

**INTERNATIONAL HARVESTER COMPANY OF THE PHILIPPINES,
PETITIONER AND APPELLEE, VS. CRISANTO ARAGON, JUDGE OF
MUNICIPAL COURT OF MANILA, AND YARAS & COMPANY, FAR
EAST, RESPONDENTS ...***G.R. No. L-2372. August 26, 1949*

Ponente: PARAS, J.

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On July 9, 1947, the respondent-appellant, Yaras & Company, Far East, filed a complaint in the Municipal Court of Manila (civil case No. IV-262) against the Manila Terminal Co., Inc., and International Harvester Company of the Philippines. The complaint alleges that the defendant Manila Terminal Co., Inc., is in charge of the custody and delivery to the respective owners of cargoes discharged at the Government piers in the City of Manila; that the defendant International Harvester Company of the Philippines is the agent in the Philippines of the vessel *Belle of the Sea*; that on September 27, 1946, the S/S *Belle of the Sea* took on board at Los Angeles, California, U. S. A., goods for shipment to Manila, Philippines, and covered by Bill of Lading No. 105; that the S/S *Belle of the Sea* arrived in Manila on December 23, 1946, and discharged her cargo at the Government piers under the supervision and custody of the defendant Manila Terminal Co., Inc.; that out of the goods covered by Bill of Lading No. 105, one carton of assorted samples with a stipulated value of P200 was not delivered to Yaras & Company; and said merchandise was lost through the negligence either of the Manila Terminal Co., Inc., or of the International Harvester Company of the Philippines. The complaint prayed for judgment either against defendant Manila Terminal Co., Inc., or the International Harvester Company of the Philippines for the amount of P200, with legal interest from the date of the filing of the complaint.

Before the trial could be proceeded with, the International harvester Company of the Philippines filed a motion to dismiss, on the ground that the Municipal Court of Manila had no jurisdiction to try the case because the action involves admiralty or maritime jurisdiction, which motion was overruled by the municipal court on December 16, 1947. In due time, the International Harvester Company of the Philippines filed in the Court of First Instance of Manila a petition for prohibition (civil case No. 4328) against the Hon. Crisanto Aragon, Judge of the Municipal Court of Manila, and Yaras & Company, Far East, for the purpose of restraining said respondent judge from proceeding with civil case No. IV-262 in so far as the International Harvester Company of the Philippines was concerned, on the ground that admiralty or maritime jurisdiction is involved. After trial, the Court of First Instance of Manila rendered judgment in favor of the petitioner, International Harvester Company, of the Philippines, ordering the respondent Judge of the Municipal Court to desist from taking cognizance of civil case No. IV-262 as against the International Harvester Company of the Philippines. From this judgment the respondents have appealed.

From the facts alleged in the complaint filed in the Municipal Court, it is clear that the International Harvester Company of the Philippines, as agent in the Philippines of the vessel S/S *Belle of the Sea*, is alternatively being held liable for the loss of the cargo in question through its negligence. Inasmuch as it is expressly alleged that the

cargo of the S/S Belle of the Sea was discharged on December 23, 1946, at the Government piers under the supervision and custody of the Manila Terminal Company, Inc., the International Harvester Company of the Philippines may be held liable only on the assumption that the goods had been lost in transit or before being discharged at the pier. In other words, the liability of the International Harvester Company of the Philippines is predicated on the contract of carriage by sea between the International Harvester Company of the Philippines and Yaras & Company as evidenced by Bill of Lading No. 105, independently of the liability of the Manila Terminal Co., Inc., as operator of an arrastre service.

Admiralty has jurisdiction over all maritime contracts, in whatever form, wherever they were executed or are to be performed, but not over non-maritime contracts. (2 Corpus Juris Secundum, p. 84.) Whether or not a contract is maritime depends not on the place where the contract is made and is to be executed, making the locality the test, but on the subject-matter of the contract, making the true criterion a maritime service or a maritime transaction. (Id., p. 85.) Specifically, admiralty has jurisdiction of a proceeding in rem or in personam for the breach of a contract of affreightment, whether evidenced by a bill of lading or a charter party. (Id., pp. 90-91.) And typical of a controversy over contracts of affreightment is a suit of one party against the other for loss or damage to the cargo. (1 American Jurisprudence, p. 567.) This is the very case now before us, because the respondent Yaras & Company seeks to recover from the petitioner International Harvester Company of the Philippines the value of a certain lost cargo.

The contention of the respondent Yaras & Company that admiralty jurisdiction is not involved herein because the contract in question was made upon land and to be terminated upon land, merely reflects the English rule which had long been rejected in the United States. It is now settled in the latter country that "the jurisdiction of admiralty in matters of contract depends upon the subject-matter, i. e., the nature and character of the contract, and that the English rule which conceded jurisdiction (with few exceptions) only to contracts made upon and to be performed upon navigable waters, is inadmissible, the true criterion being that the contract has reference to maritime service or maritime transaction." (Benedict on Admiralty, 6th Ed., Vol. 1, p. 127.) We choose to adopt the sound American rule. Even in England the English rule was not without protest. Lord Kenyon, in *Menetone vs. Gibbons*, 3 Term, 269, had expressed the following criticism: "If the admiralty has jurisdiction over the subject-matter, to say that it is necessary for the parties to go upon the sea to execute the instrument borders upon absurdity."

The respondent Yaras & Company cannot invoke the rule against multiplicity of suits, for the simple reason that said rule has to be subservient to the superior requirement that the court must have jurisdiction. In view of our conclusion that the cause of action of said respondent against International Harvester Company of the Philippines involves admiralty over which the courts of first instance have original jurisdiction (Par. 4, Sec. 56, Act No. 136 of the Philippine Commission, as reproduced in Sec. 43 [d] of Republic Act No. 296), and to which the jurisdiction of the justice of the peace courts (including municipal courts) does not extend (sec. 68, Act No. 136 of the Philippine Commission, as amended by Commonwealth Act No. 4090, reproduced in par. 2, sec. 88, Republic Act No. 296), the respondent judge was properly restrained from further proceeding with civil case No. IV-262.

We hold also that prohibition is the proper remedy, since the respondent judge was taking cognizance of the case over which he had no jurisdiction and his order overruling the motion to dismiss filed by the petitioner-appellee is interlocutory and therefore not appealable. (Sec. 2 of Rule 67, Rules of Court 2.) At any rate, the remedy of appeal available when the case shall have been decided on the merits, is inadequate.

The appealed judgment is therefore affirmed, with costs against the appellant Yaras & Company. So ordered.

Moran, C.J., Ozaeta, Feria, Bengzon, Padilla, Tuason, Montemayor, and Reyes, JJ., concur.

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