Both labels are printed in the same colour, green, on a white background. An average man, seeing the bunch of grapes hanging under the top border, associates the label with wine. He knows the opponent sells its wine with a label having that bunch of grapes and the leaves on three sides, with some words written within the border, all done up in green on a white background. He knows the opponent's label on its wine bottles has all these features. Whether the word written is "Krio" or "Keo" is of less consequence to him; he will not without some justification conclude, on seeing the applicant's label on a bottle of wine, that the bottle bearing that label contains the opponent's wine. Again, as regards the pronunciation of the words "Krio" and "Keo," a man wanting the opponent's wine which has the word "Keo" written on its label could be supplied with "Krio," which would be the applicant's brand of wine. The pronunciation of the words is so similar.

I hold that the applicant's trade mark, Exhibit C, so closely resembles the trade mark of the opponent, Exhibit A, as is calculated to deceive and to lead to confusion, and as such it should not be admitted to registration. Considering all the circumstances of the case, including the fact that the opponent failed in respect of its trade mark No. 3313, I order that each party pays his own costs. I also order that the amount of £15 deposited by the opponent as security for costs be refunded by the registrar.

Order accordingly.

WRIGHT *v.* ELDER DEMPSTER LINES LIMITED

SUPREME COURT (Boston, Ag.J.): April 2nd, 1954
(Civil Case No. 349/53)

[1] **Shipping—carriage of goods—unloading—delivery to consignee—special stipulations or custom as to mode of delivery—when delivery effected so as to discharge shipowner's liability:** While a shipowner is under an obligation to deliver goods correctly to the consignee, and so remains responsible for the goods until such delivery, this liability may be limited by the express terms of the contract and the custom at the port of discharge; and therefore where the bill of lading states that the shipowner's responsibility ends when the goods leave the ship's deck at the port of discharge, but the custom of that port is for the goods to be taken out of the ship into lighters and tallied before landing on the quay for storage, delivery to the

consignee is effected simply by unloading the goods at the quay because, although the goods remain in the control of the shipowner while they are on the quay until actual delivery to the consignee, he is then acting as agent of the consignee (page 367, line 18—page 369, line 19).

The plaintiff brought an action against the defendants to recover damages for breach of a contract of carriage of goods.

The defendant shipowners undertook to carry a number of bundles of corrugated iron sheets from London to Freetown in one of their ships. The bill of lading stated that the goods were in the defendants' custody both before loading and after discharge, but that their responsibility would cease as soon as the goods left the ship's deck. The custom at the port of Freetown was for goods to be taken from the discharging ship, put on a lighter, tallied and then stored on the quay. All the bundles of iron sheets were transferred to the lighter, but when the plaintiff collected them from the quay some days later some were missing. The plaintiff instituted the present proceedings against the defendants to recover damages for breach of contract in failing to deliver the full consignment.

The Supreme Court considered the nature of a shipowner's liability to the consignee and the effect of the stipulations in the bill of lading and the custom at the port of discharge on that liability.

Case referred to:

(1) *Petrocochino* v. *Bott* (1874), L.R. 9 C.P. 355; 30 L.T. 840, followed.

Mahoney for the plaintiff;
Edmondson for the defendants.

BOSTON, Ag.J.:

The plaintiff's claim against the defendants is for damages for breach of contract in failing to deliver to the plaintiff 20 bundles of corrugated iron sheets which the defendants undertook to carry in their ship S.S. *Cabano* from London to the Port of Freetown. The defendants denied liability.

The case for the plaintiff is that 60 bundles of corrugated iron sheets were delivered to the master of the *Cabano* by the defendants' agents in London to be conveyed by him to the Port of Freetown for the plaintiff. The plaintiff received advice from his agents in London of the dispatch of the goods by the S.S. *Cabano*. He was not informed by the defendants when the goods arrived

in Freetown, but from enquiries at the defendants' office he knew they arrived on April 3rd, 1953, which was Good Friday, a public holiday. On the following Tuesday, the 7th, after Easter Monday, the plaintiff ascertained that the goods were on the ship's manifest, passed the necessary entries and went down to the wharf to obtain delivery. He did not get delivery that day as the goods had not yet been sorted out. Next day, the 8th, the goods were sorted out, but only 40 bundles of corrugated iron sheets were found for the plaintiff. Searches and enquiries were made for the remaining 20 bundles without avail, and the plaintiff had to take delivery of the 40 bundles on April 14th to avoid payment of rent.

On behalf of the defendants, evidence was given that 60 bundles of corrugated iron sheets consigned to the plaintiff were tallied from the lighter to the quay—in other words, that the defendants landed the correct number of bundles at the Port of Freetown on April 3rd but only 40 bundles were delivered to the plaintiff on April 14th. According to the bill of lading (Exhibit B) the defendants were to deliver the goods to the consignee, *i.e.*, the plaintiff or his assigns, and if they failed to do so were liable for loss; but that is subject to the custom at the port of discharge, and the terms and conditions on the bill of lading which are part of the terms of the contract.

From the evidence, the practice in the Port of Freetown for the landing of cargo is that it is taken from the ship and put into lighters. From the lighter the cargo is tallied by the defendants' servants and placed on the quay. There is a Government wharf superintendent who allocates space in the sheds or on the quay for the storage of cargo. The defendants are in control of the cargo whilst on the quay until it is delivered to the consignee, but they are not in charge of the quay. It is a Government quay. Corrugated iron sheets are always stacked on the quay in the open, not in sheds. The goods remain on the quay until the consignee applies for them, when they are delivered by the defendants' servants.

In the bill of lading, the terms and conditions printed on which are part of the contract of carriage and bind the company and the consignee, No. 10 of the terms and conditions reads as follows:

> "Goods in the custody of the carrier (meaning the defendants) or its sub-contractors or agents before loading on the ship and after discharge therefrom shall be deemed to be in such custody as agent or agents only for and at the entire risk of the shipper and/or consignee, and the carrier and its sub-contractors shall not be responsible for any act neglect or omission on the part

of its or their servants or agents in relation to the goods while in such custody."

No. 8 reads as follows:

"The carriers' responsibility shall cease as soon as the goods have left the ship's deck or tackle. The goods shall be received by the consignee from the ship's tackle as soon as they are ready for delivery. If the consignee fails to send a representative on board, or to the place of delivery as the case may be, the tally of the ship shall be accepted as final. No claims will be admitted which are ascertained after the goods are delivered. Goods may be put into lighters or surf boats for landing as customary or convenient."

In Freetown harbour ships do not come alongside the quay—they anchor in mid-stream and the goods are then put into lighters from the ship and landed on the quay. There is evidence that in this case the bundles of corrugated iron sheets were tallied from the lighters to the quay by the defendants' servants and found correct—60 bundles. That was on April 3rd. The terms of the contract state that the defendants' responsibility comes to an end when the goods are landed on the quay. It is true that on the quay the defendants still retain control of the goods, but according to the terms of the contract they are in such control as agents of the consignee—they are no longer liable as carriers. They still have to deliver the goods to the consignee, but whilst such goods are under their control they are merely the agents of the plaintiff, and are not liable for loss. These terms are part of the contract contained in the bill of lading and are binding on the plaintiff.

It was argued that the defendants were under an obligation to deliver the goods correctly to the plaintiff. That is a true proposition of law, but it is limited by the express terms of the contract and the custom at the port of delivery. In this case, it is one of the terms of the contract that when the goods have left the ship and been landed on the quay, the liability of the defendants as carriers is at an end. The custom of this port is that goods are taken out of the ship into lighters, tallied and landed on the quay —the normal place for storage. The quay is the property of the Government over which the defendants have no control, although they have control of the goods. By the custom of the port therefore the goods are stored on the Government quay from where the plaintiff should take delivery; but after storage on this quay the responsibility of the defendants ceases.

There is a case which provides an authority for what has been stated above—the case of *Petrocochino* v. *Bott* (1). In that case goods were shipped under a bill of lading in these terms "Shipped in good order and condition by Petrocochino Brothers, of Calcutta, in the steamer *Zeno*, bound for London, sixty-nine hides, being marked and numbered as per margin, and to be delivered in the like good order and condition from the ship's deck, *where the ship's responsibility shall cease*, at the aforesaid port of London, . . . unto Messrs. Petrocochino Brothers, or his assigns . . . ." [Emphasis supplied.]

On arrival in London, the bales were taken from the deck of the vessel by the dock company's servants and placed on the quay. Within the proper time the consignee of the bales sent a lighter for them. The whole 69 bales were proved to have been landed by the company's servants and placed on the quay, but only 68 bales were delivered—the other one was never traced. It was held by the court that the shipowner was not responsible for the missing bale. In the course of his judgment Brett, J. said (L.R. 9 C.P. at 360; 30 L.T. at 842):

> "On the part of the consignees it was argued that the defendant, the ship-owner, was liable for the loss, on the ground that he had failed to deliver that one bale to the consignees or their agents; that the delivery of the goods to the dock company was a thing done for the convenience and at the expense of the ship-owner; and that, if any of the goods were lost through the negligence of the dock company, the ship-owner was responsible for it. On the other side it was contended that, according to the true interpretation of the bill of lading, the ship-owner was not responsible in any way for the goods after they had left the ship's deck."

After referring to the terms of the bill of lading, which I have stated above, Brett, J. continued (*ibid.*, at 360–361; 842):

> "The general principle seems to be that, where goods are consigned to a particular port, delivery is to be made according to the usage which prevails at that port . . . . Thus the mode and manner of delivery of goods according to the usage of the port of London is, not an immediate delivery from the ship to the consignee, but from the ship to the quay, and from the quay to the consignee. Having regard to that usage, this bill of lading is drawn. It seems to me that I could not more accurately describe the mode of delivery from the ship's deck

to an intermediate place of delivery. That being so, according to the true construction of this bill of lading, I am of opinion that the moment the ship-owner has cleared the goods from the deck, he ceases to be responsible in any way for them; and that, whatever remedy the plaintiffs may have against the dock company, or anyone else, they cannot under the circumstances charge the ship-owner with the loss of the bale in question."

Denman, J. concurred in the judgment.

In that case although it was stated in the bill of lading that the goods were to be delivered to the consignee or his assigns, yet it was held that unloading at the quay in London was a good delivery according to the custom of that port. The case is practically on all fours with the present case. The custom at Freetown Port is to take the goods in lighters from the ship and load them on the quay. It is from the quay that delivery is made to the consignees, not from the ship; and whilst the goods are lying on the quay the defendants are in charge of them merely as agents of the plaintiff. Their responsibility as carriers came to an end when the goods were landed correctly on the quay.

It follows from the above that the defendants are not liable for the missing 20 bales of corrugated iron sheets. The action is dismissed with costs to the defendants to be taxed.

Suit dismissed.

BIA *v.* MURRAY

WEST AFRICAN COURT OF APPEAL (Foster-Sutton, P., Coussey, J.A. and Luke, J. (Sierra Leone)): April 12th, 1954
(W.A.C.A. Civil App. No. 11/54)

[1] **Evidence — presumptions — presumption of law — presumption of absence of malice in privileged communication rebuttable by evidence of express malice:** Where a communication is covered by qualified privilege, there is a presumption of absence of malice which is rebuttable only by evidence of express malice; and it will be held that words are used with express malice if they are not used honestly and *bona fide* (page 372, lines 18–23).

[2] **Tort—defamation—defamatory statements—construction—words must not be construed so as to restrict unduly right to make communication and language used:** The words of a defamatory statement must not be construed in a way that will violate the doctrine that the law