

PC
G.M.H. G. J.

Judgment
2, 1964

IN THE PRIVY COUNCIL

No.17 of 1961

ON APPEAL FROM THE COURT OF APPEAL OF THE
STATE OF SINGAPORE

Island of Singapore

B E T W E E N :-

UNIVERSITY OF LONDON
INSTITUTE OF ADVANCED
LEGAL STUDIES
22 JUN 1965
25 RUSSELL SQUARE
LONDON, W.C.1E

TAY KHENG HONG (Plaintiff) Appellant

- and -

HEAP ENG MOH STEAMSHIP CO. LTD.

(Defendants) Respondents

78514

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CASE FOR THE APPELLANT

1. This is an appeal in forma pauperis from a judgment, dated the 30th September, 1960, of the Court of Appeal of the State of Singapore (Tan, Buttrose and Wee, JJ.) allowing an appeal from a judgment, dated the 28th May, 1960, of the High Court of the State of Singapore (Ambrose, J.) awarding the Appellant \$30,711.60 by way of demurrage under a contract for the transhipment of cargoes of rice.

Record
p.128

p.119

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2. By his Statement of Claim, dated the 18th April, 1959, the Appellant pleaded that on the 18th of October, 1958 he and a Mr. Goh, who represented the Respondents, had made an oral contract under which the Appellant was to act as the lighterage contractor of the Respondents for a period of three years for the transhipment of rice arriving in Singapore in steamers to other steamers destined for Indonesia. Rates of payment for the Appellant's services had been agreed, including demurrage of 60 cents per ton per day for every day over two days. In accordance with this contract, the Appellant had transhipped cargoes of rice from two steamers, the 'Incharran' and the 'Planet', which had arrived in Singapore about

pp.2-4

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Record

the 22nd of October, 1958 and the 27th November, 1958 respectively. The Respondents had paid to the Appellant \$71,128.71 for lighterage, towing and stevedoring of these two cargoes, but had refused to pay \$30,711.60 due for demurrage.

pp.5-7

3. By their Defence, dated the 1st of June, 1959, the Respondents denied that they had made the contract alleged by the Appellant. They alleged that the P.T. Indonesia Sugar Line, the operators of the 'Planet', and the P.T. Indonesian Samudera Lines, the operators of the 'Incharran', had appointed them (the Respondents) agents of the two vessels "to handle the clearance, on carriage and other documents" in connection with the cargoes of the two vessels. They further alleged that the P.T. South Sumatra Shipping Company and the General Mercantile Company had been the agents of the two vessels "to handle the actual discharge and lightering" of the cargoes. They admitted that there had been discussions between them, the Appellant, the representative of the operators of the vessels and a Mr. Khoo, who was the General Manager of the General Mercantile Company, but alleged that the Appellant had known that they (the Respondents) were acting only as agents of the vessels for the particular purposes alleged. The Respondents contended that, if there had been any contract between them and the Appellant, they to the knowledge of the Appellant had contracted as agents for the operators of the vessels; further, they alleged it had been a term of such contract that demurrage was to be free. The Respondents admitted that the Appellant had transhipped the two cargoes, but said he had done so on the instructions of the South Sumatra Shipping Company and the General Mercantile Company. They further admitted that they had paid the Appellant \$71,128.91 for lighterage, towing and stevedoring, but said that they had done so against bills submitted by the Appellant to Khoo and addressed to the Respondents as agents for the operators of the vessels.

pp.7-8

4. The Appellant delivered a Reply on the 12th of June, 1959. In it he pleaded that he had never had any knowledge of any agency between the Respondents and the operators of the vessels, and as far as he had been concerned the transaction had been between him and the Respondents. He had never received any instructions from either the South Sumatra Shipping Company or the

General Mercantile Company, but had received all his instructions from Goh or the Respondents' shipping clerk. It had not been a term of the contract that demurrage was to be free. The Appellant had never submitted any bills to Khoo. Khoo had drawn up the bills on the basis of tally sheets and other documents furnished by the Appellant, and the Appellant had then submitted the bills to Goh, who had paid the Appellant.

5. The case turned principally upon the conflict of evidence between the Appellant and Goh. The Appellant's evidence was that he had been taken by Khoo to the Respondents' office one day about the middle of October, 1958, and had there met Goh. Goh had said that he wished to give the Appellant a contract for transshipping rice, and they had agreed upon the rates to be paid, including 60 cents per ton for demurrage. No Indonesian firm had been mentioned, and the Appellant had thought that he was making a business arrangement with the Respondents. Goh had paid him, by cheques drawn by the Respondents. The Appellant had never taken orders from Khoo. Khoo had assisted him in his office work, and had taken charge of the English correspondence, since the Appellant could not read English. The Appellant had taken all the bills to Goh. Goh, on the other hand, denied that he had ever discussed rates and conditions of lighterage with the Appellant; he said he had never seen the Appellant before the arrival of the 'Planet'. He said that the Respondents had been engaged by the operators of the vessels to act "as husbanding agents" only, arrangements for the transshipment of the rice had been made by the operators and the Respondents paid transshipment expenses certified by Khoo. They were to receive a sum of money from the operators out of which to do this. In support of this evidence Goh produced an unsigned and undated memorandum, which he said he had received from the Managing Director of the Respondents, and a letter dated the 29th of October, 1958 from the Respondents to the operators of the 'Planet', on which a representative of the operators had indorsed their agreement.
6. The bills submitted by the Appellant to the Respondents were produced. They were addressed to the Respondents as agents for the operators of the two vessels. The two bills for lighter charges included the words "free demurrage". All the bills except those for demurrage were either signed or initialled by Khoo. The Appellant gave
- p.9,1.29-
p.10,1.22
p.11,11.7-
14
p.11,1.32-
p.12 1.2.
p.12,1.15
p.58,11.6-7
p.57,11.30-
31
pp.57-61
p.63,11,11-
13
p.57,11.15-
27; p.227
p.179
pp.130-152
165/6,194/6
pp.138,152
pp.141,165
p.11,1.32-
p.12 1.17

Record

26,11.
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p.39
p.42

p.21,11.22-
33;

p.31,11.22-
24 p.61 l.13

p.62,1.3.

evidence that the bills had been prepared by Khoo, and this was confirmed by the Appellant's typist, who said that she had typed the bills from drafts made by Khoo. She also said that Khoo had instructed her to insert the words "free demurrage" in the two bills for lighter charges. The Appellant said that the bills had not borne Khoo's signature at the time that he had submitted them to Goh, and Goh admitted that he had sent some of the bills to Khoo, and obtained Khoo's signature upon them, after they had been submitted by the Appellant.

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pp.48-54
p.48,1.34-
p.49,1.15;
p.51,1.33-
p.52,1.4.

p.36,11.27-
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pp.47-48

7. One Tan, who had been employed by the Appellant as a clerk in October, 1958, gave evidence that shortly before the work on the two cargoes had started the Appellant had taken him to see Goh. Tan had discussed with Goh how many tally clerks would be needed, and had subsequently arranged for the engagement of the clerks. Mr. S.W. Pears, Managing Director of the Anglo-Dutch Lighterage Company, said that if he was employed by a local agent he looked to that agent for payment, and the local agents recognized that they were parties to the lighterage contract. Mr. N.W. Ireson, the acting Shipping Manager of Paterson, Simon & Company, Limited, said his Company acted as agents for foreign shipping companies and their business included arranging for lighterage. The bills for lighterage were submitted to them, addressed sometimes to the Captain and owners, sometimes to them as agents for the owners, and sometimes to them without reference to agency. In all these cases they paid the bills themselves, and the lighterage contractors looked to them for payment because the contract was between them and the lighterage contractors.

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pp.42-46
pp.54-55

pp.91-96

pp.97-98

Other witnesses who gave evidence for the Appellant were three owners of lighters which the Appellant had hired for discharging the two cargoes, and a tindal who had worked for the Appellant during the discharge. For the Respondents, a man named Lambert, employed by a concern called Barrett Shipping and Trading Co., Ltd., gave evidence of abortive negotiations between his company and the operators and agents of the 'Planet' with a view to his company's handling the cargo of the 'Planet'. He said what he had been told that Khoo was to do. One Koh, who said he was the Respondents' permanent lighter contractor, gave evidence of asking Goh why he had not been given the lighterage work of the 'Planet', and of what Goh had said to him in reply.

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118

8. Ambrose, J. delivered a reserved judgment on the 28th of May, 1960. After summarising the evidence of

the Appellant and that of Goh, and also the contents of the unsigned and undated memorandum and the letter of the 29th of October, 1958, the learned Judge accepted the evidence of the Appellant. He said that the Appellant had been subject to a severe and prolonged cross-examination, but had not been shaken and had impressed him as a simple, honest and straightforward witness. He was satisfied that Goh had told a deliberate lie in saying that he had no discussions with the Appellant. Ambrose, J. found that it was not a term of the contract that the bills should be countersigned by Khoo before presentation for payment, and the bills had not been so countersigned when presented. He thought it more probable that Khoo had signed the bills by arrangement between him and Goh without reference to the Appellant. The learned Judge accepted the evidence of the Appellant's typist, and the evidence of the Appellant that he had not been aware that the bills contained the words "free demurrage". He thought it exceedingly improbable that any lighterage contractor would in the circumstances have agreed to demurrage being free, and accepted the Appellant's evidence that the parties had agreed that the rate for demurrage should be 60 cents per ton per day. Turning to the question whether the Appellant had known, when making the contract, that the Respondents were contracting as agents for the operators of the vessels, the learned Judge said the Respondents had relied on the fact that the bills were addressed to them as agents for the operators. However, these bills had been drawn by Khoo, and Ambrose, J. said he preferred the Appellant's evidence to any inference which might be drawn against him from words prepared by Khoo. He found that the Appellant did not know when making the contract that the Respondents were acting as agents for foreign principals. It followed that the Respondents were personally liable upon the contract. However, the learned Judge also found that the Respondents, even if the Appellant had known that they were contracting as agents for foreign principals, would have been liable personally under the custom of Singapore, of which Mr. Pears and Mr. Ireson had given evidence. He also held that, as agents contracting on behalf of foreign principals, they were personally liable, because no contrary intention appeared. He therefore gave judgment for the Appellant for the amount claimed.

p.115,11.3-18

p.115,11-19-31

p.116

p.117,1.1-118,1.2

p.118,11.3-10

p.118,11.11-20

9. The Respondents appealed to the Court of Appeal. The appeal was heard on the 22nd and 23rd of September,

Record.
pp.123-127 1960, and judgment was delivered on the 30th of September. Buttrose, J., with whom the other two learned Judges agreed, said he would have been reluctant to interfere with the findings of fact made by Ambrose, J. if the case had turned entirely on the comparative credibility of witnesses. He thought, however, that to a large extent it turned on inferences from proved facts and documents. He said there was a considerable volume of independent evidence, both oral and documentary, consistent only with the Respondents' case. He referred to the evidence of Lambert, Tan and Koh, and to the unsigned and undated memorandum and the letter of the 29th of October, 1958. The onus of establishing the contract had, the learned Judge said, lain on the Appellant, and he had failed to call Khoo, who was supposed to have been present when it had been made. The Appellant's evidence of the making of the contract had been uncorroborated. The learned Judge said that Ambrose, J. had failed to consider any of these matters; further, he had himself stated that there was no evidence that the contract, as alleged in the Statement of Claim, had been for three years. Buttrose, J. therefore considered that Ambrose, J. had been plainly wrong, and the Respondents had not entered into any contract with the Appellant in respect of the lighterage. The appeal was therefore allowed, and the judgment of the Hight Court set aside.

p.124,11.13-16
p.124,1.27-
p.125,1.13
p.125,1.14-
p.126,1.11
p.126,LL.12-35
p.126,1.26-
p.127,1.24

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10. The Appellant respectfully submits that the judgment of the Court of Appeal was wrong. The case turned upon findings of specific facts, i.e. whether the Appellant and Goh met on the 18th October, 1958, and, if they did, what agreement they made. Ambrose, J. made clear findings on these matters, regarding the Appellant as a reliable witness and Goh as dishonest. Buttrose, J. was wrong in thinking that the case 'to a large extent..... turned on inferences from proved facts and on documents', and the Court of Appeal, in the respectful submission of the Appellant, ought not to have interfered with the findings of Ambrose, J..

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11. The Appellant respectfully submits that the reasons which Buttrose, J. gave for differing from the findings of Ambrose, J. did not justify him in so doing. He relied on the evidence of Tan and on that of Lambert and Koh, two of the Respondents' witnesses. The evidence of Tan, in the Appellant's submissions, supported the Appellant's case, while that of Lambert and Koh as to part was irrelevant and as to the rest consisted of hearsay and was therefore inadmissible. Buttrose, J. also relied on the unsigned

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and undated memorandum and the letter of the 29th October, 1958. He did not observe that these documents threw little light on the vital question of what agreement was made on the 18th of October, 1958, because they were made after that date, by persons who, according to the evidence, were not present at the meeting between the Appellant and Goh. These documents, moreover, were never shewn to the Appellant. Buttrose, J. suggested that Ambrose, J. had failed to consider these and other matters. There is, in the Appellant's submission, no justification for this suggestion; rather, it appears from the judgment of Ambrose, J. that that learned Judge reached his conclusion after giving due consideration to all the relevant matters.

12. The Appellant respectfully submits that Ambrose, J. was right in holding alternatively that the Respondents would also be liable both under the custom of Singapore and as agents contracting on behalf of foreign principals. The learned Judges of the Court of Appeal said nothing of either of these points.

13. The Appellant respectfully submits that the judgment of the Court of Appeal is wrong and ought to be reversed, and the judgment of the High Court ought to be restored, for the following (among other)

R E A S O N S

1. BECAUSE the Court of Appeal ought not to have interfered with the findings of Ambrose, J. upon the evidence:

2. BECAUSE the findings of Ambrose, J. were fully supported and justified by the evidence:

3. BECAUSE there was a contract between the Appellant and the Respondents in the terms found by Ambrose, J.:

4. BECAUSE the Respondents, if they contracted as agents, were liable to the Appellant under the custom of Singapore:

5. BECAUSE the Respondents, if they contracted as agents, were liable to the Appellant as agents of foreign principals.

J.G. Le Quesne.

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B E T W E E N :-

TAY KHENG HONG Appellant

- and -

HEAP ENG MOH STEAMSHIP
COMPANY, LIMITED Respondents

CASE FOR THE APPELLANT

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