

**INSURANCE COMPANY OF NORTH AMERICA, PLAINTIFF-APPELLEE,
VS. MANILA PORT SERVICE AND/OR MANILA RAILROAD COMPANY,
DEFENDANTS-APPELLANTS, NIPPON YUSEN KAISHA AND/OR
ELIZALDE & CO.,...**

G.R. No. L-24887. April 22, 1968

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Appeal taken by defendants Manila Port Service and Manila Railroad Company from the decision of the Court of First Instance of Manila dated June 9, 1965.

It appears that on August 21, 1962 the vessel "SS Hoeisan Meru", owned and operated by Nippon Yusen Kaisha, took on board at Copenhagen, Denmark 1,188 packages of cheese, meat preserves, butter oil and salami sausages consigned to Ed. A. Keller & Co. Ltd., Manila, said goods having been insured with herein plaintiff against all risks and damages. On September 25, 1962 said vessel arrived at the port of Manila and began discharging its cargoes, including the aforesaid shipment, into the custody of the Manila Port Service, the arrastre operator acting as a subsidiary of the Manila Railroad Company. When the shipment was delivered to the consignee, it was short by fifteen (15) packages.

Plaintiff, as subrogee of the rights of the consignee, filed a claim against all the defendants herein for the amount of the loss and/or damage. Upon failure to collect, plaintiff, on September 25, 1963, sued in the alternative the owner of the carrying vessel and its agent in the Philip-pines, Elizalde & Co., Inc., on the one hand, and the arrastre operator and its principal on the other, alleging that it was uncertain as to who was the party responsible for the loss of or damage to the shipment in question. All the defendants other than Nippon Yusen Kaisha filed their respective answers. Defendant arrastre operator and its principal subsequently moved to dismiss the complaint on the ground that the lower court lacked jurisdiction over the subject matter of the suit, to which motion plaintiff filed a written opposition. The motion to dismiss was denied and after trial on the merits the lower court rendered judgment, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered, ordering defendant Elizalde & Co., Inc. to pay the plaintiff the sum of P264.53; ordering defendants Manila Port Service and Manila Railroad Company jointly and severally, to pay the plaintiff the sum of P1,601.34; ordering the said de-fendants to pay the costs in equal shares."

From the above-quoted decision, defendants Manila Port Service and Manila Railroad Company appealed to this Court on questions of law. The other defendant did not appeal.

Appellant avers that the lower court erred: (1) in holding that it had jurisdiction over the subject-matter of the instant suit; (2) in holding that the provisional claim filed one day before the actual discharge of the last package from the carrying vessel was in substantial compliance with the provisions of the management contract; and (3) in holding that defendants-appellants are liable for the C.I.F. value of the alleged loss and/or damage and not the

invoice value thereof.

On the first question it is contended that the lower court had no jurisdiction over the subject-matter of the instant case insofar as the appellants were concerned because appellee's suit against them was based on a contract of deposit (*Macondray & Co. vs. Delgado Brothers, et al.*, 28 O.G. 899) and therefore the total amount demanded in the complaint lodged jurisdiction in the City Court.

It is further contended that the rule on joinder of causes of action did not apply, for it is subject to the fundamental limitation that each and every cause of action must be within the original jurisdiction of the court in which the complaint is filed.

This question has been settled by this Court in *Rizal Surety & Insurance Co. vs. Manila Railroad, et al.*, G. R. No. L-20875, April 30, 1966, and reiterated in *Hanover Insurance Co. vs. Manila Port Service and Manila Railroad Co.*, G. R. No. L-20976, January 23, 1967, where we said:

"At the time the complaint was filed, plaintiff did not know at what precise stage of transactions the loss complained of occurred. If the loss took place in transit, C.F. Sharp & Co., Inc. would be liable therefor; but if the loss occurred after the goods were landed and discharged from the carrying vessel, the Manila Port Service would bear such loss. Hence, the joinder of causes of action and parties defendants in the alternative which is permitted by Section 5 of Rule 2 of the Rules of Court, quoted hereunder:

x x x

"And since one of the causes of action is cognizable by the Court of First Instance the suit should be filed, as was correctly done by the plaintiff, in said court, notwithstanding that the other cause of action - if standing alone - would fall within the jurisdiction of the municipal court, by reason of the amount of the demand. (*Sapico v. Manila Oceanic Lines*, L-18776, January 30, 1964). In *International Harvester Co. of the Philippines v. Judge Aragon*, (supra, note 1) where a similar action was filed with the municipal court, we held that the municipal court lacked jurisdiction over the case inasmuch as one of the alternative causes of action, against the shipping firm, was an action in admiralty, cognizable by the Court of First Instance."

Appellants contend that the provisional claim filed one day before the complete discharge of the shipment from the carrying vessel was speculative and premature and not in substantial compliance with Section 15 of the management contract. The fact, however, is that when the provisional claim was filed on September 25, 1962, part of the shipment had already been discharged and a number of packages had been noted to have been landed in bad order, As shown by Exhibits "H", "H-1" and "H-2", all Bad Order Tally Sheets signed by the carrier's agent and a representative of appellants and dated September 25, 1962.

In *Shell Company of the Philippines, Ltd. vs. Compañia General de Tabacos de Filipinas and Manila Port Service, et al.*, G. R. No. L-20230, July 30, 1965, we held:

"x x x that paragraph 15 of the management contract clearly and specifically requires the claim to be filed 'within fifteen (15) days from date of discharge of the last package from the carrying vessel.' Quite obviously therefore such claim should be filed after discharge of the goods from the vessel. A claim filed before such discharge is premature and speculative."

However, the above rule was qualified in *New Hampshire Fire Insurance Co. vs. Manila Port Service, et al.*, G.R. No. L-20938, August 9, 1966, where this Court made a distinction between two situations, namely: (1) where the provisional claim is filed ahead of the date of the discharge of the last package from the carrying vessel and the consignee has not yet examined or is not yet informed of the condition of the shipment, in which case the provisional claim is held to be speculative and premature; and (2) where the claim is filed also before the date of the discharge of the last package from the carrying vessel, but the consignee has in fact discovered or is already

informed of a shortage or damage to the goods before the discharge of the last package, or during the unloading, in which case the provisional claim is deemed to have been properly presented.

The instant case falls squarely under the second category above-mentioned. When the provisional claim was filed on September 25, 1962, appellee was already aware of the bad order condition of some of the goods. It was therefore neither premature nor speculative, but was based on facts already within the consignee's knowledge.

As regards the last issue, appellants claim that if at all they should be liable only for the invoice value of the lost or damaged goods, and not for their C.I.F. value. Appellee does not dispute this, since it is what the management contract says. However, there is no showing that the lower court based its award on the C.I.F. value of the lost and/or damaged goods. The point is raised for the first time in this appeal, and how much was the invoice value is even now disputed by the parties. Since the appeal has been taken directly to this Court the facts may no longer be reviewed, including the finding of the lower court as to the actual amount of appellants' liability in this case.

Wherefore, the decision appealed from is affirmed, with costs against appellants.

Reyes, J.B.L., (Acting C.J.), Dizon, Bengzon, J.P., Zaldivar, Sanchez, Angeles, and Fernando, JJ., concur.

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