

11/11/87

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN MISCELLANEOUS

SUIT NO. M204/87

| | | |
|---------|------------------------------------|-----------|
| BETWEEN | MURRAY VERNON LIMITED | PLAINTIFF |
| A N D | SEABURG TRADING COMPANY LIMITED | DEFENDANT |

Dennis Goffe Q.C. and Ms. A. Walters
for Plaintiff.

C.M.M. Daley and L. Heywood
for Defendant.

Heard: February 10,11,12,13 and 14, 1992
July 26,27,28 and 29, 1993
June 9 and 10, 1994
July 3,4,5 and 6, 1995 and
July 10, 1998.

CHESTER ORR, J.

JUDGMENT

Let me at the outset offer my profuse apologies for the delay in the delivery of this judgment which delay has prolonged the completion of a case which occupied an unusual length of time for trial.

This is a claim for the sum of £217,864.26 being the balance due from the defendant to the plaintiff for goods sold and delivered. The goods consist of three (3) shipments of dried salted fish called 'sáithe', from Norway to Kingston, Jamaica and a shipment of flour.

In an amended Defence and Counter Claim the defendant denies that it owes the plaintiff the amount claimed or any amount at all. The defendant avers that there was an Agreement between the plaintiff and the defendant for the sale of goods by description and to the knowledge of the plaintiff the goods were being purchased by the defendant for sale for human consumption. It was an implied term and condition of the Agreement that:

- a. the goods were fit for human consumption;
- b. the good should be free from any defect rendering them unwholesome or unmerchantable.

In breach of the Agreement the goods were not fit for human consumption and further or alternatively were unwholesome or unmerchantable. In addition in the second and third shipments the fish was found on arrival to be short weight. Further the second shipment did not conform to the description namely "Colin Brand, blue box only" specified by the defendant.

In respect of the claim for flour the defendant says that the plaintiff agreed to give the defendant two-thirds credit on the shipment.

In an Amended reply and Defence to the Counter Claim the plaintiff states that it sold the goods to the defendant on the usual F.O.B. terms.

At the time of delivery of each consignment of goods, an inspection of same was conducted by the Norwegian Government which certified that the goods were:

3.

- i. fit for human consumption, and
- ii. of sound and merchantable quality

If the goods were unfit or unwholesome or unmerchantable they only became so after they had been delivered to the defendant. Further or alternatively the goods became unfit as a result of the defendant's own acts or default or neglect. The plaintiff informed the defendant that "Colin" was not a brand name but the French name for the specie of fish which the plaintiff had supplied to the defendant.

In respect of the flour the plaintiff agreed to credit the defendant with two-thirds of the invoice of the consignment but not two-thirds credit on the defendant's total costs relative to the shipment.

The Plaintiff Company which has its registered office at Haslington, Crewe, Cheshire in the United Kingdom exported dried salted fish from Norway to the defendant company in Kingston, Jamaica.

The companies were represented in the transactions by Mr. Michael Herwin who was employed by the plaintiff as Export Manager for the Caribbean and Mr. Norman Harley the Managing Director of the defendant company.

The procedure employed in each shipment was as follows:- The fish was packed in 20 lb. cardboard containers by the packer, A.S. Bringsvor at Alesund, Norway. Immediately before the goods left the factory, the authorities certified that the fish was fit for human consumption and sound. This was done between

five (5) and ten (10) days before the goods were placed on board the ship. Mr. Herwin said that he saw a Certificate in respect of each shipment to the defendant when he approved the documents. None of these certificates were tendered in evidence.

From the factory the cartons were transported in a sealed truck over a considerable distance which was not stated, to Rotterdam where the cartons were placed in a container on the ship. Mr. Herwin described the container as a general purpose cargo container, one which is not temperature controlled. It has no refrigeration equipment or installation.

The ship proceeded to Kingston where the container was kept on the wharf under a shed pending clearance by the Customs. After clearance by the Customs the cartons were removed from the container and placed in one of the defendant's warehouses. This was done in respect of the first two shipments. In the case of the third shipment the cartons were placed in cold storage and then taken to the warehouse.

The first shipment was the first transaction between the parties and the first shipment of dried salted fish by the plaintiff to Jamaica. Pursuant to an offer by Telex message, Mr. Hardy placed an Order by Invoice No. 0189, Exhibit 1(1). The shipment left Rotterdam on or about the 4th May 1985 and arrived at Kingston on May 22, 1985. It was delivered from Customs on June 11, 1985. See Exhibit 1(4). The container remained on the wharf for 20 days after arrival and was then

removed to one of the defendant's warehouses where the fish was stored and some sent to the trade. Adverse reports were received in respect of the condition of the fish. Mr. Harley communicated with the plaintiff. He was advised that a survey should be undertaken. This was done by Lloyds on July 11 and 12, 1985. See Exhibit 1 (4-6).

The Surveyor conducted an examination of 5% of the shipment checked at random and in his Report states inter alia-exhibit 1 (6).

"Carton in apparent good condition.
Contents soft, discoloured (pink
in the area of the head of the fish)
and emitting an offensive odour.

The surveyor is unable to state how,
where or when deterioration occurred
as the cartons were in external good
condition."

The average net weight of the cartons marked 20lbs. was 18.79 lbs. The shortage was evidently due to short packing.

The second shipment left Rotterdam on or about the 18th May 1985 and arrived in Kingston on June 4, 1985. The shipment was delivered from Customs on 25th June 1985. The container remained on the wharf for 13 days and was removed to a warehouse where the fish was unloaded. Mr. Harley stated that he inspected the shipment and observed that the fish was discoloured and emitted a foul odour. He did not send it to the trade.

An examination was carried out on the 8th, 9th and 10th July, 1985 and the Surveyor's Report is identical to that done on the first examination supra:

"Cartons in apparent good condition.
Contents soft and discoloured (pink
in the area of the head of fish) and
emitting an offensive odour."

The surveyor was unable to state where, how or when the deterioration occurred. There was a short net weight of an average of 19.16 lbs.

Mr. Harley observed that the cartons were marked G.K & Co., the initials of Grace Kennedy and Company, a Jamaican company. He enquired of the plaintiff why they were so marked and was advised as follows:-

Exhibit 1(17c)

"Re Grace Kennnedy Markings
Packer advises goods were packed
for Grace order but Grace failed
to conform shipping instructions
but goods were fresh packed/
inspected prior to shipment."

He inquired but got no information of the time which had elapsed between the packing for Grace Kennedy and repacking for the defendant.

The third shipment left Rotterdam on or about the 29th August 1985 and arrived in Kingston on the 14th September, 1985 see Telex message Exhibit 1 (70c) and not on the 4th September as stated in the Surveyor's Report - Exhibit 1(18). It was delivered from Customs on the 25th September 1985 and taken to Cold Storage. Mr. Harley said that the cartons were torn all over, mutilated and the fish emitted an offensive odour which he smelt before the container was opened. An examination was carried out on September 30, October 1 and 2, 1985.

The Surveyor reported as follows: See Exhibit 1(20)

"Cartons mutilated to varying degrees.
Fish soft, discoloured (pink in the
area of the head of the fish) to
varying degrees and exuding an
offensive odour.

The Surveyor is of the opinion that
the fish was shipped in the condition
described above or deterioration
resulted possibly from humidity
during transit."

The entire lot was seized by the Public Health Authorities.

CONDITIONS OF STORAGE

Mr. Harley gave evidence of these conditions.

At the wharf the container was placed on a ramp in a shed about 25ft. high with a sloping roof on either side, the lowest part being about $2\frac{1}{2}$ to 3ft. from ground level. The roof was made of metal overcoated with a heat-reflecting material on the outside. This shed was reserved for goods which needed specialised attention such as salted fish and other goods of a semi-perishable nature. It was enclosed and could be locked. At the cold storage facility the fish was removed from the container and stored in the boxes in which they arrived. He operated two warehouses at Belmont Road and Osbourne Store respectively. One had a zinc roof. He was unsure if it sloped. The sides were made of concrete, the doors were wooden with steel burglar bars.

The other warehouse had a slab roof with concrete walls and steel shutters. At Belmont Road there was a huge fan and

a blower and at Osbourne Store there was an extractor fan. There were pallets on the floors of both warehouses on which the boxes with the fish were stored. The pallets were required by the Food and Infestation Division of the Ministry of Agriculture.

He was not sure to which of the warehouses the first two shipments went. The third shipment went to Cold Storage. There were negotiations with a view to arriving at a settlement but these proved to be abortive.

The following issues arose for decision:-

- a) What was the cause of the spoilage of the fish?
- b) What was the nature of the contract between the parties? and
- c) Did the goods in any shipment correspond with the description as specified by the defendant?

(a) Spoilage

For the plaintiff Mr. Herwin proffered a layman's opinion and Miss Michelle Hamilton gave expert evidence. For the defence Mr. Donald Hinds gave expert evidence and Mrs. Carmen Bennett the lay person's. Mr. Herwin opined that no particular container is necessary for salted fish because the fish is salted and dried which is sufficient to maintain the quality provided it is cleared and placed in a warehouse quickly. If not cleared quickly and if the containers were left outside on the wharf the sun would heat the fish and cause it to soften by breaking down the fatty tissues. It can also cause an increase in any bacteria particularly if there is condensation.

If the fish had been on the wharf for 11 days, condensation would form because of the change in temperature between day and night. This would cause the bacteria in the fish to multiply and the fish would soften. The fish could turn a pinkish colour particularly around the area of the head and cause offensive odours. The shelf life of the fish, saithe, calculated from the time it is packed to the time placed in a store for sale is at least three months, provided it is stored under ideal conditions.

Mrs. Michelle Hamilton is a Research Fellow at the Bio-Technology Centre at the University of the West Indies. At this University she obtained the degrees of Bachelor of Science majoring in Bio-Chemistry and Microbiology, Master of Philosophy in Microbiology and Doctor of Philosophy in Bacteriology. She obtained the degree of Doctor of Philosophy at the University of Edinburgh, Scotland.

She had experience in Industry at Jamaica Broilers and Seprod Limited.

She stated that the use of salt as a preservative in edible foods creates conditions which are unfavourable for microbial growth. It reduces the amount of water available for growth and has a drying effect on bacterial cells. It pulls the water from the cells and in that way causes the death of the cells.

Fish properly salted should remain edible for 3-4 months depending on the conditions of storage. Salted fish does not

have to be refrigerated but it must be kept cool. Bacteria that cause spoilage do not grow well at temperatures below the mid 20° centigrade which would be in the mid to low 80° farenheit. At this temperature bacteria grow very slowly. They do not form at all at refrigeration temperatures or under conditions of freezing. If deterioration had already commenced, refrigeration would merely arrest, not reverse it. She was familiar with the temperatures in Norway. In the first half of the year it starts out freezing, very cold, quite possibly below zero at times and as the year progresses it warms up. By the middle of the year the temperature would not exceed the 20° centigrade in the day. At night it could drop to 10-12° centigrade or even lower.

During the summer months, June, July and August, the temperature does not exceed the 20°s centigrade but on very hot days on an average in the region of the mid 20's. At night the temperature drops. In Europe the climate is not consistently warm as it is in Jamaica and very likely it may peak one day at 24° centigrade and by the following day it goes down to 18°. In Jamaica between January and June the temperature would be between very high 20's centigrade and low 30's. In September 30's. At nights the temperature tends to drop. The drop can be quite significant but varies with the location in the Island.

She had seen metal containers which are loaded on vessels. She had also visited the Kingston docks. If salted fish were

left inside such a container for 11 days the temperature in the container would get very high in the days, possibly to the high 30's or low 40's centigrade. Under these conditions halo bacteria, the bacteria that causes spoilage, thrive. These temperatures are the optimum conditions for growth. Additionally because of the changes in temperature between day and night, condensation of water vapour would be expected to occur in the surface of the fish. This increased moisture would further enhance bacterial growth. The salt concentration on the fish in the areas of moisture would be reduced and make these areas more favourable for bacterial growth. Deterioration would start almost immediately and would be visible in about 5 days when the bacteria would possibly be seen and smelt. The odour is caused by the production of enzymes which cause proteins in the fish to be broken down and result in off odours.

She was asked to comment on the Report on the 3rd Shipment Ex. 1(20). Goods shipped on August 28 arrived on 14th September:

"Fish soft, discoloured (pink in the area of the head of the fish) to varying degrees and exuding an offensive odour."

She said, that fish pink in the area of the head signifies that there was growth of halo bacteria on the fish as colonies of these bacteria are pink in colour. The body of the fish would not necessarily be pink as halo bacteria can grow on the body and not cause it to be pink. "Discoloured to varying degrees"

would indicate bacteria growing all over. From pink colouration one could assume that there was a concentration of growth in the area of the head. Assuming that the fish had been shipped in that condition in a container without refrigeration on 29th August 1985 and arrived on 14th September 1985 and then remained in the container on the wharf for 11 days, she would expect the fish to have deteriorated during the passage and further deteriorated during the stay on the wharf - 11 days in an ideal condition for bacterial growth. On opening the container she would expect the fish to be positively putrid, one would almost be blown away by the smell. Deterioration on board the ship would depend on the conditions on the ship.

In cross examination she said she would not expect that the fish was shipped in the condition described in the Report. If the temperatures were high on board the ship and the fish was shipped in poor condition, she would expect that the level of deterioration would have been worse than shown on the Report. The growth of halo and the pink discolouration would have been more extensive with pink colour all over the fish but the pink pockets more extensive. The fish would have had a yellowish brown colour. She was not asked nor did she state what she considered to be a poor condition.

If during the passage at sea for 17 days the temperature in an unrefrigerated metal container became excessively high and was sustained at that temperature for prolonged periods of the journey, this could have caused the deterioration. If the

fish were removed from Customs to Cold Storage there would be less deterioration. Deterioration would not stop unless the temperature was below zero°. Humidity in cold storage would determine the difference between fish in cold storage and that not in cold storage. If oxydation was the problem cold storage would not stop deterioration.

On a comparison of this Report with that in the second shipment Ex. 1(14) where the findings were similar save that the cartons were in apparent good conditions she said that the length of deterioration would depend on the conditions of storage. If the temperatures are the same in both cases then the length of time would be important. Assuming everything was the same except for the time of refrigeration, she would expect that the fish that was not refrigerated would be in a greater state of deterioration. She was of the opinion that at some point, either at the wharf or in transit, the cartons could have become more moist than usual. She had not been to the place of storage of fish on the wharf. She had seen general containers but was unable to identify the type in which fish was stored. If the conditions on the wharf were reasonably low temperatures and low humidity it would be possible for fish in a container to be in reasonably good condition within the expected shelf life. If the moisture content is too high or the fish improperly cured it would deteriorate at a rapid rate.

The duration of the voyage would become a factor only if conditions of high temperatures and high humidity were attained.

If transported under low temperatures and low humidity, wherever the product is, whether on ship or in a warehouse, fish can survive for a period not less than the shelf life. The deterioration of fish is something that accumulates over a time, essentially the process begins as soon as the product is formed. In order to be successfully in storage one must try as much as possible to minimize the exposure of the product to conditions which may prove unacceptable.

The length of the voyage by sea by itself would have no effect on the deterioration of the fish. Under good conditions of storage halo bacteria grow slowly so a voyage of three weeks or longer with good storage would not be alarming. The condition of the fish on arrival in Kingston depends on all steps of the journey. The conditions of travel by road are important. If the fish became wet before having been stored in the container and during the journey the moisture left the fish and could not escape from the container, it would remain in the container. If the moisture level increased beyond the level required for bacterial growth, halo bacteria would form on the fish.

If the fish was stored in a shed with a roof about 25ft. high and the roof was metal coated with a compound that reflects the heat, unacceptably high temperatures could be attained resulting in spoilage.

Mr. Donald Hinds for the defence stated that he was employed to the Food Storage and Prevention of Infestation

Division in the Ministry of Industry and Tourism. He was trained as a Medical Technologist from 1972 to 1976 and then did a Diploma Course in Microbiology from 1976 to 1979 at the Government Technical Laboratory and completed the examination for Diploma in Bacteriology in 1979. He is also qualified as a Medical Technologist and specialised in Microbiology from 1976.

He set up the Microbiology Laboratory at the Food Stores and checked imported foodstuff including salted fish for unwanted bacteria.

The shelf life of properly cured salted fish is between three (3) and four (4) months if properly stored in a dry covered warehouse with enough space to have air movement. There should not be any hot and cold spots which could cause condensation. The fish should be stored away from direct sunlight. He was familiar with storage conditions at Kingston Wharves. At the wharves fish is usually kept in the container or if the container was opened up, kept in a large warehouse on pallets away from moisture, rain, water or hazardous chemicals.

Re: The First Shipment Exhibit 1 (4-6)

If the fish was properly cured he would not expect that it would deteriorate after 2 or 3 weeks while being kept in a warehouse. If the fish was not properly cured-- the moisture content higher than recommended or it got wet along the journey or there was a lot of trapped moisture in the closed container along with external excessive heat, he would expect the fish to go bad.

Re: The Third Shipment - Exhibit 1(18-20)

The mutilated cartons indicate that they got wet somewhere in transit. The wetness affected the stability of the cartons also the fish. He did not believe that if the fish was in good condition it would wet the cartons to the point where they became mutilated. His opinion was that there was an excessive amount of water somewhere along the line because the cartons in the other shipments were in apparent good condition yet the fish was spoilt. In this case both fish and cartons were adversely affected.

If the container was normal, no holes or leakage, he would not expect the fish to cause that amount of mutilation unless the fish had a very high moisture content. The acceptable moisture content should be between 22% and 32% of the dry weight. From experience when it goes above 32% one can feel the dampness of the fish and there is a tendency to run into problems. He had investigated spoilage on the wharf and had not encountered any that was due solely to delay. The temperatures at the wharf is conducive to the growth of micro-organisms but if the fish is properly cured they will not spoil the fish.

Miss Carmen Bennett was a former Marketing Representative of Jamaica Commodity Trading Company. She worked with the company for about 15 years. The company imported salted fish mainly from Norway and Canada and at one period was the sole importer of salted fish. She was engaged in importation from 1978 to 1990. There were bureaucratic delays in clearance of containers, at times of 20 to 25 days. The company had had salted fish

arrive in unsatisfactory condition from time to time. In one instance clearance was effected about 25 days after arrival. The container was in the open yet the fish was intact. There had been occasions where the containers were cleared within three (3) days of arrival and almost all the contents were bad.

Bureaucratic delays were common to all customers - the Rules were hard and fast. Her company had a dried storage warehouse which was used to store salted fish after clearance. There was no special facility on the wharf, general facilities. At one stage after clearance her company stored goods at Newport West Warehouse which had concrete walls and zinc roof.

Each time her company purchased salted fish it stipulated in writing that the moisture content should not exceed 40% because of the climatic conditions in Jamaica.

FINDINGS

The evidence indicates that the fish was certified fit for human consumption immediately before it left the factory. In the case of the first and second shipments there is nothing in the evidence to suggest that there was any unusual occurrence in transit which would have caused the spoilage. The conditions at the wharf were not ideal for storage. In the case of the first shipment the container remained on the wharf for 20 days before the cartons were removed to the defendants warehouse where they were examined some 30 days later. In the second shipment the container remained on the wharf for 13 days after which time

the cartons were removed to the defendant's warehouse where they were examined 21 days later.

In respect of these two shipments I find that the spoilage of the fish was due to the length of time it spent on the wharf.

The third shipment was different from the others. It was Mr. Harley's evidence, which I accept, that the cartons were mutilated when the container was opened and that he detected an offensive odour before the container was opened. The container remained on the wharf for 11 days, less than the time in the previous shipments and the cartons were placed in cold storage. Miss Hamilton stated, and I accept her evidence on this point, that there would have been less deterioration in cold storage. However the fish in this instance was condemned by the Public Health Authorities.

Both experts agree that the condition of the cartons suggest that they got wet or moist in transit. This conclusion accords with common sense. No one is able to state at what stage of the journey this occurred. In the circumstances the plaintiff has failed to discharge the onus of proof that the fish was fit for human consumption at the time of delivery.

(b) What was the nature of the Contract?

The plaintiff claimed that the contract was F.O.B, Free on Board, the defendant that it was C.I.F., Cost, Insurance and Freight. Mr. Goffe relied on the following definition of free on board in the Concise Commercial Dictionary by P.S. Osborn

and S. T. Grandage:-

Free on Board -

"Under a 'free on board' (F.O.B.) contract it is duty of the seller to put the goods on board the ship named by the buyer, and to pay the expenses incurred thereby, and to make a reasonable contract of carriage for their transport to the buyer, and they are at his risk, once the goods have been put aboard ship, but it is the duty of the seller to notify the buyer of the shipment to enable him to insure the goods: if the seller fails to do so the goods will be at his risk."

Mr. Daley did not submit a definition of a C.I.F. Contract nor did he indicate the advantages of such a contract.

The Invoices and Bills of Lading refer to F.O.B. However in each instance the goods were insured in favour of the defendant from Rotterdam to Kingston - See Certificates at Exhibit 1 - 86, 98 and 99. The defendant actually claimed on the Insurance Company in respect of the third shipment. The claim was rejected on the basis of the Report of the Survey. Exhibit 1(87) from the Insurance Company states inter alia:

"However, having noted the comments on the surveyor's report, it seems evident that the loss was due to inherent vice which is excluded from the policy cover, hence we have no alternative but to deny liability."

I hold that the contract was F.O.B.

**(c) Did the goods correspond with the
description as specified by the defendant?**

The defence complains of the second and third shipments in this regard but the evidence indicates that this issue could only arise in respect of the third shipment.

Mr. Harley stated that after the spoilage in the first shipment he ordered "Colin" brand of fish. This fish is supplied in a blue box and was of superior quality. It withstood the conditions in Jamaica and was widely acceptable to the trade.

The second shipment which arrived on the 4th June, 1985 was released from Customs on 17th June, 1985. On 11th July, 1985 he sent Telex message Exhibit 1 (7) to the plaintiff which stated inter alia:-

"We are placing orders for bal.9 FCL
prefer all "Colin" Brand (Blue Box)."

On the 12 July, 1985 the plaintiff replied by TElex Exhibit 7.

"Would have no problem ensuring all future
deliveries in Blue Boxes marked Collin."

The defendant sent a Telex message undated Exhibit 1(8)

1. We have today place order number
0216
2. Also, placing order number 0217 -
1 F.C.L. Saithre, for earliest ETa
Kgn. (Blue Box).

On 19 August 1985 the plaintiff sent Telex message Exhibit 8
stating inter alia -

"August 31 shipment will be in standard boxes thereafter in Blue Colin Boxes."

The third shipment left Rotterdam on or about the 29th August 1985 and arrived on the 14th September. It did not consist of Colin Brand Blue Box.

Mr. Herwin stated that Colin is not a brand of fish. It is the French word for saithe. The colour of the box is irrelevant. He explained this to Mr. Harley. He did not state whether the explanation was done orally or by Telex message nor was Mr. Harley asked about this. He said the request was made after the second shipment had left and it was too late to have new boxes provided for the August shipment.

Mrs. Carmen Bennett for the defence stated that she was familiar with the Colin Brand of fish. Al Unidos from Norway were the main suppliers. The Company of Colin Brand was the packer and did excellent curing and packing of fish. Colin Brand measured up very well to the local requirements. In cross-examination she said that she was unaware that Colin is the french word for fish. She was referred to the Concise Oxford French Dictionary and F.A.O. Species Catalogue which indicated that Colin is the french word for fish. She said the packing house used the name Colin and the fish was supplied in blue boxes predominantly blue with white background with the name Colin marked in big print and the type of fish e.g. Pollock, saithe or cod.

I accept the evidence of Mrs. Bennett that there is is a Colin Brand of fish supplied by Al Unidos of Norway. I note with interest that in the Schedule to the report on, this shipment

Exhibit 1(20) under the Heading Marks and Numbers appear:

"A1 Unidos
Norway
20 lb. Net"

I reject the ingenious attempt by the plaintiff to attribute the failure to supply the brand of fish requested on the ground that Colin is the french name for fish. I find that the fish in the third shipment did not correspond with the description as specified by the defendant.

Claim for Shipment of Flour - Invoice 807B

A shipment of flour was discovered to be infested with weevils after the flour had been stored in the defendant's warehouse. It could not be determined where the infestation had occurred and the plaintiff agreed to give 2/3 credit of the Invoice value as a goodwill gesture. The defendant incurred costs in respect of the shipment and set a statement of the costs to the plaintiff. The defendant contends that the credit should be 2/3 of the value of the Invoice plus the costs incurred.

I am of the opinion that an equitable settlement is that contended for by the defendant, 2/3 of the Value of the Invoice plus costs incurred by the defendant, \$105,726.91.

Mr. Goffe for the plaintiff acknowledged the short weight in respect of the first and second shipments but said the question was whether credit had been given for the shortage. This question was not canvassed. I accept the total amount

claimed by the defence namely \$804,642.91.

There will therefore be judgment for the plaintiff on the claim for the amount claimed less the amounts for the third shipment and the flour as per Invoice 807 B as follows:

| | |
|---------------------|------------------|
| Amount claimed | £217,864.26 |
| Less Third Shipment | £32,872.64 |
| Flour | <u>2,355.00</u> |
| | <u>35,227.64</u> |
| | £182,636.62 |

The sum claimed by the plaintiff includes agreed interest to the 10th January 1992.

Section 3 of the Law Reform (Miscellaneous Provisions) Act prohibits the award of interest upon interest. In Bushwall Properties v Vortex Properties [1975] 2 All ER 214 Oliver J said at 225:

"It appears to me that the proviso was clearly aimed at the sort of case where an interest bearing debt is sued for (for instance, a mortgage debt or an instalment of interest in arrear). In such a case the court is not to award interest on such part of the sum claimed as represents contractual interest."

I adopt his approach and award interest on such parts of the sum claimed as does not represent agreed interest.

I award interest at the rate of 37% per annum from 11th January 1992 to date.

claimed by the defence namely \$804,642.91.

There will therefore be judgment for the plaintiff on the claim for the amount claimed less the amounts for the third shipment and the flour as per Invoice 807 B as follows:

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|--------------------------------|------------------|
| Amount claimed | £217,864.26 |
| Less Third Shipment £32,872.64 | |
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I adopt his approach and award interest on such parts of the sum claimed as does not represent agreed interest.

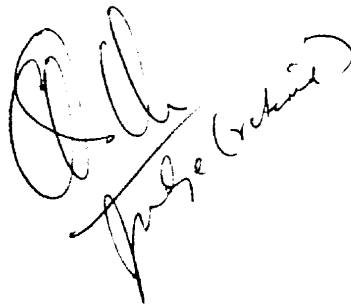
I award interest at the rate of 37% per annum from 11th January 1992 to date.

There will be judgment for the defendant on the Counter Claim for the total of the third shipment, the shortage and the value of the flour in Invoice 807 B namely,

| |
|-------------------|
| \$433,495.45 |
| 371,147.46 |
| <u>105,762.91</u> |
| \$910,369.82 |

Interest at 37% per annum from the 11th January 1992 to date.

Each party will have his costs, such costs to be taxed if not agreed.

A handwritten signature in cursive script, appearing to read "Judge (Richard)".