

FISHER,
C.J.
&
GRIM-
SHAW,
ACTING P.J.
1921
July 9

[FISHER, C.J. AND GRIMSHAW, ACTING P.J.]

LAMBRO LAMBI

v.

MICHAEL N. LOIZO

AND

MICHAEL N. LOIZO

v.

LAMBRO LAMBI.

BREACH OF CONTRACT—IMPLIED WARRANTY BY SHIPOWNER OF SUITABILITY OF
SHIP TO CARRY PARTICULAR GOODS.

APPEAL of Lambro Lambi from the judgment of the District Court given in both actions which were tried together.

The facts are as follows:—

Appellant, a shipowner and master, entered into a charter party with Respondent to carry sheep from Larnaca to Alexandria. The animals, 840 in number, were put on board and almost immediately commenced to die. The sheep were ordered back to shore by the Port Authorities. 110 sheep died, some on the ship and some ashore.

Appellant sued Respondent for half the agreed freight £72 10s. Respondent sued Appellant for loss of sheep and expenses £124 11s. 7cp.

Actions tried together.

The District Court gave the following judgment:—

The Court has before it two actions arising out of a common set of facts. In the one case the captain and master of the sailing vessel "*Ayios Nicolaos*" claims £72 10s. from one Michaili Loizo, an army contractor, for breach of contract; in that he agreed to ship 840 sheep in the Plaintiff's ship for £145 to be shipped from Larnaca to Alexandria, and that for certain reasons after having shipped the said sheep on board, he re-landed the sheep thereby breaking the conditions of the charter party; the £72 10s. claimed is half of the agreed freight.

In the other case the Plaintiff is Michaili Loizo, army contractor, and owner of the sheep in question, who claims £124 11s. 7cp. from captain Lambi, the master of the said sailing vessel "*Ayios Nicolaos*," for loss of 110 sheep, embarkation and disembarkation expenses, and the costs of pasturing the said sheep; on the grounds that the vessel in question, was unsuitable for the transport of the sheep and that for certain causes 110 sheep died as a result of their shipment on the said vessel.

The facts of the case are simple. The shipment of the sheep began on 16th September, 1916 (Saturday) at 7 o'clock a.m. and was completed by noon of the same day. The sheep began to die almost immediately. At or about 4 o'clock p.m. the captain, who was on shore at the time, noticed the flag hoisted "half-mast" on the ship, and he went on board half an hour later, and found thirty to forty sheep lying dead in both the hold and on the deck.

At 6.30 p.m. the Collector of Customs (Mr. Stead) received a message that forty sheep had died. He thereupon went on board the ship and ordered the captain to discharge 200 sheep and not to leave the port. On the following morning 17th September at 8 a.m. the Collector of Customs again went on board the ship, and found many sheep dead, and the remainder in bad condition, and he ordered all the sheep to be landed at once. By 11.30 a.m. on 17th September all the sheep were disembarked, 87 having died on board. The captain not finding any other freight at Larnaca, sailed back to Limassol.

We will now turn to the issues and record our findings on the questions of facts involved.

The first and second issues framed are: Was the ship in question suitable for the stowage of sheep? And had it enough room to carry 840 sheep? After carefully weighing the evidence adduced by both parties, we find that the ship in question was not suitable for the carriage of sheep, and that taking into consideration the type of the vessel, there was insufficient accommodation for 840 sheep—namely the number contracted to be shipped.

As regards the third issue, we find that the death of the sheep was caused by the overcrowding of the said sheep in both the hold and on the deck.

As regards the fourth issue we find that the weather at the time of shipment was calm.

The charter party was signed on 15th September, 1916, and the bill of lading was signed on 16th September, 1916. By the charter party it was agreed that Michaili Loizo, the shipper, was to ship on board the sailing vessel "*Ayios Nicolaos*" on the deck and under the deck, as many healthy sheep as the vessel will take, to be shipped from Larnaca to Alexandria for £150. It was a condition in the charter party that the captain was to sign the bill of lading free from any liability for death or escape of the said sheep.

We are of opinion that this clause merely relieves the captain of liability when the death of the sheep was due to natural causes, or due to causes, over which the captain himself had no control.

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We are further of opinion that in the contract of carriage by sea, there is an implied warranty when a ship is to carry goods of a particular kind, that the ship and her equipment shall be fit for the purpose of carrying those goods to their destination safely.

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—

In this case, the ship was chartered to carry 840 sheep, and we find that this ship was unfitted for that purpose, inasmuch as the under-deck space, namely the hold, was unsuitable, and the deck space was insufficient for the number contracted to be carried.

Having regard to the evidence of the Veterinary Surgeon, who testifies that he examined the sheep both in the open plain, and one by one as they were being shipped, and that they were in a normal condition when they were embarked on the lighters, and that no evidence has been brought forward to show whether or not the sheep sustained injuries, or suffered from overcrowding, on those same lighters either on embarkation or disembarkation, we find that at the time of shipment the sheep were in a proper condition to be shipped.

We will now turn to the question of damage:—
We award the Plaintiff in action 368/16 the sum of £107 5s. for the loss of 110 sheep at 19s. 6cp. each, £9 6s. 7cp. for costs incurred in embarkation and disembarkation of the sheep, but we disallow the item claimed for grazing the said sheep after disembarkation.

After considering the Law as laid down in Art. 115 of the Ottoman Maritime Code the claim for freight in action 367/16 is dismissed, the ship of the Plaintiff being unsuitable to carry the cargo for which he contracted, thus necessitating the withdrawal of the cargo by the Defendant.

The Plaintiff in action 367/16 to pay the costs of both actions.

For Appellant *N. Paschalis*.

For Respondent *D. Themistocles*.

Judgment: We find that there was no liability on Respondent to see the animals safely stowed on board. This was the master's duty. We affirm the judgment of the District Court and dismiss both appeals with costs.