

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Dapuzo v. Wyllie and others (the "Pieve Superiore"), from the High Court of Admiralty ; delivered 12th May, 1874.*

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Present :

SIR JAMES W. COLVILE.

SIR BARNES PEACOCK.

SIR MONTAGUE SMITH.

SIR ROBERT P. COLLIER.

THIS is an Appeal from an Order of the Judge of the High Court of Admiralty, rejecting a Petition on Protest to the jurisdiction of the Court, in a cause *in rem* instituted against the ship "Pieve Superiore," for damage to cargo under the 6th section of "The Admiralty Court Act, 1861."

The facts alleged in the Petition on Protest are : that the Appellant, the owner of the ship, lived in Genoa ; and that, on the 30th March, 1872, a charter-party was made in London between him and Mr. Schiller, on behalf of the house of Borradaile, Schiller and Co., merchants of Calcutta, by which it was agreed the ship should proceed to one of certain named ports in India, and there load a cargo of rice in bags, for which the master was to deliver bills of lading. The ship accordingly went to Rangoon, and was there loaded by Messrs. Gladstone, Wyllie, and Co., with a cargo of rice ; and in pursuance of the charter, the master signed bills of lading, describing the ship to be "bound for Belle Isle, Scilly, Queenstown, or Falmouth, for orders to discharge at a port in the United Kingdom, or on the Continent between Havre and Hamburg," and making the cargo deliverable to order, or assigns, on payment of freight at the rate of 3*l.* 15*s.* sterling per ton. It is further alleged that the ship went into the port of Falmouth, with her cargo, for

orders ; and whilst lying in that port, the master received orders to go to Bremen to discharge ; that she went there and discharged her cargo, and afterwards sailed to Cardiff on a new voyage, and was arrested in that port in the present suit.

The concluding paragraphs of the Petition are the following :—

“ The Plaintiffs allege themselves to be assignees, for valuable consideration, of the said bill of lading ; and allege that the said cargo of rice suffered damage in the said vessel ; and they have instituted this suit as such assignees for the recovery of losses which they allege themselves to have sustained by negligence or misconduct, or by breach of duty, or breach of contract, on the part of the master or crew of the said vessel.

“ Save as aforesaid, the said cargo of rice was never brought into any port in England or Wales.

“ The Defendants submit that the said cargo of rice was not carried into any port in England or Wales within the true intent and meaning of the 6th section of the Admiralty Court Act, 1861 ; and that by reason thereof this Honourable Court has not jurisdiction to entertain this suit.”

The Petition on Protest being filed before the Plaintiff's Petition setting forth the particulars of his damage, ought to state the facts which show want of jurisdiction. But this Petition does not allege whether the misconduct or breaches of contract complained of arose before or after the ship left the port of Falmouth. It is consistent with it that the causes of complaint, or some of them, arose before she left that port ; and their Lordships think it must be assumed that this may have been so in dealing with the question raised by the Protest. The only objection taken to the jurisdiction is “ that the said cargo of rice was not carried into any port in England or Wales within the true intent and meaning of the 6th section of ‘ The Admiralty Court Act, 1861.’ ”

The section is as follows .—

“ The High Court of Admiralty shall have jurisdiction over any claim by the owner or consignee, or assignee, of any bill of lading of any goods carried into any port in England or Wales in any ship, for damage done to the goods, or any part thereof, by the negligence or misconduct of, or for any breach of duty or breach of contract on the part of the owner, master, or crew of the ship, unless it is shown to the satisfaction of the Court, that at the time of the institution of the cause, any owner or part owner of the ship is domiciled in England or Wales.”

Their Lordships are satisfied that this enactment

does not confer a maritime lien, for the reasons given in the Judgment of this Committee upon the effect of the previous clause of the Act (the 5th) in the case of "The Two Ellens" (L. R., 4 P., C. 169). The clause in question does no more than give to the Court of Admiralty jurisdiction to entertain suits in cases that can be brought within its scope, and which, it is to be observed, may be instituted *in personam* as well as *in rem*.

The clause is undoubtedly framed in large and general terms, and Dr. Lushington, a Judge of high authority, in a judgment delivered soon after the passing of the Act, thought it was intentionally so framed. (The "Bahia," Br. and Lush., 61.)

It was insisted for the Appellant, and not denied by the Respondent's Counsel, that the words "carried into any port" must receive some limitation, otherwise, it was said, if a ship with cargo on board, being under no obligation to enter an English port, was driven to take refuge in such a port by stress of weather or other accident, the jurisdiction would be founded. The learned Counsel for the Appellant, however, felt great difficulty in defining what the limitation should be, but ultimately contended that to bring a claim within the clause, the goods must be carried into a port in England or Wales, for the purpose of delivery, or in which, from circumstances, they become deliverable. The latter branch was introduced with reference to some decisions which had upheld the jurisdiction, notwithstanding that the entry into an English port was not contemplated by the contract. But supposing the suggested definition to be correct so far as it goes, their Lordships are not prepared to hold that it contains an exhaustive interpretation of the clause.

Cases must frequently arise at ports of call and intermediate ports, giving occasion for the remedy it was intended to afford to English merchants against foreign shipowners, by proceedings in the English Court of Admiralty. Besides the instances where causes of action have arisen before the arrival of the ship at such ports, take the cases of damage done to goods, or of unjustifiable delay, in the port of call itself; or the case of a ship bound, without calling for orders, to go direct to London to discharge her cargo, and the master improperly putting into some

other English port, and refusing to take the cargo on. Instances of this kind would certainly be within the scope of the mischief intended to be dealt with ; and their Lordships are reluctant in construing the Act so to interpret words, large enough in their ordinary meaning to embrace such cases, as to exclude them from its operation, and thus leave foreign masters who may have broken their contracts free to take away their ships from this country in the sight of English consignees, who would be powerless, as they were before the Act, to stop them.

The Legislature has used the words "carried into any port in England or Wales," and may have done so designedly to meet cases of the kind to which reference has just been made. It has said nothing of delivery, nor of the purpose for which the goods may be carried into port. The general words of the clause "any claim . . . for any breach of contract on the part of the owner, &c. of the ship" must undoubtedly be construed to have relation to the contract in the bill of lading: and it may have been the intention of the Legislature to give the jurisdiction only in the case of claims arising on contracts to carry the cargo to some port in England or Wales. It is not, however, necessary to consider whether the operation of the Act ought to be limited to this extent, for if it were there would not be an absence of jurisdiction in the present suit. In this case the parties contemplated that the goods would, or at least might, be carried into and delivered in an English port, and the bill of lading signed by the master at Rangoon in pursuance of a charter party made in London, so provided. The master in fact put into the port of Falmouth for orders in part fulfilment of the contract of carriage, and might, in further fulfilment of it, have been ordered to discharge there, or at some other English port. Their Lordships think that under these circumstances the jurisdiction, at least in respect of then existing causes of suit, arose when the goods were so carried into the port of Falmouth, and was not taken away when the ship was subsequently ordered to a foreign port to be discharged.

If the jurisdiction of the Court of Admiralty over the claim once attached, that Court, in their

Lordships' opinion, would be competent at any subsequent time to entertain a suit either *in personam*, or *in rem* by arrest of the ship whenever it came within reach of its process. They therefore think, assuming the jurisdiction to have once attached, that it was competent to arrest the ship in this suit on her arrival upon a new voyage at Cardiff. The arrest, however, there being no maritime lien, could not avail against any valid charges on the ship, nor against a *bond fide* purchaser; for, as already stated, the object of the statute is only to found a jurisdiction against the owner who is liable for the damage, and to give the security of the ship, the *res*, from the time of the arrest. This is clearly explained by Dr. Lushington in the "Alexander" (1 W. Rob., 288-294), and the "Pacific" (Br. and Lush., 243), and by this Committee in the "Two Ellens."

The statute being remedial of a grievance, by amplifying the jurisdiction of the English Court of Admiralty, ought, according to the general rule applicable to such statutes, to be construed liberally, so as to afford the utmost relief which the fair meaning of its language will allow. And the decisions upon it have hitherto proceeded upon this principle of interpretation.

One of the earliest decisions (the "Bahia," *ubi ante*) gives the widest interpretation to the word "carried." In that case the cargo was consigned to Dunkirk. The ship, in consequence of an accident, put into the port of Ramsgate, and the master refused to carry on the cargo to Dunkirk or to give delivery at Ramsgate. It was there contended by the defendant's Counsel, but without success, that the words "carried into any port in England," meant so carried under a contract to that effect. In upholding the jurisdiction of the English Court of Admiralty, Dr. Lushington, after stating the facts, said:—"That this is a great grievance cannot be denied, and the Court ought to give, if necessary, great latitude to the construction of the Act of Parliament, in order to extend the remedy to this case. However, it appears to me that the section was carefully worded to give the utmost jurisdiction in the matter. It uses the words 'carried into any port in England or Wales,' and does not use the word 'imported.'

I apprehend the phrase 'carried into' was advisedly used instead of the word 'import.'" It does not appear that this decision was appealed from.

The present Judge of the Court of Admiralty, Sir R. Phillimore, adopted the view of Dr. Lushington in deciding the case of the "Patria" (L.R., 3 A. and E., 459). There, a German ship bound under a bill of lading to take a cargo of coffee to Hamburg, put into Falmouth shortly after the commencement of the French and German war—Hamburg was then blockaded. On the removal of the blockade the master refused to go on to Hamburg, or to deliver the cargo at Falmouth, and Sir R. Phillimore sustained the jurisdiction of the Court over claims arising on these breaches of contract; and again there was no appeal.

There was recently another important cause in the Court of Admiralty, also arising out of the war between Germany and France, which came before this tribunal on appeal (the "Teutonia," L. R., 4 P.C., 172). In that case, the "Teutonia," a German vessel, called at Falmouth, one of the ports of call under the bill of lading, for orders, and was ordered to Dunkirk to discharge. On nearing the French port she found that war was imminent, and put back to Dover. She was again directed to go to Dunkirk, but the master refused to go there, or to deliver the cargo at Dover without payment of freight. For this refusal a suit was brought against the ship in the English Court of Admiralty under the clause in question. It failed on the merits, but the previous decisions were, apparently, acquiesced in, for no objection was taken to the jurisdiction.

In the cases of the "Bahia" and the "Patria," the arrival at an English port was not contemplated by the contract, and the ships put into our ports by reason only of circumstances extrinsic to it; nor did they then enter them for the purpose of discharging their cargoes, which only in any sense became deliverable there by reason of the subsequent refusal of the master to take them on to the port of destination. Their Lordships, in pointing out the distinction between these cases and the present, must not be understood to question their authority. They are fully sensible of the difficulty of construing this loosely drawn clause, and giving a satisfactory interpretation of it. It

is sufficient for them to decide that under the circumstances of this case, to which they have above adverted, the objection taken *in limine* to the jurisdiction is not, upon the facts disclosed in the protest, sustained.

For these reasons their Lordships think the order of the Judge of the High Court of Admiralty is right, and they will humbly advise Her Majesty to affirm it, and to dismiss this Appeal with costs.

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