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Sept. 3.

Appeal Suit No. 122.

THE PENINSULA AND ORIENTAL STEAM NAVIGATION COMPANY .....*Appellants.*

SOMA'JI VISHRA'M .....*Respondent.*

Bill of Lading—Insufficiency of Package—Negligence—Onus *of Proof.*

The defendants, by a condition annexed to their bill of lading, stipulated that they should not be responsible for "leakage or breakage or other consequences arising from the insufficiency of the address or package."

The plaintiff shipped, for conveyance from Hongkong to Bombay, certain goods on board a steamer of the defendants, in packages which were proved to be insufficient.

These goods, in accordance with a condition to that effect contained in the bill of lading, were transhipped at Galle.

On their being landed in Bombay it was found that all the packages were broken, and in a much more damaged condition than is usual in the case of such goods carried from Hongkong to Bombay in similar packages. The contents had, to a large extent, escaped from the packages, but were otherwise uninjured.

Held that, under a bill of lading in the above form, the *onus* of proving that the packages were insufficient, and that the injury which they had sustained was the consequence of such insufficiency, lay upon the defendants, but that when the result of the evidence on both sides was to leave it in doubt whether the injury was caused by negligence, or was the consequence of the insufficiency of the packages, the plaintiff was not entitled to recover.

THIS was an appeal from the judgment of SARGENT, J., delivered in a Division Court on the 16th of September 1867, in Suit No. 720 of 1867.

The plaint stated that the plaintiff shipped at Hongkong, on the 28th of February 1866, on board the steam-ship "Behar," of the defendants, seventy-five chests of aniseed and five boxes of vermilion; that the said goods were transhipped at Galle by the defendants from the "Behar" to the steamer "Baroda;" that on the arrival of the "Baroda" in Bombay the plaintiff caused application to be made to the defendants for the said goods, and it was then found that, with the exception of three boxes of vermilion, all the chests and boxes were broken, and the contents had been removed

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therefrom in part, and such portion as remained was unmarketable.

The plaintiff claimed as damages Rs. 5,750. The facts in this case were similar to those in the case of *Mâṇikji N. Pádshá* v. *The P. & O. S. N. Co.* (a), the claim having arisen in respect of a portion of the cargo of the same vessel. The defence set up was also the same. The defendants relied upon a condition in their bill of lading, which declared "the company not to be responsible for leakage or breakage, or other consequences arising from the insufficiency of package." They also relied upon a stipulation in their bill of lading which gave them liberty, "at any time during the voyage, to tranship the goods into any other steamer of the defendants, and for that purpose to land and store the same at the company's expense, but at the merchant's risk."

In the margin of the bill of lading the following clauses appeared:—

"This bill of lading is issued at a lower freight, the shippers taking risks upon themselves.

"*N. B.*—Forms of bills of lading by which, in consideration of an *ad valorem* freight, risks are taken by the company, are also issued. It is at the option of the shippers which form they adopt."

The aniseed was packed in chests which usually contained about one "picul," or 133⅓ lbs. Some were somewhat heavier. One contained as much as 160 lbs. The planking of these chests was of China pine, a soft white wood, three-eighths of an inch in thickness. They were described as similar to tea-boxes of the largest size, but the exact dimensions were not given in evidence. They were covered with China matting, inside of which were bands of split rattan. These packages were said to be exceptionally bad, even for China packages.

The vermilion was contained in boxes fourteen inches long, eight inches broad, and six inches deep. The planking was half an inch in thickness, of China pine. These

(a) 4 Bom. H. C. Rep., O.C.J. 169.

boxes were also covered with matting, and weighed each about fifty-six pounds.

On the arrival of the "Behar" at Galle, the goods were transhipped into the "Baroda," and this latter vessel arrived in Bombay Harbour on the 4th of April 1866. The goods were landed by the defendants on the Custom House Bandar.

When the plaintiff applied for them, it appeared that all the aniseed boxes were broken, and the contents had largely escaped. They were in a much worse condition than that in which China packages usually arrive. The woodwork was smashed, so as to have lost its original shape—the boxes looked, one witness said, more like bags than boxes. The matting also was in some places torn. The aniseed itself, which had escaped from the boxes, was not injured, but the witnesses were unable to say whether or not any portion of it had been lost. It appeared, however, that loose aniseed is sold at a less price than that which arrives in unbroken packages. It appeared also from the evidence that about thirty per cent. of China packages usually arrive in a damaged condition.

Of the vermilion boxes three arrived uninjured, and the remaining two, though slightly damaged, were merchantable, and such as a consignee would be bound to accept.

No evidence of express negligence on the part of the defendants was given.

The issues raised were—

I. Whether the goods were insufficiently packed.

II. Whether the damage was the result of such insufficient packing.

III. Whether the damage occurred during the transhipment.

IV. If so, whether the company were liable for such damage, assuming that the goods were sufficiently packed.

The learned Judge held that the packages were insufficient, and that no custom to treat them as sufficient had been established.

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On the second issue, he delivered the following judgment:—"It is not sufficient that the goods should be shown to have been insufficiently packed; the company must give reasonable proof that the damage resulted from such insufficient packing. In the case before the court of appeal, the Chief Justice is reported to have said: 'The evidence which was given of the state in which the goods were, leads to the conclusion that insufficiency of packing was the cause of the injury.' As there is no reference in the judgment of either of the members of the Court to the particular state in which the goods arrived, the conclusion at which the Court arrived can only be a very imperfect guide to me in deciding this issue.

"The fair rule, in cases of this kind, to apply would seem to be this. If the damage to the goods is of the same description and degree as the experience of practical men shows not uncommonly happens to China goods, it is a fair and reasonable conclusion that the damage was the result of insufficiency of packing; but if the goods arrive in a very exceptional state—a state arguing that the goods have been subjected to more than ordinary strain and pressure, then the company ought to give additional evidence, explaining how the damage occurred, and to rebut the presumption that arises that ordinary care has not been employed by the company's servants. The owner of the goods has no means of knowing the circumstances of the case, and if the mere fact that the packages are broken is to be taken as sufficient proof that the damage arose from insufficiency of package, it is clear that the shippers of goods are completely at the mercy of the company.

"It appears from the evidence of all the witnesses, whether of the plaintiff or the defendants, that the aniseed boxes were very badly broken—smashed in so as to lose all appearance of boxes, and look like bags; and there is no evidence to show that it is a common occurrence for China cases to arrive in that state; and, although the risk is doubtless increased by transhipment, there is not a tittle of evidence to show that in cases of transhipment the cargo sustains

similar damage to the present. It is clear that both Captain Dixon and Mr. Gordon considered the state of the cargo quite exceptional.

"Here, then, we have an exceptional state of cargo, pointing quite as much to want of ordinary care on the part of the company, as to insufficiency of packing; and, that being so, the company were bound to remove the suspicion by additional evidence. This they have not done; nor have they, in my opinion, satisfactorily proved that the damage done to the cases of aniseed was the result of insufficient packing, and consequently they have not relieved themselves from their Common Law liability. With respect, however, to the boxes of vermilion, the case is different. It is clear that these sustained but little damage, and such as they did sustain is fairly attributable to insufficiency of packing. The second issue must, therefore, be determined in favour of the plaintiff as regards the aniseed, and for the defendants' company as regards the vermilion.

"It is unnecessary to decide the third and fourth issues."

The Appeal was argued before COUCH, C.J., and WESTROPP, J., on the 24th and 25th of July.

Marriott and *Branson* (with them *McCulloch*), for the appellants:—The only question here is as to the *onus* of proof. The facts are the same as in *The P. and O. S. N. Co.* v. *M. N. Pádshá*, except that here the boxes were rather more broken. The Judge has found that the boxes were insufficient; and we have accounted for the exceptional state in which they arrived, by the fact of their having been transhipped at Galle. We showed, too, that ordinary care was taken. [COUCH, C.J.:—Can we say, on the evidence before us, that the damage to *all* the boxes of aniseed arose from the insufficiency of packing?] Under our form of bill of lading, as soon as it is proved that the packages are insufficient, the *onus* of showing want of care is on the plaintiff: *Czech* v. The *Gen. Steam Nav. Co.* (*b*); though if negligence be proved, such a clause affords no defence: *Phillips* v.

(*b*) Law Rep., 3 C. P. 14.

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Clark (*c*). The *extent* of damage merely does not entitle the plaintiff to recover, nor is it proof of negligence. In *Ohrloff* v. *Briscall* (*d*) the words in the bill of lading were "not accountable for leakage," and it was held that this clause protected the shipowners, even though all the oil escaped. Lord Justice *Turner* there said:—"The condition that the shipowners are not to be accountable for leakages does not, in its ordinary and grammatical sense, put any limit on the quantity of leakage; and on principle, therefore, we do not think it would be justifiable to add any such limit to its terms. Nor are we aware of any authority for doing so. It follows that, in our judgment, the memorandum in the bill of lading protects the shipowner as to all leakage except that caused by negligence, and, therefore, if no negligence is shown, there is no cause of action." Putting the construction most favorable to the other side upon the evidence, it shows a state of facts equally consistent with negligence or the contrary, and so comes within the rule laid down in *Cotton* v. *Wood* (*e*), and approved of in *Briggs* v. *Oliver* (*f*). [COUCH, C.J.:—You say the case may be put thus:—According to law, if the case comes within the exception in the bill of lading, negligence must be shown. And if the facts proved are equally consistent with negligence or its opposite, negligence has not been proved.]

Pigot and *White*, for the respondent:—From the character and nature of the damage, a jury may draw the inference that such damage was occasioned by negligence. That was done in the case of *Czech* v. *The Gen. Steam Nav. Co.*, and that is what the Judge below has done in this case. The maxim "*res ipsa loquitur*" applies. *All* the cases here were crushed "so as to look like bags," as one witness described their state. Under such circumstances unexplained any reasonable man would be justified in drawing the conclusion that the damage was caused by negligence, remembering that similar packages usually come safely—only about twenty-five

(*c*) 26 L. J., C. P. 168.
(*d*) Law Rep., 1, P. C. App. 231.
(*e*) 29 L. J., C. P. 333.
(*f*) 35 L. J. Exch. 163.

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or thirty per cent. being injured. All the authorities on this question are collected in *Czech* v. *The Gen. Steam Nav. Co.* It is only necessary to instance *Hamnack* v. *White* (*g*), *Byrne* v. *Boadle* (*h*), and *Scott* v. *The London Docks Co.* (*i*). [COUCH, C.J., referred to *The Great Western Railway Co. of Canada* v. *Fawcett* (*j*).] The Judge below puts the proposition very clearly: he says, "The presumption arising from the exceptional state of the packages rebuts the presumption arising from the packages being insufficient." [WESTROPP, J., referred to *Phillips* v. *Edwards* (*k*), in which case a cask of brandy that was being carried by a shipowner was staved in, and yet he was held to be protected by the clause in his bill of lading.] The words limiting the liability of the shipowner are very strong in that case. He was not to be liable for any cause whatever. So, too, are the words used in *Czech* v. *The Gen. Steam Nav. Co.*, "Free of leakage, breakage, and damage." *Leuw* v. *Dudgeon* (*l*) is a strong case in my favour. *Ohrloff* v. *Briscall* does not apply, for there it was shown how the damage arose, and the cause was held not to amount to negligence; and besides the shipper assented to what was done. *Lloyd* v. *The Gen. Screw Collier Co.* (*m*), *Grill* v. *The Gen. Steam Nav. Co.* (*n*), *Austin* v. *The Manchester, Sheffield, and Lincolnshire Railway Co.* (*o*), and *Walker* v. *The York and North Midland Railway Co.* (*p*), were also referred to.

Marriott in reply.

Cur. adv. vult.

COUCH, C.J.:—In this case the plaint states that the defendants were owners of steam ships which ply between Hongkong and Bombay; and that the plaintiff shipped at Hongkong on board the steam ship "*Behar*," belonging to the defendants, seventy-five chests of aniseed and five boxes of vermilion, deliverable to the plaintiff in Bombay. It then alleges that a transhipment of these goods had taken place

(*g*) 11 C. B. N. S. 588. (*h*) 33 L. J. Exch. 13. (*i*) 34 L. J., Exch. 17.
(*j*) 1 Moo. P. C., N. S. 101. (*k*) 28 L. J. Exch. 52.
(*l*) 37 L. J., C. P. 5 (*in notis*); Law Rep., 3 C. P. 17 (*in notis*).
(*m*) 33 L. J. Exch 269. (*n*) 35 L. J., C. P. 321; Law Rep. 1. C P. 600.
(*o*) 21 L. J., C. P. 179. (*p*) 23 L. J., Q. B. 73.

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at Galle, and that when the goods arrived in Bombay, the plaintiff caused application to be made for them, and it was then found that, with the exception of three boxes of vermilion, all the cases were broken, and the goods had been removed therefrom in part, and such part as remained was unmarketable.

Now it appears that the "bill of lading" under which the goods were shipped contained a clause "that the company were not to be responsible for leakage or breakage or other consequences arising from the insufficiency of the address or package."

The plaintiff endeavoured to show, as had been done in a previous case against the same defendants, that there was a custom in Bombay to treat such packages as these were as sufficient packages. This he failed to prove. Then the evidence shows, and the learned Judge has found, that the packages were insufficient; and I think that they must be so considered. The question then arises, whether the defendants are liable for the injury which it was proved the packages had sustained on their being landed in Bombay.

The defendants seek to avail themselves of the clause which I have read from their bill of lading. In order to bring themselves within the exception contained in that clause, it was not sufficient for them to show that the packages were insufficient; but they had further to show that the injury was caused by the insufficiency. That is the distinction between this case and those cited before us: *Ohrloff* v. *Briscall* (*suprà*) and *Czech* v. *The Gen. Steam Nav. Co.* In both these cases the exception clearly applied, and it was necessary for the plaintiff to show negligence. The defendants there stipulated that they should not be accountable for leakage, and then it was for the plaintiff to show that the leakage arose from negligence. Here the question is, whether the exception does apply. Did the damage here arise from the insufficiency of the packages? The plaintiff need not prove negligence, except to rebut any evidence for the defendants which tended to show that the damage arose

from the insufficiency. On the law of the case the *onus* was on the defendants. Though, however, that is so, if the evidence leaves it in doubt what the cause of the injury was, or if it may as well be attributable to a cause within the exception in the bill of lading as to negligence, the plaintiff cannot recover. The plaintiff must show that there is a breach of duty on the part of the defendants. If he does not do this he is not entitled to damages. This is the law laid down in Angell on Carriers, p. 217, which, on questions of this kind, is a work of authority.

That this is the law is also shown by the mode of stating his case by a plaintiff in an action brought against ship-owners for the loss of goods. In his declaration the plaintiff must aver that the defendants were not prevented from carrying or delivering the goods by any of the perils or casualties excepted. That is the form adopted in those courts in which a plaintiff is bound to state his case with exactness, and not in the loose form usually adopted here under the Code of Civil Procedure.

It frequently affords strong proof of what the law upon a particular subject is, to observe what averments the plaintiff must necessarily make in order to entitle him to recover.

If the plaintiff here were obliged to plead strictly, he would have to aver in his plaint what he must subsequently prove, viz., that the alleged injury did not arise from the insufficiency of the package, and that the defendants were not prevented from carrying safely by any of the perils or casualties excepted. If that matter is left in doubt, the plaintiff must fail in his suit. In order to prove this, the plaintiff may have to resort to the evidence of persons in the service of the defendants, but, though that may seem hard, it does not exempt him from having to do so.

In the former suit in this court, we were of opinion that the damage arose from the insufficiency of the packages; and this appeared also to have been the opinion of the court below. Now the evidence in the present case is similar to that given in the former. The witnesses speak rather more

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strongly, but the result of the evidence is the same. Upon it the court below has expressly found that as regards the aniseed the damage was not the result of insufficient packing. I have read through that evidence, and, with all regard for the opinion of the learned Judge, I am not able to say that the damage was not the result of insufficient packing. To my mind the question is left in doubt. The damage may well have arisen from the insufficiency of the packages, as there had been a transhipment, the risk of which the plaintiff had to take upon himself. That being the result of the evidence, it was necessary for the plaintiff to give some evidence of negligence, and it was not necessary for the defendants to disprove negligence. That this was the result of the evidence seems to me to be the opinion to which the learned Judge himself came, for he says in his judgment, "If the damage to the goods is of the same description and degree as the experience of practical men shows not uncommonly happens to China goods, it is a fair and reasonable conclusion that the damage was the result of the insufficiency of packing. But if the goods arrive in a very exceptional state—a state arguing that the goods have been subjected to more than ordinary strain and pressure,—then the company ought to give additional evidence, explaining how the damage occurred, and to rebut the presumption which arises that ordinary care had not been employed by the company's servants." That form of expression, I think, shows that the learned Judge did not consider that the evidence did more than leave the question in a doubtful state. Then further on he says: "It appears to me we have here an exceptional state of cargo, pointing quite as much to want of ordinary care on the part of the company as to insufficiency, and that the company were bound to remove the suspicion by additional evidence." There the expression is that the state of the cargo pointed as much to want of care as insufficiency of package; and then, in my view of the law, it was for the plaintiff to give some evidence to lead to the conclusion that the damage arose from negligence, and not from other causes. Therefore, I look upon the difference of our views not merely as on a matter of fact depending on the evidence,

but on a matter of law, by which an additional burden was put upon the defendants. The *onus* is really in this state of facts on the plaintiff. It may be that very slight evidence of negligence would turn the scale; but it lay upon the plaintiff to adduce that evidence, and that is not a great hardship on him, if it can be said to be any hardship at all. The plaintiff might have shown that the transhipment had been made in a hurried manner, or that the goods were taken out of the ship and put into the boats, or from the boats on to the shore, without proper appliances being used. No evidence of that kind was given, and the plaintiff relied solely upon the state of the packages. We cannot supply that evidence for him, and he, therefore, must fail in his suit. I think the judgment of the court below should be reversed, but without costs.

WESTROPP, J.:—I concur in the propositions of law laid down by my Lord Chief Justice. He has entered so fully into the law that it is unnecessary for me to say anything more upon it. And in so far as the learned Judge who tried this cause in the Division Court found that the packing of the aniseed was insufficient, and that there was not any evidence of usage to treat such packing as sufficient, I agree in his views also.

But I am unable to agree with him in his finding on the second issue, viz., that the damage to the aniseed cases cannot be imputed to the insufficiency of packing, or in his *dictum* that the state in which the aniseed has been landed is one "pointing quite as much to want of ordinary care on the part of the company as to insufficiency of packing, and that the company was bound to remove the suspicion (of negligence) by additional evidence."

Before discussing the state of the aniseed, it is convenient to advert to that of the vermilion packages. Of these there were five, of which three arrived perfectly sound, and the remaining two were slightly damaged, but not so as materially to affect their value, or to render them unmerchantable. And such appears to have been the opinion of the learned Judge.

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Vermilion, which I believe to be an artificial preparation made in China, of which the principal component part is cinnabar (*i.e.*, bisulphate of mercury, the most common ore of mercury), and the minor ingredients sulphur and solid caustic potash (Eng. Cyc. Arts and Sciences, Vol. V., p. 578, title Mercury: and *Ibid.* Natural History, Vol. III., p. 774; see also McCulloch's Commercial Dictionary, title Cinnabar), must be a heavy commodity. According to Mr. Blackmore (one of the plaintiff's witnesses), the vermilion in this instance was contained in boxes not so strong as would probably be used in England for the same purpose, but fourteen inches long, eight inches broad, and six inches deep, the planking being half an inch thick, and each box with its contents weighing about fifty-six lbs. Those boxes were stated by Mr. Crawford (who was examined on behalf of the plaintiff) and other witnesses to be stronger than the boxes containing aniseed.

The evidence, when analysed, shows that the aniseed boxes must have been much larger and much weaker. The witnesses seem to agree in stating that the planking was only three-eighths of an inch thick at the utmost. Aniseed Mr. Blackmore states to be not heavier than tea, and he adds that the boxes were much of the same size as the largest kind of tea-boxes, which are sent to England, and that the tea-boxes which come to Bombay are smaller, and hold about forty pounds. Mr. Crawford and one or two other witnesses state that the aniseed boxes when full should have weighed one "*picul*," *i.e.*, one hundred and thirty-three pounds and one-third of a pound; in fact Mr. Crawford saw one box which weighed one hundred and sixty pounds. To contain that weight, or the lesser weight of 133⅓ lbs., of a substance of no heavier specific gravity than tea, the boxes must have been very much larger than boxes containing 56 lbs. of so heavy and compact a substance as vermilion. Accordingly we have in the case of the aniseed boxes a very much larger surface of planking, and a scantling slighter by one-eighth of an inch, to hold a weight not far short of being three times as great as that contained in the vermilion boxes

which seem to be only barely strong enough to sustain the wear and tear of the voyage from China to Bombay. The evidence of Mr. Parker, who manages the Company's freight department, is to the effect that China packages are generally bad and insufficient, and that aniseed packages from China are, even amongst China packages, "exceptionally bad." Mr. Gordon, the manager of the British India Steam Navigation Company, substantially supported that evidence. He said that the goods in this case were packed in the ordinary way, but, if anything, slighter than usual. Keeping in view Mr. Blackmore's comparison of aniseed packages to large packages of tea, it should be noticed that one of the defendant's most important witnesses, Mr. Maury, who is Assistant Commissioner of Customs at Bombay, says that packages of tea and sugar-candy from China to Bombay almost invariably come broken, and that sugar-candy boxes generally weigh half a hundredweight. We must remember, too, that those tea-boxes, being much smaller than those which go to England, to which latter Mr. Blackmore compared the aniseed boxes in size, expose a very much less surface to hardship than the aniseed boxes. Mr. Dixon, Lloyd's Surveyor, another important witness for the defence, said—"The cases of aniseed were in broken condition. In some cases the matting was burst. The wood was three-eighths of an inch thick, and of the soft China pine. The sides were dovetailed. So far as I remember, that is usual in China cases. Sometimes a nail is used. The sides were too thin to be dovetailed. I don't consider that the aniseed was sufficiently packed. *I don't consider that the boxes are fit to be moved about without more than ordinary care.*" He adds "all of the aniseed boxes were very much broken;" and again, "I could see that they were badly broken, from the irregular shape."

Although I have not now quoted the whole of the evidence relating to the aniseed packages, I have very carefully read and considered it. The impression left on my mind is, that having regard to their considerable size, the great quantity and weight that is in them, and the degree of thickness

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of the soft pine wood of which the boxes are made, and assuming that they are equal in all these particulars to ordinary aniseed packages from China, yet they must be considered as somewhat inferior in packing to China packages in general.

But there seems to be a general concurrence amongst the reliable witnesses, that a very large percentage of China packages in general arrive at Bombay from Hongkong in a broken condition, even in ordinary voyages, in which there has not been transhipment. Mr. Maury says of China cargoes: "They generally come very much damaged—I should say thirty per cent. more or less damaged. Nothing like the same percentage of goods from Europe is damaged. I consider China packing insufficient." Mr. Dixon says: "Every steam ship from China contains some broken packages. Goods of this description if sent from England would be more strongly packed. It is quite exceptional for any claim to be made for broken China goods, unless it is very serious." Mr. Blackmore too admits that "the China packages are more likely to be broken than English packages coming round the Cape or overland."

It is, I think, manifest that, even for the ordinary voyage from Hongkong to Bombay, China packages are generally quite insufficient, and are liable to an average damage, say, of thirty per cent.

But here there has been a transhipment at Ceylon. The voyage is the same one as that out of which the case of *Máṇikji Nasarvánji* v. *The P. & O. S. N. Co.** arose. It is contended for the plaintiffs that the damage to the aniseed packages in this case being greater than that to the packages of bangles, yellow stone, and brass leaf in that case, is in itself evidence of negligence, and creates a distinction between the two cases. The damage does appear to be greater, the boxes seem to be more broken, and, though the quality of the contents does not seem to have suffered, a larger quantity of them has escaped from the packages. It is, I think,

* *Ubi suprà.*

quite consistent with the main current of the evidence, that the damage arose from the insufficiency of the packing. The evidence of Mr. Gordon is direct on this point: he says—"I have had great experience in China goods: I don't consider the packages strong enough to bear transhipment;" and again, "I am of opinion that the goods in question were broken in transhipment, and so being subjected to double the usual handling."

Mr. Gordon, it is true, had not received in Bombay a cargo from Hongkong which had undergone transhipment, but he must have formed his opinion on the damaged condition in which a China cargo usually arrives here after an uninterrupted voyage, the frail nature of the aniseed packages in this particular case, and the indisputable fact that they had to undergo double the usual hardship. It would be difficult to say that those are not fair grounds on which to build an opinion. Although the hardship is only double the ordinary amount, it is reasonable to suppose that the injury would be more than double, because the packages, which are insufficient for even an ordinary voyage, would, after sustaining from the first handling the amount of injury which it is to be expected might then occur, be in a much worse condition to resist the second handling than the first, and the injury accordingly must be expected to increase in that ratio. Further, the aniseed packages here seeming to be a degree inferior to ordinary China packages containing goods other than aniseed, we cannot be surprised to find the damage greater than accrued to the packages the subject of the action brought by Máṇikji Nasarvánji against the company. Had the aniseed packages been as well suited for carriage in size and strength, and in the amount of weight with which they were loaded, as the packages of vermilion, the former would probably have been conveyed with equal safety as the latter. The safe arrival of the vermilion tends to repel the supposition of negligence. Beyond the state of the aniseed packages, the plaintiffs have not given any evidence of negligence on the part of the company, which, even assuming it to be doubtful whether the damage arose from the insufficiency of

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the packing, I think that the plaintiffs would have been bound to do; and under these circumstances I think that the company are protected by the terms of the bill of lading. That bill provides for the contingency of transhipment, and exempts the company from liability arising from damage caused by insufficiency of packing.

Decree reversed without costs.

Attorneys for the plaintiff : *Acland, Prentis, and Bishop.*

Attorney for the defendants : *J. S. Hurrell.*

Oct. 1.

Appeal Suits Nos. 125 *and* 126.

Laksmiba'i, widow of Krishnanáth Morobá ..... *Appellant.*

Ganpat Moroba', Na'ra'yan Moroba', and Satyabha'ma'ba'i, widow of Vináyak Morobá ..... *Respondents.*

Ganpat Moroba' and Na'ra'yan Moroba'. *Appellants.*

Laksmiba'i, widow of Krishnanáth Moroba' ..... *Respondent.*

Hindú Law—Partition—Ancestral Estate—Will—Construction of Hindú Will—Guardian—Family Arrangement—Acquiescence—Adoption of Acts of Guardian—Hindú Widow's Estate.

V., a Hindú, being possessed of property, both moveable and immoveable, which he had acquired by making partition with his brother of their joint ancestral estate, died in 1850, after making a Will in the English language, by which, after various bequests, he disposed of the residue of his said property: one-third to his son V. absolutely; one third to his son L. absolutely; "and the remaining clear third-share to my grandsons K., V., G., and N., the sons of my late son Morobá, deceased, their and each of their respective heirs, executors, administrators, and assigns, share and share alike." These residuary bequests were not to take effect until after the death of the testator's widow, who was appointed executrix and manager of the whole estate during her life.

The estate was divided by arbitrators in 1855, after making provision for the testator's widow, in substantial accordance with the Will, and V. and L. immediately entered into possession of their respective third-shares; the third-share allotted to the four sons of M., who were then