pounds sterling for any one package, unless Bills of Lading are signed for such goods, and the value declared therein.
7. If Chemicals or other goods of a dangerous nature are shipped without being previously arranged for they are liable to be thrown overboard and their loss as well as any loss or damage to the ship or cargo will fall upon the Shippers or owners of such goods.
8. Where goods are to be received on board from craft alongside, or to be discharged into craft alongside, they shall be so shipped or discharged at the sole risk of the Shipper or Receiver and the Owners shall not be liable for any accident, loss or damage happening to the goods during, or arising out of, such shipment or discharge under any circumstances whatever.
9. The goods to be taken by the Consignees as and when they come to hand in discharging the Ship, otherwise the Master to be entitled to land the same or discharge them into lighters at the Merchant's risk and expense.
10. In the event of Quarantine being imposed at any Port, or the prevalence of bad weather, or the existence or any other cause likely to detain the Ship, the goods may be discharged into any Vessel, Craft, or Depot, and such discharge shall be considered a final delivery of the goods under the Bill of Lading.
- 40 11. The Owners are not responsible for any consequences arising from the sanitary or other regulations of the Local Government Authorities which may prevent or delay the disembarkation of the goods. No goods will be

Exhibits
 P 5
 Bill of Lading.
 28-12-1946.
 —continued.

delivered without previous production of the Bill of Lading, and unless Receipts are given at the Ship's Gangway for all cargo received into Craft, the Company will not be liable for any claim arising from loss, short delivery, damage &c.

12. If any impediment of any description renders the immediate discharge of the cargo impracticable, the goods may be carried on to any other port or place ports or places brought back to the port of destination and if similar impediments render it necessary to retain the goods on board, then they may be landed at the port of shipment or transshipment or conveyed back to their destination, at the merchant's risk throughout. 10
13. Goods on wharf or in lighter before shipment shall be at the Skipper's risk of loss or damage. In every case the Consignee shall bear all expenses and risks incurred after the goods leave the ship's deck, where the Ship's responsibility ceases.
14. A written declaration of the contents and value of goods must be delivered by the Shippers to the owners or Agents before shipment and an untrue declaration shall, release the owners from all responsibilities and shall entitle the Company to charge double freight on the real value.
15. All fines, losses, costs, damages, or expenses caused by detention of Ship or Cargo, arising from any omissions or errors herein as to marks, numbers, 20 weight, contents, and description of packages or goods or in any particulars required by the authorities at any of the Ports of Discharge shall be paid by the Consignee of goods, and ship is to have a lien on the said goods until such charges are paid.
16. The Ship has the right to tranship or land and store the goods ashore or afloat and reship and forward the same at the Ship's expense but at Merchant's risk.
17. Notwithstanding anything herein contained to the contrary in the event of restrictions of Quarantine, Prohibition, Sanitary or Customs or Labour Regulations, Lockouts or Strike Blockade or Interdict at the Port of 30 Discharge War or Disturbance or other like cause preventing or threatening to prevent the ordinary discharge of the goods or any portion thereof at the Port of destination such goods or any portion thereof may at the Vessel's option either be put into other vessels or be retained on board and landed and warehoused and otherwise disposed of as circumstances may admit wheresoever most convenient to the vessel and re-shipped thence to destination as soon as conveniently may be after such restrictions as aforesaid have been removed or be returned to Port of shipment, and all expenses whatsoever incurred in such landing, warehousing, transshipment, over-carriage or return carriage or otherwise shall be borne by the shipper or Consignee the 40 Company having a lien on the goods therefor. The Company shall not be responsible for loss or damage of any kind which may result directly or indi-

rectly from the above causes or any of them and the goods shall throughout be at the Shipper's or Consignee's risk.

Exhibits

P 5

Bill of Lading.
28-12-1946.
—continued.

18. Delivery by the Company of packages externally in good condition as received shall be conclusive evidence of delivery of full weight and contents.
19. No claim that may arise in respect of goods shipped by this steamer will be recoverable unless made at the port of delivery within 14 days of Steamer's departure thence.
20. In accepting this Bill of Lading, the Shipper on behalf of all concerned accepted and agrees to all its stipulations exceptions and conditions whether printed or written.
21. All the terms, provisions and conditions of the Carriage of goods by Sea Act 1924 and the Schedule thereto are to apply to the contract contained in this Bill of Lading and the carriers are to be entitled to the benefit of all privileges, rights and immunities contained in such Act and the schedule thereto as if the same were specifically set out. If or not to the extent that any term of this Bill of Lading is repugnant to or inconsistent with anything in such act or schedule it shall be void.

War Clause.—In the event of the imminence or existence of any of the following :—

- 20 War between any nations or civil war, prohibition, restriction or control by any Government of intercourse, commercial or otherwise with any country from or to which the vessel normally proceeds or calls, control or direction by any Government or other Authority of the use of movements of the vessel or the insulated or other space in the vessel, the Carrier and/or his Agents and/or the Master, if he or they consider that the vessel or her Master, Officers, Crew, Passengers, or any of them, or cargo or any part thereof will be subject to loss, damage, injury, detention or delay in consequence of the said war, prohibition, civil war, restriction, control or direction may at any time before or after the commencement of the voyage alter or vary or depart from the proposed or
- 30 advertised or agreed or customary route or voyage and/or delay or detain the vessel and/or discharge of the cargo (for delivery or storage or transhipment) at or off any port or ports place or places without being liable for any loss or damage whatsoever directly or indirectly sustained by the owner of the goods. If and when the goods are so discharged at such port or ports, place or places they shall be landed or put into craft or vessels at the expense and risk of the Owner of the goods and the Carrier's responsibility shall cease at the vessel's rail the Carrier, Master or Agents giving notice of such discharge to the consignee of the goods so far as he is known. The vessel in addition to any liberties expressed or implied herein, shall have liberty to comply with any orders or directions as
- 40 to departure, arrival, route, voyage, ports of call, delay, detention, discharge (for delivery or storage or transhipment) or otherwise howsoever, given by any Government or other Department thereof, or any person acting or purporting

Exhibits
 P 5
 Bill of Lading.
 28-12-1946.
 —continued.

to act with the authority of any Government or of any Department thereof, or by any committee or person having under the terms of the War Risks Insurance on the vessel the right to give such orders or directions and if by reason of or in compliance with any such orders or directions or by the reason of the exercise by the Carrier of any other liberty mentioned in this clause anything is done or is not done as same shall be within this contract. Discharge under any liberty mentioned in this clause shall constitute due delivery of the goods under this Bill of Lading and the owner and/or Consignee of the goods shall bear and pay all charges and expenses resulting from such discharge and the full freight stipulated herein, if not prepaid, shall on such discharge become immediately due and payable by the Owner and/or Consignee of the goods, and if freight has been prepaid the carrier shall be entitled to retain the same. The vessel is free to carry contraband, explosives, munitions of warlike stores, and may sail armed or unarmed. 10

If the ship is not owned or chartered by demise to the Company or line by whom this Bill of Lading is issued (as may be the case notwithstanding anything that appears to the contrary) this Bill of Lading shall take effect only as a contract with the owner or demise charterer as the case may be as principal made through the agency of the said company or line who act as agents only and shall be under no personal liability whatsoever in respect thereof. 20

U. S. A. "Both to Blame" Collision Clause.—

"If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder, will indemnify the carrier against all loss or liability to the other or non-carrying ship or her owners in so far as such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of the said goods, paid or payable by the other or non-carrying ship or her owners to the owners of the said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carriers." 30

The foregoing provisions shall also apply where the owners, Operators or those in charge of any ship or ships or object other than, or in addition to, the colliding ships or objects are at fault in respect of a collision or contract.

General Average shall be payable according to the York-Antwerp Rules 1924, but where the adjustment is made in accordance with the Law and practice of the United States of America, the following Clause shall apply :—

In the event of accident, danger, damage or disaster before or after the commencement of the voyage resulting from any cause whatsoever whether due to negligence or not, for which or for the consequence of which, the carrier is not responsible by statute contract or otherwise the goods shippers, consignees or owners of the goods shall contribute with the carrier in general average to 40

the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the goods.

Exhibits
P 5
Bill of Lading.
28-12-1946.
—continued.

If a salving ship is owned or operated by the carrier, salvage shall be paid as fully as if the said salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery.—

10 Disclosure of the contents of this bill of lading to my unauthorised person may involve an offence against the Espionage Act of the United States (50 USC 31 and 32 as amended) or against the official Secrets Act 1911 and 1920 or the defenece (General) Regulations of the United Kingdom.

ODHAVJI ANANDJI & CO. LTD.

Sgd.

Secretary.

P 5A

Copy of Bill of Lading

P 5A
Copy of Bill
of Lading.
1-2-1947.

INDIAN-AFRICAN LINE

20 THE BANK LINE LIMITED, LONDON

		Voyage	
		B/L No. 113	
		Agents :	
Durban	.. John T. Rennie & Sons, Mauritius	..	Adam & Co.
Cape Town	.. Thomson Watson & Co., Searles, Ltd.	..	Edwin Mayer & Co., Ltd.,
Cape Town	.. Thomson Watson & Co., Madagascar	..	Edwin Mayer & Co., Ltd., Tananarive
30 Mossel Bay	.. Searles, Ltd., Calcutta	..	Graham's Trading Co. (India) Ltd.
Port Elizabeth	.. Mackie Dunn & Co., Ran- goon	..	The Bank Line (Burma) Ltd.
East London	.. John T. Rennie & Sons, Madras	..	The Bombay Co., Ltd.

Exhibits <hr style="width: 50px; margin-left: 0;"/> P 5A Copy of Bill of Lading. 1-2-1947. —continued.	Lourenco Marques	John T. Rennie & Sons, Colombo	..	J. D. McLaren & Co. (Co- lombo), Ltd.	
	Beira	.. Manica Trading Co., Ltd., Singapore	..	Boustead & Co., Ltd.	
	Mombasa	.. African Mercantile Co., Ltd. Bangkok	..	The Anglo-Thi Corporation, Ltd.	
	Zanzibar	.. African Mercantile Co., Ltd. Saigon	..	Export & Import Co.	10
		Hong Kong and Shanghai		The Bank Line (China) Limited	

AL AH 646 Bags Cow Peas (Chola)
 COLOMBO

1st Feby. 1947

Tons 59.19.1.24

Freight at shs. 66/- per ton of 20 cwts. : £197.18.3

Freight paid in Mombasa.

Accountable for leading marks only.

Single Second hand bags.

- Bags torn and repaired. 20
- Bags slack.
- Bags patched.

Rates —.....@..... per ton of

of —.....@..... per ton of

Freight —.....@..... per ton of

**FREIGHT IS DUE AND PAYABLE ON SHIPMENT OF CARGO, SHIP/OR
 CARGO LOST OR NOT LOST**

Shipped in good order and condition by Odhavji Anandji & Co., Ltd., in and upon the Screw Vessel/(steamer) June Crest and now lying in the Port of Mombasa and bound for Colombo (646) Six hundred and forty-six packages 30 merchandise being marked and numbered as above and are to be delivered subject to the exceptions and conditions hereinafter mentioned in like good order and condition at or off Colombo unto order or to his or their Assigns, freight as per margin, for the said goods to be paid before delivery, or the ship to have a lien upon the said goods until freight is paid. Average according to York-Antwerp Rules 1924.

In witness whereof the Master or Agents of the said ship hath affirmed to Two Bills of Lading all of this tenor and date one of which Bills being accomplished, the others to stand void.

Dated in Mombasa the 28th day of December, 1946.

ODHAVJI ANANDJI & Co.,
Sgd. _____,
Secretary.

FOR THE AFRICAN MERCANTILE CO., LTD.,
Sgd. (Illegibly)
Agents for Master.

Exhibits
P 5A
Copy of Bill
of Lading
1-2-1947.
—continued.

Penalty imposed by the " Merchant Shipping Acts " for shipping goods of a dangerous nature without notice is £100 but shippers are warned that in the event of destruction of or damage to other property arising from the fraudulent transmission of dangerous articles the parties making such false declaration are liable by law for the full amount of all the damages that may be sustained, through their misconduct and in case of fatal results would be exposed to a criminal prosecution.

The following are the exceptions and conditions referred to on the reverse side :—

1. The act of God, the King's Enemies, Pirates or Robbers by Sea or Land, Restraint of Princes, Rulers and People rising of Passengers, Strikes and Lockouts Vermin Barratry Fire on Board, in hulk or Craft or on shore and all accidents, loss or damage whatsoever from Explosion, Collision, Heat, Machinery, Boilers, Coal Dust, Fuel and Steam Navigation, Perils of the Sea or of land or Rivers of whatever nature or kind soever, or any act neglect or default whatsoever of the Pilot, Master, Officers, Crew, Engineers, Stokers, or any Agents or Servant of the Owners or any person or persons, in providing, despatching and navigating the Ship or otherwise or detention, delay or deviation however caused, being excepted, and the Owners being in no way liable for, or for the consequences of any such case or occurrence however caused.
2. It is expressly declared that the Owners are not liable for loss or damage occasioned by any defects whatsoever in the Hull, Machinery or equipment of this vessel or any other vessel or vessels to which the goods may be transferred under the Bill of Lading whether the said defect existed before the commencement of or arose or developed during the vessel's voyage, provided all reasonable means have been taken to make the vessel or vessels seaworthy.
3. The Owners are not responsible for any detentions or non-delivery consequent upon the terms and conditions imposed by any Contracts entered into or that may be entered into by them.
4. The ship has liberty to sail with or without Pilots and to tow and assist vessels in all situations also either before or after proceeding towards the port of discharge to proceed to and stay at any ports or places whatsoever (although in a contrary direction to, or out of, or beyond, the route to the said port of discharge) once or oftener, in any order, backwards or forwards

Exhibits
 P 5A
 Copy of Bill
 of Lading.
 1-2-1947.
 —continued.

for the purpose of drydocking (even with cargo on board) or loading or discharging cargo or passengers for any purpose whatsoever. All the said liberties, exceptions and conditions shall apply (any warranty, implied term, custom or rule of law to the contrary notwithstanding) although the vessel may have deviated from the contract voyage, and although such deviation may amount to change or abandonment of the voyage, all such deviations being deemed within the voyage, and notwithstanding unseaworthiness or unfitness of the Ship at the commencement or at any period of the voyage, and whether the goods are carried on or under deck, nothing in this Bill of Lading, whether written or printed or implied there- 10 from, shall limit or affect the provisions of this clause.

5. The Ship is not liable for delays in delivery arising from inaccuracies or absence of marks, numbers or address of goods or inaccurate description of goods shipped ; nor for leakage, breakage, loss or damage by seas, sweat, rust, decay, destruction, damage or vermin, unless occasioned by improper stowage ; nor for chipped edges split ends of dimensions of timber. The owners will not be responsible for the due delivery, unless each package is distinctly marked with the name of the Port for which it is destined.
6. The Ship will not be liable for gold, silver, bullion, specie, jewellery, precious stones, precious metals, or for indigo, opium or other valuable goods, or 20 beyond the amount of One Hundred pounds sterling for any one package, unless Bills of Lading are signed for such goods, and the value declared therein.
7. If Chemicals or other goods of a dangerous nature are shipped without being previously arranged for they are liable to be thrown overboard and their loss as well as any loss or damage to the ship or cargo will fall upon the Shippers or owners of such goods.
8. Where goods are to be received on board from craft alongside, or to be discharged into craft alongside, they shall be so shipped or discharged at the sole risk of the Shipper or Receiver and the Owners shall not be liable 30 for any accident, loss or damage happening to the goods during, or arising or arising out of, such shipment or discharge under any circumstances whatever.
9. The goods to be taken by the Consignees as and when they come to hand in discharging the Ship, otherwise the Master to be entitled to land the same or discharge them into lighters at the Merchant's risk and expense.
10. In the event of Quarantine being imposed at any Port, or the prevalence of bad weather, or the existence or any other cause likely to detain the Ship, the goods may be discharged into any Vessel, Craft, or Depot, and such discharge shall be considered a final delivery of the goods under the 40 Bill of Lading.

11. The Owners are not responsible for any consequences arising from the sanitary or other regulations of the Local Government Authorities which may prevent or delay the disembarkation of the goods. No goods will be delivered without previous production of the Bill of Lading, and unless Receipts are given at the Ship's Gangway for all cargo received into Craft, the Company will not be liable for any claim arising from loss, short delivery, damage &c.
12. If any impediment of any description renders the immediate discharge of the cargo impracticable, the goods may be carried on to any other port or place ports or places and brought back to the port of destination, and if similar impediments render it necessary to retain the goods on board, then they may be landed at the port of shipment or transhipment or conveyed back to their destination, at the merchant's risk throughout.
13. Goods on wharf or in lighter before shipment shall be at the Skipper's risk of loss or damage. In every case the Consignee shall bear all expenses and risks incurred after the goods leave the ship's deck, where the Ship's responsibility ceases.
14. A written declaration of the contents and value of goods must be delivered by the Shippers to the owners or Agents before shipment and an untrue declaration shall, release the owners from all responsibilities and shall entitle the Company to charge double freight on the real value.
15. All fines, losses, costs, damages, or expenses caused by detention or Ship or Cargo, arising from any omissions or errors herein as to makes, numbers, weight, contents, and description of packages or goods or in any particulars required by the authorities at any of the Ports of Discharge shall be paid by the Consignee of goods, and ship is to have a lien on the said goods until such charges are paid.
16. The Ship has the right to tranship or land and store the goods either ashore or afloat and reship and forward the same at the Ship's expense but at Merchant's risk.
17. Notwithstanding anything herein contained to the contrary in the event of restrictions of Quarantine, Prohibition, Sanitary or Customs or Labour Regulations, Lockouts or Strike Blockade or Interdict at the Port of Discharge War or Disturbance or other like cause preventing or threatening to prevent the ordinary discharge of the goods or any portion thereof at the Port of destination such goods or any portion thereof may at the Vessel's option either be put into other vessels or be retained on board and landed and warehoused or otherwise disposed of as circumstances may admit wheresoever most convenient to the vessel and re-shipped thence to destination as soon as conveniently may be after such restrictions as aforesaid have been removed or be returned to Port of shipment, and all expenses whatsoever incurred in such landing, warehousing, transhipment, over-carriage

Exhibits.
P 5A
 Copy of Bill
 of Lading.
 1-2-1947.
 —continued

Exhibits
 P 5A
 Copy of Bill
 of Lading,
 1-2-1947.
 —continued.

or return carriage or otherwise shall be borne by the shipper or Consignee the Company having a lien on the goods therefore. The Company shall not be responsible for loss or damage of any kind which may result directly or indirectly from the above causes or any of them and the goods shall throughout be at the Shipper's or Consignee's risk.

18. Delivery by the Company of packages externally in good condition as received shall be conclusive evidence of delivery of full weight and contents.
19. No claim that may arise in respect of goods shipped by this steamer will be recoverable unless made at the port of delivery within 14 days of Steamer's departure thence. 10
20. In accepting this Bill of Lading, the Shipper on behalf of all concerned accepted and agrees to all its stipulations exceptions and conditions whether printed or written.
21. All the terms, provisions and conditions of the Carriage of goods by Sea Act 1924 and the Schedule thereto are to apply to the contract contained in this Bill of Lading and the carriers are to be entitled to the benefit of all privileges, rights and immunities contained in such act and the schedule thereto as if the same were specifically set out. If or not to the extent that any term of this Bill of Lading is repugnant to or inconsistent with anything in such act or schedule it shall be void. 20

War Clause.—In the event of the imminence or existence of any of the following :—

War between any nations or civil war, prohibition, restriction or control by any Government of intercourse, commercial or otherwise with any country from or to which the vessel normally proceeds or calls, control or direction by any Government or other Authority of the Use of movements of the vessel or the insulated or other space in the vessel, the Carrier and/or his Agents and/or the Master, if he or they consider that the vessel or her Master, Officers, Crew, Passengers, or any of them, or cargo or any part thereof will be subject to loss, damage, injury, detention or delay in consequence of the said war, prohibition, 30 civil war, restriction, control or direction may at any time before or after the commencement of the voyage alter or vary or depart from the proposed or advertised or agreed or customary route or voyage and/or delay or detain the vessel and/or discharge the cargo (for delivery or storage or transshipment) at or off any port or ports place or places without being liable for any loss or damage whatsoever directly or indirectly sustained by the owner of the goods. If and when the goods are so discharged at such port or ports, place or places they shall be landed or put into craft or vessels at the expense and risk of the Owner of the goods and the Carrier's responsibility shall cease at the vessel's sail the Carrier, Master or Agents giving notice of such discharge to the consignee of the 40 goods so far as he is known. The vessel in addition to any liberties expressed or implied herein, shall have liberty to comply with any orders or directions as

to departure, arrival, route, voyage, ports of call, delay, detention, discharge (for delivery or storage or transshipment) or otherwise howsoever, given by any Government or other Department thereof, or any person acting or purporting to act with the authority of any Government or of any Department thereof, or by any committee or person having under the terms of the War Risks Insurance on the vessel the right to give such orders or directions and if by reason of or in compliance with any such orders or directions or by reason of the exercise by the Carrier of any other liberty mentioned in this clause anything is done or is not done the same shall be within this contract. Discharge under any liberty
 10 mentioned in this clause shall constitute due delivery of the goods under this Bill of Lading and the owner and/or Consignee of the goods shall bear and pay all charges and expenses resulting from such discharge and the full freight stipulated herein, if not prepaid, shall on such discharge become immediately due and payable by the Owner and/or Consignee of the goods, and if freight has been prepaid the carrier shall be entitled to retain the same. The vessel is free to carry contraband, explosives, munitions of warlike stores, and may sail armed or unarmed.

Exhibits
 P 5A
 Copy of Bill
 of Lading.
 1-2-1947.
 —continued.

If the ship is not owned or chartered by demise to the Company or line by whom this Bill of Lading is issued (as may be the case notwithstanding anything
 20 that appears to the contrary) this Bill of Lading shall take effect only as a contract with the owner or demise charterer as the case may be as principal made through the agency of the said company or line who act as agents only and shall be under no personal liability whatsoever in respect thereof.

U. S. A. "BOTH TO BLAME" COLLISION CLAUSE

" If the ship comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship, the owners of the goods carried hereunder, will indemnify the carrier against all loss or liability to the other or non-carrying ship or her owners in so far as
 30 such loss or liability represents loss of, or damage to, or any claim whatsoever of the owners of the said goods, paid or payable by the other or non-carrying ship or her owners to the owners of the said goods and set off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the carrying ship or carriers."

The foregoing provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects other than or in addition to, the colliding ships or objects are at fault in respect of a collision or contact.

General Average shall be payable according to the York-Antwerp Rules 1924, but where the adjustment is made in accordance with the Law and practice
 40 of the United States of America, the following Clause shall apply :—

In the event of accident, danger, damage or disaster before or after the commencement of the voyage resulting from any cause whatsoever whether due

Exhibits
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 Copy of Bill
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 —continued.

to negligence or not, for which or for the consequence of which, the carrier if not responsible by statute contract or otherwise the goods shippers, consignees or owners of the goods shall contribute with the carrier in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the goods.

If a salving ship is owned or operated by the carrier, salvage shall be paid as fully as if the said salving ship or ships belonged to strangers. Such deposit as the carrier or his agents may deem sufficient to cover the estimated contribution of the goods and any salvage and special charges thereon shall, if required, be made by the goods, shippers, consignees or owners of the goods to the carrier before delivery.

Disclosure of the contents of this bill of lading to any unauthorized person may involve an offence against the Espionage Act of the United States (50 USC 31 and 32 as amended) or against the Official Secrets Act 1911 and 1920 or the defence (General) Regulations of the United Kingdom.

ODHAJI ANANDJI & CO. LTD.

(Sgd.)

Secretary.

E. B. Creasy & Co. Ltd.

(Sgd.)

Please deliver to the ...

E. B. Creasy & Co. Ltd.

(Sgd.)

20

D 4
 Cable from
 Yakoob to
 Defendants.
 28-12-1946.

D 4

Cable from Yakoob to Defendants

D 4

CABLE & WIRELESS, LIMITED,
 "Via Imperial"

Office of Issue :

CABLE & WIRELESS, LIMITED,
 Colombo Branch.

COLOMBO

28 Dec., 46
 TELEGRAPHS

28th Dec., 1946.

30

DS 103/RD 97/B 1 DARESSALAAM 1928 1525 = NLT
 RELIABLE COLOMBO = PROCEEDING LOURENCOMARQUES
 EXAMINING QUALITY WEIGHTS ESMAILS SIXHUNDRED
 TONS OPEN CREDIT MY FAVOUR AT LOURENÇO-
 MARQUES = JACOOB,

Insurance in Respect of 646 Bags of Cowpeas**IMPORTANT**

Exhibits
 P 6
 Insurance in
 Respect of
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 Cowpeas.
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Consignees should find out if their cargo is damaged as soon as possible after arrival, and in case of loss or damage, a claim must immediately be filed in writing against the vessel or other carrier before taking delivery; copies thereof and of the reply thereto must accompany any claim presented under this Policy, in addition to the usual certificate of loss issued by the Underwriters' Agent. Liability under this Policy is only to succeed and not in any degree supersede any claim which the Insured may be entitled to make on the carrier.

Reference should be made to the clause in the margin regarding survey and notice of claim given to the firm referred to within 15 days after arrival of the goods at destination.

INSTITUTE CARGO CLAUSES*(Wartime Extension)*

Clauses 1, 3 and 4 of the Institute Cargo Clauses are deemed to be deleted and the following clauses substituted :—

1. This insurance attaches from the time the goods leave the warehouse at the place named in the policy for the commencement of the transit and continues until the goods are delivered to the final warehouse at the destination named in the policy or a substituted destination as provided in Clause 3 hereunder.
2. This insurance specially to cover the goods during—
 - (i) deviation, delay, forced, discharge, reshipment and transshipment ;
 - (ii) any other variation of the adventure arising from the exercise of a liberty granted to the shipowner or charterer under the contract of affreightment.
3. In the event of the exercise of any liberty granted to the shipowner or charterer under the contract of affreightment whereby such contract is terminated at a port or place other than the destination named herein, the insurance continues until the goods are sold and delivered at such port or place, or if the goods be not sold but are forwarded to the destination named herein or to any other destination this insurance continues until the goods have arrived at final warehouse as provided in Clause 1.

Exhibits
 P 6
 Insurance in
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4. If while this insurance is still in force and before the expiry of 15 days from midnight of the day on which the discharge overseas of the goods hereby insured from overseas vessel at the final port of discharge is completed the goods are re-sold (not being a sale within the terms of clause 3) and are not be forwarded to a destination other than that covered by this insurance the goods are covered hereunder while deposited at such port of discharge until again in transit or until the expiry of the aforementioned 15 days whichever shall first occur. If a sale is effected after the expiry of the aforementioned 15 days while this insurance is still in force the protection afforded hereunder shall cease as from time of the sale.

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5. Held covered at a premium to be arranged in case of change of voyage or of any omission or error in the description of the interest vessel or voyage.

6. This Insurance shall in no case be deemed to extend to cover loss, damage or expense proximately caused by delay or inherent vice or nature of the subject matter insured.

7. It is a condition of this Insurance that the assured shall act with reasonable despatch in all circumstances within their control.

Institute War Clause

1. The Policy Covers :—

- (a) The risks excluded from the Standard Form of English Marine 20 Policy by the Clause: "Warranted free of capture, seizure, arrest, restrains or detainment, and the consequences thereof or of any attempt thereat; also from the consequences of hostilities or warlike operations, whether, there be a declaration of war or not; but this warranty shall not exclude collision, contact with any fixed or floating object (other than a mine or torpedo), stranding, heavy weather or fire unless caused directly (and Independently of the nature of the voyage or service which the vessel concerned or in the case of a collision any other vessel involved therein, is performing) by a hostile 30 act by or against a belligerent power; and for the purpose of this warranty 'power' includes any authority maintaining naval, military or air forces in association with a power. Further warranted free from the consequences of civil war, revolution, rebellion, insurrection, or civil strife arising therefrom or piracy."
- (b) Loss of or damage to the interest hereby insured caused by (1) hostilities, warlike operation, civil war, revolution, rebellion, insurrection or civil strife arising therefrom. (2) mines, torpedoes, bombs or other engines of war but excluding loss 40 or damage covered by the Standard Form of English Marine

Policy with the Free of Capture &c. Clause (as quoted in Exhibits
1 (a) inserted therein). P 6

2. Notwithstanding the provisions of Clause 1, this policy is warranted free of any claim based upon loss of, or frustration of, the insured voyage or adventure caused by arrests restraints or detainments of Kings, Princes, Peoples, Usurpers or persons attempting to usurp power. Insurance in Respect of 646 Bags of Cowpeas. 30-12-46. —continued.

3. The insurance against the risks covered by these clauses attaches only as the interest hereby insured is first loaded on the vessel or craft after such interest leaves the warehouse at the place named in the policy for the commencement of the transit and ceases to attach as the interest is discharged overside finally from the vessel or craft prior to delivery to warehouse at the destination named in the policy (or a substituted destination as provided in Clause 6).

4. If anything contained in this policy shall be inconsistent with Clause 2 and 3 it shall to extent of such inconsistency be null and void.

5. This insurance covers the interest hereby insured during—

- (i) transit by craft to or from the vessel.
- (ii) deviation delay forced discharge re-shipment and transshipment,
- (iii) any other variation of the adventure arising from the exercise of a liberty granted to the shipowner or charterer under the contract of affreightment.

6. In the event of the interest hereby insured being discharged at a port or place other than the destination named herein, in circumstances beyond the control of the Assured the insurance continues until the interest is sold and delivered at such port or place or if the interest be not sold but forwarded by vessel or craft to the destination named herein or to any other destination the insurance continues until the vessel or craft arrives at the original or substituted final port of place of discharge and thereafter as provided in clause 3.

7. Held covered at a premium to be arranged in case of change of voyage or of any omission or error in the description of the interest vessel or voyage.

8. Warranted free of loss or damage proximately caused by delay, inherent vice or loss of market or of any claim for expenses arising from delay except such expenses as would be recoverable in principle in English law and practice under York-Antwerp Rules 1924.

9. General average and salvage charges payable (subject to the terms of these clauses) according to Foreign Statement or York-Antwerp Rules if in accordance with the contract of affreightment.

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 —continued.

10. Claims for loss or damage within the terms of these clauses shall be payable without reference to average conditions.

11. It is a condition of this insurance that the Assured shall act with reasonable despatch in all circumstances within their control.

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INSTITUTE STRIKE CLAUSES

1. This Policy covers—

- (a) the risks excluded from the Standard Form of English Marine Policy by the clause : “ Warranted free of loss or damage caused by strikers, locked out workmen or persons taking part 10 in labour disturbances, riots or civil commotion.
- (b) theft or pilferage by or other loss of or damage to the property hereby insured caused by strikers, locked-out workmen or persons taking part in labour disturbances, riots or civil commotion,
- (c) destruction of or damage to the property hereby insured, caused by persons acting maliciously.

The above-mentioned clauses shall not cover theft, pilferage, loss or damage caused by hostilities, warlike operations, civil war, or by revolution, rebellion, insurrection or civil strife arising therefrom. 20

Warranted free of loss or damage proximately caused by delay, inherent, vice or loss of market, or of any claim for expenses arising from delay except such expenses as would be recoverable in principle in English law and practice under York-Antwerp Rules 1924.

General average and salvage charges payable (subject to the terms of these clauses) according to Foreign Statement of York-Antwerp Rules if in accordance with the contract of affreightment.

Claims for loss or damage within the terms of these clauses shall be payable without reference to condition of average.

2. Held covered at a premium to be arranged in case of deviation or 40 deviation or charge of voyage, or other variation of the adventure by reason of the exercise of any liberty granted to the shipowner or charterer under the contract of affreightment or of any omission or error in the description of the interest vessel or voyage.

3. In the event of the exercise of any liberty granted to the shipowner or charterer or under the contract of affreightment whereby such contract is

terminated at a port or place other than the destination named therein, the goods are held covered in terms of these clauses at a premium to be arranged until sold and delivered at such port or place or notice be given to underwriters to terminate the policy whichever first occurs or, if the goods be forwarded to the destination named herein or to any other destination until arrival at destination (subject to the provisions of clause 4 as to the period covered after discharge overside from the overseas vessel at final port).

Exhibits
Insurance in
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—continued.

4. This insurance attaches from the time the goods leave the warehouse and/or store at the place named in the policy for the commencement of the transit and continues during the ordinary course of transit including customary transshipment if any until the goods are discharged overside from the overseas vessel at the final port. Therafter the insurance continues whilst the goods are in transit and/or awaiting transit until delivered to final warehouse at the destination named policy or until the expiry of...days (or 30 days if the destination to which the goods are insured. × × × × (torn.)

No. M.B./55989

Amount Insured : £3,425/- E.C.

Rate per cent as agreed.

Amount of Premium : £ as agreed.

20 1. Warranted free from Particular Average unless the vessel or craft be stranded sunk or burnt but notwithstanding this warranty the Underwriters are to pay the insured value of any package or packages which may be totally lost in loading transshipment or discharge also for any loss or of damage to the interest insured which may reasonably be attributed to fire collision or contact of the vessel and or craft and/or conveyance with any external substance (ice included) other than water or to discharge of cargo at port of distress also to pay landing warehousing, forwarding and special charges if incurred for which Underwriters would be liable under a policy covering Particular Average. This clause shall operate during the whole period covered by the Policy.

30 2. Warranted free of capture seizure, arrest restraint or detainment and the consequences thereof or of any attempt thereat ; also from the consequences of hostilities or warlike operations whether there be a declaration of war or not ; but this warranty shall not exclude collision contact with any fixed or floating object (other than a mine or torpedo) stranding heavy weather, or fire unless caused directly (and independently of the nature of the voyage or service which the vessel concerned or in the case of a collision any other vessel involved therein, is performing) by a hostile act by or against a belligerent power and for the purpose of this warranty " power " includes any authority maintaining naval, military or air force in association with the power.

40 Further warranted free from the consequences of civil war, revolution rebellion, insurrection or civil strife arising therefrom or piracy.

Exhibits
 P 6
 Insurance in
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 —continued.

3. Should Clause 2 be deleted the current Institute War Clauses relevant to the particular form of transit covered by this Insurance shall be deemed to form part of this contract.

4. Warranted free of loss or damage caused by strikes locked-out workmen or persons taking part in labour disturbances or civil commotion.

5. Should Clause No. 4 be deleted the current Institute Strike Clauses shall be deemed to form part of this contract. 10

6. The clauses printed on the back hereof are to have the same effect as if they were printed in this margin.

7. This policy not to inure to the benefit of any Fire Insurance Company or Underwriter.

8. Subject to the Institute Dangerous Drugs Clause on back hereof.

9. In the event of a general average arising under this policy the Insured is requested not to sign any general average bond or pay any general 20 average deposit without first consulting the Agents of this Company.

Claims, if any payable by Co.'s Colombo Agent, Jas. Finlay & Co., Ltd., at the current rate of exchange for demand drafts.

In the event of damage for which the Company may be liable occurring during the voyage all claims for Average must be accompanied by a Certificate from

The Company's Agent at Port of discharge or 30 in cases where the Company has no Agent by a Certificate from Lloyd's Agent without which Certificate no claim for loss will be paid.

N.B.—Notice must be given to the Company's Agent (or to Lloyd's Agent as above) previous to the Survey.

LONDON OFFICE :
 4, Fenchurch Avenue, E.C. 4.

CARGO POLICY

THE
SOUTH (Seal) BRITISH

*Incorporated in New Zealand
Founded 1872*

INSURANCE COMPANY, LIMITED

Capital Authorized :	Paid-up Capital :
£2,000,000	£1,031,640

The South British Insurance Company, Limited, for the consideration 10 hereinafter provided and subject to the conditions and warranties herein specified DOES BY THESE PRESENTS HOLD INSURED ODHAVJI ANANDJI & Co., LTD., as well as his or their own name as in that of those to whomsoever the same may appertain and whether lost or not lost at and from Mombasa to Colombo in the sum of £3,425 (Three thousand Four hundred Twenty-five pounds English currency) upon 646 bags Cowpeas (Chora) marked : ALAH, COLOMBO.

War Risk Only

Warranted with Particular Average amounting to 3% on each £100 or on the whole including War Risk as per slip attached hereto including strike, 20 riot and civil commotion risks.

Warranted to sail within seven days from the date of issue of this Policy

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Valued as insured in the good Ship or Vessel called the ss. " June-crest " whereof is (or whoever else with approval of the Company when practicable shall or may be) Master beginning the adventure upon the aforesaid interest from the loading thereof on board the said vessel as aforesaid and continuing during the time or voyage as aforesaid until landed, including risk of craft, raft, and/or lighter to and from the vessel. Each craft, raft and/or lighter to be deemed a separate 30 insurance. The assured are not to be prejudiced by any agreement exempting lightermen from liability.

And it shall be lawful for the said Ship in this voyage to proceed and sail to and touch and stay at any Ports or Places wheresoever, if thereunto obliged by stress of weather or for necessary purposes, without prejudice to this Insurance.

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—continued

Exhibits.
 P 6
 Insurance in
 Respect of
 646 Bags of
 Cowpeas.
 30-12-46.
 —continued.

The Adventures and Perils which the Company is content to bear and does take upon itself in this Voyage are :—Seas, Men-of-War, Fire, Enemies, Pirates, Rovers, Assailing Thieves, Jettisons, Letters of Mart and Counter Mart, Surprisals, Takings at Sea, Arrests, Restraints and Detainments of all Kings, Princes, and People of what Nation, Condition, or Quality soever, Barratry of the Masters and Mariners, and of all other Perils, Losses and Misfortunes that have or come to hurt, Detriment or Damage of the said subject matter of this Insurance or any part thereof.

And in case of any Loss or Misfortune, it shall be lawful for the 10 Insured, their factors Servants and Assigns, to sue, labour and travel for, in, and about the Defence, Safeguard and Recovery of the aforesaid subject matter of this Insurance or any part thereof, without prejudice to this Insurance—to the charges whereof the Company will contribute in proportion as the sum hereby insured is to the whole amount at risk ; and the acts of the Insured or of this Company in recovering saving or preserving the property insured shall not be considered a waiver of acceptance of abandonment.

Free of all liability for loss arising from Leakage or Breakage of or to any liquid package. 20

Cotton is warranted free from Average under Five per cent., on every ten bales, running landing numbers which shall be proved in case of loss, Loss or damage from Black Leaf discoloration shall not be claimed for under this Policy except when caused by the bale so affected having been in actual contact with sea water or fire, and no claim shall be made for Black Leaf in damaged bales when the entire sound portion of the same mark contains Black Leaf.

Tea is warranted free from Average under Three per cent. on every ten chests, twenty half-chests, or forty boxes but no claim for wet or damp in respect of any package to attach, unless the tea therein contained 30 shall have been in actual contact with sea or river water.

Wool is warranted free from particular average under Three per cent. payable on each bale as if separately insured.

Freight is warranted free from Average unless general, Profits, Commissions, and Advances on Freight or Bottomry are warranted against absolute total loss of the Ship only. Live Stock is warranted free from all losses of the Vessel. In no case is the Company liable for Deck Cargo or Freight unless specially insured as such.

Grounding in Canals, Harbours or Tidal Rivers not to be deemed a strand but the Company to pay damage or loss which may be proved to 40 have directly resulted therefrom.

General Average and Salvage Charges payable according to Foreign Statement or per York-Antwerp Rules if in accordance with the contract of affreightment.

In open Policies by Ship or Ships it is stipulated that each shipment shall be declared in writing by the Insured to the Company's Representative at port of shipment _____ days after receipt of advices otherwise no liability shall attach to the Company.

Claims for all losses or average shall be payable by the Company after due adjustment of the same and shall be adjusted in accordance
10 with English law and usage.

And the Company is content and does hereby hold itself bound to the Insured his or their Executors Administrators or Assigns for the true performance of the premises in consideration of the sum due to it for this Insurance at the rate as agreed.

IN WITNESS WHEREOF the undersigned being duly authorised by the Directors of the said Company and on behalf of the said Company hath hereunto set his hand at Mombasa, the 30th day of December, 1946.

Sgd. (Illegibly)

Manager.

HB examined.

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INSTITUTE CARGO CLAUSES

1. This insurance attaches from the time the goods leave the Warehouse and/or Store at the place named in the Policy for the commencement of the transit, and continues during the ordinary course of transit, including customary transshipment if any, until the goods are discharged
30
overside from the overseas vessel at the final port. Thereafter the insurance continues whilst the goods are in transit and/or awaiting transit until delivered to final warehouse at the destination named in the policy or until the expiry of 15 days (or 30 days if the destination to which the goods are insured is outside the limits of the port), which ever shall first occur. The time limits referred to above to be reckoned from midnight of the day on which the discharge overseide of the goods hereby insured from the overseas vessel is completed. Held covered at a premium to be arranged in the event of transshipment, if any, other than as above and/or in the event of delay in excess of the above time limits arising from circumstances beyond the control of the assured.

2. Including transit by craft, raft and/or lighter to and from the vessel. Each craft, raft and/or lighter to be deemed a separate insurance. The assured are not to be prejudiced by any agreement exempting lightermen from liability.

Exhibits.

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—continued.

Exhibits.

P 6

Insurance in
Respect of
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Cowpeas.
30-12-46.
—continued.

3. Held covered at a premium to be arranged in case of deviation or change of voyage or other variation of the adventure by reason of the exercise of any liberty granted to the shipowner or charterer under the contract of affreightment, or of any omission or error in the description of the interest vessel or voyage.

4. In the event of the exercise of any liberty granted to the ship-owner or charterer under the contract of affreightment whereby such contract is terminated at a port or place other than the destination named therein, the goods are held covered in terms of the Policy at a premium to be arranged until sold and delivered at such port or place, or notice be given to the Underwriters to terminate the Policy whichever first occurs or if the goods be forwarded to the destination named herein or to any other destination until arrival at destination (subject to the provisions of Clause 1 as to the period covered after discharge overseas from the overseas vessel at final port) provided always that no liability shall attach in this Policy for loss or damage occurring after the termination of such contract of affreightment and proximately caused by delay or inherent vice or nature of the subject matter insured.

5. Warranted free from average under the percentage specified in the Policy unless general or the vessel or craft be stranded sunk or burnt but notwithstanding this warranty the Underwriters are to pay the insured value of any package which may be totally lost in loading transshipment or discharge also for any loss of or damage to the interest insured which may reasonably be attributed to fire collision or contact of the vessel and/or craft and/or conveyance with any external substance (ice included) other than water or to discharge of cargo at port of distress. This clause shall operate during the whole period covered by the Policy.

6. General average and salvage charges payable according to Foreign Statement or per York-Antwerp Rules if in accordance with the contract of affreightment.

7. The assured are not to be prejudiced by the presence of the negligence clause and/or latent defect Clause in the Bills of Lading and/or Charter party. The seaworthiness of the vessel as between the Assured and the Underwriters is hereby admitted and the wrongful act or misconduct of the Shipowner or his servants causing a loss is not to defeat the recovery by an innocent Assured if the loss in the absence of such wrongful act or misconduct would have been a loss

recoverable on the Policy. With leave to sail with or without Pilots and to assist vessels or crafts in all situations and to be towed.

8. Warranted free from liability for loss of or damage to the goods whilst in the custody or care of any carrier or other bailee who may be liable for such loss or damage but only to the extent of such carrier's liability.

Warranted free of any claim in respect of goods, shipped under a Bill of Lading or contract of carriage stipulating that
10 the carrier or other bailee shall have the benefit of any insurance on such goods, but this warranty shall apply only to claims for which the carrier or other bailee is liable under the Bill of Lading or contract of carriage.

Notwithstanding the warranties contained in this clause it is agreed that in the event of loss or of damage to the goods by a peril or perils insured against by this Policy for which the carrier or bailee denies or fails to meet his liability the Underwriters shall advance to the assured as a loan without interest a sum equal to the amount they would have been
20 liable to pay under the Policy but for the above warranties the repayment thereof to be conditional upon and only to the extent of any recovery which the assured may receive from the carrier or bailee.

It is further agreed that the assured shall with all diligence bring and prosecute under the direction and control of the Underwriters such suit or other proceedings to enforce the liability of the carrier or bailee as the Underwriters shall require and the Underwriters agree to pay such proportion of the costs and expenses of any such suit or proceedings as
30 attached to the amount advanced under the policy.

Note.—It is necessary for the Assured to give prompt notice to Underwriters when he becomes aware of an event for which he is "held covered" under the policy and the right to such cover is dependent on compliance with this obligation.

INSTITUTE NON-DELIVERY CLAUSE

It is hereby agreed that this Policy covers the risk of non-Delivery of an entire package for which the liability of the Shipowner or other Carrier is limited, reduced or
40 negated by the Contract of Carriage by reason of the value of the goods.

Exhibits.
P 6
Insurance in
Respect of
646 Bags of
Cowpeas.
30.12.46.
—continued.

Exhibits.
 P 6
 Insurance in
 Respect of
 646 Bags of
 Cowpeas
 30-12-46.
 —continued.

Underwriters to be entitled to any amount recovered from the Carriers or others in respect of such losses (less cost of recovery if any) up to the amount paid by them in respect of the loss.

THEFT AND/OR PILFERAGE CLAUSE

It is hereby agreed that this Policy covers the risk of theft and/or pilferage irrespective of percentage. No liability for loss to attach hereto unless notice of survey has been given to Underwriter's Agents within 10 days of the expiry of the risk under the policy. 10

Underwriters to be entitled to any amount recovered from the Carriers or others in respect of such losses (less cost of recovery if any) up to the amount paid by them in respect of the loss.

Notwithstanding anything herein to the contrary, it is a special condition of this insurance that underwriters shall not be liable for claims for theft, pilferage, non-delivery or shortage of any kind except on sufficient proof from the Assured that such loss was suffered within the number of days allowed by the Theft and/or Pilferage Clause above, 20 or prior to the removal of the insured goods by the Assured and/or his agents from the railway and/or customs quays and/or sheds and/or warehouse at the destination named in the Policy, whichever may first occur.

INSTITUTE DANGEROUS DRUGS CLAUSE

“ It is understood and agreed that no claim under this policy will be paid in respect of drugs to which the various International conventions relating to opium and other dangerous drugs apply unless—

- (1) the drugs shall be expressly declared as such in the Policy and the name of the country from which and the name of the country to which they are consigned shall be specifically stated in the Policy ; 20
- (2) the proof of loss is accompanied either by a licence, certificate or authorisation issued by the Government of the country to which the drugs are consigned showing that the importation of the consignment into that country has been approved by that Government, or, alternatively, by a licence, certificate or authorisation issued by the Government of the country from which 40

the drugs are consigned showing that the export of the consignment to the destination stated has been approved by that Government ; and

(3) the route by which the drugs were conveyed was usual and customary.”

Exhibits.
P 6
Insurance in
Respect of
646 Bags of
Cowpeas
30-12-46.
—continued.

INSTITUTE “ BOTH TO BLAME COLLISION ” CLAUSE

Agreed that this Policy is extended to indemnify the Assured against such proportion of liability under the Bill of Lading “ Both to Blame Collision ” clause as is in respect of a loss recoverable under the Policy.

In the event of any claim by Shipowners under the said clause the Assured agree to notify the Assurers who shall have the right, at their own cost and expense to defend the Assured against such claims.

ODHAVJI ANANDJI & Co., LTD.
Sgd. (Illegibly)
Secretary.

P 7

Invoice

P 7
Invoice
30-12-1946.

A 1,404.

Mombasa, 30th December, 1946.

Invoice of 646 Bags Cowpeas Supplied

ODHAVJI ANANDJI & Co., LTD., of Mombasa.

MESSRS. ABDUL LATIFF ABDUL HAMID of Colombo.

20 To be shipped per ss. “ June Crest.”

Order Number :

Country of origin	Marks & Nos. on Packages	Quantity and Description of Goods	Current Domestic values in Currency of exportable Country (see Para 3 & 4 of Certificate)		Selling price to Purchaser
			@ Amount	@ Amount	Amount
Kenya & Uganda	ALAH Co-lombo ..	646 Bags Cowpeas 139272 lbs. gross 1615 lbs. Tare			
		137657 lbs. Nett Tons 61.9.0.9			
		@ £51/- per ton c.i.f.	..	£3134.3.1	.. £3134.3.1
	×	×	(torn)	×	×
	×	×	(torn)	×	×

Exhibits. No. 732

P 7
 Invoice
 30-12-1946.
 —continued.

APPENDIX " B "

Conference Form*Combined Certificate of Value and of Origin and Invoice of Goods**Exportation to the British Dominions*

1. Here insert
 Manager Chief
 Clerk or as the
 case may be

2. Here insert
 name of firm or
 country.

3. Here insert
 name of city or
 country

4. The words
 should be omitted
 where the manu-
 facturer or supp-
 lier himself signs
 the certificate

5. Here insert
 particulars of any
 special arrange-
 ment

I, Vasnji Anandji Manek (1) Secretary (2) of Odhavji Anandji & Co., Ltd. of (3) Mombasa, manufacturer/supplier of the goods enumerated in this Invoice amounting to £3,134.3. I hereby declare that I (4) have the authority to make and sign this certificate on behalf of the aforesaid manufacturer/supplier and that I) have the means of knowing and do hereby certify as follows :—

Value

1. That this invoice is in all respects correct and contains a true and full statement of the price actually paid or to be paid for the said goods and the actual quantity thereof.

2. That no different invoice of the goods mentioned in the said invoice has been or will be furnish to anyone and that no arrangements or understanding affecting the purchase price of the said goods has been or will be made or entered into between the said exporter and purchaser or by anyone on behalf of either of 20 them either by way of discount, rebate, compensation or in any manner whatever other than as fully shown on this invoice or as follows :—

6. Here insert
 "Warehouse"
 "Factory" or
 "Port of ship-
 ment

3. That the domestic values shown in the Column headed "Current Domestic values" are those at which the above mentioned firm or company would be prepared to supply to any purchaser for home consumption in the country of exportation and at the date of the exportation identically similar goods in the usual wholesale quantities at (6) subject to per cent. cash discount, and that such value 30 include/exclude the cost of outside packages if any in which the goods are sold in such country for domestic consumption.

4. That the said domestic value includes any duty leviable in respect of the goods before they are delivered for home consumption, and that on the exportation a drawback or remission of duty amounting to nil has been/will be allowed by the revenue authorities in the country of exportation.

Exhibits.
P 10
Draft for
£ 3,134.3s.1d.
30-12-46.

P 10
Draft for £3,134. 3s. 1d.

P 10

No. Exchange for £3,134.3s.1d. Stg.

Mombasa, 30th December, 1946.

Sight on Demand Pay this First of Exchange (Second of the same tenor and date being unpaid) to the Order of the NATIONAL BANK OF INDIA, LIMITED, Sterling Pounds Three thousand One hundred Thirty-four, Three shillings and One pence only only for value received and 10 place the same to account ABDUL LATIFF ABDUL HAMID, Colombo.

ODHAVJI ANANDJI & Co., LTD.,
Sgd. (Illegibly),
Director.

Payable in London.

Sgd. VASANJI ANANDJI,
Secretary.

Endorsements.

77/717

Noted for non-payment. Drawee declined to pay and stated the goods have been sent contrary to instructions. 20

Colombo, 29th January, 1947.

Sgd. P. R. SITTAMPALAM,
Notary Public.

Stamp.

NATIONAL BANK OF INDIA, LTD.,
MOMBASA

(In pencil)

Goods sent contrary to instructions.

161, Prince Street, Pettah.
Pay to the order of Odhavji Anandji

& Co., Ltd., without recourse.

For THE NATIONAL BANK OF INDIA, LTD., 30

Sgd. (Illegibly)
Manager, Mombasa.

Stamp.

NATIONAL BANK OF INDIA, LTD.,
COLOMBO.

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P 8

Cable from Defendants to Plaintiff

P 8

CABLE & WIRELESS, LIMITED

Exhibits.

P 8

Cable from Defendants to Plaintiff. 1-1-1947.

Office of Issue :

Mombasa Telegraphs,
1, Jan., 1947.

SD 45/E COLOMBO 20/17 31 2150 LC ODHAVJICOLTD,
MOMBASA

10 OPEN CREDIT BARCLAYS JUNECREST TWENTYFIVE
TONS CHORA 51/- CABARITA THIRTYFIVE TONS VATANA
51/- BALANCE UNREQUIRED RELIABLE. 51/- 51/-

P 9

Copy of Cable from Plaintiff to Defendants

P 9

RELIABLE,
COLOMBO.

DEPOSIT A/C.

2-1-47.

REFERENCE MR. YAKOOB'S CABLE 24TH WHY NOT
OPENED CREDIT SIXTY TONS COWPEAS OPEN TELE-
20 GRAPHICALLY REPLY.

ODHAVJILTD.

P 9A.

Original of Cable from Plaintiff to Defendants

P 9A.

CABLE & WIRELESS, LIMITED,
"Via Imperial"

Office of Issue :

CABLE & WIRELESS, LTD.,
Colombo Branch

2. Jan., 47.

30 DS 56/E MOMBASA 20/19 2 0900 — LC RELIABLE
COLOMBO.

REFERENCE MR. YAKOOB'S CABLE 24TH WHY NOT
OPENED CREDIT SIXTY TONS COWPEAS OPEN TELE-
GRAPHICALLY REPLY — ODHAVJILTD,

P 9A
Original of
Cable from
Plaintiff to
Defendants.
2-1-1947.

124

P 21

Letter of Credit.

P 21

Exhibits.
P 21
Letter of
Credit.
2-1-1947.

BARCLAY'S BANK (DOMINION, COLONIAL & OVERSEAS)

(Incorporated in the United Kingdom)

Mombasa, Kenya.

2nd Jan., 47.

Credits Dept. :

MESSRS. ODHAVJI ANANDJI & Co., LTD.,
Mombasa.

10

Dear Sirs,

We have pleasure in advising you that a Credit, as detailed below, has been established in your favour for account of A. L. A. Hamid of Colombo.

Credit Opened By : Eastern Bank, Ltd., Colombo.

Credit No. : Confirmed Irrevocable without recourse No. 2234.

Amount : £3060. Stg. (Three thousand Sixty pounds).

Expiry : 31st January, 1947.

Goods and Price : 25 tons Chora per " June Crest ", 35 tons Vatana
" Cabarita ". (c.i.f., Colombo).

Shipment of Chora to be effected per " June Crest " and of Vatana per 20
" Cabarita " to Colombo. c.i.f.

Insurance : Marine and War Risks Insurance to be effected by you.

Documents Required : Sight Draft on A. L. A. Hamid, Colombo, accom-
panied by full set of Clean " On Board " B/Lading made to order and
endorsed in Blank, Invoices, Certificates of Origin and Weight and
Insurance Policy.

£1,134. 2s. 3d. 2. 1. 47. (230 bags Cowpeas)

£1,706.11s. 9d. 6. 1. 47. (842 bags Vatana)

Please note that negotiation by us of Bills drawn under the above men-
tioned Credit does not release you from the liability attaching to the drawer of a 30
Bill of Exchange.

Yours faithfully,

Sgd. (Illegibly),
Manager.

125

D 5

Cable from Yakoob to Defendants

D 5

Exhibits.
—
D 5
Cable from
Yakoob to
Defendants.
9-1-1947.

CABLE & WIRELESS, LIMITED,
" Via Imperial "

Office of Issue :

CABLE & WIRELESS, LTD.,
Colombo Branch.

COLOMBO
10 TELEGRAPHS
9 JA 47

9 Jan., 47

DS 81/L MOMBASA 21 9 0835 — NLT RELIABLE
COLOMBO —

OPEN CREDIT THIRTYNINE TONS WHITE JUWARI
FOR BHATIA REGARDING TWENTYFIVE TONS VATANA
AMEND SHIPMENT LIMBURG OR INCHANGA — YACOOB

D 6

Cable from Yakoob to Defendants

D 6

D 6
Cable from
Yakoob to
Defendants.
9-1-1947.

20 CABLE & WIRELESS, LIMITED,
" Via Imperial "

Office of Issue :

CABLE & WIRELESS, LIMITED,
Colombo Branch

COLOMBO
9 Ja., 47.
TELEGRAPHS.

9 Jan. 1947.

DS 71/L MOMBASA 51 8 1615 — NLT RELIABLE
COLOMBO.

30 OPEN CREDIT FOR FIFTY TONS CHOLA JUNE-
CREST EIGHTY TONS LIMBERG ONEHUNDRED FIFTY
TONS JANUARY SHIPMENT JUWARI THIRTYFIVE TONS
LIMBERG STOP THESE GOODS BOUGHT AND CON-
FIRMED BY ME THEREFORE OPEN CREDIT TELE-
GRAPHICALLY IMMEDIATELY STOP BY YOUR NOT
OPENING CREDIT THEY SOLD FIFTY TONS JUNE-
CREST CHOLA STARTED FOR NAIROBI BY TRAIN

P 15
CUSTOMS ENTRY

Customs 53

P 15

Exhibits
P 15
Customs
Entry
13/1/47

E. B. CREASY & Co., Ltd. Colombo.

By Requisition

In the S.S..... JUNE CREST 13/1/47 from "Mombasa"

No. A 1209

Marks and Numbers	2 3 Classification		4 Description of Goods	5 Quantity	6 Country of production	7 Invoice Value	8 Rate of exchange	9 Value for Duty	10 Rate of	11 Duty	12 Duty	13 14 First rent and harbour Dues		15 Amount Rs.
	Class	Group										Dimensions or other details	Whether details appear on B/L Invoice or L.W. a No. and Rate	
AL AH Colombo 646 bags	1	A	Six hundred and forty six (646) Cowpeas (Chola) 1219.3.1 Duty rupees six hundred Ninety cents 95/100 Rupees Thirty sixty cents 60/100	(646)		3134.3.1	1/5	Rs. c. 41934.33		Rs. c. -/50	609.95	Under 24	Gross -/04 -/25	Rs. c. 25 84 6 46 32 30 32 30 64 60 609 95 674 55

We E. B. Creasy & Co., Ltd., of Colombo, do hereby declare that we are the importers (or authorised by the Importers of the goods.....

We claim that the goods against which preferential rates of duty have been entered be admitted at those rates. In support of this claim we submit the annexed documents.

Witness our hand this day of February, 1947.

E. B. CREASY & Co., LTD.
Sgd. (Illegibly)

(This space is to be left blank for Customs purposes)

Correctly Classified	Intld.
Rent and Dues checked 13-2	B/L Record
Duty checked1.50
Manifested Title Valid
Entered in Cash Book
Received payment
Warranted	—

2. Documents filed	Date	Time
3. Invoice checked	T. W.	Checking Officer
4. A/Samples required		
5. Samples herewith		

7. Correct per Invoice.	Certi-
Value for	ificate of Origin.
Time	
8	Appraiser
	<input type="text"/>

**P 20
MANIFEST**

Exhibit
P 20
Manifest
13-1-47



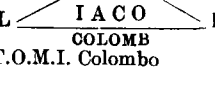
of S.S. JUNE CREST for goods shipped from MOMBASA to COLOMBO OUTWARD
HOMEWARD Voyage No. sailed December 46

B/L D.G No.	Shippers	Consignees	Marks and Numbers	Number of Packages and Contents.	Weight.				Measurements		Notify Party	Dead Weight.			
					Tons.	Cwt.	Qrs.	lbs.	cu. ft.	In.		Tons.	Cwt.	Qrs.	lbs.
1	The Old West African Trading Co. Ltd.	The African Agency, Galle, Colombo Ceylon	The African Agency, Galle Ceylon, Colombo	40 Tins Roasted and Ground coffee to be 20 lbs. each	—	—	—	—	33	4	The African Agency, Galle, Colombo, Ceylon D/O No. 26 issued to the Ceylon Wharfage Co. Ltd. on B/L 1 13 2/47	0	7	3	12
2	Hemraj Kesharji & Co., Ltd. ...	Order ...	H.K. Colombo ...	207 Bags Chola ...	19	17	0	15	—	—	D/O Hoosen Kassain Dada on B/L 25 21 1/47	19	17	0	15
3	The Kampala Shipping Agency, Ltd.	Order ...	K.S.A. Colombo ...	104 Bags Urad 470 Do	—	55	17	1	13	—	Moosagee on B/L 3 ...	55	17	1	13
4	Vallimohamed Haji Waijee & Co....	Order ...	Y.R. Colombo No. 5/6 ...	2 Loose Tusks Ivory ... 7? ... 1 Case said to contain 14 pieces Ivory Value £100.0s. 0d.	—	—	—	—	—	—	Cargo Boat Desp. says that P. N. Mendis has taken delivery on D. B/L 28/2 47	0	1	3	4 Gross 22 nett
5	Hansraj Dulamhji & Co., Ltd., Tel. recd. 4/2 June Crest, Mombasa-Colombo. B/L5 deliver 1000 bags maize Abdul Hussain Jafferjee. Negotiable B/L surrendered here Navigation	Order ...	H.D. Colombo, Trans. Mombasa	1000 Bags maize ...	88	11	0	25	—	—	D/O issued to Abdul Hussein Jafferjee on Telegram 4/2 47	88	11	0	25
6	Oihavji Ananiji & Co., Ltd. ...	Order ...	O.A.C.O. Humkin Colombo	514 Bags Uganda Cow Peas	49	10	0	0	—	—	Alimohamed and Habib Bros., Guarantee cancelled 25 1/47	49	10	0	0
7	Do ...	Order of the Bank of Ceylon	A.E.I.C. Colombo ...	70 Bags Uganda Cow Peas	7	1	1	25	—	—	Associated Export Import Corp. B/L 7	7	1	1	25
8	Vasani & Company ...	Order ...	Vagani Colombo, lot No. 1	128 Bags moong ...	12	0	0	25	—	—	M/s. Jafferjee Bros., Bk. No. 8 27 1/47	12	0	0	25
9	Do ...	Order ...	do ...	200 Do ...	17	16	1	2	—	—	do No. 9 27 1/47	17	16	1	2
10	Do ...	Order ...	V.A.C.C. Colombo ...	400 White Juwares ...	35	18	1	26	—	—	P. B. Umbichy on B/L No. 10 on 20.1	35	18	1	26
11	Do ...	Order ...	Vagani, Colombo ...	711 Bags Chola ...	61	10	2	13	—	—	Messrs. Jafferjee Bros. on B/L 11 27 1/47	61	10	2	13
12	Do ...	Order ...	V.J. Co., Colombo ...	210 Do ...	20	2	2	20	—	—	A. H. Jackria Bros. B/L 12 ...	20	2	2	20
13	Do ...	Order ...	Vagani, Colombo ...	520 Do ...	50	1	0	12	—	—	Hassan Kasaru Dada on B/L 13 on 22 1/47	50	1	0	12
14	Do ...	Order ...	V.K. Co., Colombo ...	105 Do ...	10	1	2	7	—	—	M. M. Sockalingam Pillai & Co. on B/L 14 30 1/47	10	1	2	7
15	Do ...	Order ...	Vagani, Colombo ...	430 Do ...	38	11	3	14	—	—	Messrs. Jafferjee Bros. on B/L 15 27 1/47	38	11	3	14
16	Do ...	Order ...	V.A. Co. K.M. Colombo ...	400 Bags Millet (Bajree) ...	34	18	1	10	—	—	Koliappa Pillai, Guarantee 15/1 ...	34	18	1	10
17	Sunderji Nanji ...	Order ...	Natvar, Colombo ...	256 Bags Kenya Chola ...	24	18	0	17	—	—	Dawood Bhoj Jafferjee Guarantee 17/1 ..	24	18	0	17
18	Do ...	Order ...	Kanti, Colombo ...	513 Do ...	50	7	2	27	—	—	D. H. Pirmohamed on B/L 18 22 1/47	50	7	2	27
19	Do ...	Order ...	Madho, Colombo ...	256 Do ...	24	12	3	16	—	—	Moosajee on B/L 19 ...	24	12	3	16
20	Africa Produce Co. (Kenya) Ltd. ...	Order ...	A.P.C. lot 2 Colombo produce of Kenya	280 Bags Tuver (Sharazi) ...	25	6	1	5	—	—	D. H. D. H. per Mohamed on B/L 20 on 22 1/47	25	6	1	5
21	Somalia Trading Co., A/c Africa Produce Co. (Kenya) Ltd.	Order ...	A.P.C. lot 3 Colombo produce of Abbyssinia	400 Bags White Juwaree ...	37	16	0	13	—	—	K.M. Mohideen & Co., on Guarantee of 13 1/47	37	16	0	13

MANIFEST

of S.S. JUNE CREST for goods shipped from MOMBASA to COLOMBO OUTWARD Voyage No. sailed December 46
HOMEWARD

Exhibits
P 20
Manifest
13-1-1947.
—continued

B/L D.G. No.	Shippers	Consignees	Marks and Numbers	Number of Packages and Contents.	Weight				Measurement		Notify Party	Dead Weight.			
					Tons	Cwt.	Qrs.	lbs.	cu. ft.	In.		Tons	Cwt.	Qrs.	lbs.
22	Africa Produce Co. (Kenya) Ltd. ...	Order ...	A.P.C. Colombo ...	800 Bags Chola (Cow Peas)...	75	17	0	5	—	—	Cargo Boat Despatch Co., B/L 22 11/2	75	17	0	5
23	Do ...	Order ...	A.P.C. lot 1 Colombo pro- duce of Kenya	300 Do ...	28	1	2	1	—	—	S. V. Ram Naido & Co., B/L 23 ...	28	1	2	1
24	Do ...	Order ...	K.M.M. Colombo ...	600 Do ...	56	11	1	1	—	—	K. M. Mohideen & Co. on Guarant- tee 13 1/47	56	11	1	1
25	Do ...	Order ...	A.P.C. lot 5 Colombo pro- duce of Kenya	514 Bags Uganda Chola do...	50	12	1	8	—	—	D/O Messrs. Hassan Dadu on B/L 25 21 1/47	50	12	1	8
26	Do ...	Order ...	A.P.C. lot 4 Colombo ...	509 Do ...	52	12	0	11	—	—	D/O Messrs. Haji Habib & Co., on B/L 26 20 1/47	52	12	0	11
27	L. H. Lakhani ...	Order of Bank of Ceylon		583 Bags Chola do ...	52	12	3	4	—	—	A. H. Jackri Bros. B/L 27 ...	52	12	3	4
28	Do ...	do ...	do ...	224 Bags Chola (Pigeon Peas)	20	3	1	10	—	—	do ...	20	3	1	10
29	Do ...	Order ...		112 Bags Pigeon Peas (Bharazi)	10	1	2	4	—	—	Maragee on B/L 29 15-1-47 ...	10	1	2	4
30	Do ...	Order ...		224 Do ...	20	8	0	0	—	—	Ismael Abdulrahim & Co., B/L 30 22 1/47	20	8	0	0
31	H. V. Twentsche Overzee Mandel Maatschappij	Order ...	T.O.M.I. Colombo ...	111 Bags Chola ...	9	19	2	24	—	—	Hoosen Kassam Dada, Colombo, Ceylon	9	19	2	24
32	Do ...	Order ...	T.O.M. Colombo ...	224 do ...	20	4	2	25	—	—	Messrs Guger Import & Export, Ceylon, Colombo D/o 41 21 2/47	20	4	2	25
33	Navallal & Co. ...	Order ...	A.P.E. Colombo ...	256 Bags Moong ...	25	0	0	0	—	—	A. H. Pir Mohamed Essack on B/L 33 on 22 1/47	25	0	0	0
34	Do ...	Order ...	M.H.P. Colombo ...	196 Bags Chola ...	19	19	0	24	—	—	do on B/L 34 on 22 1/47	19	19	0	24
35	Do ...	Order ...	A.H.C. Colombo ...	213 do ...	19	17	0	0	—	—	D/O to Messrs. Haji Habib & Co. on B/L 35 20/1/47	19	17	0	0
36	Do ...	Order ...	A.H.P. Colombo ...	202 Bags Chola ...	19	13	0	8	—	—	A. H. Pir Mohamed on B/L 36 on 22 1/47	19	13	0	8
37	Navallal & Co. ...	Order ...	N.C. A.H.P. Colombo ...	554 Bags Tuwe ...	50	0	0	0	—	—	do B/L 37 on 22 1/47	50	0	0	0
38	Kassamali Gulam Hussein & Bros.	Order ...	K.G.B. Colombo ...	650 Bags Maize ...	56	6	3	12	—	—					
39	Do ...	Order ...	K.B. Colombo ...	350 do ...	29	6	0	27	—	—					
40	Do ...	Order ...	G.K. Colombo ...	500 do ...	42	7	1	0	—	—					
41	Do ...	Order ...	H.H. Colombo ...	1000 do ...	85	5	3	27	—	—					
42	Do ...	Order ...	K.G. Colombo ...	500 do ...	42	9	0	18	—	—					
43	Do ...	Order ...	M.H. Colombo ...	600 do ...	50	8	1	20*	—	—					
44	Do ...	Order ...	K.G.B. Colombo ...	93 Bags Chola (Cow Peas)...	8	15	0	0	—	—					
				9 Bags Moong ...	—	18	0	0	—	—					

D/O on Telegram to Nangis,
Ceylon 24 1/47

*Amended see African Merchants
letter J.A.G. of 3 1/46

MANIFEST

of S.S. JUNE CREST for goods shipped from MOMBASA to COLOMBO ^{OUTWARD} _{HOMEWARD} Voyage No sailed December 46

Exhibits
P 20
Manifest
13-1-1947.
—continued

B/L D.G. No.	Shippers	Consignees	Marks and Numbers	Number of Packages and Contents.	Weight		Measurements				Notify Party	Dead Weight.			
					Tons	Cwt.	Qrs.	lbs.	cu. ft.	In.		Tons	Cwt.	Qrs.	lbs.
45	Pardhan Ladak, Ltd.	Order	A.R.P.-A.H.P.E. Colombo	Bags White Jawaree	101	4	3	1	—	—	D/O Messrs. A. H. Pirmohamed Essack, Colombo on B/L 45 on 22 1/47	141	4	3	1
46	Do	Order	do	509 Bags Chola	50	10	3	23	—	—	do B/L 46 22 1/47	50	10	3	23
47	Do	Order of Bank of Ceylon	A.R.P.-R.M.S. Colombo	555 Bags Millet (Bajree)	48	2	0	13	—	—	Messrs. R. M. S. Gopal Krishna Pillai, Colombo Cargo Boat Des- patch, 14/3 B/L 47	48	2	0	13
48	Do	Order	A.R.P.-A.J.K. Colombo...	1181 Bags White Jawaree	99	19	1	21	—	—	D/O Messrs. Abdul Hussain Jaffer- jee, Colombo, on B/L 48-27 1/47	99	19	1	21
49	Do	Order	A.R.P. Nadar, Colombo ...	1100 Bags Millet (Bajree)	95	5	1	8	—	—	Messrs. A. R. S. Thirameninaka Nadar B/L 49 23/1	95	5	1	8
50	Do	Order	A.R.P.-A.K.P. Colombo...	270 Bags Millet Bajree	23	20	2	18	—	—	D/O Messrs. A. K. P. Govinda- samy Chettiar & Co., Colombo, B/L 50-24 1/47	23	10	2	18

MANIFEST

of S.S. JUNE CREST for goods shipped from MOMBASA to COLOMBO ^{OUTWARD} _{HOMEWARD} Voyage No. sailed December 46
 Exhibits
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 —continued

B/L D.G. No.	Shippers	Consignees	Marks and Numbers	Number of Packages and Contents	Weight			Measurements			Notify Party	Dead Weight			
					Tons	Cwt.	Qrs.	lbs.	cu.ft.	In.		Tons	Cwt.	Qrs.	lbs.
51	Kassm Jivraj & Co., Ltd.	Order	J.E./K.J. Colombo	447 Bags Val	40	2	0	25	—	—	M/s. E. B. Creasy & Co., Ltd., B/L 51, 3 2/47	40	2	0	25
52	Do	Order	A.J. Colombo	300 Bags Val	30	12	3	3	—	—	M/s. E. B. Creasy & Co., Ltd. B/L 52, 3 2/47	30	12	3	3
53	Do	Order	J.M. Colombo	60 Bags Moong	5	2	1	11	—	—	J. Mansoor & Co., Ltd. B/L 53 on 24 1/47	5	2	1	11
54	Do	Order	A.R.F. Colombo	480 Bags Juwaree	46	15	3	1	—	—	D/o to D. H. D. H. Pir Mohamed on B/L 54 on 22 1/47	45	15	3	1
55	Do	Order	R.F. Colombo	550 do	47	9	2	20	—	—	Eastern Grain Stores, (B/L No. 55 on 22 1/47	47	9	2	20
56	Do	Order	H.M. Colombo	329 do	30	16	0	18	—	—	Haji Habib & Co. (B/L 56 20/1 ...	30	16	0	18
57	Do	Order	M.E.M. Colombo	520 do	39	3	1	12	—	—	M/s. E. B. Creasy & Co., Ltd. B/L 57, 3 2/47	39	3	1	12
58	Do	Order	C.C. Colombo	465 do	40	18	0	5	—	—	Only 345 given to Chettinad Corp. on B/L 58, see letter re Eastern Bank letter of 12/2. Balance 120 bags given to Eastern Bank Ltd. 13/2 (Eastern Bank of 11/2, 47	40	18	0	5
59	Do	Order	K.P. Colombo	450 do	39	12	1	14	—	—	Kaliappa Pilla, Guarantee 15/1 ...	39	12	1	14
60	Do	Order	M.E.M. Colombo	550 do	49	10	2	12	—	—	M/s. E. B. Creasy & Co., Ltd. B/L 60 3 2/47	49	10	2	12
61	Do	Order	T.K.J. Colombo	659 do	57	15	3	12	—	—	Kaliappa Pilla, Guarantee 15/1 ...	57	15	3	12
61a	Do	Order	A.K.J. Colombo	1110 do	97	31	3	23	—	—	D/o to H. K. Dada on B/L 61 of 21/1/47	97	3	3	23
62	Do	Order	P.E. Colombo	1087 do	100	7	2	11	—	—	D/o to M/s. Haji Habib & Co., on B/L No. 62, 20/1/47 ...	100	7	2	11
63	Do	Order	K.J. Colombo	1020 do	99	6	0	9	—	—	D. H. D. H. Pir Mohamed on B/L 63 on 22, 1/47	99	6	0	9
64	Do	Order	A.M. Colombo	161 do	14	0	1	24	—	—	A. M. Karuppaswamy Pillai on B/L 64, 25 1/47	14	0	1	24
65	Do	Order	P.H. Colombo	910 do	78	10	0	3	—	—	A. H. Pir Mohammed Essack on B/L 65 on 22 1/47	78	10	0	3
66	Do	Order	D.A.A. Colombo	364 do	31	17	0	15	—	—	Hassen Rensam Dadde B/L 66 on 21 1/47	31	17	0	15
67	Do	Order	P.L.S. Colombo	215 do	18	15	3	14	—	—	P. L. S. Sevagam Chettiar on B/L 67 on 25/1/47	18	15	3	14
68	Do	Order	P.H. Colombo	{ 35 32 do	—	6	3	2	8	—	—A. H. Pir Mohamed Essack on B/L 68 on 22/1/47	6	3	2	8
69	Do	Order	A.J. Colombo	203 do	18	0	2	16	—	—	Abdul Hussen Jafferjee B/L 69 ...	18	0	2	16
70	Do	Order	A.H. Colombo	328 do	30	8	1	25	—	—	A. H. Peri Mohammed Essack on B/L 70, 22/1/47	30	8	1	25
71	Do	Order	A.F. Colombo	1550 do	133	9	3	25	—	—	M/s. Abdul Hussen Jafferjee B/L 71, 28/1/47	133	9	3	25
72	Do	Order	P.L.S. Colombo	402 do	34	17	3	17	—	—	P. L. S. Sevagan Chettiar on B/L 72, 25/1/47	34	17	3	17

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of S.S. JUNE CREST for goods shipped from MOMBASA to COLOMBO ^{OUTWARD} _{HOMEWARD} Voyage No. sailed December 46Exhibits
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B/L D.G. No.	Shippers	Consignees	Marks and Numbers	Number of Packages and Contents	Weight				Measurements				Notify Party	Dead Weight			
					Tons	Cwt.	Qrs.	lbs.	cu. ft.	In.	Tons	Cwt.		Qrs.	lbs.		
73	Kassam Jivraj & Co., Ltd.	Order	A.J. Colombo	1642 Bags Juwaree	143	13	0	18	—	—	Abdulhussein Jafferjee B/L 73	143	13	0	18		
74	Do	Order	A.J. Colombo	328 do	30	6	1	9	—	—	Abdullah Jafferjee B/L 74	30	6	1	9		
75	Do	Order	K.J.L. Colombo	670 Bags Chola (Cow Peas)	65	14	3	7	—	—	H. K. Dada D/o issued on B/L 75	65	14	3	7		
76	Do	Order	C.K.J. Colombo	600 do	53	12	3	15	—	—	Kaliappa Pilla Guaranteed 15/1	53	12	3	15		
77	Do	Order	J.K. Colombo	1053 do	97	15	2	4	—	—	Abdul Hussein Jafferjee B/L 77	97	15	2	4		
78	Do	Order	A.H.P. Colombo	751 do	67	4	2	25	—	—	A. H. Pir Mohammed Essack on D/L 78 on 22/1/47	67	4	2	25		
79	Do	Order	A.N.K. Colombo	209 do	20	3	3	16	—	—	M/s. E. B. Creasy & Co., Ltd. B/L 79, 3/2/47	20	3	3	16		
80	Do	Order	R.M.S. Colombo	302 do	30	12	0	11	—	—	Gopalakrishna Pilla 135 . . steel B/L 80	30	12	0	11		
81	Do	Order	J.A. Colombo	399 do	34	3	2	15	—	—	Abdul Hussein Jafferjee, B/L 81 22/1	34	3	2	15		
82	Do	Order	P.K. Colombo	500 do	38	9	3	27	—	—	Kaliappa Pilla, Guarantee 15/1	38	9	3	27		
83	Do	Order	R.K.J. Colombo	300 do	26	7	3	10	—	—	M/s. Duraisamy Pilla & Co., on B/L 83, 23/1/47	26	7	3	10		
84	Do	Order	J.B. Colombo	500 do	43	18	2	20	—	—	M/s. Haji Habib & Co., B/L 84 on 28/1/47	43	18	2	20		
85	Do	Order	J.B. Colombo	550 do	47	7	3	20	—	—	M/s. Abdul Hussein Jafferjee, B/L 85 on 28/1/47	47	7	3	20		
86	Do	Order	A.H.P. Colombo	198 do	19	18	2	22	—	—	A. H. Pir Mohamed Essack on B/L/ 86 on 22/1/47	19	18	2	22		
87	Do	Order	D.B. Colombo	550 do	47	6	0	26	—	—	M/s. D. Bagsoo Bhoy, B/L No. 87 on 24/1/47	47	6	0	26		
88	Do	Order	H.H.C. Colombo	759 do	67	0	3	5	—	—	D/o to M/s. Haji Habib & Co., on B/L No. 88, 20/1/47	67	0	3	5		
89	Do	Order	P.L.S.C. Colombo	550 do	47	9	2	13	—	—	D/o to P. L. Sevagan Chettiar on B/L 89, 25/1/47	47	9	2	13		
90	Do	Order	G.M. Colombo	275 Bags Millet	23	13	1	13	—	—	Nonis General Trading Co., B/L No. 90, 23/1/47	23	13	1	13		
91	Do	Order	K.P. Colombo	1088 Bags Millet Green Bajree	96	12	2	23	—	—	Kaliappa Pilla, Guarantee 15/1	96	12	2	23		
92	Do	Order	K.J.C. Colombo	400 Bags Millet (Bajree)	34	7	3	24	—	—	M/s. D. Bagsoo Bhoy, B/L 92 on 24/1/47	34	7	3	24		
93	Do	Order	R.M.M. Colombo	272 do	25	0	3	14	—	—	M/s. R. M. M. Sockalingam Pillai & Co., B/L 93 6/2/47	25	0	3	14		
94	Do	Order	R.A.M.O.O. Colombo	1089 do	96	18	2	11	—	—	M/s. G. H. Reimoo on B/L 94 on 3/2/47	96	18	2	11		
95	Do	Order	M.G.T. Colombo	271 do	24	17	2	7	—	—	The Eastern Grain Works, B/L 95 on 23/1/47	24	17	2	7		

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of S.S. "JUNE CREST" for goods shipped from MOMBASA to COLOMBO ^{OUTWARD} _{HOMEWARD} Voyage No. sailed December 46

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B/L D.G. No.	Shippers	Consignees	Marks and Numbers	Number of Packages and Contents	Weight					Measurements					Notify Party	Dead Weight				
					Tons	Cwt.	Qrs.	lbs.	cu	ft.	In.	Tons	Cwt.	Qrs.		lbs.				
96	Kassam Jivraj & Co., Ltd.	Order	S.C. Colombo	271 Bags Millet (Bajree)	24	10	0	5	—	—	—	—	—	Subramaniam & Co. L/B No. 96 24/1/47	24	10	0	5		
97	Do	Order	H.H.K. Colombo	636 do	62	11	2	23	—	—	—	—	Eastern Grain Stores on B/L 97 on 22/1/47	62	11	2	23			
98	Vagani & Company	Order	V. & Co., Colombo	155 Bags Moong	15	4	1	24	—	—	—	—	Kohinoor Commercial Co., B/L 98 3/2/47	15	4	1	24			
99	Odhavji Anandji & Co., Ltd.	Order	Odhavji, Colombo	251 Bags Cow Peas	29	10	1	4	—	—	—	—	Hussein Kasswa Dada on B/L 91 21/1/47	29	10	1	4			
100	M. M. Jamal & Co.	Order	M.M.J.C., Colombo	336 Bags Juvar (Bharazi)	31	2	—	18	—	—	—	—	K. M. Mohideen & Co. B/L No. 100 22/1/47	31	2	—	18			
101	Pardhan Ladak, Ltd.	Order	P.L. Colombo	1181 Bags White Juwaree	101	1	—	11	—	—	—	—	Hussein Kassar Dada on B/L 101 on 21/1/47	101	1	—	11			
102	Do	Order	A.R.P.-A.J.K. Colombo	175 Bags Bajree	15	10	1	—	—	—	—	—	D/o Abdulhussein Jafferjee, Co- lombo on B/L 102, 27/1/47	15	10	1	—			
103	Odhavji Anandji & Co., Ltd.	Order	Odhavji, Colombo	253 Bags Cow Peas (Chola)	25	16	—	9	—	—	—	—	Hussein Kassar Dada on B/L 1032 21/1/47	25	16	—	9			
104	Do	Order	M.B., Colombo	224 do	19	19	1	7	—	—	—	—	Muhammed Ally Boos, B/L No. 104 on 29/1/47	19	19	1	7			
105	Do	Order of the Bank of Ceylon	D.A.C.O.-S.U.B.P. Co- lombo	200 do	19	14	—	—	—	—	—	—	Director of Food Supplies, B/L No. 105 on 7/2/47	19	14	—	—			
106	Do	Order	M.C., Ltd., Colombo	112 Bags Pigeon Peas (Bha- razi)	9	18	—	24	—	—	—	—	Moosajee, B/L 106, 23/1/47	9	18	—	24			
107	East Africa Overseas Trading Co., Ltd.	India Overseas Trad- ing Co.	I.O.T.C., Colombo	222 Bags Beans	19	17	1	10	—	—	—	D/o issued to M.S. Hebtulabhoy & Co., 29/1	19	17	1	10				
108	Do	do	do	214 do	18	12	3	5	—	—	—		19	17	1	10				
109	Do	do	do	426 Bags Kafir Corn (Juwar)	38	3	—	8	—	—	—		38	3	—	8				
110	Do	do	do	170 Bags Millet	15	8	1	22	—	—	—	Alimohamed & Habib Bros. Yugalec (Guarantee cancelled) 25/1/47	24	17	—	2				
111a	A. B. Abdul Husein & Co., Ltd.	do	A.G.A.C., Colombo	100 Bags Juwaree	9	5	2	5	—	—	—		9	5	2	5				
111	Do	do	do	217 Bags Moong	20	14	0	25	—	—	—	E. B. Creasy, B/L 111 of 8/2/47	20	14	0	25				
112	Narandas Rajaram & Co. (Africa) Ltd.	The Wellawatta Spinning & Wea- ving Mills	N.R.C. M.Z.A. N.S.O./A.R.M. 29 ex 1.50 N.S.O./A.R.M. 30 ex 1.50 N.W.R./A.B.M. 31 ex 1.50	1 Bale Cotton 2 do 3 do	—	—	—	—	—	—	—	121 The Wellawatte Spinning & Wea- ving Mills on Telegram 15/1	1	1	3	24				
113	Odhavji Anandji & Co., Ltd.	Order	A.L.A.H., Colombo	646 Bags Cow Peas (Chola)	59	19	1	24	—	—	—		E. B. Creasy & Co., Ltd. B/L No. 113 3/2/47	59	19	1	24			
114	M. M. Jamal & Co.	Order	J.C., Colombo	56 Bags Moong	5	1	1	24	—	—	—	S. V. A. Arunasalam Nadar, B/L 114	5	1	1	24				
115	Do	do	J.C., Colombo	56 Bags Tuvar (Bharazi)	5	1	1	23	—	—	—	do B/L 115	5	1	1	23				

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of S.S. "JUNE CREST" for goods shipped from MOMBASA to COLOMBO OUTWARD Voyage No. sailed December 46

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B/L D.G. No.	Shippers	Consignees	Marks and Numbers	Number of Packages and Contents	Weight		Measurements				Notify Party	Dead Weight				
					Tons	Cwt.	Qrs.	lbs.	cu.	ft.		In.	Tons	Cwt.	Qrs.	lbs.
116	M. M. Jamal & Co. ...	Order ...	M. M., Colombo ...	100 Bags Urad ...	9	14	3	18	—	—	P. L. S. Serugan Chettiar on B/L 116 20/1/47	9	14	3	18	
117	Do ...	do ...	J. Colombo ...	56 Bags Tuar (Bharazi) ...	1	—	—	—	—	—	} Cancelled	—	—	—	—	
118	Do ...	do ...	C. Colombo ...	56 do ...		—	—	—	—	—		—	—	—	—	—
119	The Somalia Trading Co. ...	do ...	S.O.M.C.O., Colombo ...	125 Bags Juwaree ...	9	16	3	7	—	—	Robert & Co. B/L No. 119, 23/1/47	9	16	3	7	
120	Pardham Ladak, Ltd. ...	do ...	A.R.P., Colombo ...	100 Bags Cow Peas (Chola) ...	10	3	2	22	—	—	Kaninhoy Bagsoobhoy, Telegur 15/1	10	3	2	22	
121	Do ...	do ...	A.R.P.A., Colombo ...	290 Bags White Juwaree ...	24	11	2	26	—	—	Hoosen Kasaun Duda on Guarantee 22 1/47	24	11	2	26	
122	M. M. Jamal & Co. ...	do ...	A.L.A.H., Colombo ...	230 Bags Cow Peas ...	22	10	—	10	—	—	A. L. A. Hamid, B/L 122, 22/1 ...	22	10	—	10	
123	Kassam Jivraj & Co., Ltd. ...	do ...	K.K.J., Colombo ...	100 Bags Cow Peas (Chola) ...	9	16	3	7	—	—	N. P. Krishnasamy Chettiar & Co. in B/L 123 22/1/47	9	16	3	7	
124	Do ...	do ...	R.K., Colombo ...	190 do ...	18	18	1	18	—	—	A. R. S. Thirumeninathu Nadar, B/L 124, 24/1/49	18	18	1	18	
125	Africa Produce Co. (Kenya) Ltd. ...	do ...	S.V.R.N., Colombo ...	325 do ...	29	16	0	5	—	—	S. Ram Nayr & Co., B/L 125 ...	—	—	—	—	
126	Do ...	do ...	P.A.N.J.U., Colombo ...	172 Bags Urad ...	16	8	2	4	—	—	Dawoodbhoy Jafferjee, B/L 124 ...	—	—	—	—	
127	Kassar Jivraj & Co., Ltd. ...	do ...	A.Z.I.Z., Colombo ...	500 Bags Cow Peas ...	48	5	2	24	—	—	D/o issued to H. K. Dada on B/L 127	—	—	—	—	
128	Do ...	do ...	K. J. & Co. Colombo ...	200 do ...	19	4	2	12	—	—	P. L. S. Sevagan Chettiar on B/L B/L 128 on 20/1/47	—	—	—	—	
129	Girther Purshotam (Kenya) Ltd. ...	do ...	G.P. (K) Ltd. Colombo ...	200 do ...	20	5	1	12	—	—	A. L. A. Hamid on B/L 129 of 20/1/47	20	5	1	12	
130	Do ...	do ...	do ...	110 Bags Urad ...	10	0	2	12	—	—	Chettinad Corporation, Ltd., on B/L No. 130 on 21/1/47	10	2	1	16	
131	M. M. Patel & Co. (Kenya) Ltd. ...	do ...	M. M. P., Colombo ...	239 Bags Cow Peas ...	22	19	1	27	—	—	P. R. Subhial Pilla & Co., (B/L 131	22	19	1	27	
132	Vagani & Co. ...	do ...	V. & C., Colombo ...	270 Bags Cow Peas ...	26	10	1	12	—	—	D/o M/s. A. L. A. Hamid on B/L No. 132 on 20/1/47	26	10	1	12	
133	Coffee Services, Limited	} Order of Messrs Karasondas Ran- chordas, Colombo	M.P., Colombo ...	271 Bags Kaffir Beans ...	24	5	1	23	—	—	} D/o Issued to M/s. Hebulabhoy & Co. 29/1/47	24	16	0	25	
	Do ...		do	D.K., Colombo ...	1052 Bags Kaffir Corn ...	109	9	0	24	—		—	109	9	0	24
				K.P., Colombo ...	105 Bags Jugo Beans ...											
			G.V., Colombo ...	428 Bags Beans ...	38	7	2	18	—	—		38	7	2	18	

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P 22

Cable from Defendants to Plaintiff

Exhibits.

P 22

Cable from Defendants to Plaintiff. 15-1-1947.

P 22

CABLE & WIRELESS, LIMITED,

Office of Issue :
Not Clear

Stamp

CABLE & WIRELESS, LIMITED,
Mombasa

SD 32/S COLOMBO SUB 18/17 15 1310 LC ODHAVJILTD, MOMBASA

10 JUNECREAST CABARITA ARRIVED CABLE TWENTY-
FIVE TONS CHORA 35 TONS VATANA MARKS QUANTITY
BAGS RELIABLE 35.

P 13

Copy of Cable from Plaintiff to Defendants

P 13
Copy of Cable from Plaintiff to Defendants. 29-1-1947.

RELIABLE

P 13

Deposit A/c.

COLOMBO

29-1-47.

20 WHY UNPAID OUR BILL £3134.3.1 SIXTY TONS
CHORA REFER CONTRACT DATED 24TH DECEMBER IF
BILL NOT PAID WITHIN FORTYEIGHT HOURS FROM
DATE HEREOF WE WILL SELL THERE AT MARKET
PRICE YOUR RISKS COSTS REPLY URGENTLY
ODHAVJILTD

P 13A.

Original of Cable from Plaintiff to Defendants

P 13A
Original of Cable from Plaintiff to Defendants. 29-1-1947.

P 13A.

CABLE & WIRELESS, LIMITED,

"Via Imperial"

Office of Issue :
WIRELESS & CABLE, LTD.,
Colombo Branch,

29 Jan., 47.

DS 43/B MOMBASA 42/40 29 1520 NOT RELIABLE COLOMBO

30 WHY UNPAID OUR BILL L31 34-3-1 SIXTY TONS
CHORA REFER CONTRACT DATED 24TH DECEMBER IF
BILL NOT PAID WITHIN FORTYEIGHT HOURS FROM
DATE HEREOF WE WILL SELL THERE AT MARKET
PRICE AT YOUR RISKS COSTS REPLY URGENTLY.
ODHAVJILTD.

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Exhibits.
P 19
Noting Chit
29-1-1947.

P 19

Noting Chit

P 19

72/717

Principal £3,134.3s..1d. Std.
Noting Fees : Rs. 1.25.

Noted for non-payment. Drawee declined to pay and stated the goods have been sent contrary to instructions.

Colombo, 29th day of January, 1947. Sgd. P. R. SITTAMPALAM,
Notary Public. 10

P 11
Copy of Cable
from Plaintiff
to Defendants
4-2-1947.

P 11

Copy of Cable from Plaintiff to Defendants

RELIABLE
NLT
COLOMBO

P 11

Deposit A/c.

4-2-47.

BANK INFORMS YOU ARE TRYING IMPORT LICENCE
PLEASE PAY DRAFT FIRST AS CONTRACT DOES NOT
SHOW LICENCE CLAUSE IF DRAFT UNPAID WITHIN
TWENTYFOUR HOURS WILL SELL MARKET PRICE AT
YOUR RISKS COSTS REPLY IMMEDIATELY ODHAVJILTD. 20

P 11A
Original of
Cable from
Plaintiff to
Defendants.
4-2-1947.

P 11A.

Original of Cable from Plaintiff to Defendants

CABLE & WIRELESS, LIMITED,
"Via Imperial"

P 11A.

Office of Issue :
COLOMBO TELEGRAPHS,

4th Feb., 47.

SÉCO 159 I DP 11/1 MOMBASA 38 4 1000 NLT RELIABLE
COLOMBO

BANK INFORMS YOU ARE TRYING IMPORT LICENCE
PLEASE PAY DRAFT FIRST AS CONTRACT DOES NOT
SHOW LICENCE CLAUSE IF DRAFT UNPAID WITHIN 30
TWENTYFOUR HOURS WILL SELL MARKET PRICE AT
YOUR RISK COSTS REPLY IMMEDIATELY ODHAVJILTD.

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P 17

Letter from E. B. Creasy & Co. to the National Bank

P 17

The Manager,

Jr/EH/518.

12-2-47.

National Bank of India, Ltd.,
Inward Bills Dept.
Colombo.

Exhibits.

P 17

Letter from
E. B. Creasy &
Co. to the
National
Bank.
12-2-47.

Dear Sir,

Shipments of Grain for Warehousing

10 We have just started receiving the first lot of grains from the wharf for warehousing for the various consignments which you have sent to us. We would like to take this opportunity of stating that practically all the bags are slack and very many of them torn. For the torn bags we have to make arrangements to mend them and we cannot hold ourselves responsible for any loss which may result from this damage.

We would point out that all the Bills of Lading are claused and that no claim can therefore be made on these consignments.

Yours faithfully,
E. B. CREASY & CO., LTD.,

20

Director.

P 12

Copy of Letter from Plaintiff's Proctor to Defendants

P 12

P 12

Copy of Letter
from Plain-
tiff's Proctor
to Defendants
5-3-1947.

S. A. SEYED HAMID,
*Proctor, Supreme Court &
Notary Public*

371, Dam Street,
Colombo, 5-3-47.

Express Delivery

30 ABDUL LATIFF ABDUL HAMID, Esq.,
161, Prince Street, Colombo.

Dear Sir,

Exhibits.

60 Tons Cowpeas

P 12
Copy of Letter
from Plaintiff's
Proctor to Defendants
5-3-1947.
—continued

I have been consulted by Messrs. Odhavji Anandji & Co., Ltd. of Mombasa to take steps against you for the breach of contract entered into with them on 24-12-46 by your representative Mr. M. Y. Aboobucker, for the purchase by you of 60 tons of Cowpeas at £51 per ton c.i.f. Colombo.

The goods were duly shipped by ss. "June Crest" which sailed from Mombasa on or about 28-12-46 with goods.

You have failed to accept the goods and honour the relative Bill of Exchange for £3134 3s. 1d.

As you have failed to take delivery of, and pay for, the goods in spite of 10 my clients' requests, my clients will now dispose of the goods on your account and at your risk, according to their earlier intimations to you, and file action against you for the recovery of any deficit.

As the quantity of goods is very large the sale of the whole quantity in bulk at an auction sale may not be as advantageous as a sale by private treaty, and so my clients intend to have the goods sold by private treaty unless you prefer a sale by public auction, in which event you must inform me forthwith.

Before doing so, I am giving you a final opportunity of fulfilling your obligations under the contract.

If I don't hear from you within 24 hours agreeing to meet the draft and 20 take the goods, my clients will proceed to dispose of the goods as stated above.

The disposal of the goods will be done by my clients without prejudice to their legal rights under this contract and purely with a view to reducing their ultimate claim against you as far as possible.

Yours faithfully,
Sgd. S. A. S. HAMID.

P 12A
Postal
Receipt
5-3-1947

P 12A.
Postal Receipt
P 12A.

Registered Postal Article Receipt No. 479

30

Received from Mr. S. A. S. Hamid
Article addressed to A. L. A. Hamid.

Insured for Rs. cts. upon which Postage and
Registration Fee Rs. cts. 41. Insurance Fee Rs. cts.

Intld. (Illegibly)
Postmaster's Signature.

139

D 10

Sale Memo.

Exhibits.

D 10

Sale Memo
6-3-1947.

D 10

6-3-47

MONA ANA

100 bags Cowpeas (white) lbs. Rs. 609 at 47/-	..	Rs. 4,843.12
Less Buyers advance	..	500.00
		<hr/>
Balance	..	Rs. 2,343.12

D 11

Sale Memo.

D 11

Sale Memo
6-3-1947.

10

D 11

6.3.47

O. A. P.

25 bags White Cowpeas lbs. 5,370 at 45/-	..	Rs. 1,208.25
--	----	--------------

D 12

Sale Memo.

D 12

Sale Memo
6-3-1947.

D 12

6.3.47

M. S. T. K. M.

20

40 bags Cowpeas (White) lbs. 8,148 at 48/-	..	Rs. 1,955.52
--	----	--------------

D 20

Sale Memo.

D 20

Sale Memo
6-3-1947.

D 20

6.3.47

GANESAN (Kannan & Co.)

50 bags of Cowpeas lbs. 10,629 at 48/-	..	Rs. 550.96
--	----	------------

Received in full.

Sgd. 13/3.

Exhibits.
D 21
Sale Memo
8-3-1947.

140

D 21
Sale Memo

D 21

8.3.47

GANESAN & Co. (Kannan & Co.)

50 bags Cowpeas 10,308 lbs. at 48/- .. Rs. 2,473.92

D 13
Sale Memo
9-3-1947.

D 13
Sale Memo.

D 13

9.3.47 10

D. H. MARIKAR

3 bags Cowpeas (White) 5 2 22 at 50/- .. Rs. 159.50
30

Rs. 159.80

D 14
Sale Memo
11-3-1947.

D 14
Sale Memo.

D 14

11-3-47

O. A. P.

25 bags White Cowpeas 5,254 lbs. at 48/- .. Rs. 1,260.96 20

46.3.18

D 22
Sale Memo
14-3-1947.

D 22
Sale Memo.

D 22

14.3.47

R. M. S. SOCKALINGAM

30 bags White Chola 6,482 at 47/- .. Rs. 1,523.27

141

D 16

Letter from Defendant's Proctor to Plaintiffs' Proctor

181

D 16

D 16
Letter from
Defendant's
Proctor to
Plaintiffs'
Proctor.
17-3-1947.

S. SOMASUNDARAM,
Proctor & Notary,
Colombo

Colombo, 17th March, 1947.

10 S. A. SEYED HAMID, Esq.,
Proctor, S.C.,
Dam Street, Colombo.

60 Tons Cowpeas

Dear Sir,

With reference to your letter of the 5th instant addressed to Mr. Abdul Latiff Abdul Hamid, I am instructed to state that the goods referred to are not the goods contracted for by my client's representative and that the same were found to have been attacked by Weevils and been subject to some treatment before they were shipped and which has adversely affected the quality of the goods. My client regrets that he cannot accept the goods in view of the damaged condition 20 in which they have been received and as the goods cannot be marketed in Colombo or elsewhere.

My client also denies liability for any loss that your clients may suffer in respect of the said goods.

Yours faithfully,

D 23

Sale Memo.

D 23

D 23
Sale Memo
21-3-1947.

21.3.47

K. L. S.

30 40 bags White Cowpeas 8,246 at 44/- .. Rs. 1,814.12

1,814.12

142

Exhibits.
D 15
Sale Memo
24-3-1947.

D 15
Sale Memo.

D 15

M. S. T. K. M. & Co.

24.3.7

30 bags Cowpeas 6,031 lbs. at 43.50 .. Rs. 1,311.75

P 16
Letter from
E.B.Creasy &
Co. to Popat-
lal & Co.
2-4-1947.

P 16
Letter from E. B. Creasy & Co. to Popatlal & Co.

P 16

E. B. CREASY & Co., LTD.,

Telegraphic Address :
"CRESCO"

10

Telephone : 2337-2338

P.O. Box No. 37
Colombo, 2-4-47.

Ref. Jr/EH/1382

MESSRS. M. POPATLAL & Co.,

184, Fourth Cross Street, Colombo.

Dear Sirs,

With reference to yours of yesterday's date in connection with 646 bags ex ss. "June Crest". The charges due on this consignment amount to Rs. 3,677.40 plus warehouse rent amounting to Rs. 1,292. These charges cover 20 the consignment up to the 17th instant and we shall be glad therefore if you will make arrangements to take delivery before that date. Will you kindly favour us with your remittance and delivery instructions.

Yours faithfully,
E. B. CREASY & Co., LTD.,

Sgd. (Illegibly)
Director.

Endorsement :

Paid by H. & S. Bank Cheque Rs. 4,969.40.

Intld. (Illegibly).
Rec. 2/4

30

Statement of Account

M. POPATLAL & Co.,

GENERAL MERCHANTS

Exhibits.

P 18
Statement of
Account.
3-4-1947.TELE { PHONE No. 1897.
GRAMS : " Manilal "185, Fourth Cross Street, Pettah.
Colombo, 3-4-47.

Account Sales of 646 Bags Chola Marks Various

Received from E. B. Creasy & Co.'s Store and sold on A/c and risk of
Messrs. Odhavji Anandji & Co., Bombay.

Date	Bags Recd.	Bags Sold	Cwts.	qrs.	lbs.	Rates	Rs. cts.	Particulars	Dr. Rs. cts.	Cr. Rs. ct.
3- 4-47	530	3	4	3	10	25	67 76	2/4 paid to E. B. Creasy & Co. Store rent, Duty, etc.	4,969 40	—
12- 7-47	116	160	255	0	06	26	3,713 58	Lorry Cooly for 530 bags Expenses, etc.	136 00 15 00	—
30- 7-47	—	25	39	2	09	24	531 96	Unloading and weighing charges	53 00	—
31- 7-47	—	60	90	2	18	25	1,269 25	8/7 paid to E. B. Creasy & Co. storage, etc.	175 00	—
2- 8-47	—	22	31	2	19	25	443 37	—	—	—
5- 8-47	—	43	66	0	26	25	927 25	Cart hire cooly for 116 bags ...	33 00	—
7- 8-47	—	80	85	0	03	25	1,190 37	Expenses, etc. ...	8 00	—
19- 8-47	—	22	30	1	09	25	424 62	Unloading and weighing cooly ...	11 60	—
- 8-47	—	40	60	3	07	25	851 37	Store rent at -/25 per bag for a month	573 50	—
47	—	65	87	2	18	25	1,202 71	—	—	—
25- 8-49	—	65	83	2	19	25	1,171 38	—	—	—
27- 8-47	—	26	27	0	23	25	380 87	Brokerage at -/25 per bag for 630 bags	157 50	—
1- 9-47	—	35	29	0	26	23	376 51	Deposit with M/s. Canjee Prem- jee & Co. (KMK) A/c.	500 00 627 52	—
	646	646	891	3	25	—	12,550 99	Commission ... Income Tax ... Insurance ... Insurance ... Postage, etc. ... By sale ...	125 50 125 50 46 88 10 00 —	— — — — 12,550 99
									7,441 90

144

Exhibits.

P 14

P 14
Copy of
Letter from
Plaintiff's
Proctor to
Defendants.
9-12-1947.

Copy of Letter from Plaintiff's Proctor to Defendants

P 14

ABDUL LATIFF ABDUL HAMID, Esq.,
161, Prince Street,
Colombo 11

9th December, 1947.

Dear Sir,

60 Tons Cowpeas

Further to my letter to you of the 5th March, 1947, I am instructed by my clients, Messrs. Odhavji Anandji & Co., to inform you that the goods were sold at your risk, and that they have suffered a loss altogether a sum of Rs. 37,3250-0-1 to wit, Rs. 41,934-2-1 being the contract price and Rs. 1,000 on account of expenses incurred thereof less Rs. 5,609-2-0 being the proceeds of sale. 10

Unless you remit the amount within seven days from the date hereof, please note that my clients will have no alternative but to institute legal proceedings against you for the recovery of the amount with interest and costs without further notice to you.

Yours faithfully,
Intld. S. A. S. H.

P 14A
Postal Article
Acknowledg-
ment Card.
11-12-1947.

P 14A.

20

Postal Article Acknowledgment Card

P 14A.

ON HIS MAJESTY'S SERVICE

A letter (1) : Advice of delivery.

Insured for : (for inland post only).

Registered at the Courts Post Office : Stamp of the office of despatch of the advice.

On the 9/12/47, Colombo.

Under No. 596 (2) : 4-30 p.m.

Under No. 596 (2) : 4.30 p.m., 11 Dec., 47.

30

Sent by S. A. S. Hamid and addressed to Mr. Abdul Latiff Abdul Hamid, 161, Prince Street, Colombo 2.

Name of the Sender of the Registered Article : S. A. Seyed Hamid, 371, Dam Street, Colombo.

The under-mentioned acknowledges that the article mentioned on the other side was duly delivered on the 11-12-47. Exhibits.

Stamp of the Delivery Office :
Colombo, 11 Dec. 47.

Postal Article
Acknowledg-
ment Card
11-12-1947.
—continued

(1) Signature of the Addressee.

For A. L. A. Hamid,
Sgd. Omar Hasam

(1) This advice must be signed by the addressee or by the Postmaster of Delivering Office and returned by the first mail direct to the sender.

10

D 9A.

Page 181 of D 9

D 9A
Page 181 of
D 9.
1946-47.

Translation from Ledger of Messrs. Abdul Latiff Abdul Hamid, 123, Bankshall Street, Colombo :

Name of Account : Cowpeas—Trading Account
Period : Year 1946-47.
Folio : 181.

	Credit	Debit
	3373-44 C. Bk. Fol. 48 of 1-11-46 51 bags	5343-51 C. Bk. Fol. 49 of 1-11-46 102 bags
20	2604-28 Jrnl. Fol. 19 of 30-11-46 51 bags	192-16 C. Bk. Fol. 54 of 1-11-46
	361.03 C. Bk. Fol. of 9- 2-47 10 bags	25.50 do 58 of 1-12-46
	3976.34 do 85 of 17- 2-47	215.49 do 60 of 17- 2-47
	3976.34 do 85 of 17- 2-47 86 bags	215.49 do 60 of 17- 2-47
	6051.37 do 100 of 8- 3-47 125 bags	30878.13 do 69 of 14- 1-47 460 bags
	1955.54 do 102 of 10- 3-47 40 bags	15194.89 do 69 of 14- 1-47 230 bags
30	159.80 do 105 of 11- 3-47 3 bags	20.50 do 74 of 14- 1-47
	1260.96 do 110 of 12- 3-47 25 bags	1.50 do 76 of 26- 1-47

Exhibits.	2550.94	do	114 of 13-	3-47	435.88	do	79 of 1-	2-47	
D9A			50 bags						
Page 181 of D9.	2473.92	do	115 of 13-	3-47	1294.10	do	82 of 9-	2-47	
1946-47.			50 bags						
—continued	1523.27	do	120 of 17-	3-47	248.00	do	82 of 9-	2-47	
			30 bags						
					41.60	do	86 of 17-	2-47	
					161.00	Jrnl. Fol.	25 of 28-	2-47	
					12.00	C. Bk. Fol.	104 of 10-	3-47	
					62.50	do	108 of 11-	3-47	10
	<hr/>								
	26290.87				54126.76				
	B/F 26290.87				54126.76				a45
	1814.12	C. Bk. Fol.	130 of 21-	3-47	15.00	C. Bk. Fol.	111 of 12-	3-47	
			40 bags						
	15004.82	Jrnl. Fol.	37 of 31-	3-47	112.50	do	119 of 12-	3-47	
			Loss		136.50	do	129 of 20-	3-47	
		Total Bags			20.00	do	135 of 24-	3-47	
		561			3.65	do	145 of 29-	3-47	
					7.40	do	145 of 29-	3-47	
					15.00	do	149 of 30-	3-47	20
	<hr/>								
	43109.81				54436.81				Total Bags 802
	11327.00	Balance —C/F.							
	54436.81	New Ledger Fol.	81						

D 17
Cable from
Plaintiff to
Defendants.
28-4-1948.

D 17
Cable from Plaintiff to Defendants

D 17

CABLE & WIRELESS, LIMITED,
"Via Imperial"

Office of Issue :

CABLE & WIRELESS, LTD.,

COLOMBO
28 AP 248
TELEGRAPHS

28 Apr., 1948. 30

DPS 160 DP 56/E 38/28 MOMBASA 32/28 27 2250 NLT RELI-
ABLE COLOMBO

COFFEE NINETY MAY JUNE SEASON ENDING GRAM Exhibits.
 FORTYEIGHT GRAMDHALL SIXTY TOORDALLOILY FIFTY- D 17
 EIGHT URID FIFTYONE CHILLIES FORTYEIGHT JOGGERY Cable from
 FORTYFIVE YELLOWPEAS FORTYFIVE MILLET THIRTY Plaintiff to
 CABLE REQUIREMENTS — ODHAVJILTD. Defendants.
 28-4-1948.

D 18

Cable from Plaintiff to Defendants

D 18
 Cable from
 Plaintiff to
 Defendants.
 7-6-1947.

D 18

10 CABLE & WIRELESS LIMITED,
 " Via Imperial " 478

Issuing Office :

CABLE & WIRELESS, LIMITED,
 Colombo Branch.

7 June, 47.

SECO 389/IP 99 MOMBASA 29/23 7 1100 — NLT -- RELI-
 ABLE COLOMBO.

MASOORDHALL L 60/- CHORA L 34/- BAJRI L 36/-
 MASOOR L 50/- GRAMS L 43/- C.I.F. PER TON SHIPMENT
 FROM ADEN SUBJECT IRREVOCABLE CREDIT—ODHAVJILTD.

20

D 19A.

Page 81 of D 19

D 19A
 Page 81 of
 D 19.

D 19A.

249.24	Cash Bk. Fol. 11 of 10-4-47	11327.00	per Old Ledger Folio,
	6 bags		bags 241
1176.10	do 20 of 17- 4-47	.60	Cash Book Fol.
	29 bags		13 of 10- 4-47
4106.87	do 75 of 27- 5-47	6.36	do 24 of 22- 4-47
	167 bags	17.50	do 43 of 3- 5- 47
5920.75	Journal Fol. of 31- 3-48	83-50	do 83 of 2- 6-47
		18.00	do 182 of 25- 7-47
<hr/>		<hr/>	
11452.96	Loss	11452.96	

30

Translation certified as correct :

27-11-50,

Sgd. (Illegibly)
 Sworn Translator.

Supreme Court of Ceylon
No. 240 (Final) of 1951.

District Court, Colombo
No. 21162.

*In Her Majesty's Privy Council on an Appeal from
The Supreme Court of Ceylon.*

BETWEEN

ODHAVJI ANANDJI & Co. Ltd.

of Mombasa.....*Plaintiff—Respondent*

AND

1. ABDUL HAMID and
2. ABDUL LATIFF, both carrying on business in partnership under the name style and Firm of "Abdul Latiff Abdul Hamid" at 123, Bankshall Street in Colombo.....*Defendants—Appellants.*

**RECORD
OF PROCEEDINGS**
