

ON APPEAL
FROM THE SUPREME COURT OF MAURITIUS

BETWEEN :

THE CENTRAL ELECTRICITY BOARD (Defendants)
Appellants

- and -

1. BATA SHOE COMPANY (MAURITIUS) LIMITED
2. EAST AFRICA BATA SHOE COMPANY LIMITED (Plaintiffs)
(MAURITIUS DEPARTMENT) Respondents

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CASE FOR 1. BATA SHOE COMPANY (MAURITIUS) LIMITED
and 2. EAST AFRICA BATA SHOE COMPANY LIMITED
(MAURITIUS DEPARTMENT) RESPONDENTS

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1. This is an appeal by the Defendants from a judgment of the Supreme Court of Mauritius (Sir Maurice Rault, Kt., Chief Justice, and P. de Ravel, Judge) dated the 12th June 1978 whereby the Appellant was held liable towards the Respondents in the sums of Rs.860,000.00. for the First Plaintiff and Rs. 1,035,000.00. for the second Plaintiff, being damages sustained by the Respondents, with costs.

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2. The circumstances under which these appeals are presented are shortly as follows :-

3. The Respondents, hereafter referred to as Bata, were at all material times the occupiers of a building situate at Plaine Lauzun, Port Louis, Mauritius, which they used as store and warehouse.

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4. The Appellant, hereafter referred to as C.E.B. was at all material times responsible for the control and development of electricity supply generally in Mauritius.

5. A Henley fused service unit had been installed by the C.E.B. in one room of the premises occupied by

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Bata (referred to in the judgment and hereafter as Henley II) and connections were provisionally made therefrom by C.E.B. to supply electricity to adjacent factories. Bata did not receive any supply of electricity from Henley II.

6. On the 6th July 1972 a fire broke out on the said premises causing considerable damage to the goods of Bata.

7. On the 7th day of June 1974 Bata issued a statement of Claim wherein it was alleged (paragraphs 1 and 2) that Bata were prior to and on the 6th July 1972 the occupiers of an immoveable property composed of several rooms which they used as a store and warehouse; (paragraph 3) that the C.E.B. was in charge of the control of electricity supply in Mauritius; (paragraph 4) that C.E.B. had in or about April 1972 caused to be connected a Henley fused service unit and all the electric cables and installations relating thereto in one of the rooms of the said premises to take a provisional service to three of its consumers in adjacent factories; (paragraph 5) that C.E.B. had at all material times the custody of the said Henley fused service unit and of all the electric cables and installations relating thereto; (paragraph 6) that on the 6th July 1972 a fire broke out in the room where was installed the Henley fused service unit; (paragraph 7) that the fire broke out through the negligence (faute) of the C.E.B. or of its "préposés", the particulars of the negligence being that the C.E.B.

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a. allowed loads to be imposed in excess of the design capacity of the Henley fuse box and/or failed to ensure that the equipment was of adequate capacity for its intended purpose.

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b. made the temporary connections to the Henley fuse box omitting to install and protect them in the proper fashion including failing to provide "bushes" on the outlet from the Henley fuse box.

c. employed fuse wire in excess of the design capacity of the fuse box.

d. failed to investigate the causes of and remedy all or any such defects despite repeated evidence, through faulting and over-heating, of such defects.

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(paragraph 8) that alternatively the fire was caused by the "fait de la chose", namely the Henley fused service unit and all the electric cables and installations relating thereto which were in the custody of the C.E.B.; (paragraph 9) that as a result of the fire

Bata's goods had been destroyed and Bata claimed damages valued at Rs. 890,996.52 and Rs. 1,153,120.88 from C.E.B. together with interest and costs; (paragraph 11) that C.E.B. was also liable to indemnify Bata in respect of any claim against them specially by their landlord arising out of the fire.

8. Particulars of the Statement of Claim were prayed for by C.E.B. and supplied by Bata on the 1st day of August 1975.

10 9. On the 17th day of February 1976 C.E.B. delivered a Statement of Defence (Paragraph 1) admitting paragraphs 1, 2 and 3 of the Statement of Claim; (paragraph 2) denying paragraph 4; alleging that the Henley fused service unit had been installed in 1968 in the room in question to supply energy to occupiers of the said room but was never used by them and admitting that in March 1972 electric cables were connected to the Henley fused service unit to give temporary supply of energy to consumers in adjacent factories; (paragraph 20 3) denying the averments of paragraphs 5 to 8 of the Statement of Claim and averring that it was Bata who had the custody of the Henley fused service unit as well as all the electric cables and installations referred to in the Statement of Claim; (paragraph 5) denying that C.E.B. or any of its "préposés" committed any negligence (faute); and moving that Bata's action be dismissed with costs.

30 10. On the 4th day of March 1976 Bata delivered a reply joining issue and on the same day notice of trial was given.

40 11. On the 14th February 1978 the action came on for trial before Sir Maurice Rault, Kt., Chief Justice, and P. de Ravel, Judge, and went on almost from day to day until the 15th day of March 1978. Oral evidence was adduced on the facts of the case, experts were heard concerning the technical aspects of the case and numerous documents and exhibits were produced. The case was then fully argued on each side. During the course of the case both parties agreed as to quantum, namely to the effect that, should the Court find C.E.B. liable, the amounts payable to Bata would be Rs. 860,000.00. and Rs. 1,035,000.00. respectively

12. The facts, as attempted to be proved by Bata through their witnesses of fact, their expert witnesses, the cross examination of the C.E.B. witnesses and the documents and exhibits produced, may be shortly stated as follows :-

- (a) Bata were the occupiers of premises rented from Development Bank of Mauritius. They used part

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thereof as a store of raw materials (the store) and the other part as a finished goods department (the department). The store and the department had no inside communication. Electric current was supplied to the department from a Henley fused service (Henley I) situated in a small room of the said premises and there was no electric current supplied to the store. Another Henley fused service unit was situated in another room in the store (Henley II) but remained out of use until April 1972.

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- (b) In March, April and May 1972 the C.E.B. obtained access to Henley II, installed and connected electric cables therefrom along the walls inside the store and out into the Court yard by means of an overhead cable, to give a temporary supply of energy to three consumers inside a neighbouring building.
- (c) From the very start the whole C.E.B. provisional installation was not safe, and from then on there was a history of faults and breakdowns involving Henley II after its connection. 20
- (d) When the third additional connection was made, breakdowns became alarmingly repeated, and instead of looking for the real cause of such breakdowns the C.E.B. employees contented themselves with making casual and most unsatisfactory repairs.
- (e) Again on the 5th July and on the 6th July 1972 such repairs were made. The repairs of the 6th July were made in the morning at about 9.10 a.m.
- (f) The same morning, the storekeeper (witness Dauharry) removed materials from the store and at about 11.30 a.m. closed the store. From then on no-one entered the store. 30
- (g) At 1.15 p.m. on the 6th July 1972 a fire broke out in the store, starting in the room where Henley II was situated, spread to the department and caused damage to the goods and buildings of Bata.
- (h) The fire could not have been caused by spontaneous ignition, negligence or imprudence of Bata's employees or a deliberate criminal act or any other reason, but was clearly caused by electrical faults connected with Henley II and those faults were clearly the result of negligence of the C.E.B. employees. 40
- (i) The C.E.B. had the custody of Henley II and fire was caused by electric faults connected with Henley II.

13. The version of the C.E.B., as attempted to be proved by their witnesses of fact, their expert witnesses, the cross examination of Bata witnesses and documents and exhibits, may be shortly stated as follows:

- 10 (A) The installation of Henley II as from the start was not dangerous and could not have been the cause of the fire.
- (B) The faults and breakdowns were normal faults and breakdowns which were remedied in the best possible way.
- (C) There was never anything done in connection with Henley II which could be in any way dangerous.
- (D) Technically there was nothing in Henley II, the surrounding electrical installations or the repairs thereto which could have caused fire to ignite.
- (E) There was a high possibility that Bata employee Dauharry set fire to the building to cover his acts of embezzlement.
- 20 (F) The fire could have ignited through negligence of Bata employees or through any other cause.

14. In a long and reasoned judgment dated 12th June 1978, the Chief Justice and de Ravel, Judge having heard and observed the demeanour of the witnesses to fact called by Bata and C.E.B. found that

- 30 (a) Bosquet,
Lowtun,
Goder,
Bigaignon,
Bathfield,
Huggett,
Georgett,
Monty and
Henry
were honest and accurate witnesses.
- (b) the evidence of witnesses
- 40 Hiss,
Mamdally,
Dauharry,
Jean,
Juste,
Mungroo,
Jupin and
Nahaboo

formed an intricate jungle of half truths, part remembered

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facts and downright inventions in varying proportions, and that such evidence had to be carefully sifted.

- (c) the evidence of
Moosaheb and
Chung Choi
was thoroughly unreliable.
- (d) witness
Rosalba
was truthful.
- (e) That whereas the Bata employees tended to exaggerate the electrical faults in and around Henley II, the C.E.B. employees strove hard to minimise those faults, but on the whole the "global" version given by the Bata witnesses was a more probable version than that provided by the C.E.B. witnesses. 10
- (f) That all expert witnesses were men of integrity but that expert opinion founded on a doubtful testimony must be discarded. This consideration particularly affected the evidence of the experts called by C.E.B. 20
- (g) That Bata used two independent units in the same building :
- a department and a store which did not communicate with each other. Men worked in the department, but no-one worked in the store whose keys were kept with witness Dauharry.
- Electric current was supplied to the department from one Henley fuse box (Henley I), situated in one of the rooms, there being no electric supply to the store. Another fuse box (Henley II) was in another room of the store and was not supplying electric current until 1972. 30
- (h) That in March, April and May respectively three new consumers (Southern Cross, Imprimerie Ideale, Textile Industries) were supplied with electric current by the C.E.B. which set up a temporary installation running from Henley II. The connection to Textile Industries was made via a tributary line run from Imprimerie Ideale.
- (i) That on the 6th July 1972, while the store was unoccupied, fire broke out therein and spread to the department causing extensive damage to the goods of Bata and to the building. 40

(j) That the fire started in the room where the Henley II fuse was situated.

(k) That five possible causes of the fire had to be considered:

1. Spontaneous ignition of the materials in the store;
2. Some negligence or imprudence on the part of Bata's employees or others, resulting in the fire;
- 10 3. A deliberate criminal act;
4. An electrical fault arising in Henley II or the electrical installation connected to it;
5. Some other unknown cause which has remained completely unsuspected.

(l) As to 1 above, that spontaneous ignition could safely be discarded.

(m) As to 2 above, that negligence or imprudence of Bata's employees could also be discarded.

20 (n) As to 3 above, that a deliberate criminal act was ruled out (The learned judges went very deeply into this question as C.E.B. had placed great weight in their cross examination and in their arguments on this possibility. The evidence of Dauharry was scrutinised by the Learned Judges who gave detailed reasons why this possible cause of fire should be rejected).

30 (o) As to 4 above, that everything pointed to the clear indication that the fire was caused by electrical faults connected with Henley II which were the result of negligence of C.E.B.'s servants.

The Learned Judges analysed fully the whole set up of the installation, which they said was marked by crude workmanship from the start, and that all through, till the day of the fire, the C.E.B., instead of looking for the cause of the repeated breakdowns, were content merely to deal with the symptoms.

40 After analysing the history of the breakdowns from the time Henley II started to be used till the day of the fire, and after going through the technical submissions of the experts on each side, and giving due weight to experiments carried out - although bearing in mind that such experiments could not be conclusive - the Learned Judges reached the irresistible conclusion that the fire

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was caused by the faulty electrical installation.

- (p) That three additional significant clues towards reaching this conclusion were:
- (i) The way part of the lid was burnt, showing uncontrolled arc cutting within the box before the lid blew off; and
 - (ii) the position of the lid of Henley II after the accident, indicating that it was blown away from the box, which showed an explosion within the box, and
 - (iii) One of the pins intended to retain the lid in position had snapped, this being a further indication of an explosion within the box.
- (q) As to 5 above, that, having been able to ascertain a definite cause of fire, the need did not arise of considering the fifth possibility of fire i.e. unknown cause.
- (r) That Bata had established
- 1 That there was a "faute" committed by the C.E.B.
 - 2. That as a direct consequence of this "faute" damage was caused to Bata;
 - 3. That the C.E.B. was bound to compensate Bata for the damage caused.
- (s) That the point raised by the C.E.B., namely that the particulars of the "faute" as given in the Statement of Claim and in the particulars or part thereof did not, in view of the evidence establish any "faute", was not sustainable.
- (t) That having reached the conclusion that the "faute" of the C.E.B. had been proved, there was no need to decide the question of liability of the C.E.B. based on the custody of Henley II and damage caused by "un fait de la chose".
- (u) That parties having agreed as to the quantum C.E.B. were ordered to pay to Bata Rs. 860,000.00. and Rs. 1,035,000.00. respectively with costs, the Court making no order as to interest.

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15. C.E.B. on the 26th June 1978 made a motion to the Supreme Court of Mauritius for leave to appeal from the said judgment of the 12th June 1978 to Her Majesty in Council and on the 14th July 1978 an order was made by the Supreme Court giving final leave to appeal

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on the usual terms which have been complied with.

16. On the 3rd July 1978, Bata made a motion to the Supreme Court of Mauritius to the effect that should the Honourable Court grant the C.E.B. leave to appeal the Court should :

- (i) make an order allowing interest on the sums awarded from the date of judgment of the Supreme Court to the date of judgment of the Privy Council in case the decision of the Supreme Court be maintained;
- 10 (ii) In the alternative reserve for determination of the Privy Council, in case the judgment of the Supreme Court were maintained, the decision as to whether interest should be paid from the date of judgment of the Supreme Court to date of judgment of the Privy Council.

and on the 14th day of July 1978 the Court gave a ruling on that question stating:-

20 "It is not our province to make any order which is in the nature of a directive to the Judicial Committee. Whether or not the Respondents are entitled to apply to the Committee for an order relating to the payment of interest and, having so applied, are entitled to the relief prayed for is a matter to be determined by the Committee and not by us".

17. Bata humbly submit that the said judgment of the 12th June 1978 ought to be maintained for the following among other reasons :

- 30 (1) The bulk of the evidence was overwhelmingly in favour of Bata's version and against the case of the C.E.B.
- (2) The Learned Judges having heard the witnesses and seen their demeanour in Court were the best possible Judges as to their credibility and reliability.
- (3) The findings of the Learned Judges amount in all respects to normal and reasonable conclusions and inferences to be drawn from the evidence accepted by them and the documents and exhibits produced.

40 18. Bata further humbly pray that Her Majesty In Council should be pleased to allow interest on the sums awarded from the date of judgment of the Supreme Court to the date of judgment of the Privy Council in

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case the decision of the Supreme Court be maintained.

MICHAEL TURNER

O N A P P E A L

FROM THE SUPREME COURT OF MAURITIUS

B E T W E E N:

THE CENTRAL ELECTRICITY BOARD (Defendants)
Appellants

- and -

1. BATA SHOE COMPANY (MAURITIUS) LIMITED
2. EAST AFRICA BATA SHOE COMPANY LIMITED
(MAURITIUS DEPARTMENT) (Plaintiffs)
Respondents

CASE FOR 1. BATA SHOE COMPANY (MAURITIUS)
LIMITED
and 2. EAST AFRICA BATA SHOE COMPANY
LIMITED (MAURITIUS DEPARTMENT)
RESPONDENTS

BARLOW LYDE & GILBERT
Drake House,
3/5 Dowgate Hill,
London, EC4R 2SJ

Solicitors for the Respondents
