IN THE HIGH COURT OF AUSTRALIA

ARAMCO OVERSEAS COMPANY

V.

AUSTRALIAN RICE PTY. LIMITED

ORIGINAL

REASONS FOR JUDGMENT

Judgment delivered at Sydney

on Thursday, 3rd October 1957

W. M. HOUSTON, Govt. Print., Melb.

C.1978/55

ARAMCO OVERSEAS COMPANY

v.

AUSTRALIAN RICE PTY. LIMITED

ORDER.

Appeal dismissed with costs.

ARAMCO OVERSEAS COMPANY

v.

AUSTRALIAN RICE PTY. LIMITED.

JUDGMENT.

DIXON C.J.
WILLIAMS J.
TAYLOR J.

ARAMCO OVERSEAS COMPANY

v.

AUSTRALIAN RICE PTY. LIMITED.

This appeal raises for our consideration questions of fact and law concerning the sale of certain goods by the respondent to the appellant. The questions with which we have to deal arose initially in an action brought by the appellant in the Supreme Court of New South Wales to recover damages for breaches of the contract of sale and the appellant, having failed in that action, now brings this appeal and seeks an order that the judgment entered for the respondent should be set aside and that, in lieu thereof, judgment should be entered for it.

The respondent was at all material times engaged in New South Wales in the milling of rice and the appellant, a foreign company registered in that State, was a large purchasing organisation devoted to the purchasing of supplies and equipment required for use by two large United States companies, Arabian American Oil Company and Trans-Arabian Pipeline Company. In the course of its purchasing activities the appellant, on 12th May, 1952, forwarded to the respondent an order for a quantity of rice and the order, as subsequently amended by "change orders", dated the 15th and 21st May respectively, was accepted by delivery of a quantity of the subject goods.

It is unnecessary to set out the terms of the appellant's original order in full but it is material to mention that, in form, it consisted in part of a printed document which contained on its face a request to furnish the "materials and/or Services listed on the attached sheets, subject to all terms and conditions shown hereunder, on the reverse side of this sheet and on the accompanying sheets". Thereafter there followed some general instructions as to shipping, packing and marking and payment and on the reverse side a number of general "terms and conditions" were set out.

Of these it is essential to mention clause 8 which was in the following terms:

> "Seller warrants that the goods sold hereunder are fit for the particular purpose or use for which they are purchased by buyer and also guarantees the goods against defective design, workmanship or material. This warranty is in addition to any and all warranties of seller arising by operation of law and nothing herein shall be construed as limiting or restricting such warranties".

The specific details of the goods ordered and detailed instructions with respect to a number of essential matters were set out on an attached typed sheet and the relevant paragraphs of that document were as follow:

" ARAMCO OVERSEAS COMPANY

12th May, 1952 ORDER NO. ARAA-715-B16AA

Item 2 155-578	5,700 bags Rice White Short Grain Non-converted milled coating U.S. No.3, 14½ lb in cloth bag Export packed, 6 bags per Jutex No.49 outer sack Broken content not to exceed 20% Moisture content not to exceed 15%	@ £75 per ton Nett F.O.B. Sydney
	Cost of Export packing above	@ £15.10.0 per ton Nett F.O.B. Sydney.

This material is for export and is to be delivered by you to a carrier or forwarding agent for shipment to a point outside Australia in accordance with shipping instructions set out below.

Shipper: Aramco Overseas Company, (Inc. in U.S.A. with Limited Liability)

Consignee: Arabian American Oil Company, Dammam, Saudi Arabia.

Space Freight
Insurance: Our responsibility.

Shipping Instructions: To be shipped per M.V. "Chyebassa" scheduled to load in Sydney approximately 3rd week in May, 1952. Kindly contact B.I.S.N. Co. and confirm loading date.

Export Licence & Restricted Goods Permit: Our responsibility.

Export packing in vendors own plant in accordance with the best export packing practice, bags marked and loaded F.O.B. vessel at no extra cost.

If goods are not packed in accordance with the best export packing practice and recoopering and/or remarking is required the cost of these services will be charged back to you at cost."

The first "change order" varied the quantity of rice ordered from 5,700 bags to 165,000 bags and provided for their shipment on three specified vessels in May, June and July. The three vessels were respectively the "Chyebassa", the "Chupra" and the "Canara". The second change order added to the existing order a further quantity, namely, 3,080 double hessian sacks of rice of the same description.

The first two shipments reached the port of Ras Tanura in Saudi Arabia in good condition and no question arises with respect to them. But a large portion of the third shipment, which was delivered for carriage to the same port by the "Canara" and which consisted of 119,232 bags of rice in 19,872 jutex sacks and 1300 double hessian bags of rice, was found upon arrival at Ras Tanura to be in a very bad state. Approximately 42 per cent of the rice contained in the jutex sacks was so affected by various kinds of moulds as to be unfit for human consumption. Of the rice contained in the double hessian bags, it should be added, a small quantity of approximately 26 bags was similarly affected.

A great deal of evidence was given at the trial and there was considerable conflict as to the probable cause of this deterioration but two things, it can be said, emerged with reasonable certainty. The first is that rice which contains a high moisture content is prone to develop mould whilst stored or stacked in transit and it is apparent that the higher the moisture content the more rapidly mould will develop. The second is that, given appropriate conditions otherwise, heat will encourage the rapid growth of mould and accordingly, as in the case of so many perishables, adequate provision should be made for ventilation when rice is being stored or stowed for carriage on a lengthy journey. No doubt this is the reason why, as was deposed to at the trial, hessian bags, or other bags of that character, are usually employed for the transport of rice since containers

of this character permit the provision of adequate ventilation. But jutex sacks are more or less impermeable and, upon the evidence, there seems no reason to doubt that there is a pronounced element of risk in using them for rice cargoes which are to be carried on long voyages through tropical climates unless special care is taken. It should be observed that the voyage of the "Canara" took some fifty-three days in the course of which her cargo commitments required her to call at Melbourne, Fremantle, Cocos Islands, Bombay, Karachi and Bahrein before ultimately reaching Ras Tanura. Moreover, she was a full ship and the rice in question was overstowed with large quantities of flour. It should also be mentioned that the evidence not only justifies but points strongly to the conclusion that, whilst, as experience has shown, rice with a moisture content of as much as fifteen per cent may, if properly stowed, be carried on such a journey in hessian bags without undue risk it would be, at least, imprudent to attempt to carry such a cargo with that moisture content in jutex sacks. Some of the witnesses in the case maintained that if rice is to be carried safely in jutex sacks its moisture content when shipped should not exceed twelve per cent or thirteen per cent but, whether or not these views were unduly conservative, the conclusion is inescapable that if rice is to be carried without damage on a long journey in sacks of this character its moisture content ought to be substantially below fifteen per cent at the time of shipment. Indeed, as will appear, the appellant, in some measure, so contended and relied upon the contention for the purpose of endeavouring to support its claim to damages.

For the purpose of establishing liability in the respondent the appellant put its case on the facts in two ways. In the first place it contended that, upon the evidence, the conclusion should have been reached that at the time of delivery in Sydney the rice, or a substantial

portion of it, had a moisture content in excess of fifteen per cent. That is to say the moisture content was in excess of the maximum specified in its order to the respondent. Alternatively it was said that, even if the moisture content of the rice did not exceed fifteen per cent, it was nevertheless too high to ensure its carriage, without damage,in jutex sacks. The basis of the appellant's alternative claim was that, upon the hypothesis advanced, the goods supplied were, either, not of merchantable quality or not fit for the purpose of carriage to Arabia for human consumption in that country.

There is no direct evidence that the moisture content of the "Canara" shipment, or any part of it, exceeded fifteen per cent and the appellant's claim that it did rests upon an examination of the whole of the evidence in the case and the possibility of excluding all other possible causes of the damage. Jutex bags, it was said, had been used for some nine or ten previous shipments and in not dissimilar weather and stowage conditions each of these had arrived at Ras Tanura without damage. Again, it was said - though denied by the respondent - that the circumstances in which the subject rice was received into the respondent's mill and thereafter milled and despatched to the vessel showed that it was probable that the rice, or some portion of it, had a higher moisture content than earlier shipments. Other matters of lesser significance, and to which it is unnecessary to refer, were mentioned in the attempt to establish circumstantially that the moisture content of the rice must have exceeded fifteen per cent at the time of shipment. The learned trial judge, however, after careful and exhaustive examination of the evidence was not satisfied that this was so. Nor do the circumstances relied upon by the appellant bring any degree of conviction to our minds on this issue for it is quite impossible to infer from the fact that previous voyages were made without damage that the consignment on the

"Canara" had, either wholly or in part, an initial moisture content exceeding fifteen per cent. Nor is there any other evidence in the case which could safely lead us to that conclusion particularly when it is borne in mind that there was a substantial body of evidence indicating the possibility, or, to be more precise, the probability, of damage resulting from the use of jutex sacks to carry rice with a moisture content of fifteen per cent or even slightly less. It may perhaps be added that the evidence clearly established that the appellant adopted jutex sacks as a container for rice purchased by it, not because they were considered to be more suitable than hessian bags for transportation purposes, but because they were thought to provide a suitable means of protection against rain and other adverse weather conditions after arrival in Arabia. It may well be that insufficient thought was given to the question whether rice would carry as well in such sacks and, apparently, no thought at all was given to the question whether the moisture content of rice to be carried in these sacks should be reduced below that generally accepted as a suitable/when maximum hessian bags were used, namely fifteen per cent. The evidence which established that the use of jutex sacks introduced an unusual element of risk commended itself to the learned trial judge as it does, also, to us and it is, alone, sufficient to dispose of the appellant's contention on this point. We do not, it should be added, overlook that there was affirmative evidence also acceptable to his Honour that frequent moisture tests were made as the rice was milled and bagged and that this evidence indicated compliance with the contractual specification.

Upon this view of the facts it is convenient to refer to the manner in which the appellant's declaration was framed. It contained four counts the first of which claimed damages in respect of the breach of a warranty that the rice shipped on the "Canara" was then reasonably

fit for the purpose of export to Saudi Arabia for human consumption. The second count was based upon a warranty that the rice in question was of merchantable quality and the breach alleged was that the rice was not of merchantable quality but was "hot and wet and musty and discoloured and bruised and had an unpleasant taste and was otherwise unfit for human consumption". The third count related to the jutex bags and alleged the breach of a warranty that they were reasonably suitable for the purpose of packing the rice for export to Saudi Arabia for human consumption whilst the substance of the fourth count was that, in breach of the contract of sale, the respondent supplied rice the moisture content of which greatly exceeded fifteen per cent. The fourth count appears to allege a number of distinct breaches of the contract but in view of the manner in which the case has proceeded the allegation to which we have referred appears to be the material matter for our consideration. Accordingly, since it is apparent from the views which have already been expressed that the appellant must fail on any cause of action founded upon the allegation that the moisture content of the rice exceeded fifteen per cent at the time of its shipment, the appellant must fail on this count and, if it is to succeed at all in the appeal, must succeed upon those claims which rest upon the allegation that the goods were not at that time, either, merchantable or suitable for the particular purposes or use for which they were purchased.

As already appears the claim made in the second count of the declaration that the goods were unmerchantable rests upon a distinct allegation of fact. That is that the rice was "hot and wet and musty and discoloured and bruised and had an unpleasant taste and was otherwise unfit for human consumption". But this allegation must mean that it was in this condition at the time of its delivery for shipment in Sydney and it is abundantly clear that no such case is made out by the evidence. At the trial,

however,
/ the appellant was permitted to contend that the rice could not be said to be merchantable if at the time of its delivery for shipment it was in such a condition that it would not, or that it probably would not, carry safely to Arabia and thereafter remain in good condition for a reasonable time. Thereupon, it was said, the rice was in such a condition either because its moisture content, either wholly or in part, exceeded fifteen per cent, or, alternatively, because its moisture content, though not in excess of fifteen per cent, was nevertheless too high to enable it to be carried safely in jutex bags.

But once it is seen that what the appellant purchased was rice of the specified quality with "moisture content not to exceed fifteen per cent" it is apparent that the claim that the rice was unmerchantable must fail. As already appears it is not established that the moisture content exceeded fifteen per cent and the hypothesis upon which the alternative submission is made admits that the goods supplied answered the contractual description and fails to assert the existence of any defect which would constitute them, as goods of that description, unmerchantable. The contention of the appellant on this branch of the case is more appropriate to an allegation that the goods, as packed, were not suitable for transport to Arabia for, whilst the alternative submission admits that the moisture content of the rice did not exceed fifteen per cent and that the manner in which it was packaged was strictly in conformity with the contractual requirements, it asserts that, in order to meet its obligation to supply merchantable goods, the respondent should have supplied rice with a moisture content sufficiently below fifteen per cent to ensure its safe arrival in Arabia. In our view there is no substance in this contention; the precise terms of the contract constituted the measure of the respondent's obligations in this respect and if they were complied with there can be no foundation

for the allegation that the goods were unmerchantable. It may, perhaps, be added that to hold otherwise would be to say that if a buyer contracts for the purchase of goods of a particular description and, thereafter, finds that they are not suitable for some special purpose for which he requires them, he would, for that reason alone, be entitled to claim that they were unmerchantable. This is not the law and there is no occasion to add to what was said on this point in George Wills and Co. Limited v. Davids Pty. Limited (31 A.L.J. 30) when a somewhat similar argument was advanced.

The remaining matter for our consideration is whether the appellant is entitled to damages for breach of a warranty or condition that the goods should be fit for the special purposes of the appellant, that is, as the appellant contends, for shipment as food to Saudi Arabia. The appellant, of course, maintains that it is and relies not only upon clause 8 of the general conditions printed on the reverse side of the order form but, alternatively, upon the provisions of sec. 19(1) of the Sale of Goods Act, 1923-1937. In our view there is a short answer to each of these contentions. No doubt clause 8 forms part of the contract between the parties but it is equally clear that that clause was designed as a general condition to operate in relation to the purchase of a great many varieties of goods though primarily, it may perhaps be said, in relation to the purchase of manufactured goods. This much would seem to be clear from its terms and from the fact that it is to be found in a printed form devised by a large purchasing organisation. The appellant, however, seeks to give to it an operation which the first few lines of the clause might be considered to have if they had been specially devised to regulate the rights of the parties under this very contract, that is to say, the sale of rice in jutex sacks. But when it is seen that the appellant's order contained provisions designed, especially, to specify the quality of rice required - a grade of rice

identifiable by reference to standards prescribed by the United States Department of Agriculture - and to regulate the manner in which it should be packed it is impossible to accord to the clause an operation capable of supporting the appellant's claim. Particularly is this so when, upon the view which we have taken of the facts, the only complaint open to the appellant is that the moisture content of the rice should have been reduced to some unspecified percentage below fifteen per cent. The particular provisions of the contract prescribing the maximum moisture content permissible and specifying the precise manner in which the goods should be packed must, in our view, be taken as finally regulating the rights and obligations of the parties with respect to these matters even if, as we doubt, shipment of the rice to Saudi Arabia can, in the language of clause 8, be regarded as a "particular purpose or use for which" the rice was purchased by the appellant.

The appellant's claim, in so far as it rests upon sec. 19(1) of the Sale of Goods Act must also be rejected. In our opinion there is no evidence whatever that the appellant in any way relied upon the respondent's skill and judgment in relation to the quality of the subject rice, its permissible moisture content or the use of jutex sacks.

For these reasons the appeal should be dismissed with costs.