

F. H. STEVENS & CO., INC., PLAINTIFF AND APPELLANT, VS. NORdDEUSCHER LLOYD, DEFENDANT AND APPELLEE.*G.R. No. L-17730. September 29, 1962*

Ponente: CONCEPCION, J.

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This is an appeal from an order granting defendant's motion to dismiss and, accordingly, dismissing the case without any pronouncement as to costs.

Plaintiff commenced this action in the Court of First Instance of Manila on June 24, 1960. It alleged in the complaint that on March 28, 1959, it had shipped from Hamburg to Manila, aboard the "MS SCHWABENSTEIN", a vessel of defendant Norddeuscher Lloyd, 2,000 pieces of prismatical thermometers valued at \$650; that on May 15, 1959, said vessel arrived at Manila; that on May 21, 1959, the master of said vessel notified the plaintiff, thru its broker, of the delivery of said goods; that, upon examination of the case containing the same, it turned out that 1,154 pieces of said thermometers valued at \$342.74, were missing and/or destroyed; that plaintiff immediately filed the corresponding notice of loss and/or short delivery, followed by the corresponding notice and formal claim for loss and/or short delivery; that, despite several demands, defendant had refused and failed to pay said sum of \$342.74; that as a consequence, plaintiff had, also, incurred damages in the sum of P1,000, as attorney's fees, and P664.70, as unrealized profits; and that an action instituted in the Municipal Court of Manila on April 27, 1960—seemingly, for the recovery of the value of said thermometers and the amount of said damages—was dismissed by said court on June 13, 1960, without any trial on the merits, upon the ground of lack of jurisdiction over the subject-matter of the case, inasmuch as the same involved the exercise of admiralty and maritime jurisdiction. Plaintiff prayed for judgment for said sums of \$342.74, P1,000 and P664.70 plus costs.

On July 8, 1960, defendant moved to dismiss the complaint upon the ground that plaintiff's cause of action had prescribed, it having been filed on June 24, 1960, or more than a year from May 21, 1959, when plaintiff was notified of the delivery of the case containing the thermometers in question. This motion having been granted and the complaint dismissed, plaintiff interposed this appeal, maintaining that the period of one (1) year prescribed in Commonwealth Act No. 65, in relation to the Carriage of Goods by Sea Act—within which the liability of carriers, based upon a contract of carriage of goods by sea, may be enforced by suit—was suspended by the commencement of the first action in the municipal court, on April 27, 1960; that the running of said period was resumed or continued on June 13, 1960, when said action was dismissed; and that, excluding said period, from April 27, 1960 to June 13, 1960, or forty-seven (47) days, less than one (1) year has elapsed from May 21, 1959 to June 24, 1960, when this case was filed in the court of first instance. In support of this pretense, plaintiff invokes Articles 1155 of the Civil Code of the Philippines, reading:

"The prescription of actions is interrupted when they are filed before the court, when there is a written extra judicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor."

Upon mature deliberation, we are of the opinion, and so hold, that the order appealed from should be reversed, not

only because of the operation of said Article 1155 of our Civil Code, but, also, in view of the provisions of section 49 of Act No. 190, pursuant to which:

"If, in an action commenced, in due time, a judgment for the plaintiff be reversed, or if the plaintiff fail otherwise than upon the merits, and the time limited for the commencement of such action has, at the date of such reversal or failure, expired, the plaintiff, or, if he die and the cause of action survive, his representatives may commence a new action within one, year after such date, and this provision shall apply to any claim asserted in any pleading by a defendant."

The action commenced by the plaintiff in the Municipal Court of Manila, on April 27, 1960, was dismissed on June 13, 1960, or over twenty (20) days after the expiration of the period of one (1) year, beginning from May 21, 1959, within which plaintiff's action could be brought, pursuant to Commonwealth Act No. 65, in relation to the Carriage of Goods by Sea Act. Under said section 49 of Act No. 190, the period within which plaintiff could initiate the present case was renewed, therefore, for another year, beginning from June 14, 1960 (*Tolentino vs. Vitug*, 39 Phil., 126; *Smith vs. McNeal*, 100 U.S. 426, 27 L. ed. 986). The case at bar was commenced on June 24, 1960, or within the period last mentioned.

The cases of *Oriental Commercial Co. vs. Jureidini* (71 Phil., 25) and *Conspecto vs. Fruto* (31 Phil., 144), in which it was held that:

"* * * Cuando se entabla una accion dentro del plazo de prescription y se desiste de ella despues, o se sobresee sin condiciones, por una razon u otra, no hace que la accion que se entable mas tarde, pero ya fuera del periodo de prescription, se pueda considerar como presentada dentro de dicho periodo porque quiere contarse con la accion entablada con anterioridad. La falta de geation de la recurrente por cuya causa se desestimaron sus demandas segunda y tercera, no puede interpretarse sino como una renuncia de su parte; y, al ejercita su ultima accion no se ha colocado en la misma situacion en que antes se hallaba al ejercitar sus tres anteriores acciones. Este es el mismo criterio que expresamos cuando so nos presento una cuestion analogia en la causa de *Conspecto contra Fruto*, 31 jur. Fil., 155." (*Italics supplied.*)

are not in point, for the dismissal of the herein plaintiff's complaint in the municipal court was not due to its desistance or voluntary abandonment.

Insofar as inconsistent with the conclusion we have thus reached, the view adopted in *Chua Kuy vs. Everett Steamship Corp.*, 93 Phil., 207; 50 Off. Gaz. 159 and *Yek Tong Lin Fire & Marine Insurance Co. vs. American President Lines, Inc.*, L-11081 (April 30, 1958) should be, as it is hereby, modified accordingly.

Wherefore, the order appealed from is reversed and this case remanded to the lower court for further proceedings, with the costs of this instance against defendant *Norddeuscher Lloyd*. It is so ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.
Labrador, J., concurs in the result.

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