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[PART 1

COURT OF APPEAL.

May 26, 27, 28 and 29, 1959.

SOCIETE FRANCO-TUNISIENNE
D'ARMEMENT-TUNIS v. THE
GOVERNMENT OF CEYLON.

(THE "MASSALIA.")

Before Lord Justice MORRIS and
Mr. Justice PILCHER.

Arbitration—Award—Motion to set aside or remit
—Settlement of final accounts between owners
and charterers under charter-party — Juris-
diction of arbitrator—Misconduct—Terms of
reference.

"Gencon" charter-party entered into by applicant owners of steamship *Massalia* and respondent charterers for carriage of a part cargo of flour from Antwerp and Bordeaux to Colombo—Owners loading at Port Said, *en route* for Colombo, part cargo of lentils (*inter alia*), under liberty conferred on them by charter-party—Time lost at Colombo in waiting for berth—Dispute as to calculation of demurrage referred to arbitration under charter-party—Charterers' time sheet showing sum of £829 6s. 10d. due to shipowners from charterers in respect of demurrage incurred at Colombo—Owners' time sheet disclosing charterers' liability for demurrage at Colombo at £1878 16s. 5d.—Award by umpire in favour of charterers disclosing a balance due to charterers, in respect of dispatch money, of £160 3s. 1d., umpire disregarding the different time sheets adduced by owners and charterers—Motion by owners to set aside or remit award alleging that umpire exceeded his jurisdiction and misconducted himself in awarding in charterers' favour on a matter not in dispute (i.e., charterers' admitted liability for £829 6s. 10d.); and misconducted himself by deciding a point against owners

(i.e., charterers' admitted liability for £829 6s. 10d.) which owners treated as not having been in issue, alternatively, that he failed to give owners' arbitrator an opportunity to deal with the point.

—*Held*, by McNAIR, J., (1) that the umpire was fully entitled to disregard the alleged admission of £829 6s. 10d. demurrage, having taken the view that the charterers' admission had no legal justification; (2) that the umpire exceeded his jurisdiction in awarding £160 3s. 1d. dispatch money to the charterers, in that no claim for dispatch money was advanced by the charterers within six months of discharge; (3) that the umpire gave sufficient indication to the parties that he was proposing to consider the question of liability *de novo*; and that, accordingly, the award should be remitted to the umpire with a direction to exclude the amount allowed by way of dispatch money and to make such consequential amendments as were necessary.

—Appeal by shipowners for an order that the award be set aside or remitted on wider terms; or that the umpire be ordered to state that part of his award in issue in the form of a special case—No cross-appeal against learned Judge's order as to elimination of dispatch money from award.

—*Held*, by C.A., (1), upholding McNAIR, J., that, if it was a possible view in law that no demurrage was payable, then the umpire was not in excess of his jurisdiction in coming to that conclusion.

—*Held* (2), reversing McNAIR, J., that, although the umpire acted with the best of intentions, he misconducted himself in that he decided the case on a basis which differed from that which the charterers were asserting and on a basis of which the shipowners did not have satisfactory warning.

—Award remitted to the umpire with the additional direction that he reconsider the question of demurrage at Colombo.