LLOYD'S LAW REPORTS

Editor:
Miss M. M. D'SOUZA, LL.B.
of the Middle Temple, Barrister

1986

Volume 1

Printed by Holmes and Sons (Printers) Ltd., 10 High Street, Andover. Tel 0264 23456

CASES JUDICIALLY CONSIDERED

STATUTES CONSIDERED

CONTENTS

NOTE: These Reports should be cited as "[1986] 1 Lloyd's Rep."

CONTENTS—*continued*

CONTENTS—*continued*

CONTENTS—*continued*

CONTENTS—*continued*

CONTENTS—*continued*

LLOYD'S LAW REPORTS

Editor: Miss M. M. D'SOUZA, LL.B., Barrister

[1986] VOL. 1] The "Jag Dhir" PART 1

THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

Oct. 21 and 22, 1985

THE "JAG DHIR" AND "JAG SHAKTI"

Before Lord KEITH OF KINKEL,
Lord FRASER OF TULLYBELTON,
Lord ROSKILL,
Lord BRANDON OF OAKBROOK and
Lord MACKAY OF CLASHFERN

Carriage by sea — Damages — Assessment — Non-delivery of cargo of salt — Whether damages awarded too high or too low — Whether proper measure of damages recoverable the full market value or total amount expended in financing purchase of salt.

By a contract dated May 20, 1977, Indian Overseas Corporation of Calcutta India (IOC) agreed to sell to Mumtazzudin & Sons of Dacca Bangladesh (Mumtazzudin) 7000 tonnes of edible salt at U.S $22 per tonne c. & f. Chittagong/Chalna. The salt was supplied by Bihar Supply Syndicate (BSS) who had sold 21,000 tonnes plus or minus 10 per cent. at U.S. $22 per tonne c. & f. Chittagong/Chalna by three shipments of 7000 tonnes.

Atlas Enterprises (Atlas), a Singapore firm, agreed with Mumtazzudin that Atlas would finance Mumtazzudin's contract of sale with IOC by causing transferable letters of credit to be opened by banks in Singapore in favour of IOC to pay for the salt bought by Mumtazzudin from the latter. The total amount expended by Atlas in financing the purchase, including the opening of the letters of credit, bank charges and premiums for the insurance of the salt in transit amounted to Singapore $275,620.82.

BSS pursuant to their contract with IOC shipped 5000 tonnes of salt on board the vessel *Jag Dhir* at Tuticorin for carriage to Chittagong. The shipowners issued two bills of lading dated July 15, 1977, in respect of the salt shipped. BSS were named as shippers in the bills of lading which provided for consignment to order or assigns. Mumtazzudin was named as the party to be notified.

BSS having been paid the price of the salt shipped by means of the transferable letters of credit endorsed the two bills of lading generally and handed them to the paying banks which later forwarded them to the opening bank. Atlas having paid the opening banks thereby obtained the two bills of lading and endorsed them over to the appellants Chabbra Corporation Pte. Ltd. (Chabbra) for value.

On July 26, 1977, the vessel arrived at Chittagong ready to discharge. Mumtazzudin persuaded the master or the ship's agent to deliver the cargo of salt to them without presentation of the bills of lading in consideration of an indemnity signed on behalf of Mumtazzudin and countersigned on behalf of the Rupali Bank.

Chabbra invoiced Mumtazzudin for U.S. $220,000 and sent the bills of lading through their bankers for collection by that firm. Mumtazzudin refused to take up and pay for the documents tendered to them by Chabbra and Chabbra claimed against the shipowners for failure to deliver the cargo of salt.

The claim was raised by an action in rem against the vessel *Jag Shakti*, a vessel in the same ownership as *Jag Dhir* begun in the High Court of Singapore on Apr. 29, 1978.

———*Held*, by A. P. RAJAH, J., that Chabbra would be awarded damages of S. $389,117.62.

The shipowners appealed on the ground that the damages awarded were too high and Chabbra cross-appealed on the ground that they were too low.

———*Held*, by C.A. of Singapore (WEE CHONG JIN, C.J., F. A. CHUA and LAI KEW CHAI, JJ.), that the award would be varied by substituting the lower amount of $275,620.82. Chabbra's cross-appeal would be dismissed.

Chabbra appealed to the Board contending that the judgment of the Court of Appeal reducing the amount of damages awarded to them should be set aside and the learned trial Judge's award be restored. The questions for decision were (1)

whether the proper measure in law of the damages recoverable by Chabbra was (a) the full market value of the sale on delivery at Chittagong or (b) the total amount expended by Atlas in financing the purchase of the salt. (2) If the answer was (a) what Chabbra proved, on the evidence adduced before the learned trial Judge, to have been the full market value of the salt on delivery at Chittagong.

————*Held*, by P.C. (Lord KEITH OF KINKEL, Lord FRASER OF TULLYBELTON, Lord ROSKILL, Lord BRANDON OF OAKBROOK and Lord MACKAY OF CLASHFERN), that (1) Chabbra as holders and endorsees for value of the bills of lading had a right to delivery of the salt to them at Chittagong; that right entitled Chabbra to recover from the shipowners, who had wrongfully converted the salt by delivering it to Mumtazzudin, the full value of the salt on delivery at Chittagong (*see* p. 6, col. 2);

————*Leach v. Swire*, (1865) 18 C.B.N.S. 479, and *The Winkfield*, [1902] P. 42, applied.

(2) the burden of proving the market value of the salt on delivery at Chittagong was on Chabbra; in the event while it was probable that such value exceeded the sums of money expended by Atlas in financing the transaction of sale between IOC and Mumtazzudin, Chabbra failed to adduce any reliable evidence to prove what the amount of that excess was; the appeal would be dismissed (*see* p. 7, cols. 1 and 2).

The following cases were referred to in the judgment of Lord Brandon.

Claridge v. South Staffordshire Tramway Co., [1892] 1 Q.B. 422;

Leach v. Swire, (1865) 18 C.B.N.S. 479;

London Joint Stock Bank Ltd. v. British Amsterdam Maritime Agency Ltd., (1910) 16 Com. Cas. 102;

Sewell v. Burdick, (1884) 10 App. Cas. 74;

Winkfield, The [1902] P. 42.

This was an appeal by the appellants, Chabbra Corporation Pte. Ltd. from the decision of the Court of Appeal of Singapore which reduced the damages awarded to Chabbra by the High Court of Singapore in the action brought by Chabbra against the respondents, the owners of, and other persons interested in, the ship *Jag Shakti*, in respect of non-delivery of a cargo of salt.

Mr. Anthony Colman, Q.C. and Mr. C. Arul (of the Singapore Bar) (instructed by Messrs. Philip Conway Thomas & Co.) for the appellants; Mr. Timothy Walker, Q.C., (instructed by Messrs. Clyde & Co.) for the respondents.

The further facts are stated in the judgment of the Board which was delivered by Lord Brandon of Oakbrook.

Judgment was reserved.

Monday, Nov. 18, 1985

JUDGMENT

Lord BRANDON OF OAKBROOK: This appeal arises out of a claim by Chabbra Corporation Pte. Ltd. ("Chabbra") against the owners of the ship *Jag Dhir* ("the shipowners") for failure to deliver a cargo of salt carried by that ship from Tuticorin in India to Chittagong in Bangladesh in July, 1977.

The claim was raised by an action in rem against the ship *Jag Shakti*, a ship in the same ownership as *Jag Dhir*, begun in the High Court of Singapore on Apr. 29, 1978, in accordance with the Admiralty jurisdiction conferred on that Court by statute. The action was tried by Mr. Justice A. P. Rajah who, by an order dated Mar. 16, 1981, awarded Chabbra damages of S. $389,117.62 with interest at 12 per cent. p.a. from July 27, 1977, and costs.

The shipowners appealed to the Court of Appeal of Singapore (Chief Justice Wee Chong Jin and Messrs. Justices F. A. Chua and Lai Kew Chai) on the ground that the damages awarded were too high. Chabbra cross-appealed on the ground that they were too low. The Court of Appeal, by an order dated Aug. 19, 1982, varied the award of damages made by Mr. Justice A. P. Rajah by substituting for the amount awarded by him the lower amount of S. $275,620.82 with interest at 12 per cent. p.a. from Aug. 5, 1977. The Court of Appeal at the same time dismissed Chabbra's cross-appeal.

Chabbra now appeal, with the leave of the Court of Appeal, to this Board, contending that the judgment of the Court of Appeal reducing the amount of damages awarded to them by the learned trial Judge should be set aside, and the award made by him should be restored. There is no cross-appeal to the Board by the shipowners.

Before their Lordships both sides accepted the facts of the case as found by the Court of Appeal. These facts, amplified to some extent by reference to the documents and to other findings by the trial Judge also accepted by both sides, are as follows:—

(1) By a written contract dated May 20, 1977, Indian Overseas Corporation of Calcutta, India,

("IOC"), agreed to sell to Mumtazzudin & Sons of Dacca, Bangladesh, ("Mumtazzudin") 7000 tonnes of edible salt at U.S. $22/— per tonne c. & f. Chittagong/Chalna.

(2) The suppliers of the salt were Bihar Supply Syndicate also of Calcutta ("BSS"), who had contracted in writing to sell to IOC 21,000 tonnes of salt plus or minus 10 per cent. U.S. $22/— per tonne c. & f. Chittagong/Chalna by three shiploads of 7000 tonnes per ship.

(3) The fact that IOC were not making a profit on the sale was because they were permitted, by reason of the export of the goods, to import certain scheduled goods into India to the value of one-third of the value of the goods so exported.

(4) There was a business firm in Singapore called Atlas Enterprises ("Atlas") having two partners, one K. C. Sharma ("Sharma") and the other his wife. Sharma agreed with Mumtazzudin that Atlas would finance Mumtazzudin's contract of sale with IOC by causing transferable letters of credit to be opened by banks in Singapore in favour of IOC to pay for the salt bought by Mumtazzudin from the latter.

(5) Altas subsequently caused two transferable letters of credit to be opened in favour of IOC. One was opened with the Singapore branch of the United Commercial Bank for U.S. $30,800 to pay for 1400 tonnes of salt at U.S. $22/— per tonne. The other was opened with the Singapore branch of the Banque National de Paris for U.S. $79,200 to pay for 3600 tonnes at the same price.

(6) The total amount expended by Atlas in financing the purchase of the salt by Mumtazzudin from IOC, including the opening of the letters of credit, bank charges and premiums for the insurance of the salt in transit, amounted to S. $275,620.82.

(7) Through the means of the two transferable letters of credit BSS were in due course paid for 5000 tonnes of salt supplied by them to IOC. The payments were made by certain paying banks in India at the request of the opening banks in Singapore.

(8) BSS, pursuant to their contract with IOC, shipped 5000 tonnes of salt on board the ship *Jag Dhir* ("the ship") at Tuticorin for carriage to Chittagong.

(9) The shipowners' agents at Tuticorin issued two shipped on board bills of lading, numbered 1 and 2 respectively and both dated July 15, 1977, in respect of the salt so shipped. Bill of lading no. 1 covered 1400 tonnes and bill of lading no. 2 covered 3600 tonnes, making 5000 tonnes in all. BSS were named as shippers in the two bills of lading, which provided for consignment to order or assigns. Mumtazzudin was named as the party to be notified.

(10) BSS, having been paid the price of the salt shipped by means of the transferable letters of credit, endorsed the two bills of lading generally and handed them to the paying banks who later forwarded them to the opening banks.

(11) Atlas, having paid the opening banks and thereby obtained the two bills of lading, caused them to be endorsed over to Chabbra for value.

(12) On July 23, 1977, Mumtazzudin were notified that the ship would shortly be arriving at Chittagong.

(13) On July 26, 1977, the ship arrived at Chittagong ready to discharge. Although Mumtazzudin were not in a position to present the two bills of lading, they persuaded the master or the ship's agents to deliver the whole of the 5000 tonnes of salt to them without such presentation, in consideration of an indemnity signed on behalf of Mumtazzudin and countersigned on behalf of the Rupali Bank.

(14) In order to obtain the countersignature of the Rupali Bank, Mumtazzudin were obliged to deposit, and did deposit, a sum of Takas 2.7 million, equivalent to S. $389,117.62, with the bank concerned.

(15) Chabbra, although not the sellers of the goods, invoiced Mumtazzudin for U.S. $220,000, and sent the bills of lading through their bankers for collection by that firm.

(16) Mumtazzudin refused to take up and pay for the documents tendered to them by Chabbra. Chabbra accordingly took the decision to bring proceedings against the shipowners.

At the trial before Mr. Justice A. P. Rajah in the High Court, Chabbra contended that Atlas had themselves bought the salt from IOC and resold it to Mumtazzudin for U.S. $220,000, twice the price paid for it to IOC. On this basis Chabbra claimed, as assignees of Atlas through the endorsement and delivery to them of the bills of lading, damages of S. $512,380, calculated by reference to a rate of exchange of S. $2.3290= U.S. $1/—.

Mr. Justice A. P. Rajah rejected this contention of Chabbra about a sub-sale and held that the damages should be related to the invoice value of the goods shipped, by which their Lordships understand him to have meant, in effect, the market value of the goods on delivery at Chittagong. The learned Judge went on to say that, in the absence of reliable

evidence as to what such value was, he had decided to take the amount of Takas 2.7 million, the sum deposited by Mumtazzudin with the Rupali Bank in order to obtain that bank's countersignature to the indemnity given by Mumtazzudin to the shipowners for the purpose of attaining delivery of the salt from the ship without presentation of the bills of lading. That sum, as indicated earlier, was equivalent to S. $389,117.62, and that was the capital sum awarded by the learned Judge as damages to Chabbra by his order dated Mar. 16, 1981. The learned Judge did not go into the question whether Chabbra's entitlement to such damages lay in contract or in the tort of conversion or both.

In the Court of Appeal Chabbra, by their cross-appeal, sought to have the damages awarded to them increased to S. $512,380 on the basis of the alleged sub-sale unsuccessfully relied on by them in the High Court. The Court of Appeal, however, like Mr. Justice A. P. Rajah, rejected Chabbra's case about a sub-sale, on the ground that there was no evidence to support it. The Court of Appeal accordingly dismissed Chabbra's cross-appeal, and, as indicated earlier, Chabbra do not appeal to the Board against that decision.

With regard to the shipowners' appeal the Court of Appeal held that Chabbra were entitled to recover damages from them both for breach of their contract to deliver and in tort for conversion. They held further, however, that the proper measure of damages in law, on either basis, was not the market value of the salt on delivery at Chittagong, but only the amount which Atlas had themselves expended in the transaction, in respect of the opening of the two letters of credit, bank charges and insurance premiums to cover the salt in transit. That sum, as stated in finding number (6) above, was S. $275,620.82, and the Court of Appeal varied the order of Mr. Justice A. P. Rajah by reducing the award of damages to that amount. The ground of this decision appears to have been that Atlas were only pledgees of the bills of lading; that as such pledgees they only had a special, as distinct from a general, right of property in the goods represented by the bills of lading; and that they were, accordingly, not entitled to recover as damages the market value of the salt, but only the amount expended by them in financing the transaction, that being the amount secured to them by the pledging to them of the bills of lading.

Before their Lordships it was conceded by Counsel for Chabbra that the Court of Appeal had been in error in holding that Chabbra could recover in contract, and accepted that they could only recover in tort for conversion. In their Lordships' opinion, having regard to the decision of the House of Lords in *Sewell v. Burdick*, (1884) 10 App. Cas. 74, this concession was properly made. That case shows that, where endorsement and delivery of a bill of lading to a party are made with the intention, not of passing to that party the general property in the goods represented by the bills of lading, but only a special property in such goods by way of pledge, the Bills of Lading Act, 1855, does not have the effect of transferring to such party either the rights or the liabilities under the contract contained in the bill of lading so endorsed and delivered. In the present case Atlas were, as found by the Court of Appeal, only pledgees of the bills of lading, and as such obtained only a special property in the goods represented by them.

This very proper concession by Counsel for Chabbra was matched by an equally proper concession by Counsel for the shipowners that, even though Chabbra could not recover from the shipowners in contract, they nevertheless had a good cause of action against the latter in tort for conversion.

Having regard to these two concessions made by Counsel on either side, only two questions remain for actual or potential decision by the Board. The first question, which needs to be decided in any event, is whether the proper measure in law of the damages recoverable by Chabbra is (a) the full market value of the salt on delivery at Chittagong, as held by Mr. Justice A. P. Rajah, or (b) the total amount expended by Atlas in financing the purchase of salt by Mumtazzudin from IOC, as held by the Court of Appeal. If the answer to the first question is (b), no further question arises for decision. If the answer is (a), however, a second question arises for decision, namely, what Chabbra proved, on the evidence adduced before Mr. Justice A. P. Rajah, to have been the full market value of the salt on delivery at Chittagong.

So far as the first question is concerned, it is not in dispute that the pledgee of a bill of lading is entitled, on presentation of it to the ship at the port of discharge, to the possession of the goods represented by it. It has further, in their Lordships' opinion, been established, by authority of long standing, that where one person, A, who has or is entitled to have the possession of goods, is deprived of such possession by the tortious conduct of another person, B, whether such conduct consists in conversion or negligence, the proper measure in law of the damages recoverable by A from B is the full market value of the goods at the time when and the place where possession of them should have been given. For this purpose it is irrelevant whether A has the general property in

the goods as the outright owner of them, or only a special property in them as pledgee, or only possession or a right to possession of them as a bailee. Furthermore the circumstance that, if A recovers the full market value of the goods from B, he may be liable to account for the whole or part of what he has recovered to a third party, C, is also irrelevant, as being res inter alios acta.

The only exception to the general principle just stated is when B has one or more cross-claims against A arising out of the same or some connected transaction. In that case B may be entitled to set-off or deduct the amount of any such cross-claim or cross-claims from the full market value of the goods in arriving at the amount of the damages recoverable from him by A: see MacGregor on Damages 14th ed. 1980 pars. 1075-1080. In the present case, however, there is no suggestion even that the shipowners had any cross-claim against Atlas arising out of the same or any connected transaction. It is, therefore, unnecessary to consider what the rights of Chabbra, claiming through Atlas, against the shipowners might otherwise have been.

In their Lordships' view it is sufficient, in order to illustrate the authority of long standing referred to above, to cite two cases only. The first case is *Leach v. Swire*, (1865) 18 C.B.N.S. 479. In that case the plaintiff, who was a pawn-broker, had seized from him by the defendant, in purported execution of a distress warrant for arrears of rent, a quantity of unredeemed pledges which he had in his possession in the ordinary course of his trade. It was held by the Court of Common Pleas, first, that goods deposited with a pawn-broker were privileged from distress; and, secondly, that the proper measure of damages for conversion was the full market value of the goods and not merely the value of the plaintiff's interest in them. With regard to this second part of the decision Chief Justice Earle said at p. 492:

> In distraining these goods, the defendant was an absolute wrong-doer. The landlord had no colour of right to take them. The bailee, therefore, is entitled to the full value of the goods.

The second case is *The Winkfield*, [1902] P. 42. In that case there had been a collision between two ships, *Mexican* and *Winkfield*, in consequence of which *Mexican* sank. The owners of *Winkfield* admitted that their ship was half to blame for the collision, and, following such admission, successfully brought proceedings to limit their liability under s. 503 of the Merchant Shipping Act, 1894. Various claims were made against the limitation fund in Court, including in particular two claims by the Postmaster-General for the loss of postal parcels, mail and registered letters of which he was not the owner. In respect of some of these items the owners of them had made claims on the Postmaster-General and given him written authority to represent them in the proceedings for distribution of the limitation fund. In respect of others of these items no claims had been made by their owners against the Postmaster-General nor had any instructions been given by them to him. He had, however, undertaken to distribute any monies recovered to the owners, and to indemnify the Court against any claims which might later be put forward by them.

The Admiralty Registrar allowed the claim of the Postmaster-General in respect of the first group of items referred to above but disallowed his claim in respect of the second such group. An objection to the disallowance made by motion to the President (Sir F. H. Jeune) was overruled, and the Postmaster-General then appealed to the Court of Appeal. That Court (Lord Justice Collins, M.R. and Lords Justices Stirling and Mathew) allowed the appeal, holding that the Postmaster-General, on the basis, accepted before the Registrar and the President, that he was the bailee of all the parcels, mail and registered letters concerned, was entitled to claim in his own name against the limitation fund for the full value of those items.

Lord Justice Collins, M.R., with whose judgment the other members of the Court of Appeal agreed, made a full review of the relevant authorities, including *Leach v. Swire* sup., which he treated as correctly decided, and *Claridge v. South Staffordshire Tramway Co.*, [1892] 1 Q.B. 422, which he regarded as wrongly decided and which was therefore overruled. Later he said at p. 60:—

> Therefore, as I said at the outset, and as I think have now shown by authority, the root principle of the whole discussion is that, as against a wrongdoer, possession is title. The chattel that has been converted or damaged is deemed to be the chattel of the possessor and of no other, and therefore its loss or deterioration is his loss, and to him, if he demands it, it must be recouped. His obligation to account to the bailor is really not *ad rem* in the discussion. It only comes in after he has carried his legal position to its logical consequence against a wrongdoer, and serves to soothe a mind disconcerted by the notion that a person who is not himself the complete owner should be entitled to receive back the full value of the chattel converted or destroyed. There is no inconsistency between the two positions; the one is the complement of the other. As between bailee and stranger possession gives title — that is, not a limited interest, but absolute and complete ownership,

> and he is entitled to receive back a complete equivalent for the whole loss or deterioration of the thing itself. As between bailor and bailee the real interests of each must be inquired into, and, as the bailee has to account for the thing bailed, so he must account for that which has become its equivalent and now represents it. What he has received above his own interest he has received to the use of his bailor. The wrongdoer, having once paid full damages to the bailee, has an answer to any action by the bailor.

In support of the view that Chabbra could recover by way of damages no more than the amount of the limited interest secured to Atlas by the pledge to them of the bills of lading the Court of Appeal of Singapore relied on the decision of Mr. Justice Channell in *London Joint Stock Bank Ltd. v. British Amsterdam Maritime Agency Ltd.*, (1910) 16 Com. Cas. 102. The facts of that case were these. A contract provided for the sale by Dutch vendors of certain oil f.o.b. to P. & Co. on the terms of cash against documents. The oil concerned was shipped by a firm, B & Z, on the ship *Maesstroom* for carriage from Amsterdam to London under a bill of lading dated Apr. 29, 1910, which was made out in the name of P. & Co. as shippers and which made the oil deliverable to their order or assigns. The oil was poured into drums belonging to P. & Co. The bill of lading, together with a draft attached to it, were then sold by the vendors to certain bill brokers and they in turn sold them to an Amsterdam bank which had an account with the plaintiffs. The Amsterdam bank sent the bill of lading, together with the draft attached to it, to the plaintiffs for collection, and the plaintiffs, on receiving them, credited the Amsterdam bank on May 2, 1910, with the amount of the draft. When *Maesstroom* arrived in London, P. & Co. approached the defendants, who were the London agents of the owners of that ship, and informed them that they had not received the bill of lading for the oil, but that, if they could have delivery of the oil, they (P. & Co.) would give them an indemnity; and on these terms delivery of the oil was given to P. & Co. Subsequently P. & Co. went to the plaintiffs, with whom they had business connections, and asked for an advance on the consignment of oil; and on May 4, 1910, this loan was arranged, and P. & Co. endorsed the bill of lading, which was still in the plaintiffs' possession, and gave them a charge. Some days later, on the plaintiffs' representative applying to the defendants for the oil, they were informed that it had already been delivered to P. & Co. who had disposed of it. The plaintiffs then sued the defendants for damages for wrongful delivery of the oil to P. & Co.

Mr. Justice Channell said at p. 108:—

> The general result, therefore, is that the plaintiffs are entitled to succeed in their action of trover. In an action like this between parties, each of whom has an interest in the subject matter, the plaintiffs are not necessarily entitled to the full value. In this case the amount having been reduced by payments off on other securities the plaintiffs are only entitled to the amount for which they held the bill of lading, and there will be judgment for the plaintiffs for that amount.

It is not clear from the report of the case what were "the other securities", the payment off of which Mr. Justice Channell considered that the defendants were entitled to deduct from the full value of the oil. If the payment off of these other securities brought the case within the exception of a cross-claim or cross-claims by the defendants against the plaintiffs arising out of or connected with the same transaction, to which reference was made earlier, the decision may be supportable on its particular facts. Otherwise the case must, in their Lordships' opinion, so far as the measure of damages is concerned, have been wrongly decided and ought not to be followed.

Applying the general principle laid down in *Leach v. Swire* and *The Winkfield* to the present case, their Lordships reach the following result. Firstly, Chabbra, as holders and endorsees for value of the bills of lading, had a right to delivery of the salt to them at Chittagong. Secondly, that right entitled Chabbra to recover from the shipowners, who had wrongfully converted the salt by delivering it to Mumtazzudin, the full value of the salt on delivery at Chittagong. Thirdly, the circumstance that Chabbra, having recovered from the shipowners the full value of the salt, might, after taking out of the sum recovered the sums expended by them in financing the purchase of the salt by Mumtazzudin from IOC, have to account, in whole or in part, for the balance to Mumtazzudin was, as between Chabbra and the shipowners, wholly irrelevant.

On the basis that the first of the two questions referred to earlier falls to be answered by saying that the proper measure in law of the damages recoverable by Chabbra from the shipowners for conversion of the salt was the full value of the salt on delivery at Chittagong, it becomes necessary for their Lordships to answer also the second question referred to earlier, namely, what Chabbra proved, on the evidence adduced by them before Mr. Justice A. P. Rajah, to have been that value.

In relation to this question, Counsel for Chabbra put forward two alternative contentions. The first contention was that Mr. Justice A. P. Rajah was entitled to assess the damages recoverable by Chabbra by reference to the amount deposited by Mumtazzudin with the Rupali Bank in order to obtain the countersignature on behalf of that bank of the indemnity given by Mumtazzudin to the shipowners. The second and alternative contention was that there were other evidence given at the trial which supported a market value on delivery at Chittagong of at least the same amount.

Counsel for the shipowners met these two contentions as follows. With regard to the first, he submitted that the amount of the deposit could not be taken as a proper basis for the assessment of the damages, because it was intended to cover an adverse claim against the shipowners by a third party and would therefore include not only the damages which such third party might recover on the basis of the value of the salt, but also the costs of both the third party and the bank in dealing with such a claim. It was further to be assumed that the bank, in accordance with ordinary commercial practice, would require the deposit to include a fee for the bank and a substantial margin for contingencies. With regard to the second contention, Counsel for the shipowners stressed the fact that Mr. Justice A. P. Rajah stated expressly in his judgment (as he did) that he had only turned to the amount of the deposit as a basis for assessing damages because there was no evidence of market value which he regarded as reliable. That being so, it would not be right, Counsel said, for the Board to make its own assessment of the amount of damages recoverable by reference to the written record of evidence which the learned trial Judge had expressly found to be unreliable.

In their Lordships' judgment, the arguments put forward by Counsel for the shipowners are unanswerable and must prevail. The amount of the deposit could not, for the reasons given by him, be regarded as a proper basis for assessing the amount of the damages recoverable by Chabbra. Similarly evidence of the market value of the goods which the learned Judge, who saw and heard the witnesses who gave it, found to be unreliable could not justifiably be used to found a fresh assessment of the market value of the salt by the Board.

The burden of proving the market value of the salt on delivery at Chittagong was on Chabbra. In the event, while it is probable that such value exceeded the sums of money expended by Atlas in financing the transaction of sale between IOC and Mumtazzudin, Chabbra failed to adduce any reliable evidence to prove what the amount of that excess was.

For these reasons their Lordships feel obliged to conclude that the amount of damages awarded by the Court of Appeal, although arrived at on a basis which they consider was incorrect in law, is nevertheless the only amount that they can justifiably arrive at on the different legal basis which they have already indicated that they consider to be correct.

In the result the victory which Chabbra have won in relation to the proper basis in law for assessing the amount of the damages recoverable by them turns out to be a fruitless victory which avails them nothing.

The judgment of their Lordships therefore is that the appeal should be dismissed with costs.