

**E.E. ELSE, INC. AND ATLANTIC MUTUAL INSURANCE COMPANY,
PETITIONERS VS. COURT OF APPEALS, INTERNATIONAL
HARVESTER CO. OF PHILIPPINES AND ISTHMIAN STEAMSHIP
COMPANY, RESPONDENTS.**

G.R. No. L-6517. November 29, 1954

Ponente: BAUTISTA ANGELO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/9ba62457ae4e/>

BAUTISTA ANGELO, J.:

This is a petition for review of a decision of the Court of Appeals which affirms that of the court of origin dismissing the complaint without pronouncement as to costs.

The facts, as found by the Court of Appeals, are:

"It appears that in the month of December, 1945 the goods specified in the Bill of Lading marked as Annex A, were shipped on the 'S.S. Sea Hydra1, of Isthmian Steamship Company, from New York to Manila, and were received by the consignee 'Udharam Bazar & Co.', except one case of vanishing cream valued at P159.78. The goods were insured against damage or loss by the 'Atlantic Mutual Insurance Co.' 'Udharam Bazar and Co.' successively filed claim for the loss with the Manila Terminal Co. Inc., who denied having received the goods for custody, and the 'International Harvester Co. of the Philippines', as agent for the shipping company, who answered that the goods were landed and delivered to the Customs authorities. Finally, 'Udharam Bazar & Co.' claimed for indemnity of the loss from the insurer, 'Atlantic Mutual Insurance Co.', and was paid by the latter's agent 'E. E. Elser Inc.' the amount involved, that is, P159.78."

As may be noted, the Court of Appeals held that petitioners have already lost their right to press their claim against respondents because of their failure to serve notice thereof upon the carrier within 30 days after receipt of the notice of loss or damage as required by clause 18 of the bill of lading which was issued concerning the shipment of the merchandise which had allegedly disappeared. In this respect, the court said that, "appellants unwittingly admitted that they were late in claiming the indemnity for the loss of the case of the vanishing cream as their written claim was made on April 25, 1946, or more than 30 days after they had been fully aware of said loss," and because of this failure, the Court said, the action of petitioners should, and must, fall. Petitioners now contend that this finding is erroneous in the light of the provisions of the Carriage of Goods by Sea Act of 1936, which apply to this case, the same having been made an integral part of the covenants agreed upon in the bill of lading.

There is merit in this contention. If this case were to be governed by clause 18 of the bill of lading regardless of the provisions of the Carriage of Goods by Sea Act of 1936, the conclusion reached by the Court of Appeals would indeed be correct, but in our opinion this Act cannot be ignored or disregarded in determining the equities of the parties it appearing that the same was made an integral part of the bill of lading by express stipulation. It should be noted, in this connection, that the Carriage of Goods by Sea Act of 1936 was accepted and adopted by our government by the enactment of Commonwealth Act No. 65 making said Act:"applicable to all contracts for

the carriage of goods by sea to and from Philippine ports in foreign trade." And the pertinent provisions of the Carriage of Goods by Sea Act of 1936 are:

"6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge or at the time of the removal of the goods into the custody of the person Entitled to delivery thereof under the contract of carriage, such removal shall be prima facie evidence of the delivery by the carrier of the goods as described in the bill of lading. If the loss or damage is not apparent, the notice must be given within three the delivery

"In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage 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." (Section 3; Italics supplied)

It would therefore appear from the above that a carrier can only be discharged from liability in respect of loss or damage if the suit is not brought within one year after the delivery of the goods or the date when the goods should have been delivered, and that, even if a notice of loss or damage is not given as required, "that fact shall not affect or prejudice the right of the shipper to bring suit within one year after the delivery of the goods." In other words, regardless of whether the notice of loss or damage has been given, the shipper can still bring an action to recover said loss or damage within one year after the delivery of the goods, and, as we have stated above, this is contrary to the provisions of clause 18: of the bill of lading. The question that now rises is: Which of these two provisions should prevail? Is it that contained in clause 18 of the bill of lading, or that appearing in the Carriage of Goods by Sea Act?

The answer is not difficult to surmise. That clause 18 must of necessity yield to the provisions of the Carriage of Goods by Sea Act in view of the proviso contained in the same Act which says: "Any clause, covenant, or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with the goods * * * or lessening such liability otherwise than as provided in this Act, shall be null and void and of no effect." (section 3) This means that a carrier cannot limit its liability in a manner contrary to what is provided for in said Act, and so clause 18 of the bill of lading must of necessity be null and void. This interpretation finds support in a number of cases recently decided by the American courts. Thus, in *Balfour, Guthrie & Co., Ltd., et al. vs. American-West African Line, Inc.* and *American-West African Line, Inc. vs. Balfour, Guthrie & Co., Ltd., et al.*, 136 F. 2d. 320, wherein the bill of lading provided that the owner should not be liable for loss of cargo unless written notice thereof was given within 30 days after the goods should (have been delivered and unless written claim therefor was given within six months after giving such written notice, the United States Circuit Court of Appeals, Second Circuit, in a decision promulgated on August 2, 1943 made the following ruling:

"But the Act Sec. 3(6), 46 U.S.C.A. Sec. 1303 (6) provides that failure to give 'notice of loss or damage' shall not prejudice the right of the shipper to bring suit within one year after the date when the goods should have been delivered. To enforce a bill of lading provision conditioning a ship-owner's liability upon the filing of written claim of loss, which, in turn, requires and depends upon the filing of a prior notice of loss, certainly would do violence to Sec.3(6). But further, as a like provision was apparently quite customary in bills of lading prior to the act, the reasonable implication of Sec. 3(6) is that failure to file written claim of loss in no event may prejudice right of suit within a year of the scheduled date for cargo delivery. This is also to be concluded from Sec. 3(8) 46 U.S.C.A Sec. 1303(8), that any clause in a bill of lading lessening the liability of the carrier

otherwise than as provided in the Act shall be null and void. A similar provision in the British Carriage of Goods by Sea Act, 14 & 15 Geo. vs. c. 22, has been interpreted to nullify any requirement of written claim as a condition to suit at any time. CF. *Australasian United Steam Navigation Co., Ltd. vs. Hunt*, (1921) 2 A.C., 351; *Convent Sheppard & Co. vs. Larrinaga S.S. Co.*, 73 L.L. Rep. 256.”[1]

But respondents contend that while the United States Carriage of Goods by Sea Act of 1936 was accepted and adopted by our government by virtue of Commonwealth Act No. 65, however, said Act does not have any application to the present case because the shipment in question was made in December, 1945, and arrived in Manila in February, 1946 and at that time the Philippines was still a territory or possession of the United States and, therefore, it may be said that the trade then between the Philippines and the United States was not a "foreign trade." In other words, it is contended that the Carriage of Goods by Sea Act as adopted by our government is only applicable "to all contracts, for the carriage of goods by sea to and from Philippine ports in foreign trade," and therefore, it does not apply to the shipment in question.

Granting *arguendo* that the Philippines was a territory or possession of the United States for the purposes of said Act and that the trade between the Philippines and the United States before the advent of independence was not foreign trade or can only be considered in a domestic sense, still we are of the opinion that the Carriage of Goods by Sea Act of 1936 may have application to the present case it appearing that the parties have expressly agreed to made and incorporate the provisions of said Act as integral part of their contract of carriage. This is an exception to the rule regarding the applicability of said Act. This is expressly recognized by Section 13 of said Act which contains the following proviso:

"Nothing in this Act shall be held to apply to contracts for carriage of goods by sea between any port of the United States or its possessions, and any other port of the United States or its possessions: Provided, however, that any bill of lading or similar document of title which is evidence of a contract for the carriage of goods by sea between such ports, containing an express statement that it shall be subject to the provisions of this Act shall be subjected hereto as fully as if subject hereto by the express provisions of this Act;" (Italics supplied)

This is also recognized by the very authority cited by counsel for respondents, who, on this matter, has made the following comment:

"The Philippine Act of 1936 like the U.S. Act of 1936, applies *proprio vigore* only to foreign commerce to all contracts for the carriage of goods by sea to and from Philippine ports in foreign trade.

"Prior to Philippine Independence on July 4, 1965 trade between the Philippines and other ports and places under the American Flag, was not, by any ordinary definition, foreign commerce. Hence, the U.S. and Philippine Acts did not apply to such trades, even though conducted under foreign bottoms and under foreign flag, unless the carrier expressly exercised the option given by Section 13 of the U.S. Act to carry under the provisions of that Act. The fact that the U.S. coast wise flag monopoly did not extend to the Philippine trade did not alter the fact that the U.S. Trade with the Islands is domestic." (Knaught, *Ocean Bills of Lading*, 1947 Ed. p. 250) (Italics supplied)

Having reached the foregoing conclusion, it would appear clear that the action of petitioners has not yet lapsed or prescribed, as erroneously held by the Court of Appeals, it appearing that the present action was brought within one year after the delivery of the shipment in question.

As regards the contention of respondents that petitioners have the burden of showing that the loss complained of did not take place after the goods left the possession or custody of the carrier because (they failed to give notice of their loss or damage as required by law, which failure gives rise to the presumption that the goods were delivered as described in the bill of lading, suffice it to state that, according to the Court of Appeals, the required notice was given by the petitioners to the carrier or its agent on April 25, 1946. That notice is sufficient to overcome the

above presumption within the meaning of the law.

Wherefore, the decision appealed from is reversed. Respondents, other than the Court of Appeals, are hereby sentenced to pay to the petitioners the sum of P159.78 with legal interest thereon from the date of the filing of the complaint, plus the costs of action.

Paras, C.J., Pablo, Bengzon, Padilla, Montemayor, Reyes, A., Concepcion, and Reyes, J.B.L., JJ., concur.

Mr. Justice Labrador, (on leave)

[1] This ruling was reiterated in *Mackay, et al. vs. United States, et al.*, 83 F. Supp. 14, Oct. 29, 1948 and *Givaudan Delawanna vs. The Blijdendijk*, 91 F. Supp. 663, June 8, 1950.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.