

Judgment 18, 1970

IN THE PRIVY COUNCIL

No. 11 of 1969

ON APPEAL  
FROM THE COURT OF APPEAL OF THE SUPREME COURT  
OF NEW SOUTH WALES

TERM NO. 634 of 1967

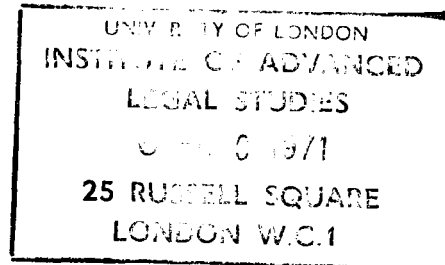
B E T W E E N:

GILCHRIST WATT AND SANDERSON PTY. LIMITED Appellants  
(Defendants)

- and -

YORK PRODUCTS PTY. LIMITED  
(Plaintiffs) Respondents

R E C O R D O F P R O C E E D I N G S



WILLIAM A. CRUMP & SON  
2 & 3, Crosby Square,  
Bishopsgate,  
E. C. 3.

Solicitors for the Appellants

CLYDE & CO.,  
Dunster House,  
Mincing Lane,  
London, E.C.3.  
*Solicitors for the Respondents*

(i)

IN THE PRIVY COUNCIL

No. 11 of 1969

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O N A P P E A L

FROM THE COURT OF APPEAL OF THE SUPREME COURT  
OF NEW SOUTH WALES

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B E T W E E N :

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(Defendants)

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(Plaintiffs)

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R E C O R D O F P R O C E E D I N G S

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(v)

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DOCUMENT TRANSMITTED TO THE PRIVY  
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Certificate of Prothonotary of the  
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verifying transcript record.

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O N    A P P E A L  
 FROM THE COURT OF APPEAL OF THE SUPREME  
 COURT OF NEW SOUTH WALES

B E T W E E N:

GILCHRIST WATT AND SANDERSON PTY. LIMITED  
 (Defendants)                      Appellants

- and -

10

YORK PRODUCTS PTY. LIMITED  
 (Plaintiffs)                      Respondents

R E C O R D    O F    P R O C E E D I N G S

NO. 1

ORDINARY SUMMONS AND PARTICULARS  
OF CLAIM

IN THE DISTRICT COURT OF THE }  
 METROPOLITAN DISTRICT        }  
 HOLDEN AT SYDNEY                }

No. of Plaint,  
 30634 of 1964

In the  
 District  
 Court of the  
 Metropolitan  
 District of  
 Sydney

No. 1

20

B E T W E E N:    YORK PRODUCTS PTY. LIMITED  
 a Company duly incorporated and  
 having its registered office at  
 50-54 York Street, Sydney.  
Plaintiff

Ordinary  
 Summons and  
 Particulars  
 of Claim

2nd July 1964

- and -

GILCHRIST WATT & SANDERSON PTY.  
 LIMITED a Company duly  
 incorporated and having its  
 registered office at 17 O'Connell  
 Street, Sydney.                      Defendant

30

YOU are hereby summoned to appear at a District  
 Court to be holden at Sydney on the 4th day of  
 August next, at the hour of Ten in the forenoon,  
 to answer the Plaintiff to a Claim, the  
 particulars of which are hereunto annexed.

Dated this 2nd day of July, 1964.

E.J. O'Grady  
 Assistant Registrar of the Court

2.

In the  
District  
Court of the  
Metropolitan  
District of  
Sydney

Debt or claim . . . . . £967 14. 7.  
Cost of plaint . . . . . 1 15. 0.  
Solicitor's costs . . . . . 7 17. 6.  
Service fee . . . . .

Total amount . . . . . £977 7. 1.

No. 1  
Ordinary  
Summons and  
Particulars  
of Claim

Besides any further fees  
properly paid or payable  
for service

To the Defendant.

2nd July 1964  
(continued)

Payment will only be accepted if made by Cash, 10  
Money Order or Bank Cheque.

PARTICULARS OF PLAINTIFF'S CLAIM

The Plaintiff by John Jarvie Watling its  
Attorney sues the Defendant for which carries  
on business under the name Central Wharf  
Stevedoring Company for that there were delivered  
to the defendant in Sydney certain goods of the  
plaintiff to be safely kept and taken care of  
by the defendant for the plaintiff for reward 20  
to the defendant and the defendant received and  
had the said goods in its care and keeping for  
the purpose and upon the terms aforesaid Yet  
the defendant kept the said goods in a negligent  
manner and took no care of the same WHEREBY  
the said goods were wholly lost to the plaintiff.

AND THE PLAINTIFF CLAIMS THE SUM OF NINE  
HUNDRED AND SIXTY SEVEN POUNDS FOURTEEN  
SHILLINGS AND SEVENPENCE (£967.14.7).

2. AND the plaintiff also sues the defendant 30  
for that there were delivered to the defendant  
in Sydney certain goods of the plaintiff to  
be safely kept and taken care of by the  
defendant for the plaintiff for reward to the  
defendant and the defendant received and had  
the said goods in its care and keeping for  
the purpose and upon the terms aforesaid  
Yet the defendant kept the said goods in a  
negligent manner and took no care of the same  
WHEREBY the said goods were wholly lost to 40  
the plaintiff.



AND THE PLAINTIFF CLAIMS THE SUM OF NINE HUNDRED AND SIXTY SEVEN POUNDS FOURTEEN SHILLINGS AND SEVENPENCE (£967.14.7)

alternatively and not in addition to the amount claimed in the first count hereof.

In the District Court of the Metropolitan District of Sydney

No. 1

Ordinary Summons and Particulars of Claim

2nd July 1964 (continued)

10

3. AND the plaintiff also sues the defendant for that there were delivered to the defendant in Sydney certain goods of the plaintiff to be safely kept and taken care of by the defendant for the plaintiff and the defendant received and had the said goods in its care and keeping for the purpose and upon the terms aforesaid Yet the defendant kept the said goods in a negligent manner and took no care of the same WHEREBY the said goods were wholly lost to the plaintiff.

AND THE PLAINTIFF CLAIMS THE SUM OF NINE HUNDRED AND SIXTY SEVEN POUNDS FOURTEEN SHILLINGS AND SEVENPENCE (£967.14.7)

20

alternatively and not in addition to the amounts claimed in the first and second counts hereof.

Solicitors Costs

Dated the 2nd day of July, 1964.

J.J. Watling

Solicitor for the Plaintiff  
16 Barrack Street,  
Sydney.

-----

4.

In the  
District Court  
of the  
Metropolitan  
District of  
Sydney

No. 2

Notice of  
intention to  
defend  
21st August  
1964.

No. 2

NOTICE OF INTENTION TO DEFEND

IN THE DISTRICT COURT OF      No. 30634 of 1964

THE METROPOLITAN DISTRICT

HOLDEN AT SYDNEY

B E T W E E N :

YORK PRODUCTS PTY. LIMITED      Plaintiff

- and -

GILCHRIST WATT & SANDERSON  
PTY. LIMITED      Defendant

10

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TAKE NOTICE that the Defendant intends to defend this action AND FURTHER TAKE NOTICE that the address of the Defendant for service of all notices and documents in this action is c/- Norton Smith & Co. Solicitors, 39 Hunter Street, Sydney.

DATED this 21st day of August, 1964.

(Sgd) C.K. Yuill

Solicitor for the Defendant

TO the Registrar of the Court.

20

I consent to the within Notice of Intention to Defend being filed out of time.

(Sgd)

Plaintiff's Solicitor.

IN THE DISTRICT COURT      No. 30634 of 1964  
HOLDEN AT SYDNEY  
BEFORE HIS HONOR JUDGE LEVINE

In the  
District Court  
of the  
Metropolitan  
District of  
Sydney

Tuesday, 17th October, 1967.

YORK PRODUCTS PTY. LIMITED

Plaintiff's  
Evidence

v.

GILCHRIST WATT & SANDERSON PTY. LIMITED

No. 3

D.L.Wilkinson  
Examination.

MR. MELVILLE appeared from the Plaintiff.  
MR. HOWELL appeared for the Defendant.

10 Defences handed to His Honor in Writing.

DESMOND LESLIE WILKINSON

Sworn, examined as under:

MR. MELVILLE: Q. Is your full name Desmond  
Wilkinson and do you live at 10 Henderson  
Street, Eastwood? A. That is right.

20 Q. And you are the secretary of H.H.Halls  
Limited of York Street Sydney and a wholly  
owned subsidiary of that company, York  
Products Pty. Ltd., the actual plaintiff  
in this matter? A. That is correct.

Q. And I think the business of the two  
related companies concerns importation of  
jewellery and also the importing and sale  
within Australia of watches and clocks?  
A. They are some of the goods, yes.

30 Q. And the particular branch of the business  
of the companies that is carried on by  
York Products Pty. Ltd. is the importing  
and selling of clocks and also acting as  
the distributors of Ronson Products?  
A. That is correct.

In the  
District Court  
of the  
Metropolitan  
District of  
Sydney  
            
Plaintiff's  
Evidence

            
No. 3

D.L.Wilkinson  
Examination  
(continued)

Q. In or about July, 1962 did the company, York Products Pty. Ltd., at this stage when was it about that a certain transaction took place with certain German suppliers of clocks? A. Can I refer to some papers I have here? I cannot remember all the dates but I can tell you we placed an order early in 1962 and the merchandise, there were two cases of clocks despatched from Ersingen Pforzheim in Germany through Hartroot's and arrived in Australia some time in about November, October, 1962. 10

Q. Have a look at the first document I show you dated 28th July, 1962. Is that an invoice from your German supplier pursuant to that order which you subsequently received?  
A. That is received.

(Abovementioned invoice tendered and marked Exhibit "B".) 20

Q. And subsequently did your company also receive the original of a bill of lading in respect of the goods referred to in that invoice from the Nord Deutscher Lloyd Australian Services dated 11th August, 1962? Have a look at that document?  
A. Yes, I recognise that as having been received by us. 30

(Abovementioned document tendered, objected to, pressed.)

HIS HONOR: Q. Is this the only document you received? A. If I say yes I might be wrong there.

Q. As a bill of lading? A. What normally happens is we receive two originals, one we send down to the shipping company which I usually endorse which is directed to the shipping company, the other one I invariably keep in my own files. That is the normal procedure. I cannot answer in this particular instance but that is what normally happens. 40

(Tender of the abovementioned document allowed and marked Exhibit "C".)

In the  
District Court  
of the  
Metropolitan  
District of  
Sydney

HIS HONOR: I note that the document tendered has come from the possession of the defendant.

Plaintiff's  
Evidence

MR. MELVILLE: Q. The goods in those invoices were the property of your company?  
A. That is correct.

No. 3  
D.L. Wilkinson  
examination  
(continued)

10 Q. Subsequently were instructions given by you to Gridlands Ltd. who are the agents of your company and indeed of both companies of which you are the secretary, to clear goods from overseas? A. That is correct.

Q. And you are aware of course that those goods were in fact received by your company in Case No. 1? A. That is correct.

20 Q. In the invoice you see two sets of goods listed, do you recall, one on the top for I think it is an item of 1,000 travel alarm clocks and then a number of items thereafter listed. Is it a fact that the number of items thereafter listed after the 1,000 travelling alarm clocks were received in case No. 2?  
A. They were received, yes.

30 Q. And I think you have told us that you are aware that the vessel arrived, I think your recollection was somewhere about October, November? A. That is right.

Q. And you have made a valuation of the amount of those goods to your company? A. Yes.

Q. And in what manner do you value those goods? A. We value all our goods actually in the same manner, that is, invoice price plus 25% which is the amount we insure it for.

Q. In the case of those goods what was the value? A. It was invoice plus 25%

40 Q. What was that figure? A. Can I look it up, I cannot remember - I think it was £1,300.

In the  
District Court  
of the  
Metropolitan  
District of  
Sydney

Plaintiff's  
Evidence

No. 3

D.L.Wilkinson  
examination.  
(continued)

HIS HONOR: Look at your calculation.

MR. MELVILLE: Q. And give us the figure?  
A. Is it the value of the shipment or those particular goods I am speaking about?

Q. The value of the particular goods?  
A. £947.19.3.

Q. And you say that is a fair and reasonable value to your company of those goods had they been landed? A. Yes.

10

Q. And in fact did your company make a claim on the defendant in respect of the loss of these goods and I think you wrote a letter of 6th November, 1962, did you not?  
A. That is right, I wrote a letter.

(Mr. Melville calls for letter of 6th November, 1962 together with accompanying invoice, not produced.)

(Copy letter dated 6th November, 1962 tendered and marked Exhibit "D".)

20

Q. You are aware that in the invoice then sent there was a slightly less figure, was there not? A. That is correct.

Q. How did that shortly arise? A. The only amount you can claim on the ship is the amount of the value of the invoice plus the proportion of wages thereon. The balance we claim from the insurance company.

Q. But the balance represents the value of the goods in your hands? A. The landed value.

30

Q. And I think you have mentioned the fact that Cridlands were the agent of your company in relation to this particular cargo and consignment? A. That is correct.

CROSS-EXAMINATION

In the  
District Court  
of the  
Metropolitan  
District of  
Sydney

Plaintiff's  
Evidence

No. 3

D.L.Wilkinson

Cross-  
examination.

MR. HOWELL: Q. What was the invoice price of these goods, without reference to the document? A. 6,800 Deutschmarks I think.

Q. What is that in money, Australian equivalent? A. In round figures it is about £680. There is roughly 10 D.M. to the Australian pound as it was at that stage.

10 Q. So the price you paid for the goods was £680? A. Approximately.

Q. And you said that the invoice which accompanied your letter of 6th November, 1962, that is Exhibit "D", represents the amount that you are permitted to claim against the ship? A. That is right.

20 Q. From where do you get that permission to claim against the ship? A. Well, can I answer this - (objected to, allowed). Can I answer it this way, that it is the normal procedure to claim which I have been doing over many years. I say it is a practical experience I have generally. I cannot say whether it is in the book or not but it is a practical experience I have of claiming on shipping companies when you claim the value of the goods plus operation or direct charge, that is on the invoice plus freight and insurance.

30 Q. You are aware that the bill of lading, Exhibit "C", contains certain terms, does it not? A. I know that there are certain terms on a bill of lading.

Q. And one of those terms is that once the goods are away from the ship's tackle on discharge they are a consignee's risk? A. I do not know - (objected to).

(Mr. Howell reads to His Honor paragraph 2 of Exhibit "C".)

40 HIS HONOR: Q. Were you aware that clause was in the document? A. Not in specific words like that.

In the  
District Court  
of the  
Metropolitan  
District of  
Sydney

Plaintiff's  
Evidence

No. 3

D.L. Wilkinson  
Cross-  
examination.  
(continued)

MR. HOWELL: Q. But you were aware that there was a clause which exonerated the ship from responsibility for the goods once the goods had been discharged from the ship's tackle, were you not? (Objected to, rejected.)

Q. You are aware there was some clause similar to the one I read to His Honor contained in the bill of lading?

A. I know there are a lot of clauses which some of them exonerate the shipping company for various periods but I do not know the specific period of time they are exonerated from. 10

Q. And you said that you were aware that there was some such clause in bills of lading exonerating the ship owner in certain circumstances? A. There are certain circumstances, yes.

Q. And may I take it when you wrote your letter of 6th November, 1962, that is Exhibit "D", you did not trouble to ascertain whether there was any exoneration of the ship owner in the present case? A. No, I did not. 20

Q. Might I have Exhibit "C". Would you agree with me that this bill is an order bill, is that so? A. Normally they are order bills. I did not look for the order on it but normally they are order bills. 30

Q. It is an open order bill? A. Normally they are, yes.

Q. And of course it contains within it, you are aware, are you not, it contains within it no value of the goods shown upon it? A. That is right.

Q. And of course where a cargo of value is being forwarded and has a bill of lading covering it it is customary, is it not, to have the ad valorem value of the goods marked within the bill itself? A. No. (Objected to) 40

Q. You are not aware of that practice? A. I have never seen it to tell you the truth.



RE-EXAMINATION

In the  
District Court  
of the  
Metropolitan  
District of  
Sydney

Plaintiff's  
Evidence

No. 3

D.L.Wilkinson  
re-examination

MR. MELVILLE: Q. You were asked about the actual purchase price of the goods, £680 you approximated it at? A. Approximately yes, actually I will say it is used as a business direction.

Q. And in respect of your claim you have referred to an additional 25% over and boave that amount, do you remember that?  
10 A. Yes.

Q. And what items does that take charge of?  
A. The 25% is in that. It takes freight, insurance, handling charges, our own buying charges, administrative expenses, probably, there is quite often sundry other items, correspondence, anything of an overhead nature really.

HIS HONOR: Q. Profits on resale? A. No, there would be no profit greatly. There might be a fraction at times. Every ship varies a little bit.  
20

MR. MELVILLE: Q. I think you phrased it from the value in your hands of the goods?  
A. Yes.

(Witness retired and excused.)

No. 4

Evidence of D.D. Fuller

DAVID DEWHURST FULLER

Sworn, examined as under:

No. 4

D.D. Fuller  
Examination.

30 MR. MELVILLE: Q. What is your full name?  
A. David Dewhurst Fuller.

Q. Where do you live? A. 19 Bayswater Road, Longueville.

Q. You are the Assistant Manager and were in 1962 and 1963 of Port Line Ltd.? A. Yes.

In the District Court of the Metropolitan District of Sydney

Plaintiff's Evidence

No. 4

D.D. Fuller Examination. (continued)

Q. Did you write a letter on 26th August, 1963 to Gilchrist Watt & Sanderson Pty. Ltd. making certain investigations in relation to the consignment of the cases of clocks from the motor vessel "Regenstein"? A. Yes.

Q. Which arrived in September, 1962 in the port of Sydney? A. Yes.

Q. And did you subsequently receive from Gilchrist Watt & Sanderson Pty. Ltd. a letter dated 30th August, 1963 in relation to your enquiry? A. Yes, that is the letter I received. 10

(Abovementioned letter tendered and marked Exhibit "E".)

(Witness retired and excused.)

No. 5

E.W. DAY Examination.

No. 5

Evidence of E. W. Day

ERIC WESLEY DAY

Sworn, examined as under: 20

MR. MELVILLE: Q. What is your full name? A. Eric Wesley Day.

Q. Where do you live? A. 7 Bergin Street, West Ryde.

Q. What is your occupation? A. Customs Clerk.

Q. And I think you are employed by Frank Cridland Pty. Ltd.? A. That is right.

Q. And were throughout 1962 and since that date? A. Yes.

Q. And in 1962, in that capacity, I understand that you were concerned with and handled certain clearances of goods from the motor 30

vessel "Regenstein" which arrived in Sydney on 29th September, 1963 at No.3 Glebe Island Wharf? A. Yes.

In the District Court of the Metropolitan District of Sydney

Q. And do you recall whether certain correspondence took place between your company and Gilchrist Watt & Sanderson Pty. Ltd. in relation to that vessel?  
A. I know a claim was lodged against the vessel.

Plaintiff's Evidence

10 Q. Have a look at this letter (objected to). Is that a letter received by your company from Gilchrist Watt & Sanderson Pty. Ltd. in respect of goods from that - (Objected to).

No. 5

E.W. Day Examination (continued)

Q. Is that a letter received by your company from Gilchrist Watt & Sanderson? A. Yes.

(Abovementioned letter tendered without objection and marked Exhibit "F".)

20 Q. In relation to clearance of goods from this vessel are you aware of the procedures that were adopted by your company in respect of goods that arrived in that vessel. (Objected to)

Q. Of your knowledge are you aware of certain acts being performed under your direct control and supervision in this instance? (Objected to, allowed)

Q. Is that so? A. What was the question, I have lost the legal back talk.

30 (Previous question read back to witness.)

WITNESS: Yes.

Q. What matters did you perform yourself, firstly in relation to this?  
A. Depends on what you want of me. The whole shipping procedure surely is known to you and your friend.

HIS HONOR: But not to me. You answer the question.

In the  
District Court  
of the  
Metropolitan  
District of  
Sydney

Plaintiff's  
Evidence

No. 5

E. W. Day  
Examination  
(continued)

WITNESS: The bill of lading covering this particular shipment is given by me to a laddy to take to the shipping company.

MR. MELVILLE: Q. You received a bill of lading, did you? A. Yes.

Q. And have you it available at the moment or has it subsequently gone?  
A. No, that is not available. That is handed to the shipping company for the order against the ship. 10

Q. That bill of lading came in your province and you handed it out to be dealt with in the manner you suggest and thereafter -  
A. It is handed to our cartage department, that is after payment of all charges, sorting and stacking or wharf delivery. This is the practice that is done two or three hundred times a week. It is common in the shipping industry.

HIS HONOR: Q. What was handed to your cartage department? A. The delivery order, that is the bill of lading with a duly authorised stamp on it from the shipping company and the Maritime Services Board stamp on it to be produced to the delivery clerk in exchange for the goods. 20

MR. MELVILLE: Q. You mentioned certain charges of the storage, I think stacking and storage? A. Stacking and wharf handling charges. They have fancy names for these. 30

Q. Are you aware of any of those charges that were paid by your company in respect of this bill of lading to which you have referred? A. Yes, and that is in the shipping cash book of some years standing which gives me the information I want in here or the proof of it. We call that our shipping cash book, a shipping cash book 1.

Q. And what was the information there you were aware of, what you did in relation to this? A. What I had control of was I told the laddy to pay the money to the shipping company and then booked it up in this book so everybody could find it. 40

In the  
District Court  
of the  
Metropolitan  
District of  
Sydney

Plaintiff's  
Evidence

No. 5

E. W. Day  
Examination  
(continued)

Q. And that book is under your control?  
A. Yes.

Q. And in this instance what was paid?  
A. 10/1d.

Q. To whom? A. The shipping company.

Q. Which one? A. Gilchrist Watt &  
Sanderson.

Q. On what date? A. This in 5th October.  
Wharfage was paid to the Maritime Services  
Board of 8/9d. about the same day.

10

Q. And in respect of what goods (objected to).  
(Witness shown Exhibit "C".)

Q. Do you recall seeing that document?  
A. Yes, it has got my signature on it.

Q. Your signature appears on the back of it,  
does it? A. Yes.

Q. Was that the bill of lading to which you  
made reference of having handed out in  
this instance for clearance? A. I did.

20

Q. And in respect of that bill of lading  
were the charges which you mentioned paid?  
A. Yes, that is it exactly.

Q. Is there a reference to it on the  
document? A. Yes, there is a "Please  
deliver" stamp of Gilchrist Watt &  
Sanderson, amount of charges 10/1d. and  
there is also a Maritime Services Board  
stamp on there. That is the bill of  
lading.

30

Q. And is this letter of 27th November a  
letter your company received from  
Gilchrist Watt & Sanderson Pty. Ltd.?  
A. Yes.

(Abovementioned letter tendered and marked  
Exhibit "G".)

CROSS-EXAMINATION

In the  
District Court  
of the  
Metropolitan  
District of  
Sydney

Plaintiff's  
Evidence

No. 5

E. W. Day  
Cross-  
examination.

MR. HOWELL: Q. This charge of 10/1d. which was paid was paid for sorting and stacking, was it not? A. That is right.

Q. And may I take it that you as a Customs Clerk would handle any charges that become payable to the Maritime Services Board for the goods being left on the wharf after they have been unloaded from the ship? A. That is right. 10

Q. And I take it that as a customs clerk you have many times paid those charges on behalf of the consignee of the goods (objected to). A. Yes.

Q. And those charges for the goods being left on the wharf are made for the consignee to the Maritime Services Board? A. For storage to (Objected to, allowed).

HIS HONOR: Q. This is a general question you understand? A. Yes, we do pay them. 20

MR. HOWELL: Q. And to the Maritime Services Board? A. That is right. I mentioned wharfage previously and storage in some instances.

HIS HONOR: Q. And this would be the sum of, relating it to this case, this would be the sum of 8/9d? A. That is the wharfage payable on that particular shipment.

MR. HOWELL: Q. Of course, as soon as the ship ties up at the wharf to your knowledge there becomes payable to the Maritime Services Board a certain amount of wharfage dues? (Objected to) 30

Q. You are aware, are you not, that once the ship berths at the wharf certain wharfage dues then become payable to the Maritime Services Board in respect of the period of its stay at the wharf? A. Well, there are two charges payable, one is for wharfage and the other one after a certain length of time is wharf storage. 40

Q. So that the Maritime Service Board extracts to your knowledge two charges, one in respect of wharfage of the ship at the wharf? A. That is right.  
(Objected to, allowed)

Q. And one in respect of the storage of the goods on the wharf after a certain period? A. Yes.

10 Q. And to your knowledge is that certain period three days after the ship has ceased to discharge the cargo? (Objected to)

HIS HONOR: Q. Do you have any knowledge of this by reason of having paid the moneys yourself? A. It is fairly common knowledge in the shipping game.

Q. Do you know it by reason of having paid the moneys yourself? A. On this particular shipment?

Q. On any ship? A. Yes.

20 Q. You have paid wharfage for ships being alongside, have you? A. The port practice is -

Q. I am not asking you about that. You have personally paid wharfage for the ships being alongside? A. Yes.

Q. On behalf of some consignee, is that how you are putting it? A. Yes.  
(Question allowed)

30 MR. HOWELL: Q. And similarly you have paid storage charges to the Maritime Services Board on behalf of some consignee for whom your company has acted?  
A. That is right.

Q. And you pay those charges, I am suggesting to you, to your knowledge, in respect of periods after three days from the date when the ship has ceased to discharge her cargo? (Objected to)

40 HIS HONOR: Q. Can you answer that question?  
A. Yes, that is what we do, pay storage on behalf of the clients.

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E. W. Day  
Cross-  
examination.  
(continued)

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E. W. Day  
Cross-  
examination  
(continued)

(Previous question read back.)

WITNESS: Yes, on demand.

MR. HOWELL: Q. Of course that is the situation today, is it not? A. That is so.

Q. And was the situation back in 1962?  
A. That is so.

Q. Would you agree with me that looking at the bill of lading, Exhibit "C", that the charge of 10/1d made to Gilchrist Watt & Sanderson for sorting and stacking charges was paid on 8th October, 1962?  
A. That is right.

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Q. And that the charge to the Maritime Services Board was made on 5th October, 1962?  
A. Yes.

Re-examination.

RE-EXAMINATION

MR. MELVILLE: Q. I think you have said, have you not, that no storage charge was paid on this occasion. That was just wharfage was it not? A. That is wharfage only.

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Q. And you mentioned, you agreed with my friend, he put it to you about three days when in certain circumstances to your knowledge payments thereafter become payable to the Maritime Services Board?  
A. That is right.

Q. Are you able to clarify this, do you know anything more precisely after that?  
A. Three days after final discharge is the time the Maritime Services Board lays down.

30

Q. Is there any qualification of the word "days" to your knowledge?  
A. There is only one day that is excepted and that is Sunday.

Q. What about Saturday? A. Saturday is part.



Q. If the ship works or whether it works or not? A. Whether it works or not Saturday is a day paid in storage.

Q. What about the days again, apart altogether from that you were talking about general practice, do you know whether these days are qualified?  
A. Not to my knowledge they are not, except Sunday is the only day they object to because the wharves do not open on Sunday.

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Q. And that is only from your general knowledge you are speaking of? A. Yes.

HIS HONOR: Q. Tell me, this 10/1d. I thought you said in your evidence you paid it to the defendant company, that is Gilchrist Watt & Sanderson? A. That is right.

Q. And you paid it in respect of what?  
A. that is for wharf handling charges and for sorting and stacking.

MR. MELVILLE: There is a second amount that is referred to Your Honor.

HIS HONOR: Q. The second amount was paid by you to the Maritime Services Board?  
A. That is right.

Q. And that was paid in respect of wharfage?  
A. Yes.

Q. You never paid any money in respect of storage? A. Not to my knowledge.

Q. To any one, never paid storage to anyone?  
A. Not to my knowledge.

Q. Did you pay any money to any one yourself for storage? A. No.

MR. HOWELL: (by leave) Q. To your knowledge no moneys were paid by Frank Cridland Pty Ltd. to any one for storage in the present case? A. Not to my knowledge.

Q. You mentioned that your signature appears on the bill? A. That is right.

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E.W. Day  
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(continued)

- Q. May I take it that you are referring to a signature which appears on the back of the bill under a rubber stamp "Frank Cridland Pty. Ltd. per" and the writing in relation to that is yours? A. That is right.
- Q. And you will observe that the bill is a bill to order? A. That is right.
- Q. And endorsed in blank? A. That is right.
- Q. And you endorsed that bill, did you? A. Yes.
- Q. On behalf of the plaintiff company? A. On behalf of Frank Cridland.
- Q. And they were acting for the plaintiff company? A. Yes, H.H. Halls (Objected to)

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(Witness retired and excused.)

(Mr. Melville calls for book known as the defendant's Key Book in respect of the entries relating to this consignment, produced.)

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No. 6

C.V. Wholohan  
Examination.

No. 6

C.V. Wholohan.

CECIL VINCENT WHOLOHAN

Sworn, examined as under:

- MR. MELVILLE: Q. Is your full name Cecil Vincent Wholohan? A. Yes.
- Q. Where do you live? A. 80 Brook Street, Coogee.
- Q. And in 1962 by whom were you employed? A. Central Stevedoring Company.
- Q. That is actually the Central Wharf Stevedoring Company? A. That is right.

30

- Q. And round about September, October were you so employed at and about No. 3 Wharf Glebe Island? A. That is true.
- Q. I think you are now employed by Patrick & Company, are you not? Yes.
- Q. And in late September October 1962 what was your particular classification? A. Head stacking clerk.
- 10 Q. And do you recall the motor vessel "Regenstein" being at No. 3 Glebe Island Wharf? A. Faintly, it is a long time ago.
- Q. But you were- A. The head stacking clerk.
- Q. Then for the Central Wharf Stevedoring Co.? A. Yes.
- Q. And as head stacking clerk what were your duties? A. To position the cargo when it came off the ship.
- 20 Q. Who was discharging the cargo from the ship to your knowledge? A. Central Wharf Stevedoring Co.
- Q. And you were present then and what particular activity did you do as and when that cargo was discharged from that vessel? A. When any goods came off I positioned them in the shed for the carriers to come down and pick them up.
- Q. There is a shed on the wharf, is there? A. That is true.
- 30 Q. Where is your office in relation to the wharf? A. In the shed.
- Q. And apart from yourself were there, at the relative time, it was discharging, other employees of Central Wharf Stevedoring Co. with you in that shed? A. Only the casual clerks picked up from the pick up centre.
- Q. And you say you position the cargo in that shed, that is, you allot space for it, have it placed in the shed? A. That is right.

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C.V. Wholohan  
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(continued)

- Q. From the operations performed in the discharge from your employer company?  
A. That is right.
- Q. In the course of your business do you record the goods as brought into that shed? A. I have a Key Book and I make eight notes where the cargo comes out and where it is stacked and that.
- Q. Have a look at this book, is that the key book relative to the discharging of cargo from the "Regenstein" in about early October, 1962? A. That is it. 10
- Q. And they are entries therein in your handwriting? A. On the right hand side yes.
- Q. And have you an entry there of 2nd October in respect of certain cases - I think they are referred to as Hon No. 1 and 2. Have a look at them. They are in Bay 6, I think, item 104 may help you? A. Yes, 104, that is true. 20
- (Abovementioned entry on page H tendered and marked Exhibit "H".)
- Q. You say your handwriting is on the right hand side of the page and that allots the storage space for those goods, does it? A. When I write on the right hand side it is only for when the carriers come in. It allots a place to have them put. It is on the right hand page I should say. 30
- Q. And you identified those cases when they came into the shed? A. That is correct.
- Q. And allotted them the space to which is there made reference? A. They were put there and I marked the position.
- Q. And that was done in the course of the discharge by your company? A. That is true.
- Q. What was the condition of those cases? A. I could not tell you.

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(continued)

- Q. You say that then in the normal course they are there until delivery? A. Yes.
- Q. And in the process of delivery of the goods does anyone make contact with you?  
A. Only the carriers that come around looking for their cargo.
- Q. They report to you, do they?  
A. Ask for the position of their cargo.
- 10 Q. Do they have any documents that they refer to you? A. They have a loading ticket.
- Q. Who issues that? A. The delivery clerk in the office.
- Q. In whose office? A. They have their own office there at the wharf.
- Q. When you say the delivery clerk you mean a fellow employee? A. Yes, he would be in charge of the job.
- Q. And he was on this occasion so in charge of the job? A. That is right.
- 20 Q. And to your knowledge employed by your employer? A. That is true.
- Q. And do you know who he was on this occasion? A. Mr. Hielman.
- Q. You then had produced to you a delivery ticket from your company signed by Mr. Hielman at this time, then you authorised delivery out of the goods?  
A. No, actually the carrier comes down and shows it to me and asks where that particular case or cases are.
- 30 Q. But he presents to you the delivery ticket signed by Mr. Hielman? A. I do not keep it.
- Q. You sight it? A. Yes and tell him where to find this cargo.
- Q. It is only when you sight that that you let him take the goods out? A. I do not let him. He sees a delivery clerk on the wharf and he loads his cargo and the shed

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(continued)

clerk gives him a ticket and he goes back into the office and gets a gate pass.

Q. Which is produced by your company. In any case he has to produce these various authorities before he gets the goods?  
A. Not to me.

Q. But he has to have, to have access to them from you, he has to show you his ticket? A. Yes.

Q. And without the ticket you would not give him access? A. No. 10

HIS HONOR: Q. What does the shed clerk do?  
A. He writes out a delivery ticket for so many cases, say Cridlands might have four cases marked AB. He has a loading ticket for four cases AB and he shows that to the shed clerk who writes them out when he loads on to the wagon.

Q. And the carrier takes away the parcels and the ticket that the shed clerk gave him? A. He takes the ticket that the shed clerk gave him back into the office and he gets a gate pass which they give to the gatekeeper. 20

Q. And that is all provided by fellow employees of yours, of your company?  
A. That is right.

Q. And at the time of this discharge are you aware of there being any watchman in relation to this shed? A. Yes, always a watchman in the shed plus a supervising watchman. 30

Q. Are they with your company too?  
A. Yes, employed by the Central Wharf Stevedoring Co.

Q. And they were at this stage to your knowledge? A. Yes.

Q. In relation to the opening and the locking of that shed what time did you report for duty? A. Eight o'clock in the morning. 40

Q. In the early days of October when this vessel was discharging. You have observed the procedure of leaving and on entering the premises, getting access to it yourself?  
 A. The watchman has to pick up a key from the Customs Officer. He is in sole charge of the goods in the sheds.

Q. But he has to get the key from the Customs Officer?  
 A. Yes.

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10 Q. What about the close of business of discharging, who locks it?  
 A. The watchman and he hands the key back into Customs.

Q. And this happened on this occasion of the discharging of this vessel?  
 A. On every occasion.

(Short adjournment)

20 Q. I would like you to look at the entry on page H. You mentioned on the right hand side in relation to this entry some writing in your own hand?  
 A. Yes.

Q. You see on the other page there is 2 CS and they are identified and there is a ring around the 2. Is that your writing?  
 A. That is right.

Q. What does that signify?  
 A. That they were the two cases left on the wharf.

Q. That you checked the two cases?  
 A. I have sighted the two cases.

30 Q. And do you recall anything in respect of those particular cases at any time whilst they were in the shed of which you were the stacking clerk?  
 A. No, I just made a note of where they were stowed and carried on.

Q. And have you any recollection of any loss in respect of either of those cases?  
 A. Not until the chap came down looking for them.

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- Q. You mean a delivery clerk? A. No, a loading chap from Cridlands.
- Q. Did you make an inspection then? A. Well, I had a faint recollection of telling him if he tried the dock shed the case might have been down there.
- Q. Was there a case missing from the shed? A. From that position then.
- Q. Did you search the shed yourself then? A. Yes.
- Q. And did not find it? A. No.
- Q. And it was not delivered out? A. No, it was not delivered out.
- Q. To Cridlands' men when they came looking for it because it just was not there? A. It just was not there.
- Q. Prior to your making your entry into the book, Exhibit "G", that is the book I take it that the cargo has first been sorted and stacked? A. That is true.
- Q. And that is done by various men in and about the shed? A. They call it the hatch clerk.
- Q. Once the goods have been sorted and stacked you then go around and make your entry in the key book regarding the position of the various items? A. That is true.
- Q. And the purpose of that is to assist the consignee, is it, to get their goods? A. That is right, when they come there.
- Q. When the "Regenstein" was being unloaded you have said that the particular shed being used was the No. 3 wharf and shed? A. Yes.
- Q. And that shed is a very large one, is it? A. Well, average size shed.

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C.V. Wholohan  
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(continued)

- Q. And at the time that the cargo is sorted and stacked in that shed were there several watchmen in attendance to keep an eye on the cargo? A. There were a few watchmen, how many I could not tell you.
- Q. There were certainly several of them, I take it? A. Yes.
- 10 Q. And is it the function of the watchmen to watch the cargo that is in the shed?  
A. Yes.
- Q. And to watch any carriers who come into the shed? A. Yes, in the shed and outside the shed.
- Q. And to check that any person that comes into the shed to take cargo has in fact got some delivery docket, some loading slip with him? A. That is true.
- Q. And are they also responsible for seeing that no unauthorised person interferes with the cargo? A. That is true.
- 20 Q. And to your knowledge would you say there were several of these men in attendance throughout the time this cargo was in the shed? A. Yes.
- Q. Were there numbers of tally clerks there also to tally the various goods as they were taken from the shed? A. Yes.
- Q. You have told us of course that once the work of the day was finished that the shed is then locked up and the key handed into the Customs Officer for safe keeping?  
A. Yes.
- 30 Q. And that was done throughout the entire time that goods from the "Regenstein" were in the shed? A. Yes.
- Q. Do you know that in addition to working the normal day shift that whilst the "Regenstein" was there they also unloaded during a shift from five to eleven at night?  
A. That is right. There is no delivery of a night.
- 40

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C.V. Wholohan  
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(continued)

- Q. But of course during the night time there are still watchmen within the shed?  
A. Yes.
- Q. Whilst people are going in amongst the cargo and stacking it or doing anything in relation to it? A. That is true.
- Q. And it is only after the final shift has ceased that the thing is then locked up for the night and it is not opened again until the watchman gets the key from the Customs Officer in the morning?  
A. That is right. 10
- Q. And in relation to there being at this time these watchmen, both in the shed throughout the day shift and the 5 p.m. to 11 p.m. shift, I take it that on each of those shifts there was a supervising watchman? A. Yes.
- Q. In overall charge of these watchmen?  
A. Yes. 20
- Q. And that he had a few men under him to carry out the work? A. That is true.
- Q. And in addition to that is there also a patrol officer whose responsibility it is to patrol outside all the sheds to see that no unauthorised persons go into them?  
A. That is right. (Objected to)
- HIS HONOR: Q. Do you answer yes to all those questions? A. There is a patrol man who checks all the doors when there is nobody working there of a night time. 30

CROSS-EXAMINATION

Cross-  
examination.

- MR. HOWELL: Q. There is in fact a patrol man there at night? A. Yes.
- Q. And he goes around checking the security of all the doors on the sheds? A. Yes.
- Q. And that was so whilst the "Regenstein" was in port in 1962? A. Yes.

Q. At No. 3 wharf at Glebe Island when the "Regenstein" was discharging, in addition to having these watchmen, a supervising watchman and other watchmen within the shed, was there also employed just outside the shed a gatekeeper? A. Yes.

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10 Q. There was a gatekeeper stationed outside the shed in the years 1962 and 1963?  
A. I could not tell you because I was inside the shed but there should have been.

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Q. But in any event there was, in 1962 when the "Regenstein" was there, there was a gatekeeper? A. I suppose so.

C.V. Wholohan  
Cross-  
examination.  
(continued)

Q. Do you know whether or not? A. Mr. Hall could tell you that.

20 Q. Do you know that there was a period of time when there was a gatekeeper outside that No. 3 shed? A. Well, there could have been. I could not tell you that, I was inside the shed. I do not know who was outside.

HIS HONOR: Q. But when you left did anyone check you off? A. They have a check point up at the top of Glebe Island there as you go through.

30 MR. HOWELL: Q. Can I put it to you this way, in 1962 whether there was a man actually occupying a post was there a place for a time keeper near that No. 3 wharf?  
A. That is true.

Q. And near the shed on that No. 3 wharf?  
A. That is true.

Q. And you have said I think back in 1962 that there was also a further gatekeeper at the main gate? A. That is right.

Q. Who checked people in and out of the area? (Objected to, question withdrawn.)

40 Q. When the "Regenstein" was at No. 3 wharf in 1962 you were coming to and from work each day? A. Yes.

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C.V. Wholohan  
Cross-  
examination.  
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- Q. You have spoken of there being a main gate where there was a gatekeeper. Do you recall mentioning that a few minutes ago?  
A. That is right.
- Q. And you said to His Honor in answer to a question His Honor asked you that that gatekeeper checked people in and out?  
A. That is true.
- Q. Did that happen on the occasion when you came to and left to go home from work?  
A. Well, only to trucks and cars.
- Q. But not to individual personnel?  
A. That is on foot, no.

10

Re-examination.

RE-EXAMINATION.

- MR. MELVILLE: Q. The people to whom reference has been made to you, whom you have spoken of in your knowledge, exercising these various functions, are they fellow employees of yours? A. Well, the clerks are casual. They are picked up by Central Wharf and I think the watchmen could have been picked up from a pick up staff. There would be casual watchmen as well.
- Q. Again employed by Central Wharf? A. Yes.
- Q. And of course the facts to which you have answered are while you have been in attendance at the wharf yourself? A. Yes.
- Q. And you yourself of course each day left the wharf and went home? A. That is correct.
- Q. And did not attend again until the following morning? A. That is right.
- Q. You were asked about the night the vessel discharged, do you know what night that was? A. No, I could not tell you, I could not remember what night it was. It was too long ago.

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- Q. But you say you recall it discharging one night? A. I think one or two nights, I am not too sure of that.
- Q. But no delivery personnel you say operate at night? A. No, unless it is hazardous cargo and then they would.
- Q. But this was not a hazardous cargo? A. No.

, (Witness retired)

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C.V. Wholohan  
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(continued)

No. 7

No. 7

10

A. H. HIELMAN

A.H. Hielman  
Examination.

ALEXANDER HARRY HIELMAN

Sworn, examined as under :

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- MR. MELVILLE: Q. What is your full name?  
A. Alexander Harry Hielman.
- Q. Where do you live? A. 83 Wright Street, Hurstville.
- Q. By whom are you employed? A. Central Wharf Stevedoring Company.
- Q. And were you so employed in September and October of 1962? A. Yes.
- Q. In what capacity then? A. As delivery clerk in charge.
- Q. And do you recall September and October of 1962 when the motor vessel "Regenstein" was discharging at the wharf at Glebe Island? A. I do.
- Q. And you were then the delivery clerk in charge? A. Yes.
- Q. And do you recall when that vessel came in?  
A. Going from memory I think 29th September.

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A.H.Hielman  
Examination  
(continued)

- Q. 1962? A. Yes.
- Q. And thereafter unloaded to your knowledge and do you recall when she left the port?  
A. 4th October.
- Q. What were your duties in relation to the unloading of that vessel?  
A. As far as the unloading was concerned, my only duties are to deliver the cargo which is unloaded from the delivery office, issue a date card for the cargo. 10
- Q. You are one of the company's employees involved in the unloading process, are you?  
A. Not in the actual unloading process, no.
- Q. That has been done by your company?  
A. That is correct.
- Q. And was on this occasion? A. Yes.
- Q. But have you an office or place? A. Yes.
- Q. Whereabouts is that? A. At that particular wharf?
- Q. Yes. A. There is a delivery office on 3 Glebe. 20
- Q. We have heard of a shed on the jetty, is it within that jetty? A. No, it is on the jetty, facing the opposite way, the entrance to the delivery office faces the opposite way to the jetty.
- Q. What is your function in relation to the cargo received from the vessel?  
A. It is my function to issue, when the customer brings down his bill of lading, I issue him with a loading ticket when the bill is cleared and charges have been made. 30
- Q. They are normally stamped on the bill of lading, are they? A. Yes. He then takes that into the shed, finds the head stacker who gives him the location of his cargo, he then finds himself a tally clerk and while his is loading the cargo the tally clerk makes him out a ticket which he brings back to me at the office. 40

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A.H.Hielman  
Examination  
(continued)

Q. Tally clerk of Central Wharf Stevedoring Co.? A. No, the tally clerk is actually a casual, temporarily employed by Central Wharf Stevedoring Co.

Q. For this purpose? A. For this purpose.

Q. What do they bring back to you?  
A. He brings me back a ticket which is issued by the tally clerk, then I write him out a gate pass which is in triplicate, one copy of which is retained, one copy for the driver, and one copy for the gate which he signs.

10

Q. And do you recall the circumstances in relation to the delivery out of goods in respect of certain cases with which Cridlands were concerned on this occasion?  
A. A certain case, yes.

Q. What do you recall about it?  
A. I recall that, as far as I can remember it is a long time ago, that the carrier came down, picked up the cases and Mr. Wilkinson, who was the head stacker on the job, informed me that the case was at one stage at a certain position and was no longer there.

20

Q. Did you make any report of that to your employer? A. I did.

Q. Do you recall when that was? A. I am not certain of the actual date of when that actually happened.

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CROSS-EXAMINATION

Cross-  
examination.

MR. HOWELL: Q. You do not recall the precise date when it was that Mr. Wilkinson came to you with Cridlands' man and said he could not find the case, is that the position? A. Yes.

In the  
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Plaintiff's  
Evidence

No. 7

A.H.Hielman  
Cross-  
examination.  
(continued)

- Q. But this man from Cridlands had been given a loading chit by you on that particular day, had he? A. I would not swear to that either, but I would imagine he would have.
- Q. Before you issue a loading chit do you first or did you back in 1962 first ascertain that it was in order for the goods to be delivered to the person seeking to pick them up? A. Yes, he must bring me in the original bill of lading which must be stamped accordingly. 10
- Q. (Exhibit "C" shown to witness.) When Cridlands' man came on this occasion did he bring that bill to you? A. I would say so, yes.
- Q. And do you first, before issuing a loading chit, check that all appropriate charges have been paid by the person seeking to pick the goods up? A. Yes. 20
- Q. And in this instance did you check that the charges for sorting and stacking had been paid? A. Yes, by Gilchrist Watt & Sanderson's stamp.
- Q. And that is shown on it? A. That is correct.
- Q. And you noticed that the date on that stamp is 8th October, 1962? A. I did.
- Q. I suggest to you then that it is probable it was about the 8th October then this man from Cridlands came there? A. It is possible, I would say so. 30
- Q. And at the time the "Regenstein" was discharging this cargo at No. 3 Glebe Island was there a watchman stationed just outside that No. 3 shed to check the carriers as they came in and out? A. Yes, there was.
- Q. A gatekeeper? A. He is a watchman actually.



Q. And he has a post at the gate?  
A. That is correct, but he also, in those days that gate was not really a gate in the recent sense of the term. It was only a sort of small sentry box and he more or less patrolled up and down the area of that check.

In the  
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Q. And did on the occasion when the "Regenstein" was discharging? A. Yes.

Plaintiff's  
Evidence

10 Q. And his duty was to check the carriers in and out, into the immediate area of No. 3 Glebe Island shed? A. That is correct but he did not check the gate pass. It was handed in at the top gate.

No. 7

A.H.Hielman  
Cross-  
examination.  
(continued)

Q. When the carrier left with his goods did that man check the load on the -  
A. That was supposed to be his duty, yes.

20 Q. And would he then take any documentation from the driver of the car?  
A. Nothing at all.

Q. The main gate pass would be handed in at the top gate? A. That is correct.

Q. Was that watchman also someone casual who had been engaged by Central Wharf Stevedoring Co.?  
A. He would be, yes.

(Witness retired)

(Case for the plaintiff closed.)

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In the  
District Court  
of the  
Metropolitan  
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Sydney

DEFENDANT'S EVIDENCE

No. 8

J. S. Hall.

Defendant's  
Evidence

JAMES STEPHEN HALL:

Sworn, examined as under:

No. 8

J.S. Hall  
Examination.

- MR. HOWELL: Q. What is your full name?  
A. James Stephen Hall.
- Q. Where do you live? A. 8 Netherby Street,  
Wahroonga.
- Q. What is your occupation? 10  
A. I am the head supervising watchman,  
Central Wharf Stevedoring Company.
- Q. And in 1962 were you employed by that  
company? A. Yes.
- Q. And in what capacity were you then employed?  
A. As I am now, head supervising watchman.
- Q. Is your responsibility as the head super-  
vising watchman to engage watchmen for the  
various sheds and surrounding areas in the  
vicinity of wharves where your company is 20  
stevedoring ships? A. That is correct.
- Q. And do you recall the motor vessel  
"Regenstein" being stevedored by Central  
Wharf in the month of October 1962?  
A. Yes.
- Q. And did you in the course of your duties  
engage watchmen for the sheds in the  
surrounding area of the No. 3 wharf at  
Glebe Island for the stevedoring of the  
"Regenstein" on this occasion? A. Yes. 30
- Q. And can you tell me first of all how many  
watchmen were engaged to watch the shed  
at No. 3 Glebe Island wharf whilst the  
"Regenstein" was discharging? A. It is  
actually four men and a supervisor on the  
"Regenstein" and there was an extra two men  
in the shed but they were the previous crew,  
the "Changsha", which made six men in the shed.

In the  
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Defendant's  
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No. 8

J.S. Hall  
Examination.  
(continued)

- Q. So there were six men? A. Plus a supervisor.
- Q. To watch the various items of cargo that had been discharged out of the "Regenstein". How many men in all were there apart from the supervising watchman engaged to watch the cargo for the "Regenstein" whilst it was in that shed? (Objected to)
- 10 Q. You mentioned that some men had been in the shed to watch the cargo from another vessel? A. Actually people can watch any cargo stevedored by the one company. They are allowed to, must watch all cargo.
- Q. And so apart from the supervising watchman how many men were there in that shed to watch the cargo from the "Regenstein"? (Objected to.)
- 20 Q. How many men were there there? A. Actually there were six men in the shed, six shed watchmen for two days and one supervising watchman and there was also a supervising watchman on the ship. It is his actual duty to have a look down the holds occasionally, see what type of cargo is coming out.
- Q. What was the function of the six men within the No. 3 shed? A. They were to look after all cargo in that shed.
- 30 Q. When you say look after, what do you mean precisely by that? A. See that it is not interfered with.
- Q. And the supervising watchman, what is his function? A. His duty is to see that all men are stationed in their positions and doing their job.
- Q. From your knowledge of the practice does he move through the shed during the course of the discharge of the cargo?
- 40 A. Yes, that is his main duty.

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No. 8

J.S. Hall  
Examination.  
(continued)

Q. So far as persons outside the shed are concerned, were any other persons engaged whilst your company was stevedoring the "Regenstein", keeping an outside watch?

A. Yes, a man we call the gatekeeper, watching the outside doors. He is not included in that.

Q. He is in addition to these six men mentioned? A. Yes.

Q. Where was he stationed in October, 1962? 10

A. He should have been stationed on the outside of the shed watching the waggons loading at the different docks, about eight or nine doors there they have to watch.

Q. And apart from that how many shifts were worked while the unloading was going on?

A. Usually work a day shift and worked two nights on the second and third. Usually worked two, five and eleven shifts. 20

Q. Second and third October? A. Yes.

Q. In addition to the day shifts? A. Yes.

Q. Are there any deliveries made at night?  
A. No.

Q. On these two nights was there a supervising watchman there? What people were there? A. There would be a patrol watchman, there was a patrol watchman and two shed watchmen and one supervising watchman. 30

HIS HONOR: Q. You have a distinct recollection of seeing them there, have you?

A. No sir, but I have, I keep a record of the men employed at that time.

Q. From your records? A. Yes.

MR. HOWELL: Q. And you are responsible I think you said for the engagement of these men? A. Yes.

Q. And for recording the time they worked?  
A. Yes. 40

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J.S. Hall  
Examination  
(continued)

- Q. And you told His Honor that on these night shifts there was one supervising watchman? A. That is correct.
- Q. How many ordinary watchmen? A. Two ordinary watchmen.
- Q. And any outside personnel? A. One patrol man.
- Q. What function does he perform?  
A. He takes a general patrol of the whole premises, outside, right around the whole premises during the - actually when the ship is working. He keeps a patrol on the outside of the wharf.
- Q. On the occasions of the night shift is the gatekeeper's sentry box occupied or not? A. No.
- Q. And you say those men were employed the times you have mentioned, whilst the ship was being discharged, the "Regenstein" was being discharged? A. Yes.

---

CROSS-EXAMINATION

Cross-  
examination.

- MR. MELVILLE: Q. How many of these days were you personally present at or about the vessel when it was unloading?  
A. I would visit the job once while it was unloading. I visited it once I know.
- Q. Do you recall when it was?  
A. I think it was after the loss of this case.
- Q. So that prior to the loss of this case you had not been personally present at this unloading at all? A. No sir.
- Q. And up to that stage at any rate you have not been speaking of your own personal knowledge of what activity was actually being pursued by any personnel that you have described as watchmen, your supervising watchmen or gatekeeper?

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J.S. Hall  
Cross-  
examination.  
(continued)

- A. I am describing the normal duties.
- Q. I did not ask you that. You yourself, up to the time of the loss of these goods have not been speaking of your own personal knowledge and observation of these various persons whose duties you have described?  
A. No, not personally.
- Q. And in fact you would not know if in fact they were actually present all throughout that time, yourself personally? A. No. 10
- Q. The answer is no is it not? A. No, that is right.
- Q. And you say some of these personnel are just casual, are they? A. Yes, we have -
- Q. Just taken from men who present themselves for duty? A. Our supervising watchman was a permanent and the others were casual watchmen.
- Q. And employed what, by the day? 20  
A. Yes, at the daily rate.
- Q. Or you just pick up someone for a night shift, would you, would that be possible?  
A. Yes, they are picked up on shifts actually.
- Q. So that - A. Day shift.
- Q. When the vessel was working on night shift you would have picked up some or other of these casual watchmen? A. That is correct
- Q. And you do not engage them, you yourself? 30  
A. Yes, I pick them up at the centre.
- Q. You do personally? A. I send them to the job personally from the centre.
- Q. Whereabouts is the centre? A. At that time 211 Kent Street, Sydney.
- Q. And they are not necessarily personnel who have been exclusively engaged as watchmen, are they? A. Oh yes, they are exclusively waterfront watchmen, they are.

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J.S. Hall  
Cross-  
examination.  
(continued)

- Q. But sometimes employed and sometimes not?  
A. Well, when we are not employing them they are employed by another company. They go back on the roster system.
- Q. If they are picked up they are employed?  
A. That is correct.
- Q. But having no permanent employment with any one permanent employer, particularly so far as your company is concerned, no permanent employment with your company?  
A. No.
- 10 Q. What are the dimensions of this particular shed approximately? A. Approximately about 600 feet I suppose.
- Q. Long. How wide? A. It varies, No. 3 wharf has a slight taper at the end, tapers back about 20 odd feet at the end of the shed but then it would be perhaps approximately 80 feet.
- 20 Q. And I take it there are a number of entrances or exit ways to the shed?  
A. Yes.
- Q. How many about? A. Approximately, they are not all open ones, approximately 17 or 18 on the water side and 8 or 9 on the road side. They are not always open. They only open the ones relevant to the hatch.
- 30 Q. Do I gather at about the time this vessel was discharging there was for part of the time another vessel whose cargo was being received into this same shed?  
A. No, not to my knowledge.
- Q. You mentioned the "Changsha"?  
A. It originally discharged there, the "Changsha" cargo was left there from a previous discharge. The "Changsha" had previously discharged at No. 3
- 40 Q. And she had left to allow the other vessel to come in, had she? A. When she finished discharging the vessel left and her cargo is left on the wharf for delivery.

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J.S. Hall  
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examination.  
(continued)

- Q. You mean left in the shed? A. Yes, or on the wharf. Some heavy cargo is left outside.
- Q. It is put in the shed? A. Placed in the shed by the clerks.
- Q. It is placed in the shed by your company's workmen? A. It is placed in there by casual clerks.
- Q. Employed by your company? A. They are still casual clerks. 10
- Q. Are the watchmen ever picked up as casual employed by your company? A. Yes.
- Q. Why make any distinction, they are in the same category, are they not? A. Yes.
- Q. Why do you wish to make any distinction? A. I thought you were making a distinction about the casualness of watchmen.
- Q. What do you mean the casualness of watchmen? A. The casual industry, you sort of, I understood - 20
- Q. But you do not disown as employees of your company the clerks who put the goods in the shed, do you? A. No.
- Q. And you were not endeavouring to make any distinction between those clerks apart from your casual watchmen? A. No.
- Q. Exactly the same? A. That is correct.
- Q. And you have been describing these various doors and so on, I suppose to some extent the number that are open depends on the activity, the extent of the cargo being received, is that so? A. That is quite correct. 30
- Q. And during the day the amount of activity and discharge? A. Yes, the number of gangs employed.



Q. And may I take it then that you, having made reference to the "Changsha" being unloaded at the same time as the "Regenstein" was being stevedored, there was also delivery activity in respect of received cargo of the "Changsha"?  
 A. Yes, for two days there was. 2nd and 3rd of the tenth there was.

In the District Court of the Metropolitan District of Sydney

Defendant's Evidence

Q. 2nd and 3rd October? A. Yes.

10 Q. Have you any knowledge that by the 3rd October the particular crate in question in this case was found missing?  
 A. No, I think it was about the 8th October I was notified. I notified the police that morning, I did not know.

No. 8

J.S. Hall  
 Cross-examination.  
 (continued)

20 Q. However, at some other period when this crate was being unloaded there were other deliveries taking place from the shed?  
 A. Yes, that is if a case came out in the day time. There would be no deliveries at night time.

Q. And I suppose during the course of the day when this vessel was being unloaded when you called there after the 3rd a great deal of activity was going on in that wharf and in and about that shed?  
 A. The day I actually called there, I cannot recall the actual date there was a fair amount of activity, yes.

30 Q. Both in unloading and in the receipt of delivery from the shed? A. Yes.

Q. And I suppose in relation to the "Changsha" cargo having started to unload on the 29th it could be that there was some activity in the delivery of her cargo from the shed?  
 A. While the "Changsha" cargo was there there would be deliveries from the "Changsha"

40 Q. You said initially when you were asked how many watchmen, you said there were four men and a supervisor on the vessel and an extra two men in the shed?  
 A. No, I said there were six men in the shed actually altogether.

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J.S. Hall  
Cross-  
examination.  
(continued)

- Q. When you first gave your evidence, when you were asked about watchmen, you said there were four men plus a supervisor on the vessel and an extra two men in the shed. Do you recall saying that? A. Actually -
- Q. Do you recall saying that?  
A. I do not recall the vessel. I do not recall the word vessel.
- Q. Do you recall naming the ship? A. Yes.
- Q. That there were four men and a supervisor on the ship? A. They would not be on the ship. They would be in the shed. 10
- Q. I am asking you what you said, you see. That is what you said initially and then you mentioned the two men in the shed as being extra and you related those to the delivered cargo from the "Changsha". You recall that, do you not? A. Yes, I raised that but I also said -
- Q. I am taking you through it as you gave it. That was your initial statement when asked about the numbers of personnel of watchmen, was it not? A. That is correct. 20
- Q. And then you remember some questions being raised as to the unloading of this vessel and the reference you had made to the "Changsha". You remember that being raised, do you not? A. Yes.
- Q. Then you said that there were six shed watchmen in the shed? A. Yes. 30
- Q. In any event they were the four men, apart from the supervisor and the two men in the shed, to whom you had previously referred? A. That meant two men on the "Changsha" account and four men on the "Regenstein".
- Q. So that would there be any of those men actually on the vessel itself? A. Yes, there was one man on the vessel.
- Q. Apart from the supervisor? A. Yes, but he is apart from those six men that were in the shed. 40

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J.S. Hall  
Cross-  
examination.  
(continued)

- Q. So that makes seven, does it? A. That makes seven with the one on the vessel. I mentioned him.
- Q. Was he a supervisor? A. He is what we call, we pick him up as a ship's supervisor. He is looking after the ship itself.
- 10 Q. Only one man on the ship? A. Yes, to collect any damage, that is the one on the ship.
- Q. Would he be the supervising watchman? A. No, our permanent man is the supervising watchman.
- Q. Who is he? A. Mr. Johnson.
- Q. Was he there on this occasion, do you recall? A. He was working with us at the time as a permanent supervising watchman.
- 20 Q. All the time that this vessel was discharging, the "Regenstein"? A. Yes.
- Q. But was he on this vessel or was he also engaged in other duties? A. He was engaged to look after the wharf, No. 3 Glebe, which entailed a certain amount of cargo left over from the "Changsha".
- Q. Does it hold one or two vessels that wharf? A. Only one at a time.
- 30 Q. How many of these men were casuals, all of them except the supervisor? A. The man on the ship was a casual. The six men in the shed for two days, they were casuals.
- Q. What happened after the two days, how many men? A. That is when the "Changsha" cargo was delivered. They had to finish. That is the Union regulations. When the shift is bonded, the "Changsha" cargo is bonded anyone relating to that vessel had to finish.
- 40 Q. When did those men in relation to the "Changsha" finish and leave the premises?

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J.S. Hall  
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examination.  
(continued)

- A. They finished on the night of the 3rd, two men finished on the night of the 3rd.
- Q. Thereafter you only had four?  
A. Four men, plus the supervisor, plus the man on the ship.
- Q. You have already told us up to the third you had no personal knowledge of how they had performed their duties? A. No.
- Q. Or where they were stationed or anything of that sort? A. No. 10
- Q. How many ways out are there, taking on the land side from the shed? A, It all depends how many doors are open. If all doors are open there would be about 27 outlets. On the roadside there is only about nine, but they would not be open because they block certain doors, if that cargo, if they left every door there would not be room for the ship's cargo.
- Q. It depends of course on the cargo in each case, the extent of it? A. Yes. 20
- Q. How many outer gates are there, immediate outer gates from the doors of the shed?  
A. That depends on how many doors are required to open for deliveries. It would depend on the supervising watchman on the job. If he decided there were only two doors to be opened, he would only open two doors, three doors for delivery.
- Q. Six, perhaps as the case may require?  
A. Yes, the doors are kept closed as much as possible for security reasons. 30
- Q. That is an instruction of someone, is it?  
A. Yes.
- Q. But when you leave the doors, I am talking about a reference that has been made to an outer gate through which delivery proceeds, leaving the wharf-  
A. Yes, some people load at the wharf and some load at the dock. It is like a dock. The door of each wharf on the water side, they can drive straight in on a level with the wharf, 40

on the outer side of the wharf there is a sort of dock which the wagons back into and they load straight on to their wagons.

Q. Is there only one road out to meet the first gatekeeper? A. No.

Q. There are a number, are there?  
A. Yes, there is a separate point altogether.

Q. There is quite a lot of open area around?  
A. Go through two out there.

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J.S. Hall  
Cross-  
examination.  
(continued)

10 Q. You only have one gatekeeper? A. We employ one to do patrol watchmen's duties outside the door but there is a man kept at the gate also which is situated on the hill as you go up.

Q. But that is a fair way from the wharf?  
A. We keep a man therefor extra precautions down at the wharf.

20 Q. There is only one man, if a truck for example starts to leave from the doorway or the back and there might be four of them open you only have one gatekeeper in that immediate vicinity of the shed itself-  
A. that is correct.

Q. And he gets about and does his best to watch the outgoing trucks? A. Yes, checks them but there is also a tally clerk who checks the load on to the wagons.

30 Q. And then you have told us about the two night shifts that are worked and do you recall what personnel of watchmen were employed on those two nights? A. Yes.

Q. What, you were not there personally yourself? A. No.

Q. But on the first night of the weekend are you able to say accurately what men were on that wharf? A. Yes, on the first night and the second they worked 5 to 11 shifts. I can say there would be two shed men.

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J.S. Hall  
Cross-  
examination.  
(continued)

- Q. You do know, not that you can say?  
A. Yes, plus a patrolman, plus a permanent supervisor.
- Q. Two men, a patrolman and a supervisor?  
A. Yes.
- Q. The shed would be open in that period, would it not? A. Yes, but only to what was required.
- Q. You do not know whether two, three or four doors were required? A. If there were two gangs working at night time there would be only three doors open at the most. 10
- Q. But you do not know yourself? A. No.
- Q. There is one patrolman and he patrols both the wharfside and the land side of this 600 ft. long shed? A. That is right.
- Q. And when does he come on duty, five o'clock? A. Four o'clock.
- Q. When does he cease? A. Midnight. 20
- Q. Is he replaced by a patrolman?  
A. Yes, the midnight late patrolman.
- Q. So when the ship finishes there is only one patrolman on that wharf? A. Yes, but when the ship is finished the shed is completely locked under customs contrd.
- Q. It is locked, the shed is locked by your employees? A. That is right, and the keys are put in the customs.
- Q. And then you merely have one man on the wharf until the morning shift starts? A. That is correct. 30
- Q. And no gatekeeper? A. No, there is a gatekeeper who accompanies subscribers up to the top gate, the entrance to Glebe Island.
- Q. But no gatekeeper in the immediate vicinity of this shed where you have one during the day?  
A. No.

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J.S. Hall  
Cross-  
examination.  
(continued)

- Q. And from that hour, from midnight to the morning shift which starts what, seven o'clock? A. No, morning shift starts eight o'clock.
- Q. That one patrolman has to watch the shed from both the water side and the land side? A. That is correct.
- 10 Q. When the ship is not worked at night, what time does the afternoon shift cease? A. Five o'clock, that is the day shift. The afternoon shift we call the 5 to 11 shift.
- Q. That only operated on two nights? A. That is correct.
- Q. So the day shift finished at five o'clock, did it? A. Yes.
- Q. And on those occasions when there was no night shift you then had one patrolman? A. Yes.
- 20 Q. And he worked till what, midnight? A. 4 p.m. to midnight.
- Q. And then he was replaced by another man from midnight to 8 p.m.? A. 8 a.m.
- Q. What two nights do you think were the night shift nights? A. Second and third.
- Q. Have you got any reason to suggest that the loss of this crate was discovered on the 3rd October? A. No. As I told you the first I knew about it was the 8th
- 30 October.
- Q. But I suppose you have records within your company to refer to, have you, and you have looked at them no doubt for this case? A. Yes, undoubtedly I have records, my own records.
- Q. And are you aware of any suggestion anywhere within any of those records you have sighted of this loss having been noticed on the 3rd? A. Not in my records.

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(continued)

- Q. Nor in any record you have seen?  
A. No, I have not seen the records. I only have my own records because I was not actually on it. I kept a record as I was told.
- Q. But you have no precise record of it occurring on the 8th either? A. No.
- Q. Or of it being ascertained on the 8th for the first time? A. No. The knowledge was given to me on the 8th. I explained that to you. 10
- Q. Were there any roads on the land side from the shed which one could traverse without getting out of the top gate?  
A. I would say as I told you Glebe Island is a very open port.
- Q. The answer is yes to my question? A. Yes.
- Q. And there is an old tunnel by which access can be had, is there not? A. Yes.
- Q. You know that to your knowledge? 20  
A. Yes, there is.

Re-examination.

RE-EXAMINATION.

- MR. HOWELL: Q. You have said that so far as each of these men that were casually engaged, they were all engaged by you?  
A. Yes.
- Q. And you did that personally? A. Yes.
- Q. And you mentioned that you picked them up at the centre? A. Yes, I picked them up.
- Q. And what is the centre? A. The Government Employment Service for Waterfront Watchmen and Parks, 211 Kent Street, Sydney. 30
- Q. In the course of your duties do you attend at that centre for the purpose of getting such men as you require? A. That is correct.



- Q. And when you engaged these men for the "Regenstein", for what period of time did they stay with your company?  
(Objected to; allowed)
- Q. You have told my friend that these men are engaged for the day? A. That is correct, the ship is what they call the job, they are employed by the day, by the hour actually. It is an hourly rate they are paid as casual watchmen and a certain minimum payment if we finish them up before time, and they are on the job until required by the company, and then they are sent back to the engagement centre.
- 10
- q. And in this instance, can you tell us for what period of time they were on the job?  
A. I would have to refer to the records.
- Q. May I put this to you, these men that were engaged as casual workmen, do they remain with the cargo, did these men remain with the cargo of the "Regenstein" until their services were no longer required?  
A. That is correct.
- 20
- Q. And was that for a period of one day or several days? A. Several days.
- Q. Can you tell us from any records you have here at the moment, were they there up until the 8th October, can you tell us that?  
A. I would have to look my records up.
- 30
- Q. You say you would have to look your records up where are those records?  
A. I have a record of one week. I have not a complete record of the ship.
- Q. Up until when does the record you have here go? A. It would go up to the following Sunday night.
- Q. That would be the 7th? A. Yes.
- Q. Can you tell us from that whether these men were still there up until the 7th?  
A. Up to the 5th, the ship would not work on Saturday and Sunday. They were there while the sheds were open and the ship was working.
- 40

In the  
District Court  
of the  
Metropolitan  
District of  
Sydney

Defendant's  
Evidence

No. 8

J.S. Hall  
Re-examination.  
(continued)

In the  
District Court  
of the  
Metropolitan  
District of  
Sydney

Defendant's  
Evidence

No. 8

J.S. Hall  
Re-examination.  
(continued)

Q. Were the sheds open on Sunday? A. Unless deliveries are required on Saturday, there are no deliveries on Sunday.

Q. And where deliveries are required on Saturdays what is the position about personnel being there?  
(Objected to)

HIS HONOR: Q. You rely entirely on your records, do you not? A. Yes.

MR. HOWELL: Q. You told my learned friend that this shed was approximately 80 feet wide? A. I might be 20 feet out. 10

Q. That is at one end? A. One end, yes.

Q. What is the approximate width at the other? A. Tapers down to 20 ft., 25 ft. at the other end.

Q. And do you know the post that is called Post 6 in that shed? A. Offhand, I would only be approximating, it is in the centre of the shed I would say. 20

Q. And the position Post 6 Centre, what is that? (Objected to; allowed)

Q. You say Post 6 is approximately in the centre of the shed? A. I would say so.

Q. And the point Post 6 centre, what does that indicate to you? A. That is the position where the cargo would be placed.

Q. What does it convey? A. In what way?

Q. What does that point mean? A. That is a point where a plaque would discharge from a ship and it would be placed at Post 6 centre or 12 centre, whatever the post he recorded in his book. 30

Q. That is Post No. 6 at the centre? A. Centre shed, yes.

(Witness retired)

(Luncheon adjournment)

No. 9.

T. G. ROWLANDS

THOMAS GARETH ROWLANDS

Sworn, examined as under :

In the  
District Court  
of the  
Metropolitan  
District of  
Sydney

Defendant's  
Evidence

No. 9

T.G. Rowlands  
Examination.

MR. HOWELL: Q. What is your full name?  
A. Thomas Gareth Rowlands.

Q. Where do you live? A. 21 The Citadel,  
Castle Crag.

10 Q. By whom are you employed?  
A. Messrs. Gilchrist Watt & Sanderson Pty.  
Limited.

Q. What position do you hold in that  
organisation? A. Inward freight and  
claims manager.

Q. Have you been with the company since  
1961? A. I have.

20 Q. And you are familiar with the course of  
the company's business so far as concerns  
the inward freight department, are you  
not? A. Yes.

Q. Your company conducts one part of its  
business as that of a stevedore under the  
name of Central Wharf Stevedoring Company?  
A. Yes.

30 Q. And in respect of what matters are charges  
made for stevedoring against consignees  
by your company? For what does your  
company charge a consignee in relation to  
the stevedoring? A. Purely for the  
sorting and stacking of cargo.

Q. And that was so in 1962? A. It was.

Q. At any time in 1962 did your company  
charge consignees for storage of cargo?  
A. No, never.

Q. At any time since that time has it?  
A. No, never.

In the  
District Court  
of the  
Metropolitan  
District of  
Sydney

Defendant's  
Evidence

No. 9

T.G. Rowlands  
Examination.  
(continued)

- Q. You have been present with His Honor's leave in Court during the morning, and you have heard the evidence, I think and you have heard the evidence of Mr. Hall?  
A. Yes.
- Q. And he has given evidence that stacking clerks are engaged by Central Wharf Stevedoring Company for the various vessels which that company is stevedoring? A. Yes. 10
- Q. So far as the stacking clerks are concerned, who pays them? A. Their wages are paid by Central Wharf.
- Q. There are also, we have been told, clerks engaged by the Central Wharf Stevedoring Company? A. Yes.
- Q. And this was so during the year 1962?  
A. It was.
- Q. And we have been told that their engagement is made by Mr. Hall, on behalf of the company? A. Watchmen only, not clerks. 20
- Q. Who engages the clerk? A. At the present moment Mr. Hielman.  
(Objected to)
- Q. Who engaged them in 1962? A. A gentleman by the name of Mr. McMonnies.
- Q. Against whom were the charges paid to delivery clerks throughout 1962 charged?  
A. To the ship owner. 30
- Q. In this case - ? A. Nord Deutscher Lloyd.
- Q. And so far as the watchmen who were engaged by Central Wharf Stevedoring Company are concerned, to whom did Central Wharf Stevedoring Company charge the amounts paid to those watchmen for the "Regenstein" removal? A. Again to Nord Deutscher Lloyd.
- HIS HONOR: Q. The stacking clerks were paid by the defendant company? A. They were. 40

Q. Charged to anybody? (No answer)

MR. HOWELL: Q. And the other charges you said have been charged out to the ship owner?

A. Yes.

In the  
District Court  
of the  
Metropolitan  
District of  
Sydney

Defendant's  
Evidence

No. 9

T.G. Rowlands  
Examination  
(continued)

CROSS-EXAMINATION.

Cross-  
examination.

MR. MELVILLE: Q. What you mean is, that of course the Central Wharf engages all their staff that you have mentioned - ?

A. They engage them on behalf of the ship owner.

10

Q. Central Wharf engages them and pays them? A. Physically, yes.

Q. And picks them up at the centre? A. Yes.

Q. And in September/October 1962 the picking up was done by Mr. McMonnies? A. Yes.

Q. They were all the watchmen engaged on the wharf during the discharging of this vessel? A. Yes.

20

Q. And all that happened at some time when you have an accounting with the particular ship owner, you get some reimbursement for the moneys you have expended in the course of unloading, A. Not at some time, each and every ship.

Q. Your company gets reimbursement of the moneys you have outlaid? A. It does.

Q. You are the freight and claims manager, and you were in 1962? A. No.

In the  
District Court  
of the  
Metropolitan  
District of  
Sydney

Defendant's  
Evidence

No. 9

T.G. Rowlands  
Cross-  
examination.  
(continued)

- Q. When were you? A. I was made freight and claims manager on January 3rd 1966.
- Q. I assumed that you said that you had been the freight and claims manager since 1961? A. No, I was asked my position in the company which I stated.
- Q. What were you in October 1962 with the company? A. Purely the claims and freight clerk.
- Q. In head office? A. Yes. 10
- Q. Nothing to do with the wharf section? A. No, nothing whatsoever.
- Q. And at the moment you are still, you had no supervisory power over any of the personnel on the wharf, did you? A. No.
- Q. And now yours is an internal office job at head office? A. It is internal but it also entails external work at the wharves.
- Q. Did you in October 1962 have anything to do with the specific loss of the goods of the present plaintiff? A. No. 20
- Q. Did you deal in any capacity either with the shipping line or otherwise with that loss? A. I may have been in on discussions in the office, but I cannot recall to any specific extent.
- Q. And are you aware of any correspondence between your company and its principal shipper in relation to this consignment? A. Any between our company and principals, our principals? 30
- Q. Principal shipper? A. Neither "Regenstein" nor Nord Deutscher Lloyd. I have seen correspondence related to this claim.
- Q. Are you aware when the loss was first discovered? A. Only from what I have seen in correspondence which purports it to be on the 8th October.

In the  
District Court  
of the  
Metropolitan  
District of  
Sydney

Defendant's  
Evidence

No. 9

T.G. Rowlands  
Cross-  
examination.  
(continued)

- Q. When did you first see that correspondence?  
A. Ever since I have been in the position of manager I have been browsing through files and the ones still pending I have taken up to study.
- Q. Delivery was sought on the 8th October when they were not available? A. Yes.
- Q. And that is all you know about it?  
A. Yes.
- 10 Q. Do you know of any suggestion that there was a loss of the goods actually prior to that date within your organisation from anything you have read or heard?  
(Objected to; allowed) A. I have not heard of any suggestion, not verbally.
- Q. Have you read it anywhere? A. Yes, I have.
- Q. Where have you read it? (Objected to; allowed)
- 20 Q. Whereabouts was that? A. In a statutory declaration.
- Q. Of whom? A. Made by the delivery clerk one by the delivery clerk and the other by the head stacking clerk.
- Q. Whose names are they? A. Delivery clerk Mr. Hielman and head stacking clerk Mr. Wilkinson.
- Q. And you recall the date of those two documents you have referred to?  
A. From memory the 26th October.
- 30 Q. 1962? A. 1962.
- Q. And they are documents on your company's files, are they? A. Well, we have copies of them.
- Q. And you have known of that for some time, have you? A. As I said previously since I had been in my present position.
- Q. When was that? A. 1966.

RE-EXAMINATION

In the  
District Court  
of the  
Metropolitan  
District of  
Sydney

Defendant's  
Evidence

No. 9

T.G. Rowlands  
Re-examination

MR. HOWELL: Q. You were asked by my friend about being reimbursed, about your company, the Central Wharf Stevedoring Company reimbursed charges for the delivery clerks and the watchmen from the ship owner. Do you recall that? A. Yes.

Q. In relation to the "Regenstein" was such reimbursement made by the ship owner in this instance? A. They would have been debited to the costs. 10

Q. They are debited with them, so it is not a question of your company puts in a debit against the ship owner? A. Yes.

Q. And it was put to you that this was done for some time and you wish to give an answer as to when that was? A. There was a separate account compiled for each and every ship. If the ship called at Sydney three times in each voyage there are three different sets of account, separate accounts for each call. 20

Q. And at this time, in October of 1962, you were the freight and claims clerk? A. One of them.

Q. And handling these matters at that time? A. Or similar matters, not actually this one.

(Witness retired)

(Maritime Services Board Cargo Handling and Wharf Storage Regulations made under the Maritime Services Act, Regulations 13 and 14, tendered and marked Exhibit "1".) 30

(Case for the Defendant closed.)

(Counsel addressed.)

(Judgment reserved.)

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No. 10

JUDGMENT OF HIS HONOUR JUDGE LEVINE

IN THE DISTRICT COURT

HOLDEN AT SYDNEY

BEFORE HIS HONOUR JUDGE LEVINE

The 10th day of November, 1967.

YORK PRODUCTS PTY. LTD.

v.

GILCHRIST WATT & SANDERSON PTY. LTD.

In the  
District Court  
of the  
Metropolitan  
District of  
Sydney

No. 10

Judgment of His  
Honour Judge  
Levine  
10th November  
1967.

10           The plaintiff was the owner of two  
cases of alarm clocks (see Invoice  
Exhibit B) which were shipped to Australia  
in the motorship "Regenstein" by the shippers  
Norddeutscher Lloyd for whom the defendant  
trading as Central Wharf Stevedoring Co.  
acted as agent. The ship berthed at  
No. 3 Wharf, Glebe Island on the 29th  
20           September, 1962, where the plaintiff's  
cases were unloaded and stacked with other  
cargo in No. 3 Shed by the defendant.  
The vessel departed on or about the 4th  
October, 1962.

30           The defendant notified the plaintiff  
that the cases had arrived, and when the  
plaintiff presented the Bill of Lading  
(Exhibit C) to the defendant, it was  
ascertained that one case was missing. It  
is for damages for the loss of this case  
which the plaintiff brings this action in  
three counts, all of which depend upon  
there existing between the parties the  
relationship of bailor and bailee.

At the hearing the defendant relied  
upon the following defences :-

- (a) A denial that the defendant received  
the goods upon terms creating a  
bailment.
- (b) That if a bailment did exist it was a  
term of the contract of bailment that

In the  
District Court  
of the  
Metropolitan  
District of  
Sydney

No. 10

Judgment of His  
Honour Judge  
Levine  
10th November  
1967 (continued)

the goods were held at the plaintiff's risk and that the defendant was not liable for the loss.

- (c) A denial of the breaches of duty to take care as alleged.

I find that there had not been made between the parties any express agreement of Bailment. It is true that the defendant did make a charge of 10/1 for the handling and stacking of the goods, but this was not a charge for storage such as to make the defendant a bailee of the goods for reward.

10

Under clause 1 of the Bill of Lading the shippers' responsibility for the goods ceased after the goods left the ship's tackle. However, under the Cargo Handling and Wharf Storage Regulations made under the Maritime Services Act, 1935 (as amended) the shippers were obliged to properly sort and stack the cargo in separate consignments on the wharf (Reg. 10) and keep a Cargo Book, Cargo Delivery Book (Reg. 6), Cargo Receipt Book (Reg. 9) and to notify consignees of the unshipment and the goods' location (Reg.12). The defendant unloaded the ship and complied with the above regulations for the shippers as their agent.

20

I find that once the goods were stacked in the sheds they came into the possession and under the control of the defendant. The defendant assumed this control in its own right after it had completed its duties as agent for the shippers. It did so because it was in its business interest so to do and it accordingly devised a system to care for the goods and deliver them to their owners.

30

Upon these facts the plaintiff contends that the defendant became a bailee of the goods for the defendant, the submission being that the facts are the same as those in the Victorian case Makower, McBeath & Co. Pty. Ltd. -v- Dalgety & Co. Ltd., 1921, V.L.R. 365, when it was held that the defendant (a registered wharfinger) was under the same duty to the plaintiff (the consignee) to take care of the goods as the duty owed by a bailee for reward.

40

10 In the Victorian case, as in this case, the defendant came into possession of the goods without the plaintiff's consent and with knowledge that the plaintiff was the true owner. But the Regulation which applied to the Victorian case (Regulations of the Melbourne Harbour Trust Commissioners (1917)) provided in effect that the goods could only be unshipped into the hands of a Registered Wharfinger, so that it may well be that perforce the consignee constructively consented and the defendant was by the Regulation obliged to receive the goods for the consignee and for this reason the Victorian case may be distinguished.

20 However, I base my decision on the law as I understand it, namely that the defendant became a bailee when he obtained possession and control of the plaintiff's goods without the plaintiff's knowledge or consent and afterwards acknowledged to the plaintiff that he held the goods for the plaintiff and thereafter retained the goods with the plaintiff's consent.

30 In this case the defendant did knowingly come into possession and control of the plaintiff's goods in the first place in his capacity as agent for the shippers, and did so without the plaintiff's knowledge or consent. The defendant's duties as agent for the shippers were completed when he notified the plaintiff he had its goods on the wharf. Thereafter the defendant held the goods on the wharf. Thereafter the defendant held the goods with the plaintiff's consent and retained possession and control of the goods (as it was in his business interest so to do) and thereby a bailment was created.

40 It was contended that the defendant was entitled to the benefits of the exclusion of liability clauses which are contained in the Bill of Lading (Exhibit C). But in my view he cannot claim the protection found in an agreement between the plaintiff and the shipper even though he came into possession of the goods as agent for the shippers in the first place.

In the  
District Court  
of the  
Metropolitan  
District of  
Sydney

No. 10

Judgment of His  
Honour Judge  
Levine  
10th November  
1967 (continued)

In the  
District Court  
of the  
Metropolitan  
District of  
Sydney

No. 10

Judgment of His  
Honour Judge  
Levine  
10th November  
1967  
(continued)

Accordingly I hold that at relevant times the defendant was in possession of the goods as bailee not arising out of any agreement between the parties, and not for reward.

As a gratuitous bailee the defendant was under a duty to take reasonable care of the goods. It is not disputed that the goods were lost and the defendant is responsible for the loss, unless it can establish that the loss was not the result of failure to take reasonable care on its part.

10

It is not necessary for the defendant to establish the precise cause of the loss, it would be sufficient if it establishes that it took such care of the goods as was reasonable in the circumstances.

The defendant did provide a system of checking persons to whom cases were handed out and of guarding the shed. But such a system was not adequate. On the evidence before me goods could be removed from the wharf without passing the entrance protected by a gate keeper. During business hours many doors were open and the traffic would be such that the watchmen available were inadequate. Although the fact of the loss is not conclusive evidence of negligence, and the bailee is not an insurer, however, in relation to the case with which I am concerned I find that the loss would not have occurred if the defendant had exercised reasonable care.

20

30

Accordingly there shall be a verdict for the plaintiff on the third count and I turn to assessment of damages.

I propose to allow the plaintiff the amount of damages claimed in the letter from the plaintiff's agents to the defendant dated the 6th November, 1962 (Part of Exhibit D), that is to say £824.0.0., which amount takes into account the cost price of the clocks, 40 buying commission, freight and insurance.

63.

- Formal Orders :-
- (1) Verdict for defendant on the first and second counts.
  - (2) Verdict for plaintiff on third count for \$1648.00.
  - (3) Judgment accordingly
  - (4) Exhibits may be returned.

(signed)

JUDGE.

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In the  
District Court  
of the  
Metropolitan  
District of  
Sydney

No. 10

Judgment of His  
Honour Judge  
Levine  
10th November  
1967.  
(continued)

In the  
Supreme Court  
of  
New South Wales  
          
Court of Appeal  
          
No. 11

Notice of Appeal  
1st December  
1967

NOTICE OF APPEALIN THE SUPREME COURTOF NEW SOUTH WALESTerm No. 634 of 1967.COURT OF APPEALBETWEEN:

YORK PRODUCTS PTY. LIMITED                      Plaintiff

- and -

GILCHRIST WATT & SANDERSON  
PTY. LIMITED    Defendant

Name of appellant: Gilchrist Watt & Sanderson                      10  
Pty. Limited.

Name of respondent: York Products Pty. Limited

Court from which the appeal is brought:  
District Court of the Metropolitan District  
Holden at Sydney.

Name of the Judge of the Court from which the  
appeal is brought: His Honour Judge Levine.

Day or days of hearing at first instance:  
10th November, 1967.

Whether appeal is against the whole or part  
only of the order decree judgment or verdict:                      20  
The whole.

Order decree judgment or verdict sought to be  
set aside: Verdict for the Plaintiff for  
\$ 1,648.

Order sought in lieu thereof: Verdict and  
judgment for the defendant or in the alternative  
a new trial.

Grounds of appeal:

(a) That His Honour erred in finding a verdict                      30  
for the plaintiff on the third count of the

particulars of claim.

(b) That His Honour should have found a verdict for the defendant on the third count.

(c) There was no evidence to support the finding of His Honour that the defendant assumed possession and control of the plaintiff's goods in its own right, after it had completed its duties as agents for the shippers (sic.).

10 (d) That there was no evidence to support the finding of His Honour that the defendant assumed possession and control of the plaintiff's goods in its own right because it was in its business interests so to do.

(e) That there was no evidence to support the finding of His Honour that the defendant's duties as agents for the shippers (sic) were completed when it notified the plaintiff that it had its goods on the wharf.

20 (f) That there was no evidence to support the finding of His Honour that the defendant notified the plaintiff that it had its goods on the wharf.

(g) That there was no evidence to support the finding of His Honour that thereafter the defendant held the goods with the plaintiff's consent and retained possession and control thereof (as it was in its business interests so to do).

30 (h) That there was no evidence to support His Honour's finding that the defendant notified the plaintiff that the cases had arrived.

(j) That there was no evidence to support His Honour's finding that the defendant complied with the provisions of the Cargo Handling and Wharf Storage Regulations made under the Maritime Services Act, 1935 (as amended) and in particular with Regulation 12 thereof, for the shippers (sic).

40 (k) That there was no evidence to support His Honour's finding that the defendant acknowledged to the Plaintiff that it held the

In the  
Supreme Court  
of  
New South Wales

Court of Appeal

No. 11

Notice of Appeal  
1st December  
1967

(continued)

In the  
Supreme Court  
of  
New South Wales  
                      
Court of Appeal

No. 11

Notice of Appeal  
1st December  
1967  
(continued)

goods for the plaintiff.

(l) That there was no evidence to support His Honour's finding that there was a bailment of the plaintiff's goods with the defendant as bailee in its own right.

(m) That His Honour should have held that if there was a bailment of the plaintiff's goods with the defendant as bailee that such bailment was upon terms that the defendant held the goods at the plaintiff's risk.

10

(n) That His Honour erred in law in finding a verdict for the plaintiff in the sum of \$1,648.

(o) That His Honour should have held that the amount of the verdict (if any) to which the plaintiff was entitled was \$1,360.

DATED this 1st day of December, 1967.

(Sgd) R.A. Howell

Counsel for the Defendant.

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No. 12

NOTICE OF CROSS APPEAL

IN THE SUPREME COURT

OF NEW SOUTH WALES Term No. 634 of 1967.

COURT OF APPEAL

BE TWEEN:

YORK PRODUCTS PTY. LIMITED Plaintiff

- and -

GILCHRIST WATT & SANDERSON  
PTY. LIMITED Defendant

10

In the  
Supreme Court  
of  
New South Wales  
Court of Appeal  
No. 12  
Notice of Cross  
Appeal  
18th December  
1967.

Name of Appellant: York Products Pty.Limited.

Name of Respondent: Gilchrist Watt &  
Sanderson Pty. Limited.

Court from which the appeal is brought:  
District Court of the Metropolitan District  
Holden at Sydney

Name of the Judge of the Court from which the  
appeal is brought: His Honour Judge Levine

20 Day or days of hearing at first instance:  
17th October and 10th November 1967.

Whether appeal is against the whole or part  
only of the order decree judgment or verdict:  
That part of the order entering a verdict  
for the Defendant Gilchrist Watt & Sanderson  
Pty. Limited on the first and second counts  
of the Plaintiff's Particulars of Claim.

30 Order decree judgment or verdict sought to be  
set aside: That part of the order entering a  
verdict for the Defendant Gilchrist Watt &  
Sanderson Pty. Limited on the first and second  
counts of the Plaintiff's Particulars of Claim.

Order sought in lieu thereof: Verdict and  
judgment for the Plaintiff on the first and

In the  
 Supreme Court  
 of  
 New South Wales  
Court of Appeal  
No. 12  
 Notice of Cross  
 Appeal  
 18th December  
 1967  
 (continued)

second counts of the Particulars of Claim for \$1648.00 or in the alternative a new trial in respect of these counts.

Grounds of appeal:

(a) That His Honour erred in finding a verdict for the Defendant on the first count of the Plaintiff's Particulars of Claim.

(b) That His Honour should have found a verdict for the Plaintiff on the first count.

(c) That His Honour erred in finding a verdict for the Defendant on the second count of the Plaintiff's Particulars of Claim. 10

(d) That His Honour should have found a verdict for the Plaintiff on the second count.

(e) That His Honour erred in holding that the Defendant's possession of the goods as bailee did not arise out of any agreement between the Plaintiff and the Defendant.

(f) That His Honour erred in holding that the Defendant's possession of the goods as bailee was not for reward. 20

(g) That upon His Honour's finding of fact:

(i) That the Defendant made a charge for handling and stacking of the Plaintiff's goods;

(ii) That once the goods were stacked in the shed they came into the possession and under the control of the Defendant.

His Honour erred in law in holding that the Defendant was in possession of the goods as bailee not arising out of any agreement between the parties and not for reward. 30

DATED this 18th day of December 1967.

J.A. Melville  
 Counsel for the Plaintiff.

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No. 13

Judgment of His Honour Mr. Justice Walsh  
Judge of Appeal

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In the  
Supreme Court  
of  
New South Wales

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IN THE SUPREME COURT

Court of Appeal

OF NEW SOUTH WALES

Term No. 634 of 1967.

No. 13

COURT OF APPEAL

Tuesday 15th October 1968.

Judgment of His  
Honour Mr.  
Justice Walsh  
Judge of Appeal  
15th October  
1968.

YORK PRODUCTS PTY. LIMITED

v.

GILCHRIST WATT & SANDERSON  
PTY. LIMITED

10

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JUDGMENT

WALSH, J.A.: I agree with the reasons for judgment of Asprey J.A. which will be published presently and I am of opinion that the appeal should be dismissed with costs and the cross-appeal should be dismissed with costs. I publish my statement to that effect.

20

Mr. Justice Asprey is of opinion that the appeal should be dismissed with costs and the cross-appeal should also be dismissed with costs. I publish His Honour's reasons.

30

Mr. Justice Hardie is of opinion that the appeal should be allowed and the verdict for the plaintiff should be set aside and a verdict entered for the defendant with costs, the respondent to pay the appellant's costs of the appeal and to have a certificate under the Suitors' Fund Act and that the respondent's cross-appeal should be dismissed with costs. I publish His Honour's reasons.

Therefore by majority, the order of the Court is that the appeal and cross-appeal are dismissed with costs.

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In the  
Supreme Court  
of  
New South Wales  
Court of Appeal  
No. 14

Judgment of His  
Honour Mr.  
Justice Asprey  
Judge of Appeal  
15th October  
1968

No. 14

Judgment of His Honour Mr. Justice Asprey  
Judge of Appeal

IN THE SUPREME COURT

OF NEW SOUTH WALES Term No. 634 of 1967

COURT OF APPEAL

Tuesday 15th October 1968.

YORK PRODUCTS PTY. LTD. v. GILCHRIST WATT &  
SANDERSON PTY. LTD.

JUDGMENT

10

ASPREY, J.A.: This is an appeal by the defendant from a non-jury action in the District Court in which the learned trial Judge found a verdict for the defendant on the first and second counts and for the plaintiff on the third count in the sum of £1,648. The third count was framed to allege a failure by the defendant in its duty as a bailee of certain goods for the plaintiff. The facts are as follows. The plaintiff, a company carrying on business in Sydney, purchased two cases of alarm clocks from a seller in West Germany and these were delivered on board the Norddeutscher Lloyd vessel "Regenstein" at Hamburg by the shipper, A. Hartrodt of Hamburg, and in respect of the goods the ship issued an order bill of lading (the name of the consignee not being specified therein) bearing the words "Port of discharge from ship: Sydney". It will be convenient to refer to the ship-owner and the ship as the "ship". I shall return to the provisions of the bill of lading in more detail later herein. The price of the goods and the freight were paid prior to shipment. The defendant has been described as the "agent" of the ship in Sydney. As part of its activities the defendant carries on the business of stevedoring under the name of "Central Wharf Stevedoring Co.". The ship berthed at No. 3 Wharf, Glebe Island, Sydney, on 29th September 1962. The defendant in its stevedoring capacity on 2nd October 1962 unloaded cargo from the ship included in which were the two cases

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10 belonging to the plaintiff and this cargo was placed on the wharf. Thereafter the defendant sorted and stacked the cargo which was on the wharf and the two cases owned by the plaintiff were identified and placed by the defendant in a shed on the wharf and positioned "for the carriers to come down and pick them up". The space in the shed in which the two cases were positioned had been allotted, after identification, by the defendant's head stacking clerk who had an office in the shed and this space was recorded by him in a book kept for that purpose. The defendant employed a number of watchmen both inside and outside the shed. The key of the shed was obtained by an employee of the defendant at the commencement of work each morning from a Customs' Officer to whom it was handed back at the close of the defendant's

20 business which sometimes extended into night shifts.

30 The ship departed from Sydney on 4th October 1962. Frank Cridland Pty. Ltd., customs and transport agents, Sydney, was engaged by the plaintiff to clear and obtain for it the two cases and for this purpose the bill of lading was handed to their company which endorsed the bill of lading in blank (cf. Halsbury 3rd Edn. Vol. 35 para. 495). On 5th October 1962 this company paid on behalf of the plaintiff the sum of eight shillings and nine pence to the Maritime Services Board representing charges exacted from a consignee by the Board for the use of the Board's wharf for the discharge of the consignee's goods thereon. On payment of its charges the Board stamped the bill of lading to permit delivery of the goods so far as it was concerned. The bill of lading was also

40 presented by Frank Cridland Pty. Ltd. to the Customs Department which also stamped the bill of lading to indicate that it permitted delivery of the goods. On 8th October 1962 Frank Cridland Pty. Ltd. paid the sum of ten shillings and one penny on behalf of the plaintiff to the defendant in respect of so much of the sorting and stacking of the cargo as was attributable to the two cases owned by the plaintiff and the defendant also stamped the bill of

50 lading to indicate that so far as it was concerned the goods could be delivered. The defendant agreed that the act

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of sorting and stacking the various items of cargo, including the two cases which were the property of the plaintiff, was carried out by it, not as the "agent" of the ship, but entirely as an activity of its own and that the sums paid to it for this work by cargo owners were retained by it as remuneration for that work. After the bill of lading had been stamped as aforesaid one Hielman, a delivery clerk employed by the defendant at an office at No. 3 Wharf, Glebe Island, on 8th October 1962 issued to Frank Cridland Pty. Ltd. a loading ticket which its employee then took to a tally clerk, also employed by the defendant, whose duty was to make out a gate pass to enable the cases to be removed from the wharf by Frank Cridland Pty. Ltd. Whilst this procedure was being carried out the defendant's head stacker informed Hielman that one of the two cases was not in the place in the shed where it had been positioned by the defendant. A search was made for it and it could not and never has been found. Delivery of the other case was taken from the shed by Frank Cridland Pty. Ltd. on behalf of the plaintiff.

The defendant did not dispute that it received the goods in question and placed them in the shed in the space which it allotted for them but relied upon the following defences:-

- (a) A denial that the defendant received the goods upon terms creating a bailment. 30
- (b) That if a bailment did exist it was a term of the contract of bailment that the goods were held at the plaintiff's risk and that the defendant was not liable for the loss.
- (c) A denial of the breaches of duty to take care as alleged.

The learned trial Judge rejected each of these defences. On this appeal, the defendant accepted the finding against it under defence (c) but argued that defences (a) and (b) should have been upheld. I propose to deal with each of these two defences separately. 40

As to (a): The trial Judge found that at the time when the case of alarm clocks was lost the relationship of bailor and bailee existed between

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the plaintiff and the defendant. The question  
 on this appeal is whether there is any evidence  
 upon which he could so find. Where a bill of  
 lading, as here, does not name the consignee but  
 makes the goods deliverable to order it may be  
 transferred by delivery without endorsement  
 (Halsbury 3rd Edn. Vol.35 para494) and,  
 subject to certain exceptions not material  
 in the instant case, the holder of the bill  
 of lading has the property in the goods  
 specified herein (Halsbury (supra) paras.  
 496, 400). When the plaintiff's goods were  
 placed on board the ship in terms of the bill  
 of lading the ship had physical possession of  
 them and held them as bailee for the holder  
 of the bill of lading. On the arrival of the  
 ship at wharf in Sydney the goods were taken  
 from the ship by the defendant with the  
 authority of the ship and placed on the wharf  
 and came into the physical possession of the  
 defendant. From that point the ship ceased to  
 have physical possession of the goods. But,  
 so it was contended by the appellant, the  
 physical possession of the defendant was still  
 possession by the ship and the purpose of the  
 ship in passing physical possession to the  
 defendant was simply for the purpose of  
 enabling the ship to perform its obligation of  
 effecting delivery of the goods to the holder  
 of the bill of lading. It was argued that at  
 no point of time did the defendant assume the  
 position, and thus the obligations, of a  
 bailee of the holder of the bill of lading.  
 It was said that the defendant at all times  
 was the "agent" of the ship and was never the  
 "agent" of the holder of the bill of lading.  
 At the inception of the argument it was submitted  
 that the defendant could not be the bailee of  
 the plaintiff for the reason that there was no  
 contract between the plaintiff and the  
 defendant but at a later stage this position  
 was receded from and it was argued that it  
 was necessary for some acknowledgment, albeit  
 non-contractual, to be made between the  
 plaintiff and the defendant whereby the defendant  
 voluntarily undertook to deal with the goods in  
 accordance with the directions of the plaintiff  
 in order for the relationship of bailor and  
 bailee to be constituted between the plaintiff  
 and the defendant.

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Before proceeding to deal with this argument it will be convenient to consider the true legal position of the defendant which has been described as the ship's "agent". It has frequently been said that the word "agent" when used in the business world is one which bears different meanings according to circumstances (see Colonial Mutual Life Assurance Society Ltd. v. Producers & Citizens Co-operative Assurance Co. of Aust. Ltd. 46 C.L.R. 41 at p.50; International Harvester Company of Australie Pty. Ltd. v. Carrigan's Hazeldene Pastoral Co. 100 C.L.R. 644 at p.652) 10  
 In the present case it is conceded and, I think, quite correctly, that the defendant was not the servant of the ship. It follows that it could not be argued that possession of the goods by the defendant was possession of them by the ship on the ground that the servant's possession is that of the master and, 20  
 accordingly, some other basis would have to be found to sustain that proposition if it can be sustained at all. In my view, the only conclusion is that the defendant was an independent contractor (Wilson v. Darling Island Stevedoring & Lighterage Co. Ltd. 95 C.L.R. 43 per Fullager J. at p.70; R.F. Brown & Co. Ltd. v. T. & J. Harrison 43 T.L.R. 633 at pp.637-638; Midland Silicones Ltd. v. Scruttons Ltd. (1962) A.C. 446 per Viscount Simonds at p.466). In that capacity, the defendant was, to borrow a term from Lord Macnaghten in Chartered Bank of India, Australia & China v. British India Steam Navigation Ltd. (1909) A.C. 369 (see especially at p.373) an intermediary owing duties both to the ship and to the holder of the bill of lading. 30

The duties owed respectively to each, the ship and the holder, would vary with the extent of the ship's obligation in relation to the delivery of the two cases and this obligation turns upon the true construction of the bill of lading. The appellant has argued that the bill of lading upon its true construction cast upon the ship the obligation of delivering the two cases to the holder of the bill of lading or its authorised agent personally (see below). The respondent argued that the ship's obligation was satisfied by discharging the goods from the 40 50



vessel (see clause 4 of the bill of lading), that is to say, by freeing the goods from the ship's tackle on to the wharf. On the appellant's argument, by reason of the defendant's "agency", its duty to the ship was to unload the goods and retain them until delivery was effected by it to the holder of the bill of lading or its authorised agent. Although the plaintiff by its agent Frank Cridland Pty. Ltd. eventually paid the defendant its charges for sorting and stacking the goods, such an activity (unless otherwise provided in the bill of lading) would be an obligation of the ship (see Halsbury (supra) para.645) and the duty owed by the defendant to the ship would also be to perform this task. On the respondent's argument the duties of the defendant to the ship ended when the goods were unloaded on to the wharf and thereafter, commencing with the sorting and stacking, the defendant acted entirely upon its own account to effect delivery of the goods because, as the learned trial Judge stated, it was in its business interest to do so (cf. Burton v. Melbourne Harbour Trust Commissioners (1954) V.L.R. 353 at p.375).

But, whichever contention be the correct one, it is clear that from the moment the goods were landed on the wharf and freed of the ship's tackle the defendant had exclusive physical possession of them. As there were no charges for freight or otherwise owing to the ship, the ship had no proprietary interest in the goods because, even upon the appellant's argument, the bill of lading was exhausted except for a contractual obligation which still rested upon the ship to ensure delivery of the goods to the holder of the bill of lading or its authorised agent; the ship did not have physical possession of the goods; physical possession of them lay with the defendant as independent contractor and, although the ship, upon the appellant's argument, was still left with a duty to deliver the goods to the holder of the bill of lading, the existence of that duty, unlike the relationship of master and servant, did not make the independent contractor's physical possession constructively possession by the ship. By the very nature of the transaction

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and the provisions of the bill of lading the ship was entitled to discharge the goods on to the wharf at Sydney into the possession of some such person as the defendant. The freight from Hamburg to Sydney had been paid to the ship and, quite apart from the fact that the ship had departed, the ship could neither require nor be bound to take re-delivery of the goods from the defendant. If the bailee of a thing sub-bails it with authority so to do, then, the position of the bailee in relation to the owner differs according to whether it is intended that the act of sub-bailment is to put an end to the bailee's bailment so that the sub-bailee becomes the immediate bailee of the owner or whether it is intended, for example, that the sub-bailment is to be revocable by the bailee so that his bailment remains on foot (see Pollock and Wright on Possession p.169). In my opinion, the only conclusion open in the circumstances of the present case is the ship's bailment was determined when it sub-bailed the goods to the defendant. The fact that the bailee may, despite the termination of his bailment, still be under a contractual obligation in relation to the goods is not repugnant to this conclusion; the bailee may for commercial reasons choose to leave the performance of his contract to a third party with the knowledge that he has his own rights against that party if he fails to perform the obligation. Such reasons will be self-evident. As in the instant case, ships cannot wait for the consignee to take delivery of the goods which it discharges at a particular port.

Under the general law the obligation of the ship is to deliver the cargo, the subject of the bill of lading, on the production of the bill of lading by the holder thereof and prima facie the contract of affreightment remains unperformed until such a delivery has been effected and, accordingly, a delivery to a wharfinger is not a compliance with that obligation. But it is always open for the ship, by special terms in the bill of lading, to provide that personal delivery to the holder of the bill of lading is not required and that the ship's obligation to

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10 deliver the goods can be satisfied by delivery  
in some other specified manner (Halsbury  
(supra) paras. 639, 642, 643, 644; Carver  
Carriage of Goods by Sea 9th Edn. pp. 710-  
712). In the Chartered Bank of India Case  
(supra) the Privy Council decided that the  
clause which enabled the ship to satisfy what  
would otherwise be its legal obligation by  
delivering the goods to the landing agents  
free of the ship's tackle (Australasia  
United Steam Navigation Co. Ltd. v. Hiskens  
18 C.L.R. 646 at pp. 654, 675-676, 679-680;  
Keane v. Australian Steamship Pty. Ltd.  
41 C.L.R. 484 at pp. 497, 500, 501). In the  
instant case the bill of lading contains at the  
end of clause 4 the following: "The carrier  
or the master is not required to give notice  
of discharge of the goods or the forwarding  
thereof. When the goods are discharged from  
20 the vessel, they shall be at their own risk  
and expense; such discharge shall constitute  
complete delivery and performance under this  
contract and the carrier shall be freed from  
any further responsibility". In this context  
"discharged from the vessel" can only mean  
"on the wharf free of the ship's tackle".  
These words lend much stronger support for the  
view that placement of the goods on the wharf -  
that is to say, putting the goods into the  
30 physical possession of the defendant as  
landing agent - fulfilled the ship's obligation  
as to delivery than the clause in the  
Chartered Bank of India Case (supra). It will  
be observed that it is expressly provided  
that the discharge of the goods from the vessel  
shall constitute complete delivery and  
performance under the bill of lading as well  
as providing that the ship should be freed  
from any further responsibility. The wording is  
40 so plain and unambiguous that ordinarily there  
could not be any doubt as to its legal effect  
(see Hiskens' Case (supra) at p. 654).  
However, it was urged that, because of its  
position in the bill of lading, that is to say,  
being part of clause 4 which commences by  
providing for a series of events which in the  
judgment of the ship is likely to give rise to  
risk of various specified matters and which  
allow the ship to proceed to follow a series  
50 of specified courses of action including the

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right to discharge the cargo other than at the nominated port of discharge, the sentences which I have quoted above should be read as applying only to the events set forth in the earlier part of clause 4. It would appear that to find in bills of lading such a clause in an unusual position may not be an infrequent occurrence (cf. the Chartered Bank of India Case (supra) at p.375.). There are provisions in the bill of lading which may both support and deny a general application of that part of clause 4 which I have quoted above. Clause 1 of the bill of lading provides (inter alia) that "the carrier shall not be liable in any capacity for any .....loss.....occurring.... after the goods leave the ship's tackle to be discharged, transhipped or forwarded.....". I would be of the view that, upon the true construction of the bill of lading, personal delivery of the goods to the holder of the bill of lading was not required of the ship but to find the answer to the question whether the defendant became a bailee of the goods for the plaintiff I do not think that it is necessary to come to a final conclusion one way or the other as to the scope of the ship's contractual obligation of delivery.

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I will assume that the provisions of the bill of lading in the present case left untouched the obligation of the ship under the general law to make a personal delivery of the two cases to the holder of the bill of lading. The ship was bailee of the goods for the holder of the bill of lading and, in my opinion, on the assumption which I have made, the ship, in order to perform that obligation effected a sub-bailment of the goods to the defendant, an independent contractor, for the purpose of effecting the delivery on its behalf. I am also of opinion that the defendant, by taking exclusive physical possession of the goods upon terms that it was bound to deliver those goods to the holder of the bill of lading and to no one else when the holder identified itself and was ready to request delivery, became the bailee of the goods for the holder of the bill of lading and that the bailment by the ship was thereby terminated. No contract existed between the defendant and the plaintiff relating

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to the delivery of the goods as the defendant was not, of course, a party to the bill of lading but the existence of the relationship of bailment between one person and another is not, in my view, dependent upon the existence of a contract between bailor and bailee and it can exist independently thereof. I am of the opinion that at common law the duty of a bailee arises when one person, otherwise than as a servant, voluntarily takes into his physical possession goods which are the property of another (see the definitions in Stroud 3rd Edn. Vol.1 p.254; *Morris v. C.W. Martin & Sons Ltd.* (1966) 1 Q.B. 716 per Diplock L.J. at p.731 and per Salmon L.J. at p.738; *Chesworth v. Farrar* (1967) 1 Q.B.407 at p.415). As I have pointed out above, by the very nature of the transaction and the terms of the bill of lading, the ship had authority to sub-bail the goods to the defendant for the purpose of effecting delivery to the holder of the bill of lading and, when the plaintiff became identified as the consignee by the production of the endorsed bill of lading, the defendant became the bailee directly of the plaintiff (*Pollock and Wright on Possession* p.169; *Paton on Bailment* p.42). Even if, as the appellant argued, it was necessary for some acknowledgment to be made by the defendant in favour of the bailor to establish the relationship of bailor and bailee between the plaintiff and the defendant, that requirement was satisfied by the production to it of the bill of lading, the receipt by it of the charges for sorting and stacking the goods and by stamping the bill with the authorisation: "Please deliver" (see *Paton (supra)* p.27).

I have not overlooked the fact that in *Midland Silicones Ltd. v. Scruttons Ltd.* (1959) 2 Q.B. 171 Diplock J. at p.189 doubted whether "on the facts" the stevedores in that case were ever bailees, whether sub, bold or simple, of the drum which was damaged by them in the course of loading it on to a truck belonging to the cartage contractors of the consignee. That doubt, however, was expressed by Diplock J. on the particular facts. The agreed facts in that case were that the stevedores were handling the drum in

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a transit shed leased by the shipowner and that the accident took place in the shipowner's shed so that the finding was open that the drum never passed into the exclusive physical possession of the stevedores. When that case went to the Court of Appeal (1961) 1.Q.B. 106 Pearce L.J. expressed the same doubt at pp.131-132; and see per Upjohn L.J. at p.135. In the House of Lords (1962) A.C. 446 Viscount Simonds at p.470 expressed agreement with Diplock J. In my opinion the facts of that case are easily distinguishable from the facts in the present case. In Makower, McBeath & Co. Pty. Ltd. v. Dalgety & Co. Ltd. (1921) V.L.R. 365 the defendant, a licensed wharfinger, unloaded cargo from a ship carried upon the terms of a bill of lading containing a clause whereby the ship's responsibility was to cease when the goods were delivered from the ship's side. The goods were placed in a cage inside a Customs' shed. The keys to the shed were held by the defendant and an officer of Customs, both keys being necessary to open the shed; but the key to the cage was held solely by the defendant. Upon this evidence it was found as a fact that the goods at the material time were held by the defendant as bailee for the consignee. In Duncan Furness Pty. Ltd. v. R.S. Couche & Co. (1922) V.L.R. 660 the plaintiffs were the consignees of goods carried upon terms similar to the bill of lading in the lastmentioned case. The defendants who were the agents of the ship employed another company to take the cargo out of the hold and put it in the ship's slings at the cost of the ship and employed yet another company to receive the goods from the slings and stack them on the wharf or shed at the cost of the consignees. The goods, some 184 coils of wire, were landed and stacked on a wharf. The Court (which included McArthur J. who had decided Makower's Case (supra)) distinguished that case on the facts as being entirely dissimilar and held that the goods, a portion of which disappeared from the stack on the wharf, were never in the possession of the defendants as bailees for the consignee and that the defendants, who came into the transaction solely in their capacity as agents of the ship, retained that character and that character only throughout and that all

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10 their transactions were referable to that character. This case is not cited in Paton (supra) and would appear to be one - decided upon its particular facts - in which the goods, not having been moved from the stack on the wharf in which they were placed by the ship's slings, the Court felt that it could not infer that any step had been taken by the defendants in fulfilment of their duty to the consignees. Although the Court had cited to it by Counsel for the plaintiff a line of authority which recognised possession in a dual capacity by wharfingers and warehousemen, no argument was presented to attack the decision in Makower's Case (supra).

20 We were also referred to Australasian United Steam Navigation Co. Ltd. v. Hiskens (supra) and to Keane v. Australian Steamships Pty. Ltd. (supra). The firstmentioned case was an action in which the plaintiff consignee sued the defendant shipowner for damages for failure to deliver and in the second of these cases the plaintiff was both consignor and consignee and sued the defendant shipowner for failure to deliver goods. Neither of these cases touches the question at issue in present appeal.

The facts in the instant case, as did the facts in Makower's Case (supra) differ vastly from the facts in Duncan Furness & Co's Case (supra). I need not repeat the circumstances in which the defendant, as an independent contractor, obtained and retained exclusive possession of the goods in the shed and held them for delivery to the holder of the bill of lading. The fact that the defendant on taking possession of the goods may have undertaken a two-fold obligation - one to the ship to make delivery to the holder of the bill of lading and the other to the holder of the bill of lading to make delivery to it is irrelevant in the sense that the existence of either obligation is not destructive of the other. Both duties can co-exist. (cf. Smith v. General Motor Cab Co. Ltd. (1911) A.C.188). Such a situation is frequently found where one agent acts in the same transaction for two different parties.

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We are only concerned as to whether there was evidence upon which the learned trial Judge could find that the goods in question came into the exclusive possession of the defendant upon terms creating a bailment of them for the plaintiff. I am clearly of the opinion that there was evidence upon which he could make the finding.

As to (b): This argument of the appellant assumed that a relationship of bailor and bailee did exist between the plaintiff and the defendant and contended that, despite the fact that the defendant was not a party to the bill of lading, the clauses exempting the ship from liability were available to it in measuring its duties as bailee. We were referred to *Elder Dempster Co. v. Paterson Zochonis & Co.* (1924) A.C. 522. I am of the opinion that, in view of the decision of the High Court in *Wilson v. Darling Island Stevedoring & Lighterage Co. Ltd.* 95 C.L.R. 43, applied in *Scruttons Ltd. v. Midland Silicones Ltd.* (1962) A.C. 446, this contention cannot be sustained.

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I would dismiss the appeal with costs. The plaintiff filed a notice of cross appeal in respect of the verdict entered for the defendant on the first and second counts. No argument was addressed to the Court on the cross appeal and it should be dismissed with costs.

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No. 15

Judgment of His Honour Mr. Justice Walsh  
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IN THE SUPREME COURT

OF NEW SOUTH WALES

COURT OF APPEAL

Term No. 634 of 1967.

Tuesday 15th October 1968.

YORK PRODUCTS PTY. LIMITED v. GILCHRIST  
WATT & SANDERSON PTY. LIMITED.

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JUDGMENT

WALSH J.A.: I agree with the reasons for judgment prepared by Asprey J.A. and, therefore, I am of opinion that the appeal be dismissed with costs and the cross appeal should be dismissed with costs.

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JUDGMENT

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HARDIE, A.J.A. In this appeal the plaintiff company, the respondent to the appeal, sued the appellant company in the District Court for damages in the sum of £967.14.7. The particulars of claim contained three counts, the first two counts being based upon an allegation that there was a bailment for reward to the defendant of the plaintiff's goods, and the third count being based upon the gratuitous bailment to the defendant of the plaintiff's goods.

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The case was heard by District Court Judge Levine without a jury, and a verdict was returned for the plaintiff on the third count in the sum of \$1,648.00. His Honour found against the plaintiff on the first two counts. Although there is a cross-appeal by the respondent in respect of the adverse finding of the Court below on the first and second counts, counsel for the respondent, on the hearing of the appeal, indicated that the cross-appeal was not being pressed.

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The judgment under appeal, which is dated 10th November 1967, summarises the relevant facts. They are set out in detail in

the judgment of Asprey J., and thus it is not necessary for me to repeat them.

10 His Honour, after finding that there had not been any express contract of bailment between the parties went on to make the following findings...."once the goods were stacked in the sheds they came into the possession and under the control of the defendant. The defendant assumed this control in its own right after it had completed its duties as agent for the shippers... After referring to the Victorian decision of Makower, McBeath & Co. Pty. Ltd. v. Dalgety & Co.Ltd. 1921, V.L.R. 365, His Honour stated that "the defendant became a bailee when he obtained possession and control of plaintiff's goods without the plaintiff's knowledge or consent and afterwards acknowledged to the plaintiff that he held goods for the plaintiff." After 20 pointing out that the defendant came into possession and control of the goods in the first place in its capacity as agent for the carrier, it was said that its duties as such agent were completed when it notified the plaintiff that it had the plaintiff's goods on the wharf. In that way, so it was held, "a bailment was created". The judgment proceeded to state that the defendant, although a 30 gratuitous bailee, was responsible to make good the loss of the property unless it could establish that the loss was not the result of the failure on its part to take reasonable care. His Honour then indicated his view - which is not challenged in this appeal - that the defendant had not discharged that onus.

40 It will be observed that the critical finding of the Court below was that although possession of the goods was originally in the ship owner, or carrier, and the defendant's possession and control of them was in the first place in its capacity as agent, and in effect acknowledged to the plaintiff that it held the goods on behalf of the plaintiff.

It is not disputed by counsel for the respondent that there was no evidence before His Honour of a notification or acknowledgment by the appellant that it held the goods for

In the  
Supreme Court  
of  
New South Wales  

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Court of Appeal  

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No. 16

Judgment of His  
Honour Mr.  
Justice Hardie  
additional Judge  
of Appeal.  
15th October  
1968.  
(continued)

In the  
Supreme Court  
of  
New South Wales  
—————  
Court of Appeal  
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No. 16

Judgment of His  
Honour Mr.  
Justice Hardie  
additional Judge  
of Appeal.  
15th October  
1968.  
(continued)

or on behalf of the respondent.

The real question for determination is whether, on the facts and material in evidence, the Court was entitled to find that possession of the goods passed to the appellant at some point of time before the loss of the goods and that the appellant thus became bailee of the goods for the respondent.

When the subject goods were put on board the ship possession passed from the consignor to the ship owner or carrier. That possession continued during the voyage, and certainly up to the point of time at which the goods were unloaded from the ship onto the wharf at Sydney.

10

Counsel for the respondent contended that, having regard to the relevant provisions of the bill of lading, the unloading of the goods onto the wharf constituted a completion by the ship owner of its obligation to carry and deliver the goods. In support of this argument he relied particularly upon the provisions of Clause 4 of the bill of lading. In my opinion that clause applies only to the special circumstances dealt with in the opening portion of it, and is not of general application. Under the main provisions of the bill the goods were accepted on board the ship "to be transported...to the port of discharge... and there to be delivered ... on payment of the charges thereon, and on due performance of all obligations of the shipper and the consignee and each of them." In my opinion the obligation of the carrier under the bill of lading to deliver did not come to an end when the goods were unloaded from the ship. That obligation continued until delivery to the consignee.

20

30

The defendant, in its capacity as a stevedore, unloaded the goods. It then proceeded to sort and stack them in a shed on the wharf belonging to the Maritime Services Board. Whilst the goods were in this shed portion of them disappeared. The verdict for the respondent for the value of those goods can only stand if the proper inference to draw

40

from the relevant facts - which are not in dispute - is that at a point of time prior to their loss possession of the goods had passed from the carrier to the appellant.

10 The key to the shed was held by a Customs' Officer over night and given to an employee of the appellant at the commencement of work each morning. It is reasonably clear that the appellant was in real and effective control of the goods during working hours. Such control and custody as it had was referable to its duties as ship's agent, i.e. to ensure compliance with and observance of the provisions of the Customs Act and Regulations and of the Maritime Services Act and Regulations, and to enable the carrier to exercise its rights and perform its obligations under the contract contained in the bill of lading.

20 The fact that the goods were unloaded from the ship and were held in a shed awaiting delivery to the holder of the bill of lading did not establish or constitute any evidence that the carrier gave up or was deprived of the possession which it had under the bill of lading. Although the carrier was a non-resident corporation and the ship had left the port, the carrier was represented by its agent, the defendant. I see nothing in the  
30 evidence, oral or documentary, to support the view that legal possession in the goods which had been in the carrier during the voyage had come to an end, and that legal possession had vested in the defendant. What the defendant did was done as the ship's agent. This, in my view, is completely consistent with, and points to possession of the goods remaining with the carrier up to the point of time when it was assumed by the  
40 consignee, the owner of the goods.

A very similar point was decided by the Supreme Court of Victoria in *Duncan Furness & Co. Pty. Ltd. v. R.S. Couche & Co.* (1922) V.L.R. 660. The reasoning applied in that decision provides support for the view that in the instant case possession of the goods remained through the relevant period in

In the  
Supreme Court  
of  
New South Wales  

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Court of Appeal  

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No. 16

Judgment of His  
Honour Mr.  
Justice Hardie  
additional Judge  
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15th October  
1968.  
(continued)

In the  
Supreme Court  
of  
New South Wales  
          
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No. 16

Judgment of His  
Honour Mr.  
Justice Hardie  
additional Judge  
of Appeal.  
15th October  
1968.  
(continued)

the carrier and that its local agent had no liability as a bailee for the consignee. (See also *Midland Silicones Ltd. v. Scruttons Ltd.* (1959) 2 Q.B. 171 at 189 & (1962) A.C. 446 at 470).

No question has arisen as to whether the endorsement by the defendant on the consignee's copy of the bill of lading of the note "please deliver" might have had the effect of vesting possession of the goods in the consignee and thus terminating the carrier's possession. There was no evidence to suggest that the goods disappeared at some point of time after the delivery order or endorsement had been made. 10

The case for the plaintiff was fought in the Court below on the one issue of whether the appellant had legal possession of the goods as bailee for the respondent. No claim was there made that, apart from bailment, the defendant was under an obligation to take reasonable care of the goods in question by reason of it having voluntarily assumed some such responsibility. Accordingly, it is not appropriate to examine the question as to whether, in a case such as the present, the plaintiff might have been able to establish a cause of action, apart altogether from bailment, i.e. for negligence. 20

For the reasons indicated I am of the opinion that the appeal should be allowed and the verdict for the plaintiff should be set aside and a verdict entered for the defendant with costs; the respondent to pay the appellant's costs of the appeal and to have a certificate under the Suitors Fund Act; the respondent's cross-appeal to be dismissed with costs. 30

No. 17

Rule of the Supreme Court of New South Wales  
Court of Appeal.

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IN THE SUPREME COURT

OF NEW SOUTH WALES

No. 634 of 1967

IN THE COURT OF APPEAL.

BETWEEN:

GILCHRIST WATT & SANDERSON PTY.  
LIMITED                      Appellant (Defendant)

- and -

YORK PRODUCTS PTY. LIMITED  
Respondent (Plaintiff)

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R U L E

Tuesday the fifteenth day of October,  
1968.

UPON MOTION and this Appeal coming on for  
Hearing on the Twenty-fifth, Twenty-sixth and  
Twenty-seventh days of September 1968  
20 WHEREUPON AND UPON READING the Notice of  
Motion herein dated the fifteenth day of  
December, 1967 and the Appeal book filed herein  
and UPON HEARING Mr. P.J. Jeffrey of Queen's  
Counsel and Mr. R.A. Howell of Counsel on  
behalf of the Appellant and Mr. T.E.F. Hughes  
of Queen's Counsel and Mr. J.A. Melville of  
Counsel for the Respondent IT WAS ORDERED  
that the matter stand for Judgment and the  
same standing in the listing this day for  
Judgment accordingly IT IS ORDERED that the  
30 Appeal be dismissed and the Appellant pay to  
the Respondent its costs of and incidental to  
the Appeal AND IT IS FURTHER ORDERED that the  
cross-Appeal be dismissed and that the  
Respondent pay to the Appellant its costs of  
and incidental to such cross-Appeal.

By the Court

For the REGISTRAR  
(Sgd) B. MUIRHEAD  
CHIEF CLERK.

In the  
Supreme Court  
of  
New South Wales  
Court of Appeal  
No. 17

Rule of the  
Supreme Court of  
New South Wales  
Court of Appeal  
15th October 1968.

In the  
Supreme Court  
of  
New South Wales  
Court of Appeal  
No. 18

Rule granting  
final leave to  
appeal.  
3rd March 1969.

No. 18

Rule granting Final Leave to Appeal.

IN THE SUPREME COURT

OF NEW SOUTH WALES

No. 634 of 1967

BETWEEN: GILCHRIST WATT & SANDERSON PTY.  
LIMITED

Appellant (Defendant)

AND YORK PRODUCTS PTY. LIMITED

Respondent (Plaintiff)

RULE GRANTING FINAL LEAVE TO APPEAL

10

Monday the Third day of March One thousand nine hundred and sixty-nine

UPON MOTION made this day pursuant to Notice of Motion dated the Twenty-seventh day of February One thousand nine hundred and sixty-nine WHEREUPON AND UPON READING the said Notice of Motion and the Affidavit of Colin Keith Yuill sworn the Twenty-eighth day of February One thousand nine hundred and sixty-nine AND UPON HEARING what was alleged by Mr. L.J. Priestley of Counsel for the Appellant and Mr. B.H. Davidson the Solicitor for the Respondent THIS COURT DOTH ORDER that final leave to appeal to Her Majesty in Council from the judgment of this Court given in the above-mentioned action on the Fifteenth day of October One thousand nine hundred and sixty eight be and the same is hereby granted to the Appellant herein AND IT IS FURTHER ORDERED that upon payment by the Appellant of the costs of preparation of the transcript record and despatch thereof to England the sum of Fifty Dollars (\$50.00) deposited in Court by the Appellant as security for and towards the cost thereof be paid out of Court to the Appellant.

20

30

By the Court

For the Prothonotary  
(Sgd) B. MUIRHEAD (L.S.)  
Chief Clerk.

40





Exhibits

"A"

Letter request-  
ing particulars  
Norton Smith &  
Co. to Sly &  
Russell.  
27th July 1964.  
(continued)

- (a) When and where was the Agreement made.
- (b) By whom on behalf of the Plaintiff was it made.
- (c) By whom on behalf of the Defendant was it made.

5. If the Agreement is said to be implied then please indicate the facts and circumstances relied upon by the Plaintiff as giving rise to such implication.

6. Please state precisely how it is alleged that the Defendant kept the goods in a negligent manner and indicating the precise acts or omissions relied on as constituting negligence on the part of the Defendant. 10

7. Please supply full details of the loss which it is alleged the Plaintiff suffered.

The above particulars are sought in respect of the three counts of the Plaintiff's particulars. It appears that the first and second counts are completely identical in words and figures and you might indicate whether this is intentional or whether the second count has been incorporated in error. 20

Yours faithfully,

Norton, Smith & Co.

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Exhibits

"A"

Letter supply-  
ing particulars  
Sly & Russell  
to Norton Smith  
& Co.

16th October  
1964

(continued)

goods were no longer there, they apparently having been stolen. The plaintiff alleges that on these facts and circumstances there is an implied contract between the parties by which the defendant agreed safely to keep and take care of the plaintiff's goods until they were picked up by the plaintiff.

6. The plaintiff claims that the defendant, as a bailee, was under an obligation safely to keep and take care of the goods and that it is for the defendant to disprove negligence in the circumstances of this case. 10
7. One case containing 1,000 travel alarm clocks dispatched by Ehren-Werk-Ersingen from Hamburg to Sydney and which due to the defendant's negligence and not keeping proper care of the said goods, the said goods were lost to the plaintiff. 20

As to the second count:

1. See answer to No.5.
2. Yes. The agreement is implied.
3. &
4. Not applicable.
5. See the answer to 5 above. Under this count the defendant is sued as ship's agents, it having been employed by the owner of the ship to supervise the discharge and delivery of the ship's cargo. it is again alleged that the defendant had the care and control of the goods which had been shipped and which were to be delivered to the plaintiff and that the defendant failed safely to take care of the same. 30
6. &
7. See answers to 6. and 7. above.

As to the third count:

The same allegations as are made in the 40

second count are relied upon under this count except that the plaintiff alleges that the bailment was gratuitous and not bailment for reward. Although the circumstances are the same the effect of this is that under this count no contract as such is alleged. It is nevertheless alleged that the defendant had the care and control of the plaintiff's goods.

Exhibits

"A"

Letter supply-  
ing particulars  
Sly & Russell  
to Norton Smith  
& Co.

16th October  
1964.

(continued)

10

The first and second counts are not completely identical. You will observe in the first count the defendant is sued as a stevedore and on the basis that it carries on business under the name Central Wharf Stevedoring Co. In the second and third counts the defendant is sued in its capacity as ship's agents.

Yours truly,

Sly & Russell.

---

Exhibits

EXHIBIT

"B"

Suppliers  
Invoice  
Uhren-Werk-  
Ersingen to  
York Products  
Pty. Limited  
28th July 1962.

"B" - SUPPLIERS INVOICE.  
UHREN-WERK-ERSINGEN TO YORK PRODUCTS PTY. LIMITED

UHREN-WERK-ERSINGEN: Allein-Inhaber HELMUT EPPERLEIN

Messrs.  
York Products Pty., Ltd.  
50-54 York Street,  
Sydney, N.S.W.  
Australia.

Ka/k ERSINGEN bei PFORZHEIM 10  
Lange Str. 114.

28th July, 1962.

INVOICE:

Today we have sent to you by ocean freight via forwarders  
A. Hartrodt, Hamburg 1, goods as follows:

Quan- tity	Item	Ref. No.	Price p.pc. DM	Price Total DM	
1.000 pc.	Travel alarm clocks, 2 Jewels dial printing "Wembley", assorted	100	6.80	6.800.--	20
25 pc.	Style alarm clocks, 7 Jewels	310	17.50	437.50	
17 pc.	Style alarm clocks, 7 Jewels	311	18.50	314.50	
17 pc.	" " " 7 "	312	19.25	327.25	
16 pc.	" " " 7 "	314	21.--	525.--	
100 "	" " " 7 " ass.500-504		13.50	1.350.--	
20 "	" " " 7 "(Tyres)	150	10.25	205.--	
20 "	" " " 7"(Hause)	200	16.60	332.--	
20 "	" " " 7" "	201	17.25	345.--	30
20 "	" " " 7"(Hexi) 125a		8.75	175.--	
10 "	" " " 7"	250	14.50	145.--	
10 "	" " " 7"	251	11.75	117.50	
				<u>11.073.75</u>	

Packing:

Net Cash - Ex factory

2 wooden cases, marked  
O/N1 O/N 2

We certify that all goods are  
of West-Germany origin  
(STAMP)

H H  
Sydney Sydney

UHREN-WERK ERSINGEN  
Allein-Inhaber Helmut Epperlein 40  
ERSINGEN bei PFORZHEIM  
(signed)

Brut weight:

AE No. P 208200

"C" - BILL OF LADING AND COPY OF  
CONDITIONS THEREOF.

Exhibits  
"C"

Bill of  
Lading &  
Copy of  
Conditions  
thereof.

December 1960

OUTWARD



AUSTRALIAN-SERVICE  
**NORDDEUTSCHER LLOYD**

B/L No. 104

BILL OF LADING

PAGE 2

SHIP: M. S. **REGENSTEIN** MASTER: VOYAGE No.  
PORT OF LOADING: **HAMBURG**  
SHIPPER: **A. HARTRODT, Hamburg I, Alstertor I**  
CONSIGNEE: ORDER OF **ORDER**  
ARRIVAL NOTICE TO BE ADDRESSED TO:

PORT OF DISCHARGE FROM SHIP: **Sydney**  
(carrier not to be responsible for failure to notify, see clause 20 hereof)  
(if goods are to be transhipped by carrier at port of discharge, show destination below under description of contents).

Scope of the voyage: The carrier's general trade is between Scandinavian, Continental, Atlantic, United Kingdom and Mediterranean ports and ports of Australia, via Suez or Cape town and ports en route, the order of ports being adjusted according to quantities and requirements of cargoes offered, outward and homeward and/or the reasonable requirements of vessel's operations. The scope of the voyage is further described on page 1 clause 3.

Ref. au 62-50-377 PARTICULARS FURNISHED BY SHIPPER OF GOODS

Marks and Numbers	Number and description of packages	DESCRIPTION OF CONTENTS	Gross Weight
O/W. 1-2 H SYDNEY	2 cases ***** (two)	Assorted Style and Travel Alarm Clocks of German Origin.	408.- kgs *****

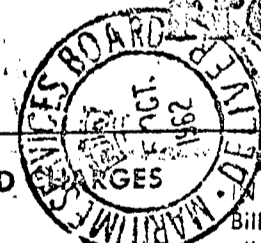
H. M. CUSTOMS  
SYDNEY NO. 50  
MAY 1962  
EXCEPT  
OFFICER

PLEASE DELIVER  
- 8 OCT 1962  
GILCHRIST, WATT & SANDERSON  
Per  
10/11

FRANK CRIDLAND PTY. LTD.  
Customs & Transport Agents  
SUSSEX STREET, SYDNEY  
PHONE BX 6921

ORIGINAL

Freight prepaid



If required by the carrier, one signed bill of lading...  
All agreements or freight engagements for the shipment of the goods are superseded by this bill of lading, and all its terms, whether written, typed, stamped, or printed, are accepted and agreed by the shipper to be binding as fully as if signed by the shipper, any local customs or privileges to the contrary notwithstanding.

FREIGHT AND CHARGES  
WITNESS WHEREOF **three**  
Bills of Lading (exclusive of non-negotiable copies) all of this tenor and date, have been signed, one of which being accomplished, the others to stand void.  
Dated in **HAMBURG**

For the Master:  
**Rob. M. Sloman jr.**  
Agent

571A5

Exhibits

"C"

BILL OF LADING.Exhibits

"C"

Bill of Lading  
Conditions.

10 SHIPPED on board by the shipper hereinafter named the goods or packages said to contain goods hereinafter mentioned in apparent good order and condition unless otherwise indicated in this bill of lading, to be transported subject to all the terms of this bill of lading with liberty to proceed via any port or ports within the scope of the voyage described herein, to the port of discharge or so near thereunto as the ship can always safely get and leave, always in safety and afloat at all stages and conditions of water and weather, and there to be delivered or transhipped on payment of the charges thereon, and on due performance of all obligations of the shipper and consignee and each of them.

20 It is agreed that the custody and carriage of the goods are subject to the following terms which shall govern the relations, whatsoever they may be, between the shipper, consignee, and the carrier, master and ship in every contingency, wheresoever and whensoever occurring and whether the carrier be acting as bailee warehouseman, or in any other relation whatever, and also in the event of deviation, or of unseaworthiness of the ship at the time of loading or inception of the voyage or  
30 subsequently, and none of the terms of this bill of lading shall be deemed to have been waived by the carrier unless by express waiver in writing signed by a duly authorized agent of the carrier.

1. This B/L shall have effect subject to the provisions of any legislation which incorporates the Hague Rules contained in the International Convention for the unification of certain rules relating to bills of lading dated Brussels  
40 August 1924 and which is compulsory applicable to the contract of carriage contained herein.

As such legislation shall be deemed any law, statute or ordinance substantially in the same terms (save as to voyages to which it



Exhibits

"C"

Bill of Lading  
Conditions.  
(continued)

applies) as the Carriage of Goods by Sea Act 1924 of the United Kingdom in force at the port of shipment.

If no such legislation is compulsory applicable, the Hague Rules contained in the said Convention as enacted in the country of shipment shall apply.

But for the foregoing provisions and for other exemptions named herein German law shall govern this bill of lading.

10

Any dispute arising under this B/L shall be decided by the Bremen courts; if, however, the law applicable to the contract of carriage contained herein forbids such stipulation of jurisdiction the latter shall be considered overridden to the extent of such inconsistency but no further.

Nothing herein contained shall be deemed a surrender by the carrier of any of his rights or immunities, or any increase of any of his responsibilities or liabilities under the applicable legislation or under the terms of the above mentioned International Convention.

20

The provisions of the applicable legislation or of the said Convention shall (except as may be otherwise specifically provided herein) govern before the goods are loaded on and after they are discharged from ship and throughout the entire time the goods are in the custody of the carrier.

30

The carrier shall not be liable in any capacity whatsoever for any delay, loss or damage occurring before the goods enter ship's tackle to be loaded or after the goods leave ship's tackle to be discharged transhipped or forwarded, nor for any delay, loss or damage arising, or resulting from hostilities, or from acts of sabotage or of malicious persons, or from strikers, lockouts, stoppages or restraints or lack of labour or labour troubles from whatsoever cause, whether of employees of the carrier or others and whether partial or general or whether existing or anticipated at the time of delivery of the goods to the

40

carrier or at any other time.

Exhibits

"C"

If the ship is not owned by or chartered by demise to Norddeutscher Lloyd 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 Norddeutscher Lloyd which acts as agent only and shall be under no personal liability whatsoever in respect thereof, if, however, 10 it shall be adjudged that the Norddeutscher Lloyd or any other than the owner or demise charterer is carrier and/or bailee of the goods all rights, exemptions, immunities limitations of and exonerations from liability provided by law or by the terms of this bill of lading shall be available to it and such other.

Bill of Lading  
Conditions.  
(continued)

2. In this bill of lading, the word "ship" shall include any substituted vessel, and any craft, lighter or other means of conveyance 20 owned, chartered or operated by the carrier; the word "carrier" shall include the ship, her owner, operator, demise charterer, and if bound hereby the time charterer, master and any substituted carrier whether the owner, operator, charterer or master shall be acting as carrier or bailee; the word "shipper" shall include the person named as such in this bill of lading and the person for whose account the goods are shipped; the word "consignee" shall include the 30 holder of the bill of lading, properly endorsed, and the receiver and the owner of the goods; the word "goods" shall include the packages said to contain goods and the goods themselves herein mentioned and described; the word "packages" shall include any piece or shipping unit; the word "charges" shall include freight, dead freight, sub-freight, demurrage, storage, advance charges, general average or salvage obligations or both, and all other expenses, 40 costs, indemnities, damages and money obligations whatever payable by or chargeable to or for account of the goods, the shipper, the consignee or any of them regardless of whether sustained, incurred or paid by the carrier in the first instance.

3. It is mutually agreed that as part of the voyage between the termini stated in this bill

Exhibits of lading the ship may proceed to, return to  
 "C" and/or stay at usual or customary or  
 Bill of Lading advertised ports of call (including the loading  
 Conditions. port) whether named in this contract or not,  
 (continued) whether in or out of the advertised,  
 geographical, usual or ordinary route or order  
 even though in proceeding to or returning  
 thereto the ship may sail beyond the port of  
 discharge or transshipment or in a direction  
 contrary thereto, or depart from the direct 10  
 or customary route.

It is mutually agreed that the ship may  
 omit calling at any port or ports whether  
 scheduled or not and that the ship may before  
 effectuating delivery of transshipment of the  
 the goods at the port of discharge or  
 transshipment, and with the like liberties as  
 aforesaid, leave and then return to and  
 discharge or tranship the goods at the port of  
 discharge or transshipment. 20

It is mutually agreed that the ship  
 either with or without the goods on board and  
 before or after proceeding towards the port  
 of discharge or transshipment and with or  
 without notice to shippers, consignees or others  
 concerned may adjust compasses, dry-dock, go  
 on ways or on repairs yards, shift berths, take  
 fuel or stores, sail without pilots, tow or to  
 be towed, make trial trips, carry goods on  
 deck, save or attempt to save life or property. 30

4. In any situation whatsoever and wheresoever  
 occurring and whether existing or anticipated  
 before commencement of or during the voyage,  
 which in the judgment of the carrier or master  
 is likely to give rise to risk of capture,  
 seizure, detention, damage, delay or  
 disadvantage to or loss of the ship or any  
 passenger or any part of her cargo, or to make  
 it unsafe, imprudent, or unlawful for any  
 reason to commence or proceed on or continue 40  
 the voyage or to enter or discharge the goods  
 at the port of discharge, or to give rise to  
 delay or difficulty in arriving, discharging  
 at or leaving the port of discharge or the  
 usual, agreed, or intended place of discharge  
 or debarkation in such port, the carrier may  
 before, during or after receipt or loading  
 of the goods or before the commencement of the

voyage, require the shipper or other person  
 entitled thereto to take delivery of the goods  
 at port of shipment and upon their failure  
 to do so, may warehouse the goods at the  
 risk and expense of the goods; or the carrier  
 or master, whether or not proceeding toward  
 or entering or attempting to enter the port  
 of discharge or reaching or attempting to  
 reach the usual, agreed or intended place of  
 10 discharge or debarkation therein or attempting to  
 discharge the goods there, may discharge the  
 goods into depot, lazaretto, craft, or other  
 place; or the ship may proceed or return,  
 directly or indirectly, to or stop at such other  
 port or place whatsoever as the master or the  
 carrier may consider safe or advisable under  
 the circumstances, and discharge the goods,  
 or any part thereof, at any such port or place;  
 or the carrier or the master may retain the  
 20 cargo on board until the return trip or until  
 such time as the carrier or the master thinks  
 advisable and discharge the goods at any place  
 whatsoever; or the carrier or the master may  
 discharge and forward the goods by any means  
 at the risk and expense of the goods. The  
 carrier or the master is not required to give  
 notice of discharge of the goods or the  
 forwarding thereof. When the goods are  
 30 discharged from the vessel, they shall be at  
 their own risk and expense; such discharge  
 shall constitute complete delivery and  
 performance under this contract and the carrier  
 shall be freed from any further responsibility.  
 For any service rendered to the goods the  
 carrier shall be entitled to reasonable extra  
 compensation.

5. The carrier, master and ship shall have  
 liberty to comply with any directions or  
 40 recommendations as to loading, departure,  
 arrival, routes, ports of call, stoppages,  
 destinations, zones, waters, discharges,  
 delivery, or in any other respect whatsoever  
 (including any direction or recommendation not  
 to go to the port of destination, or to delay  
 proceeding thereto, or to proceed to some other  
 port) given by any Government or by any belligerent  
 or by any organized body engaged in civil war,  
 hostilities or warlike operations or by any  
 person or body acting or purporting to act as or

Exhibits with the authority of any Government or  
 "C" belligerent or of such organized body or by  
 any committee or person having under the terms  
 Bill of Lading of the war risk insurance on the vessel the  
 Conditions. right to give any such directions or  
 (continued) recommendations. Delivery or other disposition  
 of the goods in accordance with such  
 directions or recommendations shall be fulfilment  
 of the contract voyage. The ship may carry  
 contraband, explosives, munitions, warlike 10  
 stores, hazardous cargo, and may sail armed or  
 unarmed and with or without convoy and with or  
 without lights.

In addition to all other liberties herein  
 the carrier shall have the right to withhold  
 delivery of, reship to, deposit or discharge  
 the goods at any place whatsoever, surrender or  
 dispose of the goods in accordance with any  
 direction, condition or agreement imposed upon  
 or exacted from the carrier by any Government or 20  
 department thereof or any person purporting  
 to act with the authority of either of them.  
 In any of the above circumstances the goods  
 shall be solely at the risk and expense and  
 all expenses and charges so incurred shall be  
 payable by the owner or consignee thereof and  
 shall be a lien on the goods.

6. Unless otherwise stated herein, the  
 description of the goods and the particulars of  
 the packages mentioned herein are those furnished 30  
 in writing by the shipper and the carrier shall  
 not be concluded as to the correctness of  
 leading marks, counter-marks, number, quantity  
 weight, gauge, measurement, contents nature,  
 quality or value. Single pieces or packages  
 exceeding 2205 lbs in weight or which because  
 of shape, size or condition cannot be handled  
 with the ship's regular tackle, shall be liable  
 to pay extra charges for loading, handling,  
 transhipping or discharging and the weight of 40  
 each such piece or package shall be declared  
 in writing by the shipper on shipment and clearly  
 and durably marked on the outside of the piece  
 or package. The shipper and the goods shall  
 also be liable for, and shall indemnify the  
 carrier in respect of any injury, loss or damage  
 arising from shipper's failure to declare and  
 mark the weight of any such piece or package or

from the incorrect weight of any such piece or Bill of Lading package having been declared or marked thereon. Conditions.  
(continued)

7. Goods may be stowed in poop, forecastle, deck house, shelter deck, passenger space or any covered in space commonly used in the trade for the carriage of goods, and when so stowed shall be deemed for all purposes to be stowed under deck.

10 Specially heated or specially cooled stowage is not to be furnished unless contracted for at an increased freight rate.

8. Live animals (including birds and fish) and cargo carried on deck and stated herein to be so carried are carried at shipper's or at consignee's risk and the carrier shall not be liable for any loss or damage thereto arising or resulting from any cause whatsoever.

20 9. If the ship comes into collision with another ship as the result of 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 said goods, paid or payable by the other or non-carrying ship or her owners to the owner of 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 carrier. The foregoing provisions shall also apply where the ship-owners, operators, or those in charge of any ship or objects, other than, or in addition to, the colliding ships or objects, are at fault in respect to a collision, contact, stranding, or other accident.

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10. General average shall be adjusted and payable at any port or place selected by the carrier and according to York-Antwerp Rules 1950 and as to matters not therein provided for according to the rules and usages of the port

Exhibits  
 "C"  
 Bill of Lading  
 Conditions.  
 (continued)

or place of adjustment. The general average statement shall in every instance be prepared by average adjusters and stated in currency selected by the carrier. Cargo's contribution in general average shall be paid to the carrier even if such average is due to the fault, neglect or error of the master, pilot or crew or to unseaworthiness of the vessel not resulting from any lack of due diligence on the part of the shipowner or carrier.

10

In the event of accident, danger, damage or disaster, before or after 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 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 for as fully as if such salving ship or ships belonged to strangers.

20

Shippers, consignees and/or owners of the goods shall be jointly and severally liable for the payment of the general average contributions of the goods and/or any salvage and/or special charges thereon as well as for making such deposits to the carrier as the carrier may deem sufficient to cover the estimated amount of such contributions and/or salvage and/or charges. Such payments and deposits shall not prejudice carrier's lien on the goods and shall be made as required by the carrier before or after delivery of the goods. Shippers, consignees and/or owners of the goods shall be obliged to declare on carrier's request the value of the goods for the purpose of determining the aforesaid amounts, one party's declaration being binding for the others.

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Shippers consignees and charterers expressly renounce the Netherlands Commercial

Code Article 700 and the Belgian Commercial  
Code Part II Article 148.

Bill of Lading  
Conditions.  
(continued)

11. Whenever the carrier or master may deem it  
advisable or in any case where the goods are  
consigned to a point where the ship does not  
expect to discharge, the carrier or master may,  
without notice, forward the whole or any part  
of the goods before or after loading at the  
original port of shipment, or any other place  
or places, even though outside the scope of  
the voyage or the route to or beyond the port  
of discharge or the destination of the goods,  
by any vessel, vessels or other means of  
transportation by water, land or air, or by  
any such means, whether operated by the carrier  
or by others and whether departing or arriving  
or scheduled to depart or arrive before or  
after the ship expected to be used for the  
transportation of the goods. This carrier,  
in making arrangements for any transshipping or  
forwarding vessel or means of transportation  
not operated by this carrier shall be considered  
solely the forwarding agent of the shipper and  
without any other responsibility whatsoever  
even though the freight for the whole transport  
has been collected by him. The carriage by any  
transshipping or forwarding carrier and all  
transshipment or forwarding shall be subject to  
all the terms whatsoever in the regular form  
of bill of lading, freight note, contract or  
other shipping document used at the time by  
such on-carrier, whether issued for the goods  
or not, and even though such terms may be less  
favourable to the shipper or consignee than  
the terms of this bill of lading and may  
contain more stringent requirements as to notice  
of claim or commencement of suit and may  
exempt the on-carrier from liability for  
negligence. The shipper expressly authorizes  
the carrier to arrange with any such  
transshipping or forwarding carrier that the  
lowest valuation of the goods or limitation of  
liability contained in the bill of lading or  
shipping document of such carrier shall apply  
even though lower than the valuation or limitation  
herein. Pending or during transshipment the  
goods may be stored ashore or afloat at their  
risk and expense and the carrier shall not be  
liable for detention.



Exhibits

"C"

Bill of Lading  
Conditions.  
(continued)

12. The port authorities are hereby authorized to grant a general order for discharging immediately upon arrival of the ship and the carrier without giving notice either of arrival or discharge may discharge the goods directly they come to hand, at or on to any wharf, craft or place that the carrier may select, and continuously, Sundays and holidays included, at all such hours by day or by night as the carrier may determine no matter what the state of the weather or custom of the port may be. The carrier shall not be liable in any respect whatsoever if heat or refrigeration or special cooling facilities shall not be furnished during loading or discharge or any part of the time that the goods are upon the wharf, craft or other loading or discharging place. All lighterage and use of craft in discharging shall be at the risk and expense of the goods. Pier dues, landing and delivery charges, unless included in the freight herein provided for and expenses arising or resulting from weighing the goods on board (including detention and extra costs of discharging) shall be at the expense of the goods, the custom of the port notwithstanding. If the goods are not taken away by the consignee by the expiration of the next working day after the goods are at his disposal, the goods may at carrier's option and subject to carrier's lien, be sent to store or warehouse, or be permitted to lie where landed, but always at the expense and risk of the goods. Without prejudice to an earlier termination by virtue of any other clause of this bill of lading the responsibility of the carrier in any capacity shall altogether cease and the goods shall be considered to be delivered and at their own risk and expense in every respect when taken into the custody of custom's or other authorities. The carrier shall not be required to give any notification of disposition of the goods.

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13. The carrier shall not be liable for failure to deliver in accordance with leading marks unless such marks shall have been clearly and durably stamped or marked by the shipper before shipment upon the goods or packages, in letters and numbers not less than two inches high, together with name of the port of

Exhibits

"C"

Bill of Lading  
Conditions.  
(continued)

10 discharge. Goods that cannot be identified as to marks or numbers, cargo sweepings, liquid residue and any unclaimed goods not otherwise accounted for shall be allocated for completing delivery to the various consignees of goods of like character in proportion to any apparent shortage, loss of weight or damage. When grain is stowed without separation from other grain shipped either by the same shipper or by other shippers, any loss or damage to the combined shipments shall be divided in proportion among the several shipments. In case any part of the goods cannot be found for delivery during the vessel's stay at the port of destination of the goods they are to be forwarded when found at the carrier's expense, the carrier not to be held liable for any claim for delay or otherwise.

20 14. The shipper and/or consignee of the goods shall indemnify the carrier and the goods shall be liable for any expense of mending, cooperage, baling or reconditioning of the goods or packages and gathering of loose cargo or contents of packages; also for any payment, expense, fine, dues, duty, tax, impost, loss, damage or detention sustained or incurred by or levied upon the carrier or the ship in connection with the goods, howsoever caused, including any action or requirement of any government or governmental authority or person purporting to act under the authority thereof, seizure under legal process or attempted seizure, incorrect or insufficient marking, numbering or addressing of packages or description of the contents, failure of the shipper to procure consular Board of Health or other certificates to accompany the goods or to comply with laws or regulations of any kind imposed with respect to the goods by the authorities at any port or place or any act or omission of the shipper or consignee.

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15. Freight shall be payable on actual gross and per weight or measurement or at carrier's option, on actual gross discharged weight or measurement or on the weight or measurement as shown in this bill of lading under particulars furnished by shippers of goods, (see page 2) but the carrier may at any time open the

Exhibits  
"C"  
Bill of Lading  
Conditions.  
(continued)

packages and examine, weigh, measure and/or value the goods. In case the particulars furnished by shipper of goods (see page 2) are found to be erroneous the carrier is entitled to charge double the freight which should have been charged had the particulars been furnished correctly and the shipper and/or consignee shall be liable for any expense incurred for examining, weighing, measuring and/or valuing the goods. Full freight shall be paid on damaged or unsound goods or if packages be empty or partly empty.

10

Full freight hereunder to port of discharge named herein shall be considered completely earned on receipt of the goods by the carrier, whether the freight be stated or intended to be prepaid or to be collected later, and the carrier shall be entitled to all freight and charges due hereunder, whether actually paid or not, and to receive and retain them under all circumstances whatsoever ship and/or cargo lost or not lost. If there shall be a forced interruption or abandonment of the voyage at the port of shipment or elsewhere any forwarding of the goods or any part thereof shall be at the risk and expense of the goods. All unpaid charges shall be paid in full and without any offset, counter-claim or deduction in the currency of the country of the port of shipment or at carrier's option in the currency of the port of discharge at the demand rate of New York exchange as quoted on the day of the ship's entry at the Custom House of her port of discharge. The carrier shall have a lien on the goods, which shall survive delivery, for all charges due hereunder and may enforce this lien by public or private sale and without notice. The shipper and consignee shall be jointly and severally liable to the carrier for the payment of all charges and for the performance of the obligation of each of them hereunder.

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16. Nothing contained in this bill of lading shall deprive the ship the shipowner or the carrier of the right to claim the benefit of any German or other statutory exemption from or limitation of liability.

Neither the carrier nor any corporation

owned by, subsidiary to or associated or affiliated with the carrier shall be liable to answer for or make good any loss or damage to the goods occurring at any time and even though before loading on or after discharge from the ship, by reason or by means of any fire whatsoever, unless such fire shall be caused by its design or neglect.

Bill of Lading  
Conditions.  
(continued)

10 17. In case of any loss or damage or delay to or in connection with the goods their value in the calculation and adjustment of claims for which the carrier may be liable shall for the purpose of avoiding uncertainties and difficulties in fixing value be deemed to be the invoice value plus freight and insurance if paid, but not exceeding the amount per package or, in the case of goods not shipped in packages, per customary freight unit (which in the absence of other agreement shall be 20 the ton, but in the case of packages heavier than one ton the package being the freight-unit) determined by the law applicable to this bill of lading, unless the goods are shipped according to the special prescriptions of the carrier and unless the nature of the goods and a valuation higher than the amount 30 aforementioned have been declared in writing by the shipper upon delivery to the carrier and inserted in this bill of lading and extra freight paid if required. If in such case the actual value of the goods per package or per customary freight unit shall exceed such declared value, the value shall nevertheless be deemed to be the declared value and the carrier's liability, if any, shall not exceed the declared value. Any partial loss or damage shall be adjusted pro rata on the basis of the applicable value. The carrier shall not be 40 liable for consequential or special damage and shall have the option of replacing any lost goods. In no event shall the carrier be liable for more than the loss or damage actually sustained.

18. Notice of loss or damage and the general nature thereof must be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods. If the loss or damage is not apparent, the notice must be given within three days of

Exhibits

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"C"

Bill of Lading  
Conditions.  
(continued)

the delivery. Unless notice is given as above provided, claim shall be deemed to have been waived. All claims for loss or damage to, or misdelivery, short delivery, non-delivery or delay in delivery of the goods or any portion thereof must be present in writing to the carrier or vessel's agent within thirty (30) days after removal of the goods from the custody of the vessel or, in the case of failure to make delivery, within thirty (30) days after the goods should have been delivered. Unless claim is presented as above provided, it shall be considered to have been waived, and no suit may thereafter be commenced or maintained thereon. In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after the delivery of the goods or the date when the goods should have been delivered. No action by the shipowner, master, carrier, ship's agent or attorneys in considering or dealing with claims where the terms of this bill of lading have not been complied with shall be considered a waiver of such terms and they shall not be considered as waived except by an express waiver in writing.

10

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19. The ship's protest relating facts and circumstances limiting the carrier's liability or exempting the carrier from liability, duly sworn by the master and/or by one or more members of the crew will be deemed sufficient proof of such facts and circumstances.

30

20. No claim shall under any circumstances whatever attach to the carrier for failure to notify the consignee or others concerned of the arrival of the goods.

21. If any part of any term of this bill of lading contract is not enforceable, that circumstance shall not affect the validity of any other term hereof.

40

22. The port of discharge for optional cargo to be declared at least 48 hours before the vessel arrives at first optional port of call, otherwise the carrier may elect to discharge at the first or any other optional port.

Exhibits

112.

"C"

23. The servants and agents of the carrier shall not be liable in their personal capacity for any loss of or damage or delay to the cargo whatsoever and wheresoever arising and all rights, defences and immunities of whatsoever nature referred to in this B/L applicable to the carrier shall in all respects ensure also for the benefit of any servants or agents of the carrier.

Bill of Lading  
Conditions  
(continued)

"D"

Letter York  
Products Pty.  
Limited to  
Gilchrist Watt  
& Sanderson Pty.  
Limited with  
copy invoice  
attached.  
6th November  
1962.

10

"D"

LETTER YORK PRODUCTS PTY. LIMITED TO GILCHRIST  
WATT & SANDERSON PTY. LIMITED WITH COPY  
INVOICE ATTACHED.

6th November, 1962.

The Manager,  
Gilchrist, Watt & Sanderson Pty. Ltd.,  
17 O'Connell Street,  
SYDNEY

Dear Sir,

20

We enclose herewith our Invoice covering the value of Alarm Clocks stolen from the shipment received ex S.S. "Regenstein".

We refer to your letter of 9th October, 1962, reference PFW/JK, addressed to Frank Cridland Pty. Ltd., regarding the loss of this Case.

Your early attention to the settlement of this claim would be appreciated.

Yours faithfully,

30

YORK PRODUCTS PTY. LTD.

D.L. Wilkinson  
SECRETARY.

DLW/MK  
Encl.

Exhibits

113.

"D"

Invoice dated  
5th November  
1962.

YORK PRODUCTS PTY. LTD.

Invoice

Importers, Manufacturers' Agents and  
Distributors.

50-54 York Street, Sydney.  
G.P.O. Box 3692 Phone BX 3451. Y

6th November, 1962.

Gilchrist, Watt & Sanderson Pty. Ltd.,  
17 O'Connell Street,  
SYDNEY

Forwarded per: Your Order No. S. Tax No. Date 10

To Stock missing from shipment ex  
S.S. "REGENSTEIN" despatched by  
Uhren-Werk-Ersingen from Hamburg  
to Sydney against B/L 104 Order H  
No. 1 on 14/8/62.

O/N 1-2

H

Sydney 2 Cases Clocks

Case No. 1 discharged and stacked on  
wharf No. 3 Glebe Island, on 8th  
October, 1962 disappeared containing: 20

D.M.

1000 Travel Alarm Clocks @ 6.80 D.M. 6800

Buying Commission 3 $\frac{3}{4}$ %

255

D.M. 7055

Converted @ 8.89  
Freight & Insurance

£793.11.9.

30.11.0.

£824. 2.9.

---

E.&O.E.

TERMS: No claims for shortages, damages or  
returns recognised unless notified within  
seven days of invoice date and must show  
invoice No. No credit allowed for empty  
cases returned. 30

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114.

"E"

LETTER GILCHRIST WATT & SANDERSON PTY. LIMITED  
TO PORT LINE LIMITED

Exhibits

"E"

AIR MAIL

GILCHRIST, WATT & SANDERSON PTY. LTD.  
17 O'Connell Street  
SYDNEY

CS

30th August, 1963.

Letter Gilchrist  
Watt &  
Sanderson Pty.  
Limited to Port  
Line Limited  
30th August  
1963.

10 Messrs. Port Line Ltd.,  
50 Young Street,  
SYDNEY N.S.W.

Dear Sirs,

LOSS OF CASE OF CLOCKS EX  
"RIEDERSTEIN" ARRIVED SEPTEMBER,  
1962. CONSIGNEES H.H. HALL LTD.

We have your letter of 26th August and  
note what you write in this connection.

20 The case concerned was discharged and  
stacked by Stevedores in good order and cond-  
ition and as you are probably aware they are paid  
for the latter service by Consignees. As  
Stevedores fulfilled their obligations their  
responsibility ceased.

30 As the vessels agent, we supplied  
Watchmen in the sheds, on a purely  
gratuitous basis, for the protection of the  
goods and when stacked their custody  
reverted to the vessel. However, you are of  
course, aware that the vessel is protected  
from any responsibility in the terms and  
conditions of the Bill of Lading and Liability  
during the period the goods remained on the  
wharf must therefore be borne by Consignees.

40 We would emphasise that at the time the  
goods in question were stolen, Stevedores  
duties had been completed and that liability  
for the goods rested solely with the  
Consignees. The employment of Watchmen is as  
mentioned before, undertaken without



Exhibits

"E"

consideration, in an effort to assist  
Consignees.

Letter Gilchrist  
Watt &  
Sanderson Pty.  
Limited to Port  
Line Limited  
30th August  
1963.  
(continued)

It is regretted we are unable to alter  
our decision in this matter.

Yours faithfully,  
GILCHRIST WATT & SANDERSON  
PTY. LTD.

(Signed)  
Director

"F"

"F"

10

Letter Gilchrist  
Watt &  
Sanderson Pty.  
Limited to Frank  
Cridland Pty.  
Limited.  
9th October  
1962.

LETTER GILCHRIST WATT & SANDERSON  
PTY. LIMITED TO FRANK CRIDLAND PTY.  
LIMITED.

GILCHRIST WATT & SANDERSON PTY. LTD.

17 O'Connell Street,  
SYDNEY

PFW/JK

9th October, 1962.

The Manager,  
Frank Cridland Pty. Ltd.,  
154 Sussex Street,  
SYDNEY

20

Dear Sir,

M.S. "REGENSTEIN" ARRIVED SYDNEY  
29/9/62 AT No. 3 GLEBE

Hamburg/Sydney B/L 104. Order H. No.1  
1 Case Alarm Clocks.

We regret to advise that this case which  
was discharged and stacked in good order and  
condition disappeared from the wharf yesterday 30  
morning, 8th October.

The disappearance of the case is the  
subject of Police investigation and we shall  
advise you should their enquiries meet with  
success.

116.

In the meantime we suggest you inform your Clients and Underwriters.

Yours faithfully,  
GILCHRIST WATT & SANDERSON  
PTY. LTD.

(Signed)

Director

Exhibits

"F"

Letter Gilchrist  
Watt &  
Sanderson Pty.  
Limited to Frank  
Cridland Pty.  
Limited.  
9th October  
1962.  
(continued)

"G"

10 LETTER GILCHRIST WATT & SANDERSON PTY. LIMITED  
TO FRANK CRIDLAND PTY. LTD.

GILCHRIST, WATT & SANDERSON PTY. LTD.

17 O'Connell Street,  
SYDNEY

GR/PM

27th November, 1962.

The Manager,  
Frank Cridland Pty. Ltd.,  
154 Sussex Street,  
SYDNEY

Dear Sir,

20

M.V. "REGENSTEIN"

O/N H. No. 1 - 1 Case Travel Alarm Clocks.

We are in receipt of your claim for non-delivery of the above packages but regret we are unable to accept any liability on behalf of the vessel as this case was landed in same apparent good order and condition as when received by the vessel.

30

We are therefore returning your claim together with a similar claim received from York Products Pty. Ltd.

Yours faithfully,  
GILCHRIST WATT & SANDERSON PTY. LTD.

(Signed)  
for Director

"G"

Letter Gilchrist  
Watt &  
Sanderson Pty.  
Limited to Frank  
Cridland Pty.  
Limited  
27th November  
1962.

"H"

ENTRY ON PAGE H OF KEY BOOK.

Exhibits

"H"

Entry on  
Page H of  
Key Book.

12	H. G	(2) c/s	30955/1 7/62/1.	5/6 Misc R/S.
55	HANIMEX.	2 c/s	(c/s DH)	
59	HANN - KOLB	5 c/s		100 w/s. 7/80 w/s.
63	H. S	11 c/s.		Remains - HS 1000. 30 w/s. 1/2 c/s.
		(1) CRATE		
73	H. B. A.	3 c/s	8053/1-3	1 R/S.
79	HODGSON / 3658	(2) c/s	1277/1-2.	60 Misc R/S.
95	H. K.	(1) LIFTVAN.	591	PAB c/s "2" with 1/2
97	HAZELL + MOORE	(1) c/s	SH64/1219	20 Misc w/s.
104	H.	(2) c/s	6/N 1-2.	60 Misc R/S.
110	HEICO	(1) CTN.	4672/1	8 Misc R/S
115	H + S 31769 CANBERRA.	11 c/s		20 w/s.
132	HANIMEX	17 c/s	(c/s DH)	OK D/H
140	H & SCH	(1) CTN.	704.	60
	H	23 PCLs.	10/123.	5/60 w/s. 70
158	H.B.	(1) c/s	1712.	
165	HANIMEX	(1) c/s	(c/s DH)	D/H.
166	" "	1 c/s	(c/s DH)	
167	H.F.D.	20 c/s	7	8 R/S. 2/30 w/s. 9 R/S.
		33 CTNS.		2/30 w/s
173	H. H.	(3) c/s	2151/1-3	5/60 Misc R/S.
177	HAWLEYS	(1) c/s	41613	Bris. Dec 6/7 R/S
185	HEALING	6 c/s.		8 R/S. M.H.S.
223	H. D.	(1) c/s.	1132.	
		(1) PCL.	1133 (DH)	D/H.
246	H.F.D. GEVAERT.	2 c/s	92444, 2036.	
301	H.F.L.	139 c/s.		8 w/s.
302	H.F.D.	(3) CTNS.	1/3	60
340	" "	4 BLS	2252/1-4	H/WALL @
343	HAWLEYS	(1) c/s.	41617	40 Misc R/S.
392	H.B. & Co. 2387	200 BAGS		2 w/s.
393	2372.	200 KEGS.		2 w/s.

MARITIME SERVICES BOARD CARGO HANDLING AND  
WHARF STORAGE REGULATIONS 13 AND 14.Maritime Services  
Board Cargo  
Handling and  
Wharf Storage  
Regulations  
13 & 14.

13. (1) The owner of goods which have been unshipped from a vessel on to any wharf shall remove or cause them to be removed therefrom within the following time, that is to say -

- 10 (a) in the case of objectionable goods, as prescribed in Regulation 4 of these Regulations;
- (b) in the case of any goods which are likely to become a nuisance, as prescribed in Regulation 5 of these Regulations;
- 20 (c) in the case of goods in respect of which the Board, or an officer or employee of the Board authorised in that behalf, has in writing required the owner to remove such goods under the provisions of Regulation 12 of these Regulations within three days after the date of such notification - excluding Sundays, and any public, bank and proclaimed local holiday;
- 30 (d) whenever the said wharf is in Rozelle Bay in the Port of Sydney and the goods consist of timber which has been brought by sea into that Port within three days after the goods have been sorted and stacked into their separate consignment (excluding any Saturday which falls within or immediately after the said three days, Sundays, and any public and proclaimed local holiday);
- 40 (e) in the case of all goods, other than those specified in sub-paragraphs (a), (b), (c) and (d) of this paragraph, within three days after the date on which the discharge of the cargo has been completed at the said wharf (excluding any Saturday which falls within or immediately after the said three days, Sundays, and any public, bank and proclaimed local holiday). Provided that if the Board or an officer of the Board authorised in that behalf, is unable to allocate any one wharf at which the

"I"  
Maritime Services  
Board Cargo  
Handling and  
Wharf Storage  
Regulations  
13 & 14.  
(continued)

owner of a vessel can disembark the passengers and the cargo, or the whole of the cargo from the vessel and/or causes the vessel to be berthed at more than one wharf for that purpose, the obligation prescribed by this subparagraph to remove goods from any wharf at which they are unshipped from that vessel shall begin to operate only within the said three days after the date on which the unshipping of the cargo has been completed at the last of the said wharves and with the same said excluded days. 10

(2) The owner of the vessel who has received goods on any wharf for shipment on a vessel shall remove or cause them to be removed therefrom within two days after having been placed thereon (excluding any Saturday which falls within or immediately after the said two days, Sundays, and any public, bank and proclaimed local holiday). 20

14. (1) Notwithstanding any other provision in these Regulations and subject to any other law operating in that behalf, if goods which have been unshipped on to or received on a wharf are not removed therefrom as or within the period prescribed by these Regulations, the Board may -

(a) without notice remove any such goods or cause the same to be removed from the location or site on which they were placed or stacked to any other place on such wharf as the Board may, in its absolute discretion, think fit and at the risk and expense of the owner of the goods, or the owner of the vessel, as the case may be; 30

(b) without notice remove any such goods or cause the same to be removed from the wharf premises to a bond or other store or to any other place as the Board may, in its absolute discretion, think fit and at the risk and expense of the owner of the goods, or the owner of the vessel, as the case may be. 40

All charges and expenses of whatsoever Exhibits  
description incurred by or payable to the "I"  
Board in connection with the removal, Maritime Services  
receiving, stacking, subsequent storage Board Cargo  
and delivery of any goods referred to in Handling and  
subparagraphs (a) and (b) of this Wharf Storage  
paragraph shall be paid by the owner of Regulations  
the goods, or the owner of the vessel, 13 & 14.  
as the case may be, and shall be payable (continued)  
10 immediately upon demand being made by  
the Board.

(c) in the Port of Sydney and in the Port of  
Newcastle, impose storage charges, which  
shall be paid for the use of the wharf -

(i) by the owner of the goods referred  
to in sub-paragraphs (c), (d) and (e)  
of paragraph (1) of Regulation 13  
of these Regulations, at the rate of  
20 three shillings per ton per day in  
respect of goods of whatsoever  
description unshipped from the vessel;

(ii) by the owner of the vessel referred  
to in paragraph (2) of Regulation 13  
of these Regulations, at the rate  
of two pence per ton per day in  
respect of goods of whatsoever  
description received by him for  
shipment upon the vessel;

30 provided that the storage charges  
prescribed by this sub-paragraph shall not  
apply to and in respect of timber  
discharged on to any wharf which is  
assigned by the Board for timber storing  
purposes;

(d) in all ports of the State, other than the  
Port of Sydney and the Port of Newcastle,  
impose storage charges, which shall be  
paid for the use of the wharf, by the  
owner of the goods referred to in sub-  
40 paragraph (e) of paragraph (1) or the  
owner of the vessel referred to in  
paragraph (2) of Regulation 13 of these  
Regulations, as the case may be, at the  
rate of -

Exhibits

121.

"I"  
Maritime Services  
Board Cargo  
Handling and  
Wharf Storage  
Regulations  
13 & 14.  
(continued)

two pence per ton per day for the first week;

three pence per ton per day for the second week;

four pence per ton per day for the third week;

six pence per ton per day for the fourth and subsequent weeks.

The storage charges referred to in sub-paragraphs (c) and (d) of this paragraph and which relate to goods received on a wharf for shipment upon a vessel shall, as regards goods actually loaded in such vessel from such wharf, cease as from the time when a commencement is made to load the cargo of which they form part from the wharf upon which they were received. 10

(2) In this Regulation -

(a) part of a day shall be reckoned as a day; 20

(b) part of a week shall be reckoned as a week;

(c) part of a ton shall be reckoned as a ton;

(d) (i) whenever but for this paragraph the charge payable in respect of goods situated in the Port of Sydney and in the Port of Newcastle for the use of the wharf would amount to less than three shillings the charge so payable shall be three shillings; 30

(ii) whenever but for this paragraph the charge payable in respect of goods situated in any port of the State other than the Port of Sydney and the Port of Newcastle for the use of the wharf would amount to less than one shilling the charge so payable shall be one shilling;

(e) whenever a charge at a rate per ton is

prescribed or directed to be paid, such charge -

Exhibits

"I"

(i) in respect of goods (other than timber) shall, in the absolute discretion of the Board, be calculated either on the basis of ton of 2,240 lb., or a ton of 40 cubic feet measurement;

Maritime Services  
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Regulations  
13 & 14.  
(continued)

10

(ii) in respect of all timber shall be calculated on the basis of 480 superficial feet representing one ton.

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(f) Sundays and public, bank and proclaimed local holidays and (except as regards goods referred to in paragraph (2) of Regulation 12 and sub-paragraph (c) of paragraph (1) of Regulation 13 of these Regulations) any Saturday which falls within or immediately after the prescribed period within which goods may remain on a wharf without the owner thereof being liable for the payment of storage charges, shall be excluded from the calculation of any storage charges which the owner of goods may have to pay under the provisions of this Regulation.

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IN THE PRIVY COUNCIL

No. 11 of 1969

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O N A P P E A L  
FROM THE COURT OF APPEAL OF THE SUPREME COURT  
OF NEW SOUTH WALES

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TERM NO. 634 of 1967

B E T W E E N:

GILCHRIST WATT AND SANDERSON PTY. LIMITED Appellants  
(Defendants)

- and -

YORK PRODUCTS PTY. LIMITED  
(Plaintiffs) Respondents

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R E C O R D O F P R O C E E D I N G S

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