

G.C.L.S. 76

28, 1955

In the Privy Council.

No. 41 of 1954.

ON APPEAL  
FROM THE SUPREME COURT OF CANADA

BETWEEN

WILLIAM D. BRANSON LIMITED ... (Plaintiffs) Appellants

AND

FURNESS (CANADA) LIMITED (In Liquidation)  
(Defendants) Respondents.

RECORD OF PROCEEDINGS  
VOLUME II

INDEX OF REFERENCE.

No.	Description of Document.	Date.	Page.
IN THE SUPREME COURT OF CANADA.			
1	Reasons for Judgment—		
	(A) Locke, J. (concurring in by The Chief Justice, Rand and Fauteux, JJ.) ... ..	—	1
	(B) Taschereau, J. ... ..	—	8
2	Formal Judgment ... ..	6th October 1953 ...	9
3	Notice of Appeal ... ..	28th October 1953 ...	10
4	Notice of Motion to fix Bail ... ..	28th October 1953 ...	10
5	Order fixing Bail ... ..	4th November 1953	11
6	Bail Bond ... ..	4th November 1953	12
7	Order approving Bond ... ..	4th November 1953	13
IN THE MONTREAL SUPERIOR COURT			
8	Order for Winding-Up of Respondent Com- pany ... ..	16th July 1954 ...	14
9	Judgment of Jean, J., authorising the Per- manent Liquidator of the Respondent Com- pany to continue proceedings ... ..	1st September 1954	16

INSTITUTE OF ADVANCED  
LEGAL STUDIES,  
25, RUSSELL SQUARE,  
LONDON,  
W.C.1. /

-4 JUL 1956

No. 41 of 1954.

In the Privy Council.

ON APPEAL  
FROM THE SUPREME COURT OF CANADA

---

BETWEEN

WILLIAM D. BRANSON LIMITED ... (*Plaintiffs*) *Appellants*

AND

FURNESS (CANADA) LIMITED (In Liquidation)  
(*Defendants*) *Respondents*.

---

RECORD OF PROCEEDINGS  
VOLUME II

---

No. 1.

Reasons for Judgment.

In the  
Supreme  
Court of  
Canada.

No. 1.  
Reasons for  
Judgment.

(A) Locke,  
J. (con-  
curred in by  
The Chief  
Justice,  
Rand and  
Fauteux,  
JJ.)

(A) LOCKE, J. (concurrent in by The Chief Justice, Rand and Fauteux, JJ.) :

In this matter there was some evidence that, on the arrival of the shipment of potatoes at Rio de Janeiro, some of them were in bad condition and, further, that the Defendant had been negligent in the matter of the stowage or preservation of the goods. The finding at the trial that the potatoes, when shipped at Halifax, were in good condition was not disputed by Counsel for the Appellant on the argument before us. The evidence does not bring the Defendant within any of the exceptions from liability provided by the Water Carriage of Goods Act 1936 and, in my opinion, the learned trial Judge's finding that the Appellant was liable for the damage sustained should not be disturbed.

The proof as to the quantum of the damage is, however, most unsatisfactory and I am unable, with respect, to agree that there was evidence to justify a finding that the Respondent had suffered damage to the amount of \$44,677.81.

The evidence as to the stowage of the goods upon the S.S. "Fort Columbia" is that 3,843 hundred pound bags were stowed in lower No. 1 hold and 1,411 hundred pound bags and 11,500 seventy-five pound bags

In the  
Supreme  
Court of  
Canada.

No. 1.  
Reasons for  
Judgment.

(A) Locke,  
J. (con-  
curred in by  
The Chief  
Justice,  
Rand and  
Fauteux,  
JJ.)—  
*continued.*

in No. 1 'tweendeck. In No. 2 'tweendeck there were 885 hundred pound bags and 12,381 seventy-five pound bags. In No. 4 'tweendeck there were 700 hundred pound bags and 5,432 seventy-five pound bags. In No. 5 lower hold there were 1,777 hundred pound bags and in No. 5 'tweendeck 3,154 hundred pound bags and 2,650 seventy-five pound bags. The shipment was thus made up of 11,770 hundred pound and 31,963 seventy-five pound bags of potatoes.

The only evidence for the Respondent as to the extent of the damage is that of witnesses whose evidence was taken at Rio de Janeiro. On 26th November, 1947, Carlos T. Nogueira, a cargo surveyor employed 10 apparently on behalf of the underwriters who had insured the cargo, went on board the vessel where, he said, he found quantities of wet bags "with "potatoes in deterioration and sprouting." The cargo was then being discharged and transported by wagons to Warehouse 19, on or adjacent to the dock. He did not undertake to estimate the extent of the damage but suggested the appointment of an agronomist, Dr. Sodre, Professor at the Rural University, who had been employed for many years past as a surveyor for Lloyd's. Nogueira produced, and there was marked as an exhibit by the Commissioner a survey report upon a form prepared for use by Lloyd's Agents which he had signed and which contained a 20 signed report by Sodre as to his inspection. In this document which was marked as an exhibit to the evidence of the witness, without objection by Counsel representing the present Appellant, Nogueira states that the consignee had given notice of loss to the steamship company's agents and that their reply had been that "the carrier was not responsible in "view of clauses in the bill of lading." Nogueira says that he was present at the examination made by Dr. Sodre in Warehouse 19 and that Sodre had opened up several bags and examined the quantity of spoilt potatoes. According to his recollection, the bags examined were taken from the 30 centre of the pile.

Simao Merhy, a member of a Brazilian firm which was the consignee of part of the shipment of potatoes, said that he had gone on board the ship but had not gone down into any of the holds, and that potatoes which had deteriorated were found in some of the holds only. Merhy said that the consignees had applied to Lloyd's to have the survey made and, from his own observation, considered that part of the potatoes were entirely rotten. He was present when Sodre conducted the survey and as to this he said that Sodre had :—

"turned out (the contents of) the damaged bags, the less  
"damaged, countless bags, in order to verify their condition; 40  
"he verified the general lot in which the goods were piled and  
"had bags on top lifted, and had the bags in the middle of the  
"lot examined."

Asked as to where the "countless bags" had been taken from, he said :—

"Different (places), from the mass of 43,000 bags which  
"were piled up inside the warehouse; he climbed up on top of

“ the bags—I was beside him ; and now and then he had one  
“ lifted out.”

Dr. Sodre had had some twenty years' experience in surveying shipments of fruit and vegetables on behalf of Lloyd's and said that he was asked to make the survey on December 5th and that it was carried out on 6th December, 1947. Other evidence disclosed that the unloading of the shipment had been completed on November 28th and the potatoes examined had been in Warehouse 19 since that date. Sodre had had an earlier experience with damage to shipments of potatoes in two ships ; the “ Fort McDonald ” and the “ Fort Kilman,” due to the failure of the refrigeration system in those vessels, and apparently thought that there had been a similar failure of the refrigeration plant of the “ Fort Columbia ” to which the damage, which he found to be “ Black Heart,” was attributable. In fact, the “ Fort Columbia ” was not a refrigerated ship. While the survey had been made on 6th December, 1947, Dr. Sodre gave his evidence upon commission on 21st July, 1950, and his account of the nature of the survey was largely based upon the written report he had made at the time. With this assistance, he said that there was only part of the total shipment of potatoes in the warehouse at the time of his examination, the balance of the cargo having been taken already to the market having been in sound condition. This statement was merely hearsay, having been information given to Sodre by someone employed on the dock or in the warehouse. While his written report said nothing as to the number of bags of potatoes that were in the warehouse when he made his examination, he said that, from information which he had obtained from the consignees and the storekeeper as well as the checking clerks who had checked the unloading, he had reached the conclusion that the potatoes surveyed originated exclusively from holds 1 and 2, and that the storekeeper (apparently of the warehouse) had already given clearance “ to all the potatoes unloaded from holds 3 and 4 “ since they had been removed from the warehouses and released for the “ City's market.” In fact, there had been no potatoes carried in hold No. 3. Again he said that the amount of the total cargo of potatoes in holds 1 and 2 had been given to him by the foreman of the stevedores doing the unloading who had a plan of the cargo in the holds and that this number was “ registered in Lloyd's report as 15,300.” Assuming, as I do, that the reference to No. 1 hold was to the 'tweendeck as well as the lower hold and the reference to No. 2 hold was to the 'tweendeck (since nothing was stored in No. 2 lower hold), there had been 6,139 hundred pound bags and 23,881 seventy-five pound bags in these two holds. Sodre did not have any count made of the quantity of bags that were in the warehouse and his report did not state the number. Merhy, referring to the examination, had said that potatoes were examined from different places “ from the mass of 43,000 bags,” he, at least, evidently being of the opinion that all of the shipment was in the warehouse. Neither the storekeeper nor any other witness having knowledge of the matter were called to give evidence as to the quantities which were in the warehouse when Sodre made his examination.

In the  
Supreme  
Court of  
Canada.

No. 1.  
Reasons for  
Judgment.

(A) Locke,  
J. (con-  
curred in by  
The Chief  
Justice,  
Rand and  
Fauteux,  
JJ.)—  
*continued.*

In the  
Supreme  
Court of  
Canada.

No. 1.  
Reasons for  
Judgment.

(A) Locke,  
J. (con-  
curred in by  
The Chief  
Justice,  
Rand and  
Fauteux,  
JJ.)—  
*continued.*

Describing what he had done in order to estimate the damage, Sodre said that his survey had lasted from one to one and a half hours, that the potatoes were in very high piles—

“ the piling was close and very high. It must have been  
“ approximately 15 or 20 bags in height.”

Nogueria’s report, referring to what was done following the discharge of the cargo from the vessel, stated :—

“ The bags were then loaded directly on to rail wagons and  
“ unloaded into Customs Warehouse No. 19, being piled 30 bags  
“ high.”

10

Sodre, without saying how many piles of bags there were in the warehouse, said that he had examined bags from all the piles from every corner—

“ in order to have an exact or an approximate idea of the  
“ extent of the damage and that this took a long time because they  
“ had to open bags from all the piles from the top, from the middle,  
“ from all positions.”

The damage, he said, was generalized and they found damaged and perfect potatoes mixed together in every pile and, specially in the underpart of the bags, nearly all were damaged. Asked as to the number of bags he had examined, he said that it was approximately 100 more or less, and that he did empty the bags on the floor in order to verify the percentage of defective potatoes. Asked, in chief, whether, in addition to the bags inspected visually, he had made a visual inspection of the remaining bags, he said that he had. How this was done, in view of the height of the tiers of bags was not explained. There appeared, endorsed at the foot of Sodre’s written report, a statement that, according to the Custom’s report, notations were recorded in the Discrepancy Book with regard to the consignment of potatoes carried by the “ Fort Columbia ” of 2,000 bags damaged, 4,000 bags torn and 1,500 bags wet, but Sodre said that, as to the accuracy of this, he assumed no responsibility. A further statement in Sodre’s report was to the effect that only the cargo carried in holds 1 and 2 had arrived in a “ wasty ” condition because in those holds there were no exhaustors nor ventilation whatsoever and that one of the stevedores who happened to be the first to go down in the holds had died, poisoned by carbonic gas. This again was pure hearsay and was wholly inaccurate. A stevedore had died in hold No. 4, where there had been no difficulty with ventilation or damage to the cargo carried. Cross examined as to the quantities in the warehouse at the time of his examination and as to whether there had not been some 45,000 bags, Sodre first said that it seemed to him that he had made the survey not on one day but on several days, and then having again examined the reports reaffirmed that everything was done on December the 6th.

20

30

40

Sodre calculated a depreciation of 70 per cent. of the shipment examined by him and said :—

“ It was established and agreed by every one that 70 per cent. would be applied to the potatoes which were in the warehouse on 6th December, and which, according to my information were those from holds 1 and 2.”

In the Supreme Court of Canada.

Asked as to what he meant by “ agreed upon by every one,” he said he referred to—

No. 1.  
Reasons for Judgment.

10 “ the consignees and receivers of the goods ; because, when we make surveys, the surveyor listens, to a certain extent, to the opinion of the owners of the goods, those who are going to trade in them for agreement on a certain loss, which we presume may take place, and which is not . . . which may be greater . . . it is an estimate, which is not always the exact truth. Very often, we arrive at an agreement in respect of the loss, which may either be a little more or a little less than in actual fact—because it is an estimate.”

(A) Locke, J. (con-  
curred in by  
The Chief  
Justice,  
Rand and  
Fauteux,  
JJ.)—  
*continued.*

20 It is not unimportant to note that no one representing the ship was present during this survey. Neither Captain O’Hara, the Master of the vessel, Eric Gardner, the second in command, or Peter Lawson, the chief engineer, who observed the unloading of the vessel throughout, heard any complaint as to the condition of the cargo or any claim on behalf of the consignees. The statement in Nogueira’s report, marked in evidence, that the consignees had given notice to the steamship company’s agents, alone suggest that any such claim was made and while, presumably, the notice would be in writing it was not produced or its contents proven. Nogueira said nothing in his oral evidence of the giving of such a notice.

30 A further witness who gave evidence on behalf of the Respondent, pursuant to the commission, was Jose Da Silva Rios, the manager of one of the firms to whom part of the shipment was consigned, who said that it was he who applied to Lloyd’s agents for the survey. He had watched the unloading of the ship and said that the potatoes in Nos. 1 and 2 holds revealed signs of damage, the evidence of this being that some of the bags were wet. He was present during part of Sodre’s survey and said that none of the shipment had been removed before the survey was commenced. As to the examination conducted by Sodre, he said that during this survey many bags were opened.

40 Waldemar Da Silva, a witness called by the Appellant, was a checking clerk and was apparently the overseer in charge of two employees by name Pedro Victorio and Osmar, and produced a document signed by these two men, on a form apparently in use by the Appellant company which bears the heading, “ Report on Cargo damaged short or in excess.” Da Silva had not signed this report and neither of the checking clerks who compiled it were called as witnesses. In explanation of this, it was said that Victorio was pensioned and that Osmar was absent from work. Da Silva further said that the check made was not for the purpose of determining the condition of the merchandise but of the containers, in this case the bags, and that a note was taken as to any that were torn or out of condition.

In the  
Supreme  
Court of  
Canada.

No. 1.  
Reasons for  
Judgment.

(A) Locke,  
J. (con-  
curred in by  
The Chief  
Justice,  
Rand and  
Fauteux,  
JJ.)—  
*continued.*

Speaking of the manner in which the bags of potatoes had been stored in the warehouse, he said they were in very high tiers of 25, 27 and even 30 bags.

Antonio Galdeano, a member of one of the consignee firms, said that he observed damage to some of the potatoes before the vessel was unloaded. He said that his firm did not clear any of the merchandise from the warehouse before Sodre's survey was made.

Alcindo Goncalves, whose evidence was taken on behalf of the present Appellant under the commission, checked the unloading of the wagons which moved the potatoes from the ship into Warehouse 19 and said that they were in good condition. They were stowed, according to this witness, in tiers 25 to 30 bags high in the warehouse. It was as the goods entered the warehouse that Victorio and Osmar had made their check. 10

Jose Dos Santos, whose evidence was also taken on behalf of the Appellant, had checked the unloading of the potatoes from No. 1 hold and said that they were in good condition. His work had been done, however, on the first day of the unloading of the cargo, when operations had been interrupted by rain, and something less than 500 bags had been unloaded.

Sebastiao Barbosa, another shipping clerk whose evidence was taken on behalf of the Appellant, had worked during the unloading of potatoes from No. 2 hold and said that he saw no wet bags or other evidence of damage to the cargo. 20

In addition to the evidence taken under commission in Rio de Janeiro, further witnesses were called before the learned trial Judge when the case came on for hearing. Among those called for the Appellant was Mr. E. A. H. Crocker, a marine cargo surveyor of some twenty-five years' experience, who gave, without objection, evidence to the effect that, to make an adequate survey of the damage to potatoes shipped in bags, he considered that a minimum of 10 per cent. of the shipment should be examined, the bags opened and the entire contents segregated as between the sound and the damaged potatoes. Asked as to whether he could come to a conclusion as to the extent of the damage by examining from 100 to 150 bags out of 15,000, he said that he would not be able to form an opinion by examining that quantity. 30

The bills of lading issued by the carrier were subject to the provisions of the Water Carriage of Goods Act, 1936. Rule 6 of Article 3 provides that :—

“ Unless notice of loss or damage and the general nature of  
“ such loss or damage be given in writing to the carrier or his 40  
“ agent at the port of discharge before or at the time of the removal  
“ of the goods into the custody of the person entitled to delivery  
“ thereof under the contract of carriage, or, if the loss or damage  
“ be not apparent within three days, such removal shall be *prima*  
“ *facie* evidence of the delivery by the carrier of the goods as  
“ described in the bill of lading.



“The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.”

In the  
Supreme  
Court of  
Canada.

No. 1.  
Reasons for  
Judgment.

(A) Locke,  
J. (con-  
curred in by  
The Chief  
Justice,  
Rand and  
Fauteux,  
JJ.)—  
*continued.*

The Appellant in its defence alleged that no such notice in writing was given to the Appellant or its agent at Rio de Janeiro until on or about 13th February, 1948, and that the survey was made *ex parte* without the knowledge or participation of the Appellant or its said agent. According to the Master, the second officer and the chief engineer, the representatives of the consignees who went on board the vessel made no complaint of any damage. Nogueira did not say that he had made any such complaint and the only suggestion that any such was made is the statement in his written survey report that notice was given to the “SS. Co. agents.” Asked on the argument before us as to whether he contended that this was evidence of the fact that notice was given, Counsel for the Respondent said that he was not prepared to argue this. It is, in my opinion, highly improbable that if such notice had been given and the representatives of the Appellant company informed that a survey of the alleged damage was to be made, they would not have taken steps to be represented. As it is, the survey was conducted *ex parte*, an added reason for subjecting the evidence to a searching scrutiny as to its sufficiency.

The evidence as to the nature and extent of the examination made may thus be summarized. According to the witness Merhy, the entire shipment of more than 43,000 bags was in the warehouse when Sodre conducted the survey. According to Sodre, it was the potatoes taken from holds 1 and 2 that were in the warehouse when he made his examination. He, however, as I have said, had no count made but relied upon information received from the storekeeper that all the potatoes unloaded from holds 3 and 4 had been removed by the time he arrived there. There had been potatoes carried in holds 4 and 5 and none in hold 3, and the storekeeper, who no doubt could have given evidence as to the removal of any of the shipment from the warehouse, was not called as a witness by the Respondent when the commission was executed. Again Sodre said that he had taken the figures as to the cargo stowed in holds 1 and 2 from the foreman of the stevedores and that this number was 15,300, whereas in fact, as above stated, the cargo in No. 1 hold and 'tweendeck and No. 2 'tweendeck was in excess of 30,000 bags, according to the undisputed evidence of Captain Gaffney, the cargo superintendent at Halifax who superintended the stowage of the shipment. The Witness, Jose da Silva Rios, said that none of the shipment had been removed before the survey was commenced. Galdeano said that his firm had not cleared any merchandise from Warehouse 19 before that time. The only admissible evidence as to the quantity of potatoes in the warehouse when Sodre made the survey was that the entire shipment was there.

Sodre said that his survey in the warehouse took from one to one and a half hours and that “100 bags more or less were examined.” His recollection was that the piles were very high and the “piling was close,” meaning, presumably, that the piles were close together. Waldemar Da Silva agreed that they were stored in very high tiers of from 25 to 30 bags

In the  
Supreme  
Court of  
Canada.

No. 1.  
Reasons for  
Judgment.

(A) Locke,  
J. (con-  
curred in by  
The Chief  
Justice,  
Rand and  
Fauteux,  
JJ.)—  
*continued.*

high and Goncalves agreed with this estimate. It is, in my opinion, obvious that in the length of time spent by Sodre there was not such an examination of the condition of the potatoes as would enable him to estimate the loss with any degree of accuracy, whether the quantity in the warehouse was 15,300 bags or all of the potatoes that had been in holds 1 and 2 or the entire shipment of over 43,000 bags piled in the manner described. In view of the evidence of the witness Crocker as to the minimum number of bags which it would be necessary to examine to ascertain the percentage of loss in goods of this nature, it is impossible, in my opinion, to sustain the award of damages made at the trial and this should be set aside. 10

I have come to the conclusion that, rather than to direct a new trial restricted to the assessment of damages, it is in the interest of the due administration of justice that the quantum of damage be now fixed by this Court. If the Respondent was given another opportunity to prove its loss by issuing a commission to take evidence in Rio de Janeiro, apart from the possibility that the witnesses Victorio and Osmar might be available to prove the quantity of potatoes stored in the warehouse at the time Sodre made his examination, it does not appear that any further evidence could be obtained to assist in determining the amount. Clearly, Sodre could add nothing to the evidence he gave when the first commission was executed. 20  
After examining with care all the evidence in this matter, I am of the opinion that \$5,000.00 is a proper allowance to be made for the damage sustained by the Respondent and, in lieu of the judgment appealed from, a judgment for this amount should be entered, together with the Respondent's costs of the action. The Appellant should have its costs of the appeal to this Court.

(B)  
Taschereau,  
J.

(B) TASCHEREAU, J. :—

The Appellant owned and operated a steamship named "Fort Columbia," engaged in the carriage of goods between Canadian and South American ports. In November, 1947, the Respondent, a dealer in fruits and vegetables, caused to be delivered to the Appellant a large quantity of 30  
potatoes to be shipped to three different purchasers in Brazil.

During and after the unloading, it was found that many bags were stained and wet, and it was established that a considerable percentage of the potatoes were affected by a disease known as "Black Heart." As it is admitted that the potatoes were in good condition when they were delivered on board the Defendant's vessel, the question resolves itself as to whether the deterioration occurred during the voyage, or in the warehouse on the quay at Rio de Janeiro.

I have come to the conclusion, as the trial judge found, that the preponderance of evidence is that the disease was contracted on board ship, 40  
due to a lack of oxygen, as a result of inadequate ventilation, and that therefore the Appellant cannot escape liability.

The learned trial judge gave judgment for the Plaintiff in the sum of \$44,677.81. The evidence as to the amount of damages to be awarded is very unsatisfactory but instead of sending the case back for a new assessment, I would allow the appeal with costs, and direct that judgment be entered as proposed by my brother Locke.

No. 2.  
Formal Judgment.

In the  
Supreme  
Court of  
Canada.

IN THE SUPREME COURT OF CANADA.

No. 2.  
Formal  
Judgment.  
6th October  
1953.

Tuesday, the 6th day of October, 1953.

Present :—

- The Right Honourable the CHIEF JUSTICE of CANADA.
- The Honourable Mr. Justice TASCHEREAU.
- The Honourable Mr. Justice RAND.
- The Honourable Mr. Justice LOCKE.
- 10 The Honourable Mr. Justice FAUTEUX.

Between

FURNESS (CANADA) LIMITED ... .. *Appellant*

and

WILLIAM D. BRANSON LIMITED ... .. *Respondent.*

The Appeal of the above named Appellant from the judgment of the Honourable Mr. Justice A. I. Smith, of the Exchequer Court of Canada, Quebec Admiralty District, pronounced in the above cause on the 4th day of April, in the year of Our Lord One thousand nine hundred and fifty-two, having come on to be heard before this Court on the 20th, 23rd and 24th  
 20 days of March in the year of Our Lord One thousand nine hundred and fifty-three, in the presence of counsel as well for the Appellant as the Respondent, whereupon and upon hearing what was alleged by counsel aforesaid, this Court was pleased to direct that the said Appeal should stand over for judgment and the same coming on this day for judgment, THIS COURT DID ORDER AND ADJUDGE that the said Appeal should be and the same was allowed in part and that the said judgment of the Honourable Mr. Justice A. I. Smith, of the Exchequer Court of Canada, Quebec Admiralty District, should be and the same was varied by reducing to \$5,000.00 the damages awarded to the Respondent.

30 AND THIS COURT DID FURTHER ORDER AND ADJUDGE that the said Respondent should and do pay to the said Appellant the costs incurred by the said Appellant in this Court.

(Sgd.) PAUL LEDUC,  
*Registrar.*

In the  
Supreme  
Court of  
Canada.

**No. 3.**  
**Notice of Appeal.**

No. 3.  
Notice of  
Appeal.  
28th  
October  
1953.

IN THE SUPREME COURT OF CANADA.

Between  
FURNESS (CANADA) LIMITED ... .. *Defendant-Appellant*  
and  
WILLIAM D. BRANSON LIMITED ... .. *Plaintiff-Respondent.*

**NOTICE OF APPEAL.**

Messrs. GOWLING, MACTAVISH, OSBORNE & HENDERSON, Ottawa Agents  
for Solicitors for Defendant-Appellant. 10

Sirs :—

TAKE NOTICE that the Plaintiff-Respondent William D. Branson Limited appeals from the judgment of the Supreme Court of Canada made herein and dated the 6th October, 1953, to the Judicial Committee of the Privy Council so that the same may be revised, altered or varied and the judgment of the Honourable Mr. Justice A. I. Smith of the Exchequer Court of Canada, Quebec Admiralty District, pronounced on the 4th day of April, 1952, be restored.

Ottawa, October 28th, 1953.

BEAMENT, FYFE & AULT. 20  
Ottawa Agents for ERROL LANGUEDOC, Q.C.  
Solicitor for the above-named Plaintiff-  
Respondent.

No. 4.  
Notice of  
Motion to  
Fix Bail.  
28th  
October  
1953.

**No. 4.**  
**Notice of Motion to Fix Bail.**

IN THE SUPREME COURT OF CANADA.

Between  
FURNESS (CANADA) LIMITED ... .. *Defendant-Appellant*  
and  
WILLIAM D. BRANSON LIMITED ... .. *Plaintiff-Respondent.* 30

**NOTICE OF MOTION TO FIX BAIL.**

Messrs. GOWLING, MACTAVISH, OSBORNE & HENDERSON, Ottawa Agents  
for Solicitors for Defendant-Appellant.

Sirs :—

TAKE NOTICE that an application on behalf of the above-named Plaintiff-Respondent will be made to one of the Honourable Judges of the

Supreme Court of Canada at Ottawa on the 4th day of November, 1953, at ten o'clock in the forenoon, or so soon thereafter as the motion can be heard, for an order fixing the bail to be given by the above-named Plaintiff-Respondent upon the appeal of the said William D. Branson Limited, to Her Majesty in Council, from the judgment of this Honourable Court pronounced and made in this action on the 6th day of October, 1953.

In the Supreme Court of Canada.

No. 4. Notice of Motion to Fix Bail. 28th October 1953—  
*continued.*

AND FURTHER TAKE NOTICE that upon such application leave will be craved to refer to the Notice of Appeal, filed, herein.

Ottawa, October 28th, 1953.

10

BEAMENT, FYFE & AULT.

Ottawa Agents for ERROL LANGUEDOC, Q.C.  
Solicitor for the above-named Plaintiff-Respondent.



No. 5.

Order Fixing Bail.

No. 5. Order Fixing Bail, 4th November 1953.

IN THE SUPREME COURT OF CANADA.

Wednesday, the 4th day of November, A.D. 1953.

Before

The Right Honourable the CHIEF JUSTICE of CANADA, in Chambers.

20

Between

FURNESS (CANADA) LIMITED ... .. *Defendant-Appellant*

and

WILLIAM D. BRANSON LIMITED ... .. *Plaintiff-Respondent.*

UPON the application of counsel for the Respondent, for an order fixing the bail to be given by the Respondent upon its Appeal to Her Majesty the Queen in Council, from the judgment of this Court dated the 6th day of October, 1953, to answer the costs of said appeal ;

30 UPON hearing read the said judgment of this Court, the Notice of Appeal served on the 28th day of October, 1953, the Notice of Application to fix the bail served herein on the 28th day of October, 1953, filed, and hearing Counsel for the Respondent, and Appellant.

In the  
Supreme  
Court of  
Canada.

No. 5.

Order  
Fixing Bail.  
4th  
November  
1953—  
*continued.*

IT IS ORDERED that the above-named Respondent William D. Branson Limited, do give bail to answer the costs of appeal to Her Majesty the Queen in Council in the sum of THREE HUNDRED (£300) pounds sterling to the satisfaction of the Registrar of this Court, on or before the 18th day of November, 1953.

AND IT IS FURTHER ORDERED that the costs of this application be costs in the cause.

(Sgd.) PAUL LEDUC,  
*Registrar.*

No. 6.  
Bail Bond.  
4th  
November  
1953.

No. 6.  
Bail Bond.

10

IN THE SUPREME COURT OF CANADA.

Between

FURNESS (CANADA) LIMITED ... .. *Appellant*

and

WILLIAM D. BRANSON LIMITED ... .. *Respondent.*

KNOW ALL MEN BY THESE PRESENTS :

That United States Fidelity and Guaranty Company, incorporated by special Act of Parliament of Canada, having its head office in the City of Toronto in the province of Ontario, and herein represented and acting by 20 John Bethune, one of the resident attorneys of the said company duly authorized by the board of directors of the said United States Fidelity and Guaranty Company, duly certified copy of the said power of attorney being hereto annexed is held firmly bound to the above-named Appellant in the penal sum of THREE HUNDRED (£300) pounds, sterling, to be paid to the said Appellant, its attorney, successors and assigns, for which payment well and truly to be made it binds itself firmly by these presents :

WHEREAS this action was brought before the Exchequer Court of Canada, Quebec Admiralty District on the 13th July, 1948 ;

AND WHEREAS judgment was rendered by Mr. Justice A. I. Smith, of 30 the Exchequer Court of Canada, Admiralty District on the 4th day of April, 1952 ;

AND WHEREAS the said Appellant appealed to the Supreme Court of Canada from the said judgment ;

AND WHEREAS judgment was given in the said appeal by the Supreme Court of Canada on the 6th day of October, 1953, allowing the said appeal in part with costs ;

AND WHEREAS the said Respondent complains that in giving the last mentioned judgment in the said action upon the said appeal to the Supreme Court of Canada manifest error hath intervened ;

In the Supreme Court of Canada.

WHEREFOR the said Respondent desires to appeal from the said judgment of the Supreme Court of Canada to the Judicial Committee of Her Majesty's Privy Council ;

No. 6. Bail Bond. 4th November 1953—*continued.*

10 Now the condition of this obligation is such that if the said Respondent shall appeal to the Judicial Committee of Her Majesty's Privy Council from the said Judgment of the Supreme Court of Canada and, if such appeal be dismissed, pay such costs and damages as may be awarded against the said William D. Branson Limited by the Judicial Committee of the Privy Council, then this obligation shall be void otherwise to remain in full force and effect.

SIGNED, SEALED AND EXECUTED by the United States Fidelity and Guaranty Company by its resident officers this 4th day of November, 1953.

UNITED STATES FIDELITY AND GUARANTY COMPANY by :  
JOHN BETHUNE,  
*Resident Attorney.*

20



No. 7.  
Order Approving Bond.

No. 7. Order Approving Bond. 4th November 1953.

IN THE SUPREME COURT OF CANADA.

Wednesday, the 4th day of November, 1953.

30

Before : THE REGISTRAR IN CHAMBERS.

Between

FURNESS (CANADA) LIMITED ... .. *Defendant-Appellant*  
and  
WILLIAM D. BRANSON LIMITED ... .. *Plaintiff-Respondent.*

40 UPON the application of Counsel on behalf of the above-named Respondent in the presence of Counsel for the above-named Appellant, upon hearing what was alleged by Counsel aforesaid ;

IT IS ORDERED that a certain Bond bearing date the 4th day of November, A.D. 1953, and filed this 4th day of November, A.D. 1953, in

In the  
Supreme  
Court of  
Canada.

No. 7.  
Order  
Approving  
Bond.  
4th  
November  
1953—  
*continued.*

which United States Fidelity and Guaranty Company is Obligor and the above-named Appellant is Obligee, as security that the above-named Respondent will effectually prosecute its appeal to Her Majesty in Council from the judgment of this Court bearing date the 6th day of October, A.D. 1953, and will pay such costs and damages as may be awarded against it by Her Majesty in Council, be and the same is hereby approved and allowed as good and sufficient security.

AND IT IS FURTHER ORDERED that the costs of this application be costs in the said appeal.

(Signed) PAUL LEDUC, 10  
*Registrar.*

In the  
Montreal  
Superior  
Court.

No. 8.  
Order for  
Winding-  
up of Re-  
spondent  
Company.  
16th July  
1954.

No. 8.

**Order for Winding-up of Respondent Company.**

CANADA.

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL.

SUPERIOR COURT  
(Under the Winding-Up Act).

July 16th, 1954.

Present : Honourable Mr. Justice STUART B. RALSTON.

No. 155

FURNESS (CANADA) LIMITED, a Company having its Head 20  
Office in the City of Montreal,

and

the said Company ... .. *Petitioner.*

THE COURT, on the petition of Petitioner for Winding-Up Order, which reads as follows :—

“ That the Petitioner, Furness (Canada) Limited (hereinafter called ‘ the Company ’) was incorporated under the Companies Act, 1934, by Letters Patent dated February 20, 1946 ;

That the Head Office of the Company is at 315 St. Sacremont Street, Montreal ;

That the authorised capital stock of the company as reduced by Supplementary Letters Patent dated December 11, 1952, now consists of \$4,870,000.00 divided into 48,700 shares of the par value of \$100.00

30



each, of which 350 shares of the par value of \$100.00 each, out of a larger number, were issued and fully paid up and are now outstanding ;

That the Company was engaged in the ship owning business but has now disposed of its ships, and its assets consists exclusively of cash in bank, accounts and notes receivable and investments having a value in excess of \$980,000.00 ;

That the Company has no debts or liabilities outstanding, nor are there any known claims against the Company except the direct liabilities and liabilities covered by insurance shown on the statement attached hereto as Exhibit A and estimated to amount respectively to \$23,715.00 and \$5,800.00 ;

That at a special general meeting of the shareholders of the Company, held at the Head Office of the Company, 315 St. Sacremont Street, Montreal, the 14th day of July, 1954, at which meeting there were present in person or represented by proxy shareholders representing 350 shares of the par value of \$100.00 in the capital stock of the Company out of a total of 350 shares outstanding, the following resolution was duly passed :

‘ RESOLVED that the Company be wound up under the provisions of the Winding-Up Act (R.S.C. 1952, Chapter 296) ; that application be made to the Court for the appointment of Mr. L. C. Frewin, C.A., of Montreal (who is a licensed trustee under the Bankruptcy Act) as Liquidator, without his being required to give security ; and that the President or any Director and the Secretary or Assistant Secretary or other proper Officers of the Company be authorised to do all such matters and things as are requisite and necessary to give effect to the foregoing ’

as appears by a copy of the said resolution certified by the Secretary of the Company, attached hereto as Exhibit B ;

That it is in the interests of the Company and its shareholders that a Winding-Up Order be granted and a Liquidator be appointed to the Company.”

SEEING the statement of the Company ;

SEEING the resolution of a general meeting of shareholders ;

SEEING the affidavit ;

DOTH GRANT said petition ;

DOTH GRANT Winding-Up Order ;

DOTH APPOINT L. C. Frewin, C.A. as provisional liquidator.

DOTH ORDER that the meeting of the shareholders and of such persons as may claim to be creditors of the Company be held on July the 30th, 1954 at ten o'clock a.m. Room 16, Old Court House, Montreal ;

DOTH DISPENSE the provisional liquidator to give security ; the whole with costs.

(Signed) STUART B. RALSTON,  
J. S. C.

In the  
Montreal  
Superior  
Court.

—  
No. 8.  
Order for  
Winding-  
up of Re-  
spondent  
Company.  
16th July  
1954—  
*continued.*

In the  
Montreal  
Superior  
Court.

No. 9.

**Judgment of Jean, J. authorising the Permanent Liquidator of the Respondent Company to Continue Proceedings.**

No. 9.  
Judgment  
of Jean, J.  
authorising  
the  
Permanent  
Liquidator  
of the Re-  
spondent  
Company to  
continue  
Proceed-  
ings.  
1st  
September  
1954.

PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

SUPERIOR COURT  
(Under the Winding-Up Act).

No. 155 (1954)

On the 1st day of September, 1954.

Present : The Hon. Mr. Justice JEAN.

*In Re :*

10

FURNESS (CANADA) LIMITED ... .. *In Liquidation*  
and  
L. C. FREWIN ... .. *Permanent Liquidator-Petitioner.*

THE COURT, on the petition for leave to continue proceedings, the Petitioner alleging :—

1.—That Furness (Canada) Limited (hereinafter referred to as “ the “ Company in Liquidation ” ) was ordered to be wound up by Winding-Up Order dated July 16th 1954, and on July 30th, 1954, the Petitioner was appointed Permanent Liquidator of the said Company in Liquidation ;

2.—That on or about July 13th 1948 an action was instituted against 20 the Company in Liquidation, in the Exchequer Court of Canada, Quebec Admiralty District, by William D. Branson Limited bearing Number 221 of the records of the said Court ;

3.—That by judgment dated April 4th, 1952 rendered by the said Court, the Company in Liquidation was condemned to pay the said W. D. Branson Limited the sum of \$44,677.81 with interest and costs ;

4.—That the Company in Liquidation appealed from said judgment to the Supreme Court of Canada, which, by judgment dated October 6th 1953, adjudged that the appeal be allowed in part and that the judgment of the Exchequer Court of Canada, Quebec Admiralty District (Honourable 30 Justice A. I. Smith) be varied and reduced to \$5,000.00 and that the Respondent pay Appellant the costs of the appeal ;

5.—That by Notice dated October 28th 1953, the said W. D. Branson Limited appealed from the said judgment of the Supreme Court of Canada to Her Majesty in Council and on November 4th, 1953 duly furnished security for the prosecution of its appeal and the said appeal is still pending ;

6.—That it is expedient that the said appeal be proceeded with and that the Petitioner be authorized to continue all proceedings in the said action and on the said appeal and that this Honourable Court do give such authorization, as required by law ;

SEEING the affidavit in support of said petition ;

10 DOTH GRANT said petition ; DOTH PERMIT the Petitioner to proceed with the appeal to Her Majesty in Council in the action bearing Number 221 of the records of the Exchequer Court of Canada, Quebec Admiralty District, wherein W. D. Branson Limited is Plaintiff-Appellant and the Company in Liquidation is Defendant-Respondent ; DOTH AUTHORIZE the Petitioner to continue the defence of the said action and to contest the said appeal to Her Majesty in Council and all proceedings in connection therewith, either in the name or on behalf of the Company in Liquidation or in its own name, as Liquidator, or to intervene therein for the purpose of continuing and contesting the same in such manner as the Petitioner may deem expedient and as circumstances may require ;—the whole with costs.

(Signed) JOSEPH JEAN,  
J. S. C.

In the  
Montreal  
Superior  
Court.

—  
No. 9.  
Judgment  
of Jean, J.  
authorising  
the  
Permanent  
Liquidator  
of the Re-  
spondent  
Company to  
continue  
Proceed-  
ings.  
1st  
September  
1954—  
*continued.*

In the Privy Council.

No. 41 of 1954.

ON APPEAL FROM THE SUPREME COURT OF  
CANADA.

---

---

BETWEEN

WILLIAM D. BRANSON LIMITED  
*(Plaintiffs) Appellants*

AND

FURNESS (CANADA) LIMITED  
*(In Liquidation)*  
*(Defendants) Respondents.*

---

---

RECORD OF PROCEEDINGS  
VOLUME II

---

---

CLYDE & CO.,  
Shell House,  
55 Bishopsgate,  
London, E.C.2,  
*Solicitors for the Appellants.*

MIDDLETON, LEWIS & CO.,  
53-54 Leadenhall Street,  
London, E.C.3,  
*Solicitors for the Respondents.*