

RIZAL SURETY & INSURANCE CO., PLAINTIFF-APPELLANT, VS. MACONDRAY & CO., INC., DEFENDANT-APPELLEE.

G.R. No. L-24064. February 29, 1968

Ponente: CONCEPCION, C.J.

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CONCEPCION, C.J.:

Plaintiff, Rizal Surety & Insurance Company seeks the reversal of a decision of the Court of First Instance of Manila dismissing the complaint herein, with costs.

Plaintiff seeks to recover from defendant, Macondray Co., Inc., as authorized agent, in Manila, of Barber Steamship Line, Inc., which operates the vessel "SS Tai Ping," the sum of P2,020.00, representing the maximum value recoverable — under the corresponding- bill of lading — of some machinery parts shipped, on board said vessel, at New York, and consigned to Edwardson Manufacturing Corporation, in Manila, but not discharged by the vessel in Manila, in view of which the plaintiff had to pay, pursuant to its contract of insurance with the consignee, the value of said effects to the latter.

In its answer, the defendant set up the defense of pre-scription which the lower court sustained. Hence, the dismissal of the complaint, which has been appealed directly to this Court.

Defendant's plea is predicated upon Section 3, Title I, of the Carriage of Goods by Sea Act, the penultimate paragraph of subparagraph 6 of which reads:

"In any event the carrier and the ship shall be discharged from all liability in respect to loss or damages unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered: Provided, That if a notice of loss or damage, either apparent or concealed, is not given as provided for in this section, that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods or the date when the goods should have been delivered."

The only question submitted for our determination is whe-ther the period of prescription in the foregoing provision is con-trolling in the case at bar, considering the conditions obtaining therein.

Plaintiff maintains the negative view, upon the theory that the above-quoted provision cannot apply when the shipment in question has not been discharged from the carrying vessel, as in the case at bar. In such event, it claims, our general statute of limi-tations of action should apply.

We find no merit in this contention. The aforementioned provision contemplates not only the case of damage, but also, that of loss. It goes without saying that there could be no possible charge of goods lost during the voyage and before reaching the destination. Then again, said provision, likewise, anticipates two (2 other possibilities, viz.: 1) that delivery has been made, in which case the action should be brought "within one year after delivery of the goods;" or 2) that no delivery has taken place, in which event said period should be computed from "the date when goods should have been delivered." In the latter contingency, the cause of such non-delivery — that is to say, whether the goods have been discharged from the vessel or not — is immaterial. If the goods have not been

discharged from the vessel, the non-delivery is imputable to the carrier. So would it be, if the goods had been unloaded from the vessel, but not delivered to the consignee. Indeed, in such case of discharge of the goods from the vessel, the carrier would still be liable for non-delivery of goods, because the same would be due to its own omission, if undertook to make the delivery by itself, or to the omission of its agent, if the carrier entrusted the custody of the goods and/or its delivery to a third party.

Again, our statute of limitations of action cannot be applied to the present case because the corresponding bill of lading which is the contract and, hence, the law between the parties expressly stipulates that it is "subject to the Provisions of the Carriage by Sea Act of the U. S. of America, approved April 16, 1936 which shall be deemed to be incorporated" therein.

The lower court held, and, correctly, that, inasmuch as "SS Tai Ping" arrived at the Port of Manila on November 2, 1962 and left it on November 4, 1962, it was on the latter date that the carrier had the last opportunity to deliver the goods; that the period of one year within which the carrier could be sued commence to run, therefore, from November 5, 1962 and expired on November 4, 1963; and that said period has expired before this action was commenced on February 10, 1964.

WHEREFORE, the decision appealed from should as it is hereby, affirmed, with costs against plaintiff-appellant.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro, Angeles, and Fernando, JJ., concur.

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