

Privy Council Appeal No. 118 of 1919.

The Trinidad Shipping and Trading Company, Limited - - *Appellants*

v.

Geo. R. Alston and Company - - - - *Respondents*

FROM

THE SUPREME COURT OF TRINIDAD AND TOBAGO.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 14TH MAY, 1920.

Present at the Hearing :

VISCOUNT HALDANE.

LORD MOULTON.

LORD PARMOOR.

[Delivered by LORD PARMOOR.]

This is an appeal against an order of the Supreme Court of Trinidad and Tobago setting aside the judgment delivered by the Trial Judge, Mr. Justice Russell. The action was brought to recover the sum of £159 0s. 6d., claimed to be due as a rebate on freights paid for the carriage of cocoa and cocoanuts from Trinidad to New York. The facts are not in dispute, and may be shortly stated.

The respondents are general merchants, carrying on business at the Port of Spain, Trinidad. The appellants are ship-owners incorporated in the United Kingdom, with their head office in London, and with branch offices at Port of Spain, Trinidad, and New York, U.S.A. They are Members of a Shipping Conference, in which certain ship-owning companies have mutual arrangements for fixing uniform freight tariffs. These Companies, prior to the 30th October, 1917, allowed rebates on freight to traders.

conditional on their shipping exclusively by steamers belonging to members of the Conference. The tariff in force at all material dates was headed :—

“ Freight Tariff Trinidad to New York.

“ Effective 26th February, 1916,”

and after a number of rates for various merchandise it continues :—

“ The rate on cocoa is subject to deferred rebates to Conference Shippers of 10 per cent. and 5 per cent. on the net freight paid. The rate on cocoanuts is subject to a deferred rebate of 25 per cent. to Conference Shippers payable on the 30th June and the 31st December in each year on the nett freight paid on shipments made during the previous periods of six months ending the 31st December, and the 30th June, respectively.”

In the present instance the rebates claimed come within the terms stated in the general notice. The respondents have complied with the condition of exclusive shipment in steamers belonging to members of the Conference; their goods were shipped in a steamer of the appellants and duly carried to New York; and they have paid freight thereon due under the terms of the bill of lading, thus fulfilling all the conditions which, under British Law, would entitle them to claim the sum of £159 0s. 6d. It was argued on behalf of the appellants that the rebates formed part of a continuing contract between the parties, but in the opinion of their Lordships, there is no ground for this contention. Each consignment was carried on a separate contract, and it is a matter of business convenience that the amount due as rebate was paid half-yearly on shipments made during the previous period of six months. The said tariff remained in force without any alteration until the 30th October, 1917, when the appellants gave notice to discontinue the payment of rebates on the ground that they had been rendered illegal, as regards shipments to New York, under the provisions of an Act of Congress of the U.S.A., which was approved, and had come into operation more than a year previously, on the 7th September, 1916.

The contracts under which the rebates are claimed, are contracts between British Subjects, made in British Territory, and therefore to be governed by British Law. It is clear that the *lex loci contractus* was British, and that no such question arises as in the case of *in re Missouri Steamship Company*, 42, C.D., 321. By British Law there is no illegality in a rebate agreement such as was made between the appellants and respondents. The contracts have not been frustrated or rendered impossible of performance; on the contrary the goods have been landed at New York, the freights in respect thereof have been paid, and all conditions have been fulfilled which, apart from any special defence founded on the Act of Congress, would entitle the respondents to claim payment.

The case of the appellants is based on the allegation that the payment of the rebates would render them liable to heavy penalties, under the Act of Congress approved and brought into operation on the 7th September, 1916. It was argued on behalf of the respondents that this Act had no application to the contracts in question, but in the opinion of their Lordships it is not necessary to give

any opinion on the construction of the Act of Congress, or to decide whether or not the appellants have rendered themselves liable to penalties. If the respondents are right in this contention, it is clear that the appellants would be liable, but the same result would follow, though the appellants had rendered themselves liable to a penalty, uncertain in amount, but of which the maximum is \$25,000. It may be that the appellants might have declined to ship the goods on the ground that the allowance of a rebate might render them liable to penalties under the Laws of the U.S.A. It is not necessary to express any opinion on this point. The appellants did not decline to ship the goods. It is said that when the liability for rebate was incurred, neither party was aware of the change in the Law of the U.S.A. The truth is that the appellants have had the advantage of the contracts of carriage; have been paid freights due in respect thereof under the various bills of lading, and are now refusing to fulfil the collateral contract for a rebate allowance on the faith of which the respondents consigned their goods by the appellants for carriage to New York. In the opinion of their Lordships, whatever may be the true construction of the Act of Congress, such refusal cannot be supported. Their Lordships concur in the judgment of the Supreme Court of Trinidad and Tobago, and will humbly advise His Majesty that the appeal should be dismissed with costs.

In the Privy Council.

THE TRINIDAD SHIPPING AND TRADING
COMPANY, LIMITED

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GEO. R. ALSTON AND COMPANY.

DELIVERED BY LORD PARMOOR.

Printed by Harrison & Sons, St. Martin's Lane, W.C.
1920.