45 Phil. 488

[G.R. No. 20410. December 10, 1923]

JAMES J. MCCARTHY, PLAINTIFF AND APPELLEE, VS. BARBER STEAMSHIP LINES, INC., DEFENDANT AND APPELLANT.

D E C I S I O N

STATEMENT

Plaintiff
is a resident of the City of Manila, and the defendant is a corporation organized under the laws of the State of New York, and duly licensed to do business in the Philippine Islands, with its principal office in the City of Manila, where it is represented by the Pacific Steamship Company, another corporation organized under the laws of the State of Washington, and duly authorized to transact business here. The steamship '*West Mahomet*' is a vessel belonging to, and operated by, the Barber Steamship Lines, Inc., which is engaged in the transportation of freight as a common carrier between New York City and Manila. The complaint then alleges that on the first day of July, 1920, the defendant entered into a contract with the American Undergarment Corporation of New York City to transport from New York to Manila 22 cases of cotton piece goods and 3 cases of perforating paper, which it received from the Undergarment Corporation in New York in good order and for which it issued its bill of lading, promising to deliver the same to the Undergarment Corporation at Manila; that of the 22 cases of cotton piece goods delivered to the defendant, only 16 were delivered to, and received by, the Undergarment Corporation in Manila, and that the value of the undelivered six cases was P7,443.64; that among the 16 cases which were delivered, one of them contained 2,926½ yards of nainsook, of which only 2,352½ yards were delivered, making a shortage

of 574 yards of the value of $223.86, or a total value on account of shortage of all the goods of the sum of $7,667.50; that the value set forth in paragraphs 3 and 4 of the complaint are the net invoice values of the goods, plus freight and insurance; that the goods were insured in the Union Insurance Company of Canton, and that upon claim of shortage being made, the Insurance Company paid the Undergarment Corporation the full value of the shortage; that for value the Insurance Company sold and assigned its claim against the defendant to the plaintiff, who became and is now subrogated to all the rights of the Insurance Company; that the defendant was duly notified of the assignment to the plaintiff, who made a demand for the $7,667.50; "that the defendant has paid on this account the sum of $218.59, U. S. currency, only."

Wherefore, plaintiff prays for judgment against the defendant for the balance, with interest and costs.

After the overruling of the defendant's motion and demurrer, to which an exception was duly taken, the defendant made a general and specific denial of all the material matters in the complaint, and, as a special defense, alleges that about April 11, 1921, the defendant paid to the American Undergarment Corporation the sum of $213.59, as a full, final and complete settlement of any and all claims arising from, and pertaining to, the alleged shortage, and, therefore, there is nothing due plaintiff.

The case was tried upon such issues, and judgment rendered in favor of the plaintiff for $7,448.91, with interest and costs, to which the defendant duly excepted and filed a motion for a new trial, which was overruled, and it then appealed, contending that the lower court erred in refusing to sustain defendant's special defense, in finding that "the consignee presented its claim in due time and form," and that part only of the claim was paid, in finding that the Insurance Company assigned all of its rights to plaintiff, in overruling defendant's motion for a nonsuit, in the admission of certain evidence, and in rendering judgment for the plaintiff and in not rendering judgment for the defendant, and in

denying its motion for a new trial.

JOHNS, J.:

It is conceded that on November 5, 1920, the American Undergarment Corporation wrote the following letter to the "Admiral Line:"

> "We received shipment of cotton textile via the S. S. *West Mahomet* six cases of which were short landed and one landed in bad order.
>
> The value of merchandise lost en route is P15,335 as per enclosed invoice.
>
> "We hereby make claim against you for P437.18 the proportionate share for which you are liable according to clause (1) of the attached bill of lading.
>
> "Kindly acknowledge receipt of this claim and documents for same and awaiting your prompt settlement, we remain."

In which it enclosed its claim, as follows:

"Claim No. 667.

"Steamer *West Mahomet*.
"Arrived Sept. 26, 1920.
"Voyage No. 2."

"Ex S. S. *West Mahomet*

"Cases short landed:

"1259	—Flesh Nainsook, yds. at $0.44	$1,339.25
"1256	—2½ Nainsook, yds. at $0.39	1,143.29
"1243	—2½ Nainsook, yds. at $0.39	1,178.77

"25015	—2½ Nainsook, yds. at $0.42 3/4	1,286.44
"25016	—2½ Nainsook, yds. at $0.42 3/4	1,296.93
"1246	—2½ Nainsook, yds. at $0.39	1,198.96
		7,443.64

"1233	—2½ Nainsook	—Inv. 2926½ "Rec. 2352½	
	"574 yds. at $0.39	.....	223.86
			7,667.50

"at $500 per ton—$218.59 or P437.18."

That, not having received payment of its claim, it wrote the following letter on March 5, 1921, to the "Admiral Line:"

"Would you be kind enough to advise us what action has been taken regarding our claim Ex S. S. *West Mahomet*. This claim has been in your hands since Nov. 2, 1921, and we sincerely trust that it is ready for settlement.

"Awaiting reply with interest we remain.

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On April 6, the claim was examined and allowed for the full amount as presented.

April 11, the Undergarment Corporation signed the following receipt:

> "Received
> from Pacific Steamship Company two hundred eighteen and 59/100 dollars, P437.18, in full settlement of loss and damage on shipment as described below." To which an itemized list of the shipping articles was attached. Also, the following guaranty by the American Undergarment Corporation against claims arising from non-delivery of original bill of lading:
>
> "In consideration of the Pacific Steamship Company paying to American Undergarment Corporation $218.59 (more or less), *in settlement of claim for Shortages and Shortlanded on the shipment referred to below*, without surrendering the original Bill of Lading, agree to bind themselves and guarantee to reimburse the said Pacific Steamship Co. whatever amount it may be required to, or may pay on other claims for shortage or for outage or damage on same shipment, or for damages, cost or expenses, incident to or growing out of such payments, or out of refusal to pay such claims made by any parties in case of presentation of claim at any time hereafter, accompanied by the missing document referred to.
>
> "The original Bill of Lading is not surrendered in support of above numbered claim for reason * * *. Shipment of 25 Cs. Cotton Pcs. Goods made by American Undergarment Corporation from New York, date July 1st, 1920, consigned to American Undergarment Corporation at Manila covered by Barber Bill of Lading, B/L 452 from New York to Manila, dated July 13th, 1920, Steamer *West Mahomet*. Voyage Two.
>
> "Dated at Manila this 11th day of April, 1921."

April 12, 1921, the Undergarment Corporation wrote the following letter to the "Admiral Line:"

> "Kindly give bearer check, for our claim No. 667 ex S. S. *West Mahomet* in amount P437.18 and oblige."

On the same day, a check for P437.18 was issued by the "Admiral Line" to, and in favor of, the Undergarment Corporation, which it endorsed and deposited to its credit in the bank.

The following dates are important: The original complaint was filed on the 1st of March, 1922, and the amended complaint was filed on March 28, 1922.

The record is not clear as to when the Insurance Company paid the full amount of the loss to the Undergarment Corporation, but it was a few days after the letter of November 5, 1920, was written, and it will be noted that the Undergarment Corporation received a check for P437.18 on April 12, 1921, about five months after the Insurance Company paid the loss in full. There is no claim or pretense that at the time the settlement was made and the check was given, the defendant was ever notified of the fact that the loss was insured, or that the policy was paid, or of any of the legal rights of the Insurance Company.

Clause 1 of the bill of lading recites:

> "It is mutually agreed that the value of the goods receipted for above does not exceed $500 per freight ton, or in proportion for any part of a ton, unless the value be expressly stated herein and ad valorem freight paid thereon."

The defendant contends that the claim of the Undergarment Corporation and the settlement with it was made under this clause, and that, in legal effect, it was a full and complete settlement of any and all claims which the Undergarment Corporation had against the defendant.

Clause 9 of the bill of lading recites:

> "Also,
> that in the event of claims for short delivery of, or damage to, cargo being made, the carrier shall not be liable for more than the net invoice price plus freight and insurance less all charges saved, and any loss or damage for which the carrier may be liable shall be adjusted *pro rata* on the said basis.
>
> "Neither the
> carrier, the vessel, nor the agents shall be liable for any claim for loss of or damage to goods in any event unless notice in writing of the claim shall have been presented to the ship's agent at the port of discharge before the removal of the goods from the ship's custody, except at Manila as hereinafter provided for."

Plaintiff contends that the present action is for short delivery of the goods under the bill of lading, and that the payment which was made to the Undergarment Corporation was a payment *pro tanto* upon the full amount of its loss, and that under the decision of this court in H. E. Heacock Co. *vs.* Macondray & Co. (42 Phil., 205), he is now entitled to judgment for the full amount, less the credit of P437.18. The record shows that the Heacock decision was rendered October 3, 1921, and that it was first published in the Official Gazette January 12, 1922, and the complaint in this action was filed March 1, 1922, more than sixteen months after the Undergarment Corporation presented its claim, which was settled in full. It is very significant that no other or further claim of any kind was ever made on the defendant until after the decision of this court in the Heacock case.

As we analyze the record, the claim
which was presented, and the settlement which was made, was a full, complete and final settlement of any and all claims which the Undergarment Corporation had against the defendant, and that the P437.18 was paid and accepted in full settlement of all claims.

The letter of November 5, 1920, recites:

> "We hereby make claim against you for P437.18 the proportionate share for which you are liable according to clause (1) of the attached bill of lading."

The claim enclosed in the letter recites:

> "Six cases short fended of Nainsook, of so many yards in each case, at so much a yard, amounting to $7,443.64," and
>
> "1233—2½ Nainsook — Inv. 2926½ "Rec. 2352½ _____ "574 yds. at $0.39..... $223.86,"
>
> or a total of $7,667.50 "at $500 per ton—$218.59 or P437.18."

This claim was presented on November 5, 1920, and the Undergarment Corporation, not having heard from it, wrote a letter of inquiry as to what action had been taken on its claim, in which it says:

> "This claim has been in your hands since November 2, 1921, and we sincerely trust that it is ready for settlement."

April 6, 1921, the claim was allowed, and on April 11, 1921, the Undergarment Corporation signed a receipt for P437.18 "in full settlement of loss and damage on shipment as described below," to which the following statement was attached:

> "Herewith claim papers supporting payment of $218.59 to American Undergarment Corporation for Shortage and Shortlanded on 7 Cs. Cot. Pcs. Goods from New York to Manila covered by Barber B/L 452 to Manila waybill 23 dated July 13, 1920, via S. S. *West Mahomet*, Voyage No. Two," to

> which were attached all of the papers concerning the shipment and the claim for loss, and on the same day the Undergarment Corporation gave its guaranty, reciting the payment of $218.59 by the steamship company "in settlement of claim for shortages and shortlanded on the shipment referred to below."

The decision in the Heacock case is the law of this court. In legal effect, it holds that at the time the Undergarment Corporation presented its claim under clause 1 of the bill of lading for P437.18, it had a claim against the defendant for the full amount of its loss under clause 9 of the bill of lading, and that in truth and in fact the defendant was liable for all of the shortage. But the question here involved is the legal force and effect of a settlement in full of all claims for losses, and whether one year after such a settlement has been made it can be annulled, set aside or vacated without any allegation or proof of fraud. The proof is conclusive that plaintiff's claim was made and presented under clause 1 of the bill of lading, and that the settlement was full, final and complete of all claims against the defendant by the Undergarment Corporation. There is no claim or pretense that the settlement was fraudulent. The most that could be claimed is that at the time it was made, the Undergarment Corporation understood and believed that the only liability of the defendant was under clause 1 of the bill of lading, and that it did not know that it had a legal claim against it for the full value of the goods under clause 9.

In other words, if the Undergarment Corporation had known and been fully advised of its legal rights, it would have made and presented its claim under clause 9 of the bill of lading, and it would not have presented its claim under clause 1, or made the settlement which it did. That is not a valid defense. The original claim was presented November 5, 1920. The settlement was made April 11, 1921, nearly five months after the claim was presented. There is no claim or pretense that the Undergarment Corporation was in any way misled or deceived by any statements or representations of the defendant.

Ruling Case Law, vol. 5, says:

> "The compromise of any matter is valid and binding, not because it is the settlement of a valid claim, but because it is the settlement of a controversy." (Page 877.)

> "In order to effect a compromise there must be a definite proposition and an acceptance. As a question of law it does not matter from whom the proposition of settlement comes; if one is made and accepted, it constitutes a contract, and in the absence of fraud it is binding on both parties." (Page 879.)

> "Hence it is a general rule in this country, that compromises are to be favored, without regard to the nature of the controversy compromised, and that they cannot be set aside because the event shows all the gain to have been on one side, and all the sacrifice on the other, if the parties have acted in good faith, and with a belief of the actual existence of the rights which they have respectively waived or abandoned; and if a settlement be made in regard to such subject, free from fraud or mistake, whereby there is a surrender or satisfaction, in whole or in part, of a claim upon one side in exchange for or in consideration of a surrender or satisfaction of a claim in whole or in part, or of something of value, upon the other, however baseless may be the claim upon either side or harsh the terms as to either of the parties, the other cannot successfully impeach the agreement in a court of justice * * *. Where the compromise is instituted and carried through in good faith, the fact that there was a mistake as to the law or as to the facts, except in certain cases where the mistake was mutual and correctable as such in equity, cannot afford a basis for setting a compromise aside or defending against a suit brought thereon * * *. Furthermore, and as following the rule stated, a compromise of conflicting claims asserted in good faith will not be disturbed because by a subsequent judicial decision in an analogous case it appears that one party had no rights to forego." (Pages 883, 884.) In which is cited

the case of Fisher *vs.* May (2 Bibb, 448; 5 Am. Dec, 626), in which the court says:

> "And whether one or the other party understood the law of the case more correctly than the other, cannot be material to the validity of the bargain. For if it were, then it would follow that contracts by the parties settling their own disputes, would at last be made to stand or fall, according to the opinion of the appellate court how the law would have determined it."

Also, vol. 13, L. R. A., p. 601,[1] to the same effect, where a wealth of authorities are cited in the notes.

Under the head of "Release," Ruling Case Law, vol. 23, p. 375, says:

> "A release is the giving up or abandoning of a claim or right to the person against whom the claim exists or the right is to be enforced or exercised. It is the discharge of a debt by the act of a party in distinction from an extinguishment, which is a discharge by operation of law. In distinguishing a release from a receipt it has been said that a 'receipt' is evidence that an obligation has been discharged but a 'release' is itself a discharge of it. No receipt can have the effect of destroying per se any subsisting right; it is only evidence of a fact. The payment of the money discharges or extinguishes the debt; a receipt for the payment does not pay the debt; it is only evidence that it has been paid. Not so of a written release; it is not only evidence of the extinguishment, but is the extinguisher itself."

In legal effect, the plaintiff now seeks to void and annul a full and complete settlement which was made between the parties in good faith, and which has been acquiesced in, and approved for sixteen months, by all parties to the settlement, so that he may take advantage of the decision of this court in the Heacock case, which was rendered sixteen months after the settlement. No authority will ever be found which will

permit that to be done. The transaction between the defendant and the Undergarment Corporation was a full, final and complete settlement with the defendant for all of the losses arising out of the shortage in the original shipment. There is no allegation or proof that at the time the settlement was made the defendant had any notice or knowledge that the loss was insured, or that the insurance company had paid the full amount of the loss. For such reasons, it follows that the settlement was binding upon both the insurance company and the plaintiff.

The judgment of the lower court is reversed and the complaint dismissed, and the defendant will have judgment against the plaintiff for its costs in both this and the lower court. So ordered.

Street, Malcolm, Villamor, and *Ostrand, JJ*., concur.

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[1] Royal Society of Good Fellows *vs.* Campbell.

DISSENTING

JOHNSON, J., with whom concur, *Avanceña*, and *Romualdez, JJ*.:

This is an action to recover a sum of money. Certain facts are not denied. They are:

(1) That the American Undergarment Corporation shipped from New York on the 15th day of July, 1920, 22 cases of cotton piece goods and 3 pieces of perforating paper;

(2) That said merchandise was shipped as per bill of lading (Exhibit A) on the steamship West Mahomet, which boat belonged to the defendant, the Barber Steamship Lines, Inc.; that said merchandise was received by said Steamship Company in good order as per said bill of lading, to be shipped to Manila from New York;

(3) That on the 15th day of July the said American Undergarment Corporation insured or entered into a contract of insurance with the Union Insurance Company in the sum of $30,144 on said merchandise, which insurance policy contained the condition, “it is hereby understood and agreed that in case of *loss* such loss is payable to the order of the American Undergarment Corporation” (Exhibit G, page 68). It will be noted that the said three cases of perforating paper were not included in the merchandise covered by said insurance policy;

(4) That a part of said merchandise was received in the City of Manila sometime in the month of October, 1920;

(5) That of the 22 cases of cotton piece goods delivered to the Barber Steamship Lines, Inc., in the City of New York, for shipment to the City of Manila, only 16 cases were delivered to the American Undergarment Corporation in the City of Manila, and one of which was received in bad condition;

(6) That the value of the 6 cases which were not delivered was P15,355; that the damage caused to the one case received in bad condition amounted to P447.72;

(7) That on the 5th day of November, 1920 the said American Undergarment Corporation made a demand upon the agent of the Barber Steamship Lines (the Admiral Line) located in the City of Manila (Exhibit F, p. 67) for the payment of the said damages and “the proportionate share for which the said Admiral Line was responsible;” that on the 12th day of April, 1921 (Exhibit M), the said Admiral Line paid to the American Undergarment Corporation the sum of P437.18;

(8) That on the 19th day of January, 1921, the Union Insurance Company, which had insured the safe delivery of said merchandise, paid, upon demand, to the American Undergarment Corporation the sum of P17,673.65, the value in Philippine currency at that time of the six cases of said

merchandise which had not been delivered (Exhibit H, p. 69);

(9) That the claim of the Union Insurance Company against the Barber Steamship Lines for its loss of the goods in question, which amount it had paid to the American Undergarment Corporation under its policy of insurance, was transferred to the plaintiff herein by assignment on the 6th day of January, 1922, more than three months before the Admiral Line paid its proportionate share of the loss;

(10) That by
virtue of said transfer to the plaintiff herein, he became subrogated to all of the rights of the Insurance Company as well as of the American Undergarment Corporation against the defendant;

(11) That this action was brought to recover the amount of the loss suffered by said Insurance Company, based upon paragraph 9 of the bill of lading issued by said Barber Steamship Lines to the American Undergarment Corporation.

DISPUTED FACTS

The only fact in dispute is, whether or not the payment by the Admiral Line to the American Undergarment Corporation of the sum of "P437.18, as per Exhibit F, p. 67; Exhibit M, p. 74, and Exhibit N, p. 75, was in full settlement of all the loss of merchandise caused by the negligence, or otherwise, on the part of the Barber Steamship Lines in its failure to deliver the said cases of cotton piece goods.

It is argued that, because the American Undergarment Corporation gave a receipt which purported to be a receipt in full of the *proportionate* share of the loss complained of, caused by the defendant, that it is now estopped from making any further claim for any other losses. It is also argued that because the American Undergarment Corporation presented its claim against the Admiral Line, agent of the defendant, under and by virtue of section 1 of the bill of lading it cannot now present a claim under paragraph 9 of said bill of lading. With reference to the alleged estoppel, of course the fact will not be lost sight of that the American Undergarment Corporation *is not a party to this action*.

Neither are we convinced, even admitting that the American Undergarment Corporation did present its claim against the Steamship Company, based upon paragraph 1 of the bill of lading, that that *mistake* will prevent the Union Insurance Company or its assignee from invoking the term of the contract of shipment which the American Undergarment Corporation might have invoked, providing the provision of the bill of lading (paragraph 9) does actually afford the Union Insurance Company or its assignee a remedy. *The fact appears of record, and is nowhere denied, that* when the claim of the American Undergarment Corporation (Exhibit F) was presented to the Admiral Line, it was presented by a clerk and was not the correct claim of said corporation, and that a mistake was made.

The majority opinion admits "that at the time the Undergarment Corporation presented its claim under clause 1 of the bill of lading for P437.18, *it had a claim against the defendant for the full amount of its loss under clause 9 of the bill of lading, and that in truth and in fact the defendant was liable for all of the shortage*" (H. E. Heacock Co. *vs.* Macondray & Co., 42 Phil., 205), which clearly confirms that a mistake was made. The majority opinion continues: "But the question here involved is the legal force and effect of a settlement in full of all claims for losses, and whether one year after such a settlement has been made it can be annulled, set aside or vacated without any allegation or proof of fraud." The majority opinion adds: "The proof is conclusive that *plaintiff's* claim was made and presented under clause 1 of the bill of lading." But it must be remembered that the *plaintiff* herein never presented a claim under clause 1 of the bill of lading. The claim presented by the plaintiff was under clause 9 of the bill of lading and not under clause 1. The majority opinion admits that the American Undergarment Corporation "did not know that it had a legal claim against it for the full value of the goods under clause 9."

Even granting that the American Undergarment Corporation made a mistake in its selection of a remedy, that fact would not estop the Union Insurance Company from invoking the correct provision of the contract unless and until the full amount of damages caused by the defendant had been paid. The Union Insurance Company paid the loss in *good faith* and was thereby subrogated to the right to recover from the Barber

Steamship Company whatever loss it had suffered by reason of the negligence of the latter. The "Barber Steamship Lines, Inc." makes no pretense that it is not responsible for the loss complained of. The majority opinion admits the liability of the Steamship Company. The said Steamship Company must have known its responsibility under its bill of lading. The Steamship Company is presumed to have known the law. Is it equitable and just and fair to permit it to escape the responsibility of the payment of more than P15,000 of damages which it caused, by the payment of P437.18 only, and in the face of the fact, as admitted by the majority opinion, that it was responsible in damages under its contract for whatever loss or damages it occasioned?

The mistake of the American Undergarment Corporation cannot be invoked for the purpose of defeating the rights, acquired in good faith, by the Union Insurance Company or its assignee. There is *no proof that the Union Insurance Company knew or had any notice that the American Undergarment Corporation had made any settlement with the defendant*. The mistake of the American Undergarment Corporation is not the first mistake which has been made under similar bills of lading on the part of merchants. (H. E. Heacock Co. *vs.* Macondray & Co., 42 Phil., 205.)

Mistakes of law are not always a bar to the right to recover one's right. A mistake on the part of the American Undergarment Corporation would not prevent the Union Insurance Company from electing the proper remedy under the law. No mistake is attributable to the Union Insurance Company or its assignee.

Mr. Chief Justice Marshall, in the case of Hunt *vs.* Rousmanier's Admr's. (8 Wheaton [U. S.], 174), said: "That he had found no case in the books, in which it has been decided that a plain and acknowledged mistake of law was beyond the reach of equity." Mr. Justice Story said: "That the *rule*, that an *admitted or clearly established misapprehension of the law* does create a basis for the interference of the court of equity, is certainly more in consonance with the best considered and best reasoned cases upon the point, both in England and America." We believe that no case can be found, where the courts have refused to give relief where

the rights of the parties under a contract have been entirely misunderstood.

And moreover, one of the principal objections made by the defendant in the court below was the fact that the plaintiff had no right to maintain the present action; that the present action should have been instituted by the Union Insurance Company, thereby tacitly admitting that the Union Insurance Company had a right to recover from the defendant the amount of damages complained of.

After a careful examination of the record, we are fully persuaded that the evidence, equity, justice, and fair dealing, demand the confirmation of the judgment appealed from. The judgment appealed from should be affirmed, with costs.

Date created: June 10, 2014