MESSRS C. M. B. TRANSPORT OF BELGIUM, represented by its registered agent, MESSRS. DENCO SHIPPING LINES, INC., Appellant, v. **MESSRS FAMILY TEXTILE CENTER**, represented by its Manager, Appellee.

APPEAL FROM THE CIRCUIT COURT FOR THE SIXTH JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Heard: October 20, 1994. Decided: February 16, 1995.

1 A carrier is held responsible for all losses or damage which may happen to goods while in his charge for the purpose of his employment.

2 Delivery does not only take place when the goods are on board the vessel with the ships tackle on them, but it is sufficient when the goods are deposited in the dock at or near the vessel.

3 The yard stick for determining whether or not a period for the institution of an action has elapsed as a consequence of the Liberian civil war is the time when the Supreme Court was re-constituted, which was March, 1992.

4 The standard of seven (7) years limitation for general contracts is not the yard stick for prescription in maritime cases. The Liberian Maritime Law governs limitations for maritime cases.

5 The measure of damages for injury to personal property or the loss thereof is the market value of the property, that is, the cost of the property, less any depreciation.

6 The jury cannot decide on its own which of the two currencies, the Liberian dollar or the US dollar, by which it will measure damages unless there is proof to warrant damages in one currency.

7 The Supreme Court cannot pass upon issues not raised in the answer or in the bill of exceptions.

Appellee entered into a contract with appellant for the shipment of appellee's goods through appellant's agent, Denco Shipping Lines, to Lome, Togo on board the "CONCORDIA". Appellee was issued a blank bill of lading by Denco, otherwise known as combined transport bill of lading, which appellee filled out describing the

goods to be shipped, the names and addresses respectively of the shipper and the consignee, the name of the vessel and the port of discharge. The appellee was then given an order to the National Port Authority for three empty containers in which to stuff the goods to be shipped. The empty containers belonged to the principal appellant C.M.B Transport Belgium.

When the "CONCORDIA" arrived in Liberia, and berthed, there was shooting inside the port, as a result of which she left for the next port of call without loading the appellee's cargo. Subsequently, the containers were looted during the civil crises and they were found empty at the port when Denco resumed business in 1992. Denco denied liability for the loss contending, among other things, that there was no delivery of the goods to them. Hence appellee instituted the instant action of damages for breach of contract seeking recovery of the value of the goods plus expenses. After a regular trial, the jury brought in a verdict awarding the appellee special damages of US$63,000.00 and general damages of US$45,000.00. From the judgment confirming this verdict, appellant excepted and announced an appeal to the Supreme Court.

Appellant on appeal contends that there was no contract of affreightment because the goods were not delivered to them; that to constitute delivery, the goods must be delivered on board the vessel and the ship's tackle attached to the containers; that it could not be held liable in damages for the loss of the goods; and that even if it were to be held liable, the act-ion is time barred, in that the action should have been brought within one year as required under the Liberian Maritime Law, which was not done in this case.

The Supreme Court relying on several of its opinions on the question of the existence of a contract of affreightment, opined that delivery does not only take place when the goods are on board the vessel with the ships tackle on then, but that it is sufficient when the goods are deposited on the dock at or near the vessel, and on the basis of this reasoning, held that a contract of affreightment was consummated between the appellant and the appellee, and that appellant was responsible for the shipment of the cargo and any damage consequent upon the loss thereof. On the question of whether the action is time barred, the Supreme Court held that the Liberian Maritime Law governs limitations for maritime cases such as the present case, and that all such actions must be commenced within one year. Noting, however, that there was a breakdown of law and order in the country at the time the cause of action accrued, which made it impossible to institute the action, the court adopted the time when the Supreme Court itself was re-constituted as the yard stick in computing the period for the limitation of actions. On the basis of this formula, the

court held that the action was not time barred.

The Supreme Court, however, held that it could not uphold the ruling of the trial court, in that the amount awarded by the jury is in contradiction with the evidence adduced at the trial. With respect to the award of general damages, the court held that the award of general damages in US dollars is in violation of the statute since there was no agreement between the parties as to which currency to pay such damages. Accordingly the judgement was *reversed* and the case remanded for new trial. *Cooper and Togbah* appeared for appellants. *Flaagwa McFarland*appeared for appellee.

MR. JUSTICE HNE delivered the opinion of the Court.

This case comes on appeal from an action of damages instituted by the appellee against the appellant for breach of a contract of affreightment.

The facts as gathered from the records are that the appellee requested the services of the appellant through its agent, Denco Shipping Lines, to ship its goods to Lome, Togo, on the vessel known as the "CONCORDIA". The appellee went to Denco on June 26 1990 for the said purpose and was thereupon issued a blank bill of lading, otherwise known as combined transport bill of lading. The appellee filed out the blank bill of lading describing the goods to, be shipped, the names and addresses respectively of the shipper and the consignee, the name of the vessel, the port of discharge at home. The appellee was then given an order to the National Port Authority for three empty containers in which to stuff the goods to be shipped. The empty containers belonged to the principal appellant C.M.B Transport Belgium.

The containers were taken to the port after they were stuffed with the goods and the port charges paid in the amount of $570.00. Denco then placed a stamp on the blank bill of lading which reads: "ACCEPTANCE SS/MV084-S Due Monrovia June 27, 1990, Dated June 26, 1990. This acceptance subject to Master's Confirmation storage charges, if any, for shippers account". The appellee then paid freight charges in an amount of US$3,900.00 to Denco for which Denco issued a receipt dated June 27, 1990 indicating thereon part payment.

On June 27, 1990, the "CONCORDIA" arrived in Liberia. When it berthed, there was shooting inside the port. The master of the vessel then decided to have the vessel piloted from the basin on account of the shooting for the safety of the vessel. The vessel later left for the next port of call without loading the appellee's cargo.

On May, 18, 1992, the appellee wrote to Denco requesting advice on the status of its

goods and the whereabouts of the containers. The text of the letter is as follows:

"'Messrs. Denco Shipping Lines Inc.
Post Office Box 1587 Monrovia, Liberia
Gentlemen:
We refer to the following containers entrusted with you for shipment to Togo:

Container No. DAYU-24554-0
700 cartons batteries US$17,808.00
59 cartons powder 1,504.50
US$19,312.50

Container No. DAYU-245486-5
700 cartons batteries US$17,808.00
96 cartons powder 2,448.00
US$20,256.00

Container No. DAYU-245190-6
700 cartons batteries US$17,808.00
95 cartons powder 2,422.50
US$20,230.50

The total cost of the entire consignment as per above is: US$59,799.00 Portage US$ 510.00 Incidental expenses/labour US$3,000.00 US$63,309.00

We hereby request that you advise us as soon as possible, of the present position of the goods or the whereabouts of the containers.

In the meantime we would like to remind you, that having issued your acceptance and received full payment of freight charges, the question of responsibility for these containers squarely rest upon you. Consequently, we would await your response prior to making any further decision.

It is hoped that you could consider this matter with the urgency and importance it deserves so as to facilitate our records in line with our board of directors and auditors requirements.
Very truly yours,
A.N. Faour

Denco replied that there was no delivery of the goods to them and therefore they could not be held liable. That as to the containers, they were looted during the civil crises and they found then empty at the port when they resumed business in 1992.

Not receiving any redress from Denco or its principal, CMB Transport, the principal appellant, the appellee filed an action of damages for breach of contract against the appellants. The appellee alleged in the complaint that the value of its goods was US$59,799.00, and that when added to the $510.00 paid to the Port, and the $3,000.00 paid for transportation and labour, totaled US$63,309.00. Appellee also claimed the amount of US$3,900.00 paid to Denco for freight, custom transhipment expenses, port handling charges, as well as transportation from Water Street to the Port amounting L$3,585.00. Thus, the total special damages claimed by the appellee was US$67,209.00 and L$3,585.00.

The appellants filed an answer, a motion for summary judgment and a motion to dismiss. The trial judge dismissed the answer and denied both the motion for summary judgment and the motion to dismiss. The motion to dismiss averred that the action was time barred for filing beyond the one year provided for maritime cases. The judge ruled that it was a case on a written instrument and consequently the statute of limitation in such cases is seven(7) years.

The case was ruled to trial. The jury awarded the appellee special damages of US$63,000.00 and general damages of US$45,000.00. The trial judge affirmed the verdict of the jury in his final judgment, from which judgment the appellant announced an appeal to this Honourable Court.

The appellants filed a bill of exceptions of eleven (11) counts. Essentially, there are three issues which require our determination. They are:

1 Whether a contract of affreightment was consummated.

2 Whether the action was time barred under our Maritime Law which provides for a one year limitation.

3 Whether the evidence presented sustain the damages awarded.

The appellants contend that there was no delivery of the goods to then and therefore could not be held liable in damages for the loss of the goods; that the goods were delivered to the National Port Authority and not to the appellants; that delivery of

the goods to them could only take place when the goods were loaded on the vessel.

The appellee for its part said that the acceptance stamped on the blank bill of lading by Denco constituted acceptance of the goods and that delivery to the National Port Authority constituted delivery to the appellant.

The appellants strenuously argued the point that there was no contract of affreightment because the goods were not delivered to them. They contend that to constitute delivery, the goods must be delivered on board the vessel and the ship's tackle attached to the containers. This argument does not correspond with our case law on the point. It is settled that delivery does not only take place when the goods are on board the vessel with the ships tackle on then, but it is sufficient when the goods are deposited on the dock at or near the vessel.

In *Compagnie Francaise de 1 'Afrique Occidentale (CFAO) v. Kamara,* 16 LLR 23 (1964), the goods (Kolanuts) were deposited at the Free Port against the receipt of the Free Port that all duties and charges have been paid and that the goods were ready for shipment. There was acceptance of the goods by the carrier. This Court held in that case that under those circumstances, there was a contract of affreightment and that liability of the carrier commenced from that point. The notation on the acceptance stamped by Denco on the Combined Transport Bill of Lading that the acceptance was subject to the Master's confirmation is unavailing and does not avoid acceptance by the carrier, since it is already held that liability does not commence with delivery of the goods on dock of the vessel. This holding was confirmed in *Nigerian National Shipping Lines v. Tip Top Tools, Inc.,* 22 LLR 279 (1973). On the basis of our case law on the point, as just cited, a contract of affreightment was consummated between the parties, and appellant was responsible for the shipment of the cargo and any damage consequent upon the loss thereof. The carrier is held responsible for all losses or damage which may happen to goods while in his charge for the purpose of his employment. *CFAO v. Kamara,* 16 LLR 23, 35(1964).

A further point advanced by the appellants is that the suit of the appellee was time barred. They maintain the action was not brought within one year as directed by the Liberian Maritime Law in such cases. The right of action accrued in June, 1990. The action was filed in February 1993. Under normal circumstances, this would mean that the action was filed almost three years after the right of action accrued. But the times were not normal. There was a breakdown of law and order in the country which we must judicially notice and so no party litigant could sue before the courts were re-constituted. The yardstick we must adopt is the time when the Supreme Court

itself was re-constituted, which was March, 1992. The suit was filed in February 1993, less than one year after the Supreme Court was re-constituted. The trial judge applied the standard of seven (7) years limitation for general contracts to this case. This is not the yardstick for prescription in maritime cases. Subject to the qualification just made herein we hold that section 132(A) of the Liberian Maritime Law governs limitations for maritime cases such as the present case. We hold that the action is not time barred for the reasons that we expressed earlier for purposes of the computation of time in this case.

The appellants contended that no evidence was introduced by the appellee such as cash invoices to prove that the goods were purchased in US dollars to warrant the recovery of special damages of US$63,000,00. As a matter of fact in argument before this bar, the counsel for appellants urge the point that the appellee could not recover damages in US dollars when the declaration made by him in transhipment entries, exhibits 6 and 7 to the complaint, placed the total value of the goods at $14,214.00 (Liberian dollars). We must say here that the transhipment entries, according to the trial records, were not offered in evidence by the appellee, and therefore were not part of the documentary evidence marked and admitted into evidence by the trial court. Documents marked P/1 through P/13 admitted into evidence excluded the said transhipment entices without any objections by the appellants during the trial. Also, the appellants did not raise this in their bill of exceptions.

With regard to the contention of the appellants that the special damages in US dollars were not proved by any cash invoices that the goods were purchased in US dollars, the records contain a cash invoice in US dollars in the amount of US$59,799.00. This document was marked P/1 by court and admitted into evidence. It is, however, not an invoice to the appellee evidencing the cost of the goods sold to the appellee. On the contrary, it is an invoice from the appellee to its customer and consignee in Bamako, Mali, Mr. Fuony Fuoko. Obviously this document could not have been used to prove damages sustained by the appellee for the loss of the goods. Instead of showing the cost of the goods to the appellee, it carries the appellee's selling price to its customer in Mali as aforesaid. It is well established in our case law that the measure of damages for injury to personal property or the loss thereof is the market value of the property, that is, the cost of the property, less any depreciation.

The appellee's proof of special damages as to the value of the goods not having met the standard required by our law, the damages claimed as to the value of the goods in the amount of US$59,799.00 cannot be upheld.

The special damages claimed by the appellee are as follows:

Value of lost consignment	US$59,799.00
Portage	510.00
Incidental expenses/Labour	3,000.00
US$63,309.00	
Freight paid to Denco	3,900.00
US$67,209.00	

Appellee also claimed special damages of L$3,585.00 representing:

Cost of customs entry	75.00
Port Charges	510.00
Labour Cost	3,000.00
	US$3,585.00

In the U.S. Dollar claim of $67,209.00, we see $510.00 listed as port charges and $3,000.00 as incidental expenses/labour which were paid in Liberian dollars. These were also listed as part of the total claim of L$3,585.00 in Liberian dollars damages.

After deliberation, the jury found in favor of the appellee, an amount of US$63,000.00 as special damages. No special damages was awarded in Liberian dollars in spite of the claim of L$3,585.00 as additional special damages. To begin with, there is no showing of any reason why the special damages in US dollars was reduced from US$67,209.00 to US$63,000.00. Neither was any reason shown for disallowing the special damages of L$3,585.00. Was it because of the expenses of L$510.00 and L$3,000.00 paid in Liberian dollars as charges and incidental expenses/labour grouped as part of the claim for US dollars. If this was the case, the jury did not so state. Let us, however, take this to be so for the sake of argument, if these two Liberian dollars items were extracted from the US dollars claims, the US dollar claim would be US$63,699.00.

How did the jury still arrive at an amount of US$63,000.00 as special damages? Yet the trial judge confirmed the verdict in this amount notwithstanding the fact that it contradicted the evidence before the court.

Yet still another contention of the appellants was that the jury awarded general damages of US$45,000.00. They maintained that the general damages should be in Liberian dollars in the absence of any evidence that the appellee suffered general damages in US dollars or a showing of any agreement between the parties that general damages would be awarded any of the parties in US dollars. They argue that

the Liberian dollar is on par with the United States dollar and that the jury cannot exercise a right of election to give general damages in US dollars in derogation of the Liberian dollars unless there is an express agreement between the parties for general damages to be given in U. S. dollars. They say that the jury's action in awarding the appellee general damages in US dollars when there is no agreement between the parties to support such an award is in violation of the Revenue and Finance Law, Rev. Code 36:71.5. We agree with the appellant's contention because the jury cannot decide on its own which of the two currencies the Liberian dollar or the US dollar by which it will measure damages unless there is proof to warrant damages in one of the currencies.

Another point made by the appellants is that under the Maritime Law, a carrier is permitted to limit, in its bill of lading, its responsibility or liability for the loss or damage to goods in connection with the custody, care and handling of goods prior to loading. They place reliance on section137 of the Liberian Maritime Laws on delivery and acceptance of the cargo which we have already passed upon in this opinion.

The appellants also stated that under section 133 of the Liberian Maritime Law, the vessel or its agents cannot be held liable for damages done to the goods or loss arising from perils, danger and accidents at sea, act of war, riots and civil commotions. Unfortunately, no contention of this nature was raised in their answer or in any of their motions in the court below or in their bill of exceptions. So we cannot pass on this point.

Our review of the records shows that the verdict is not in harmony with the evidence. Hence,we are left with no alternative but to reverse the judgment and remand the case for new trial. Costs to abide final determination. And it is hereby so ordered.

Judgment reversed, case remanded