IN THE SUPREME COURT OF QUEENSLAND No. 4739 of 1982

CIVIL JURISDICTION

BEFORE MR. JUSTICE CONNOLLY

BRISBANE, 13 MARCH 1986

BETWEEN:

ARIEL PRESS PTY. LIMITED Plaintiff

-and-

AITKIN TRANSPORT PTY. LTD. Defendant

JUDGMENT

HIS HONOUR: Prior to 8 April 1980 the plaintiff had purchased a Planetea PZO7 two-colour offset printing press second-hand. This equipment had been manufactured in East Germany and was no longer in its first youth. It was purchased for $40,000 and was brought by road from Melbourne to Brisbane and was stored at the defendant's transport depot.

The equipment, in broad terms, was in two parts. There was a printing press and there was a paper feeder. The press was a very large piece of machinery, whereas the feeder was relatively smaller, weighing just over one tonne.

The plaintiff had constructed a concrete slab upon which it proposed to position the two pieces of equipment and then to finish the building by walling in around the

printing press and feeder. When its construction had got to this stage, its director, Mr. Dillon, got in touch with the defendant company and arranged first for a truck to transport the equipment to the plaintiff's new premises at Beenleigh and, as he says - and I accept his evidence - at the suggestion of the transport division he then got in touch with the crane division of the defendant and arranged for a crane to stand by to load the equipment on to the truck at the defendant's transport depot and later to unload it from the defendant's truck at the plaintiff's new premises at Beenleigh.

The printing press was duly unloaded and duly placed in position. The feeder was on the tray of the low-loader and at that stage the decision had to be made as to how to take it off and position it on the slab. The evidence of the defendant's crane driver, Taylor, was that he had loaded the feeder on to the truck that morning by placing chains beneath it, engaging their hooks and lifting it in that fashion. It is clear that he found that a time-consuming and tedious operation. He says that the passing of chains around the feeder was liable to damage it and all one can say to that is that, if that is so, some other means of securing the chains ought to have been found whether by the placement of protective dunnage or timber or something of the sort, but he obviously judged that to be the right way of loading it.

When it came to unloading it he says that he asked an unidentified and unidentifiable member of the plaintiff's staff whether there was any objection to his removing the feeder from the truck by securing chains to a horizontal bar which ran across the top of the feeder as it was then positioned and which was in fact a spreader bar.

It is clear from the evidence which has been put before me that it was not designed for such a purpose at all and indeed it had, in the judgment of the defendant's consulting engineer, a function, namely, to keep the uprights of the frame of the feeder at a designed distance

apart. That gentleman agreed, in answer to a question I put to him, that it was therefore, on any view, an unsuitable member by which to attempt to lug this ton weight of machinery off a truck and attempt to position it.

Be that as it may, I find on the undisputed evidence, that Taylor did not inspect the load to be removed, but remained on his crane; and that the driver of the truck, who was standing by and assisting, warned him that he doubted whether the transverse bar was strong enough to be used in the manner proposed.

Taylor asserts, and Hamilton supports him in this, that the plaintiff's servant, whoever he was, was asked whether he agreed with the proposal, and I am asked to accept that without question he assented.

I pause to say that there is not a shred of evidence that the plaintiff's officers or servants had any familiarity with the equipment at all, certainly, not sufficient familiarity to form such a judgment as is imputed to this unidentified person. I am unable to accept this evidence. It seems to me to be quite improbable and, in my view and I so find - the method of affixing the chains to the feeder in order to remove it - in fact, the whole method of unloading the feeder from the truck and placing it where the plaintiff desired it to be placed - was the decision essentially of the crane operator.

After the hook of the crane was secured by chains to the horizontal bar on the feeder, it was lifted from the vehicle and the crane was moved progressively, in an endeavour to keep the hook of the crane vertically above the load being lifted. The feeder was lifted clear of the vehicle and the transverse bar to which the chains were attached then broke away from the feeder and it crashed to the ground.

It was damaged, as I find, beyond economic repair. There is really no dispute about this and, sadly, the result was that the press itself became inoperable. I

accept the evidence that no substitute feeder could have been employed with it. This means that the plaintiff's entire investment of $40,000 was lost, save for a net value of $30 salvage which means that the plaintiff's loss was $39,970.

What happened was that a bolt or bolts - at least one of the bolts rather - which secured the ends of the transverse bar to the shoulders of the - if I may put it this way - of the frame of the feeder had simply sheared away.

By way of defence, it is said that this bolt was of insufficient tensile strength for the load to which the defendant subjected it. I am prepared to accept this. It is obviously correct. What seems to have escaped the defendant's notice however is that the bar was on no view designed to carry any such load.

It is said that a person with knowledge of engineering and engineering practice who examined the bolt would have observed that its head was of a dimension which would have led an engineer to believe that its bearing part, if I may put it that way, was of sufficient dimension to have secured the transverse bar during the operation of unloading.

All this is extremely interesting, but it has nothing much to do with this case because there is no evidence that the crane driver or, indeed, anybody else examined the feeder and sought to make a judgment as to whether the projected method of unloading was a satisfactory one or not.

Indeed, the consulting engineer to whom I have already referred said himself that he would not have adopted this method, and I took his evidence to be to the effect that a person with no knowledge of engineering, merely a rough acquaintance with standard bolts, might well have formed the opinion that it was not, after all, such a dangerous thing to do.

As I say, the plainest of evidence against the defendant at this point is that the crane operator well knew the right way to do this and had already done it once that day. He had successfully loaded the feeder on to the vehicle and he chose to adopt an easier expedient, as it appeared, in taking it off again.

In my opinion, therefore - and I so find - the damage to this feeder and the consequential damage to the plaintiff with which I have already dealt were caused by the negligence of the defendant's crane operator.

It might be thought that that would lead then to judgment for the plaintiff for the amount which is claimed, less the cost of certain carriage, including - carriage and crane hire on this occasion, a total of $595, for which the plaintiff has been billed by the defendant and which has not been paid. On the view that I take of this case, the defendant is entitled, to bring that sum to account and that leaves a nett sum of $39,375.

While I am on the subject, interest is claimed under the Common Law Practice Act, so that in quantifying damages I propose, in the light of a list of interest rates which have pertained in the commercial market since January 1980 until the present time, to allow interest at a rate over the whole period of 14 per cent, and I do not understand that to be regarded as an unfair generalisation.

The defendant's main defence is under The Carriage of Goods by Land (Carriers Liabilities) Act of 1967. Section 6(1) of that Act provides that a carrier shall not be liable for loss of or injury to any goods entrusted to him under a contract of carriage for reward in an amount greater than $20 per package. The expression “carrier” is defined to be a person who holds himself out for hire for reward for the carriage by land of goods as a common carrier or otherwise. One point raised by the plaintiff is that the defendant did not prove itself strictly to be a carrier within this definition which is contained in s.2 of the Act. It seems to me that there is some substance in

this although, if asked to speculate, I would have little doubt that the defendant was indeed such a carrier. I am asked to look at invoices rendered by the defendant at a later stage, and if one may judge by those it would appear to be a company with a fleet of vehicles, with their address at Eagle Farm and other places. It has radio-controlled vehicles, and I should think the likelihood is that it is indeed such a carrier. In the view I take of the case it is unnecessary to pursue this point.

The question in my judgment is whether the injury to the goods occurred by this act or omission of the defendant qua carrier, that is, during the continuance of the contract of carriage. I have already said that the plaintiff engaged not merely a vehicle, which was the property of the defendant, for the carriage of its goods by land - that is to say, from the defendant's transport depot to the plaintiff's new premises at Beenleigh - but it also engaged a crane which, as it happened, was the property of the defendant. Two operations were involved and it is not, I think, in the light of the history of similar legislation, being unduly analytocal day to divide the events which occurred on this clay into a contract of carriage by land on the one hand and a contract for the handling of the printing press and the feeder by the crane on the other. Indeed, I was referred to a line of authority in the United Kingdom, and to legislation which is obviously the antecedent of the Queensland Act of 1967. The problem emerged in the United Kingdom when contracts to carry by land merged into or perhaps became in one sense a part of larger arrangements which included contracts to carry by sea. For the convenience of the public, as well as the exigencies of the trade, it frequently occurred that the same carrier made a contract to perform both the land and the sea content of the necessary carriage, and in the case of Le Conteur v. London and South Western Railway Company (1865) L.R. 1 Q.B. 54 it was held by the Court of Queens Bench following Pianciani v. London and S.E. Railway 18 C.B. 226 that where a contract was one to carry not only to the terminus of the railway by land, but also by water,

that the contract was divisible: and - and this is the important feature - the carrier was protected so far as the land carriage was concerned by an Act of Parliament, similar in its purpose and effect to the one with which I am concerned. That case was affirmed by the House of Lords in London and North Western Railway Company v. J.P. Ashton & Company (1920) A.C. 84 when it was held that in the case of a composite contract the carrier, to limit liability, must show that the loss occurred during the carriage by land.

There is really no reason why a contract such as this, although, as it happens, made between the same parties, should not be divided into its land carriage content and the subsequent and distinct function of the handling by crane. It seems to me that if that is so, and I hold that it is, then the contract of carriage by land ended when the vehicle had brought these two components to the position at which the unloading operation by crane was to commence. That had plainly occurred, and the greater part of the unloading had been successfully carried out when this unfortunate accident happened. I hold, therefore that the Carriage of Goods by Land Act does not operate so as to limit the damage which is recoverable in this case.

Finally it is said that s.5(3) operates to deny the right to recover on the footing that notice of the claim against the carrier was not given by notice in writing of the loss or injury within five days after the date of delivery. This, be it noted, is a claim upon a carrier for loss of injury to the goods entrusted to him under the contract of carriage by land. Unless the claim be for damage which occurred during the contract of carriage I would hold that s.5(3) does not apply anyway. As it happens, however, when presented with an invoice for the crane hire the plaintiff's director wrote on the invoice the somewhat laconic words, “One part sheared off and fell” which, while not an over-informative notice, certainly was sufficient to alert the defendant to the fact that a claim for injury to the goods was being made.

However, I would rest my decision on this aspect of the case primarily on the fact that, in my view, if my analysis of the factual situation is correct, the claim which is made in this case is not one which arose out of the contract of carriage but arose out of the contract for the handling of the goods by crane. This makes it unnecessary for me to examine the possible application of the Trade Practices Act of the Commonwealth and the possible grounds of reply to an attempt to apply that statute, and, in the circumstances it is not appropriate that I should refer to it.

There will be judgment for the plaintiff for $39,375, with interest at the rate of 14 per cent from 22 September 1982 until this clay, 13 March 1936.

I note that Mr. Martin asks for costs on the counterclaim. This is not an appropriate type of case for such an order, the plaintiff's claim having proved more than sufficient to offset the hiring charges in question.

I order that the defendant pay the plaintiff's costs of the action to be taxed. There will be no order for the costs of the counterclaim.
