

BRITISH COLUMBIA ADMIRALTY DISTRICT

1956  
Dec. 3  
1957  
Feb. 14

PACIFIC INTERNATIONAL RICE } PLAINTIFF;  
MILLS INC. .... }

AND

THE SHIP *OLGA TORM* ..... DEFENDANT;

AND

PACIFIC INTERNATIONAL RICE } PLAINTIFF;  
MILLS INC. .... }

AND

THE SHIP *ANDINO* ..... DEFENDANT.

*Shipping—Action for damage to cargo—Liability admitted in part—Costs.*

In an action for damage to a shipment of rice allegedly due to the presence of mice and rat excreta in the rice and for contamination by copper or lead concentrates the claim for damage due to the excreta was settled. The Court found that the loading of the rice and of the concentrates was done in such a manner that it did not detract from the value of the rice.

*Held:* That the action is dismissed except as to a certain number of badly stained sacks of rice for which the defendants admit liability.

- 2. That the counterclaim is dismissed without costs; the plaintiff is entitled to costs prior to the date of tender and payment into Court of the sum for which defendants admitted liability.
- 3. That the defendant is entitled to all costs after tender and payment in together with the costs relating to security and bail bond.

**ACTION** for damage to a shipment of rice.

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

*G. F. McMaster* and *F. H. H. Parkes* for plaintiff.

*J. Cunningham* and *C. C. Ryan* for defendants.

SIDNEY SMITH D.J.A.:—In this consolidated action the plaintiff claims damages from one or both defendant vessels for alleged failure to carry safely a shipment of some 1,400 metric tons of Peruvian brewers or broken rice. The voyage was from Pacasmayo in Peru to Woodward's Landing in the Fraser River, near Vancouver, British Columbia. The shipment of rice was packed in used sacks, and was loaded into the Danish *M.S. Olga Torm*.

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INC.

THE SHIP  
*Olga Torm*  
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The circumstances are somewhat unusual but can be stated at no great length. The shipper of the rice was Caja de Depositos y Consignaciones (later referred to as "Caja"). The shipper's agent in Peru was Mr. Max Garcia (later referred to as "Garcia"). He was also the plaintiff's agent in Peru. The Bill of Lading (written in such small print as to be almost illegible) was "to order notify Pacific International Rice Mills Inc.," the plaintiff in this action (known as Pirmi). This company was at all material times the owners of the rice. The port of delivery originally was Stockton, California, but for reasons shortly appearing this was later amended to "Woodward's Landing, B.C.," and the shipment was stated to be "for the account of" the plaintiff. The Bill of Lading was signed by some agency on behalf of the shipper.

The loading of the rice was completed on 28th January, 1954, and this was the date of the Bill of Lading. Two days previously the plaintiff had received a sample of the rice which disclosed the fact that the shipment contained rodent excreta. On the 26th January, the plaintiff cabled as follows:

1/26/54

PERULAND

LIMA (PERU)

SHIPPING SAMPLE ARRIVED TODAY SUBMITTED BREWERY HOWEVER THEY REQUESTING ANALYSIS PURE FOOD WHICH ALLOWING BECAUSE THEY INDICATE THEIR INSPECTION REVEALED LARGE NUMBER MOUSE EXCRETE STOP EXTREMELY CONCERNED BECAUSE IF ACTUAL SHIPMENT CONTAINS EXCRETE SIMILAR SAMPLE RECEIVED TODAY CERTAIN REJECTION U.S. PURE FOOD AUTHORITIES REQUIRING CLEANING IF POSSIBLE OR RE EXPORTATION AS ORDERED BY GOVERNMENT STOP VIEW RESPONSIBILITY SELLERS CONFIDENT THEY WILL STAND BEHIND US IN EVENT REJECTED ASSISTING US COSTS IF INCURRED STOP WOULD CONSIDERABLY APPRECIATE YOUR CABLE INDICATION POSSIBILITY RESELLING TO CAJA ALTERNATELY SOME OTHER DESTINATION OUTSIDE UNITED STATES STOP ANY POSSIBILITY REMOVING EXCRETE BEFORE SHIPMENT GUIDANCE THEY APPEAR AS BROWN EGGSHAPE OBJECTS APPROXIMATELY 1/8" DO UTMOST

PIRMI

This was followed by another cable on the 28th:

1/28/54

PERULAND

LIMA (PERU)

CONFIDENTIALLY VIEW PUREFOODS ATTITUDE SAN FRANCISCO FEEL DANGEROUS SHIP THIS PORT RECOMMEND SHIPMENT VANCOUVER IN BOND FOR PROCESSING WITH RESHIPMENT ACROSS CANADIAN BORDER WHERE SUPERVISION VERY LAX STOP COSTS UNKNOWN EXPECT BETWEEN 5 AND 8 DOLLARS PER TON IN VANCOUVER WITH FAIRLY GOOD ASSURANCE PASSING AS PUREFOODS ALERTED EXAMINING EVERY BAG MICROSCOPICALLY STOP STILL HOPEFUL ACTUAL SHIPMENTS WITHOUT EXCRETA CABLE SOONEST MEAN-TIME MAKING PRELIMINARY ARRANGEMENTS VANCOUVER ADVISE WHEN LOADING COMPLETED

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PIRMI

The ship reached San Francisco on 12th February. But there was delay there. A dispute arose as to whether the *Olga Torm* was obliged to carry the cargo to Vancouver under an option in the Bill of Lading. But in the end the dispute was settled by mutual agreement, the rice discharged from the *Olga Torm* and loaded into the Chilean M.S. *Andino*. The Bill of Lading was then amended to read as I have said. The agreement reached at San Francisco was in part as follows:

The ship or carrier will not be liable for any loss resulting from the condition of the cargo at the time it was received for shipment at Pacasmayo. The ship or carrier will not be liable for any loss sustained at the port of San Francisco resulting from the double or extra handling of the cargo in order to effect British Columbia discharge, nor for any damage suffered by the cargo after discharge of the cargo at San Francisco while awaiting reloading.

The *Andino* proceeded on this voyage and arrived at Woodward's Landing on 26th February, 1954. There the rice was discharged on the 26th and 27th and stored in the warehouse of the Canada Rice Mills Ltd., to await developments.

The plaintiff made a claim against the shipper for damage due to the rodent excreta and this was settled by a payment of \$10,000. It may be convenient also to state here that the plaintiff presented a claim to the survey company who issued two survey reports at the loading port but failed to mention the rodent excreta. This is the letter:

February 25, 1954.

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PACIFIC  
INTERNATIONAL  
RICE MILLS  
INC.

Superintendence Co., Inc.,  
Two Broadway,  
New York 4, New York.  
Gentlemen:

*v.*  
THE SHIP  
*Olga Torm*  
AND  
PACIFIC  
INTERNATIONAL  
RICE MILLS  
INC.

We have currently been corresponding by cable with you on the shipment of Peruvian brewers rice per *MS Olga Torm*. We are attaching photostats of the Superintendence certificate issued in Peru and also a copy of the Curtis & Tompkins certificate issued in San Francisco. We are also holding the shipping sample upon which the certificate was based in San Francisco.

*v.*  
THE SHIP  
*Andino*

The complete lack of honesty in issuance of the Peruvian certificate is absolutely not understandable, and we must go on record as holding you fully liable and responsible for the issuance of this fraudulent certificate in your name and on the part of your authorized agent in Peru.

Sidney Smith  
D.J.A.

To add insult to injury, the shipping sample that was sent by Superintendence Company, and souled (sold?) by them, contained hundreds of mouse and rat excreta, and they were even so kind as to take some of the mouse excreta and wrap them up in a separate blue envelope within the same package.

We are referring the matter to our attorneys, who will be corresponding with you in due course. For your guidance, the loss, because of this contamination will probably exceed \$30,000 and could run as high as \$50,000 or \$60,000.

Sincerely yours,

PACIFIC INTERNATIONAL RICE MILLS, INC.

C. M. Rocca

There is no evidence how this claim was disposed of.

Then on 1st March, 1954 the plaintiff wrote to his agent, Garcia, describing the events at San Francisco and giving their view of the damage in these words:

For your guidance, the excreta is found in all sacks, and the entire cargo will have to be cleaned.

I quote the foregoing to show that up to this date at least there was no suggestion of anything wrong with the rice other than contamination by rodent excreta. Indeed in all the documents (except perhaps the Eldridge reports) no mention is made of metal contamination. There may be another exception in the letter of 12th May, 1954 from Pirmi to Canada Rice Mills Ltd., which is as follows:

May 12, 1954.

Mr. R. D. Gavin,  
Canada Rice Mills, Ltd.,  
448 Seymour Street,  
Vancouver, B.C., Canada.  
Dear Bob:

We are attaching letter of May 4th from our attorneys and also a letter of April 29th from King. From the attached you can see that the next move is up to us, and we have to do the necessary to convince King

that the processing is extraordinary and would not be necessary had not the metal contamination been present. We would certainly appreciate what you can do to get this thing pushed along, as we would like to liquidate this rice, and the market does not appear to be getting any stronger.

Hoping to hear from you favorably very shortly, we remain

Cordially yours,

PACIFIC INTERNATIONAL RICE MILLS, INC.

C. M. Rocca

This is rather cryptic and was not satisfactorily explained in the evidence. Captain King was underwriters' surveyor.

The Canada Rice Mills made several test runs with the contaminated rice when it was processed in unsuccessful attempts to remove the rodent excreta. Tests for copper and lead were also made. Finally in July 1954 the entire shipment was sold "as is, where is" to Canada Rice Mills Ltd., for \$3.75 per 100 lbs. At that time the market price for brewers rice free from contamination was \$4.50 per 100 lbs. C.I.F. Vancouver. The Canada Rice Mills heavily blended the infected rice with good rice in such manner as to pass inspection by the United States Pure Food Authorities and thus in small lots over a period of many months the whole shipment was sold across the Border. This was all in accordance with plaintiff's cabled recommendation of 28th January, 1954.

The present claim has nothing to do with contamination by rodent excreta. It is urged here that there was further contamination by copper or lead concentrates. The evidence dealt also to some extent with zinc concentrates but nothing of this was set out in the pleadings and there was no application to amend. It was urged upon me that this damage was due to concentrates having been carried in both these ships; and in the *Andino* carried partly in the same hold as was the rice. It may be undesirable to carry foods and concentrates in the same hold but there is nothing to show that this cannot be done provided proper safeguards are taken.

The *Olga Torm's* cargo compartments consist of a forward hold entered by two hatches, Nos. 1 and 2: so that the lower hold is one compartment and likewise the 'tween decks. Aft of this and separated by a water tight bulkhead is No. 3 lower hold and 'tween decks. Then come the engine spaces and aft of these another lower hold and 'tween decks

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also entered by two hatches Nos. 4 and 5. These compartments were all provided with permanent cargo battens in the orthodox manner. Boxes were fitted into the lower holds for the reception of the concentrates, which were loaded at several ports before the vessel reached Pacasmayo. They were lowered into the holds in sacks and as they reached bottom the sacks were slit open and the concentrates dumped out. Much was made of this creating dust but I accept the answer to that question given by the Master. He said:

Well I mean to say there is always dust but once you see the dust come down again when there is no more loading, then the concentrated ore becomes hard on the surface.

At Pacasmayo the ship loaded about 400 tons of zinc concentrates and the 1,400 tons of rice. The concentrates were loaded into No. 4 hatch lower hold. Before loading the rice the 'tween decks space was thoroughly cleaned and swept with sawdust: then two inches of dunnage was laid all over the 'tween decks. That was covered with new cargo mats; all iron was likewise covered; the hatch covers laid over the lower hold hatchway, covered with tarpaulins and battened down; then the tarpaulins were again covered with cargo mats. This procedure was carried out at each hatch before the receiving and during the loading of the rice. No rice was loaded in the after end until after the zinc concentrate had been stowed in No. 4 hold. Reference was made to some sacks of rice which were stowed in the fore end of No. 3 'tween decks, and to the fact that abaft this was stowed a shipment of lead ore. But this was ore in bags, not concentrates, and gave rise to no dust at all. The ore was like lumpy stones. Moreover, both ore and rice were covered with tarpaulins and there was a space of 3 or 4 feet between the rice stowage and the sacks of lead ore. Before any loading began the compartments in which rice was to be carried were inspected by Government health authorities and approved. The vessel was at an anchorage and the ore and rice came off in the one set of lighters. No rice was stowed in the lower holds. It was stowed in the 'tween decks throughout the ship and these with the exception of the lead ore in bags, contained rice only. The Master considered this stowage "absolutely proper" and I see no reason to disagree with him. The stowage of the cargo in the

*Andino* was also attacked. This was answered by the then Chief Officer of the *Andino* now Master of the M.S. *Atacama*. It should be observed that the *Andino* is divided into three holds and 'tween decks and that the engine spaces are abaft of these. The rice was stowed in No. 2 lower hold and 'tween decks and No. 3 'tween decks. The Chief Officer said that before loading the rice at San Francisco No. 3 'tween decks and No. 2 hold and 'tween decks were cleaned by the crew. In No. 3 'tween decks the hatchway into the lower hold was closed, tarpaulins were laid over the bottom of the 'tween decks, quarter-inch dunnage was laid completely across the floor, paper was placed on top of that and paper was placed in the wings as well, and mats about 6 feet square were laid on top of the paper and in the wings of the 'tween decks. The bags of rice in No. 3 'tween decks were loaded to about two feet from the top of the coamings. There was no air connection between the lower hold and the 'tween decks. Nothing was placed on top of the rice; the hatches were closed, the usual three tarpaulins placed on top, and the hold kept battened down until arrival at Woodward's Landing. No one went into the hold again during the voyage after the loading of the rice. He pointed out that the same precautions were taken in stowing the rice in No. 2 hold and 'tween decks with plenty of six foot square mats used. He also said that in the lower hold the rice was completely covered with tarpaulins. The copper concentrates in No. 2 hold were packed firmly between a wooden bulkhead constructed to reach about half way to the deckhead holding the ore so that it could not move during the voyage. On the after side of the wooden bulkhead, tarpaulins were draped and the rice was stowed commencing about two yards aft of the wooden bulkhead. On the evidence I think this stowage was also sufficient.

There was a good deal of conflict as to the condition of the sacks on arrival at Woodward's Landing, and as to the procedure prior to the sale of the rice. I formed the impression that some of this testimony was rather evasive. With respect to the sacks it must be remembered that these were "used" sacks. They were brought off in lighters at Pacasmayo, Peru, and at San Francisco partially unloaded then reloaded only to be discharged from the *Olga Torm* in their entirety and reloaded into the *Andino*. There was evidence

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of the beams and stringers in the holds being covered with dust. Captain Armatage, an independent marine surveyor of recognized standing, gave acceptable evidence. He did not agree that any damage had occurred from the concentrates except to some sacks mentioned later. He thought that any dust was such as might be expected from a general cargo. He was of opinion that the rice contained no more than normal amounts of metal material. I gathered from Captain King that he thought damage might have been caused in the *Olga Torm* and there localized, but that upon trans-shipment it would no longer remain local but be spread throughout the whole cargo. The complaint that the *Andino* carried concentrates and rice in the same hold loses its significance in view of the general evidence of plaintiff's witnesses that all sacks in the entire shipment were more or less stained.

At the conclusion of the hearing I was of opinion that had it not been for the presence of rodent excreta in the rice we should have heard nothing of the concentrates claim. Subsequent study of the documents and consideration of the testimony have fortified this conclusion. Even assuming that some metal contamination was present, there was no evidence whatever that this detracted from the value of the rice. On the contrary there was some evidence that the rodent contaminated rice by itself was unmarketable.

I dismiss the action except as to some forty badly stained sacks stowed in the port after corner of No. 3 'tween decks, as to which defendants admit liability in the sum of \$500. Plaintiff will have judgment for this amount or alternatively there will be a reference to the learned Registrar to assess the value of these forty sacks of rodent contaminated rice.

I should like brief memoranda from Counsel as to the disposition of the general costs of the action; also of the costs of the counterclaim as to the demand for excessive security upon arrest on the assumption that I (1) allow (2) dismiss the latter.

*Judgment accordingly.*

NOTE:—On February 14, 1957, upon receipt of memoranda and further argument Mr. Justice Sidney Smith dismissed the counterclaim without costs; plaintiff was granted costs of the action prior to date of tender and payment in of \$500; defendant was granted all costs thereafter, together with the costs relating to security and bail bond.