

1954

BRITISH COLUMBIA ADMIRALTY DISTRICT

June 26

BETWEEN:

June 30

DAVID McNAIR & CO. LTD. PLAINTIFF;

AND

THE SHIP TRADE WIND DEFENDANT.

Shipping—Damage to cargo—Measure of damages.

Held: That the measure of damages recoverable for damage to cargo is the difference between the sound wholesale market value of the shipment and the damaged wholesale market value at the date and place of the breach.

ACTION for damage to cargo.

The action was tried before the Honourable Mr. Justice Sidney Smith, Deputy Judge in Admiralty for the British Columbia Admiralty District, at Vancouver.

C. C. I. Merritt for plaintiff.

Vernon R. Hill and *John R. Cunningham* for defendant.

The facts and questions of law raised are stated in the reasons for judgment.

SIDNEY SMITH D. J. A. now (June 30, 1954) delivered the following judgment:

This is a case of damage to cargo. The defendant admits liability. The only question for determination is as to the measure of damages. The cargo consisted of a shipment of 57,500 bundles of Mandarin oranges loaded on board the defendant ship in Japan, and destined as to 40,000 bundles to Vancouver, and 17,500 to Victoria. The shipment was delivered in a seriously damaged condition.

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Mr. Hill for the defendant, with his usual frankness, admitted that the plaintiffs were the holders in due course of the bills of lading covering the shipment, that they were at all material times the owners of the shipment, that they had taken all reasonable steps to mitigate the loss consequent on the breach of the bill of lading contract, and that such steps did in fact "minimize and restrict the damage to the said shipment". These admissions go far to simplify the sole issue before me. The only evidence given was that of Mr. McNair, President and Manager of the plaintiff company.

The defendant's case was that the damages should be based on the principle of indemnity; that the plaintiffs were entitled to a complete indemnity but to nothing beyond that. The argument was not put quite in such form, but this seemed to be the effect of defendant's submissions. They were based on an examination of plaintiff's books and documents. The plaintiffs, on the other hand, say that the true measure of the damages recoverable by them is the difference between the sound, wholesale, market value of the shipment, and the damaged, wholesale, market value at the date and place of the breach; and moreover that any further dealings they may have had with the shipment are irrelevant to the matter of quantum of damages; *a fortiori* since such dealings met with defendant's approval.

That this is the correct view seems to be established by the authorities to which reference was made. I think the one nearest the present case is *William Brothers v. Agius, Limited* (1), where the Lords again stamp their approval on *Rodocanachi v. Milburn* (2), which holds that in a situation such as we have here "the market value of the goods was the value in the market, independently of any circumstance peculiar to the plaintiff (the buyer)".

(1) [1914] A.C. 510.

(2) (1887) 18 Q.B.D. 67.

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It may be useful to refer to two passages from the *Williams* case, one from the speech of Lord Haldane, at p. 520:

In that case it was held that in estimating the damages for non-delivery of goods under a contract the market value at the date of the breach was the decisive element. In the judgment delivered by Lord Esher he laid down that the law does not take into account in estimating the damages anything that is accidental as between the plaintiff and the defendant, as for instance a contract entered into by the plaintiff with a third party. He said that if the plaintiff had sold the goods before the breach for more than the market price at that date he could not recover on that footing, and that it would therefore be unjust if the market price did not govern when he had sold for less;

and the other from that of Lord Moulton, at p. 530:

If these were the only facts of the case the contention of the respondents would be precisely that view of the damages in the case of an article purchasable in the market which was negatived by the decision in *Rodocanachi v. Milburn*—18 Q.B.D. 67. That case rests on the sound ground that it is immaterial what the buyer is intending to do with the purchased goods. He is entitled to recover the expense of putting himself into the position of having these goods, and this he can do by going into the market and purchasing them at the market price. To do so he must pay a sum which is larger than that which he would have had to pay under the contract by the difference between the two prices. This difference is, therefore, the true measure of his loss from the breach, for it is that which it will cost him to put himself in the same position as if the contract had been fulfilled.

I accordingly hold with the plaintiff's view. Apart from the principle involved, there would seem to be only a few differences on minor items between the parties. It may well be that they can agree on these, but if not, the learned Registrar will assess the damages.

Judgment accordingly.
