

23rd January,  
1920.

SOLOMON SHAHEEN - - Appellant.

v.

KALFALLAH DURALIA - Respondent.

*Action for damages for default in carriage by sea and delivery of goods in a canoe—Local custom that owner who lets a canoe to another for his exclusive use can take cargo and passengers, other than those sent by the person hiring the canoe.*

The Plaintiff hired from the Defendant a canoe to take his goods from Kambia to Freetown. The Defendant sent other goods and passengers in the canoe, which was lost.

Held that a native custom for the person letting a canoe to another, to place in it other loads and passengers, is not supportable under section 6 of the Protectorate Courts Jurisdiction Ordinance, 1903<sup>1</sup>.

Judgment of the Circuit Court set aside, and judgment for the Appellant for £162 10s. 9d., with costs, in the Circuit Court and the Court of Appeal.

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Appeal from a judgment of Parodi, J., in the Circuit Court of the Protectorate of Sierra Leone.

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*J. F. Boston and Betts* for the Appellant.

*McCarthy* for the Respondent cites:—

Addison on Contracts, 11th Edition, p. 1027.

*Boston*, in reply, cites:—

Addison on Contracts, 4th Edition, p. 989.

PURCELL, C.J.

This is an appeal from the judgment of Mr. Justice Parodi, dated 2nd December, 1918, when sitting in the Circuit Court at Moyamba.

The Plaintiff (the Appellant in this Court) claimed £162 10s. 9d. damages for breach of duty in, and about, the carriage and delivery of goods from Kambia to Freetown.

The facts of this case may be here stated as briefly as possible:—

The Plaintiff, who is a Syrian trader, stated that he hired in July, 1918, a canoe to take his goods from Kambia to Free-

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<sup>1</sup> Now Cap. 169, sec. 5, Vol. II., p. 1156.

town; that such goods were sufficient to entirely fill the canoe, and that he contracted for the exclusive use of this canoe, but that during such voyage the Captain of this vessel took on board passengers and cargo, which had the effect of overloading the canoe, and caused her to sink, in consequence of which Plaintiff's loss was occasioned.

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The Defendant, on the other hand, denies the Plaintiff's story in almost every particular, and contends that he merely agreed to convey the Plaintiff's load to Freetown, that he (Plaintiff) had not the exclusive use of the canoe, it was open to him (Defendant) to carry other passengers and loads which, in fact, he did, and that the subsequent loss of the cargo was due to a violent storm which arose, and was in no way due to the overloading of the canoe. He further set up that he was entitled to the protection of the provisions of section 6 of Ordinance No. 6 of 1903.<sup>1</sup>

Section 6 runs as follows:—

“ Nothing in this Ordinance shall deprive the Court  
“ of the District Commissioner, or the Circuit Court, in its  
“ civil jurisdiction, in causes or matters between natives,  
“ and persons not natives, where it may appear to the  
“ Court that substantial injustice would be done to either  
“ party by a strict adherence to the rules of English law  
“ of the right to observe and enforce the observance, or  
“ shall deprive any person of the benefit, of any law, or  
“ custom, existing in the Protectorate, and not being  
“ repugnant to natural justice, equity and good conscience,  
“ nor incompatible either directly or by necessary impli-  
“ cation with any enactment of the Colonial Legislature  
“ existing at the commencement of this Ordinance, or which  
“ may hereafter come into operation: Provided that no  
“ party shall be entitled to claim the benefit of local law  
“ or custom, if it shall appear either from the express con-  
“ tract, or from the nature of the transaction, out of which  
“ any suit or question may have arisen that such party  
“ agreed that his obligations in connection with such  
“ transaction should be regulated exclusively by English  
“ law; and, in cases where no express rule is applicable  
“ to any matter in controversy, the Court shall be governed  
“ by the principles of justice, equity and good conscience.”

The learned Judge found that the canoe sank in deep waters during the course of a strong tornado, and that Plaintiff's loss

<sup>1</sup> Now Cap. 169, sec. 5, Vol. II., p. 1156.



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was caused by the act of God, and he further came to the conclusion that injustice would be done to the Defendant were he to be denied the benefit of a local custom by the strict adherence to the rules of English law, such custom being that, even though the canoe in question was hired by the Plaintiff for his exclusive use, he (Defendant) was nevertheless entitled to take other cargo and other passengers.

After very carefully considering all the facts of this case, as I now know them, both from the arguments addressed to us from the Bar and from a perusal of the record, I am unable to agree with the conclusion arrived at by the learned Judge in the Court below.

I am satisfied:—

(1) that there was a contract between the Plaintiff and the Defendant for the exclusive hiring of his canoe to convey Plaintiff's goods from Kambia to Freetown, and that the Defendant, for the purposes of that particular voyage, was not a common carrier;

(2) that in breach of this contract the Defendant, by taking aboard the canoe passengers and other cargo, overloaded her, and caused her to sink;

(3) that the loss of the Plaintiff's goods was due solely to such overloading of the canoe, and was not due to any storm at all;

(4) that the Defendant was not entitled to claim the benefit of a local custom of the kind contended for under the provisions of section 6 of Ordinance No. 6 of 1903,<sup>1</sup> as such custom, even if it was proved—which it was not—is obviously, from every standpoint, unsupportable.

It follows, therefore, that the judgment of the Court below must be set aside, with costs, here and in the Court below, and judgment must be entered for £162 10s. 9d., with costs.

PENINGTON, J.

I concur.

McDONNELL, Acting J.

I concur.

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<sup>1</sup> Now Cap. 169, sec. 5, Vol. II, p. 1156.