

AIR FRANCE, PETITIONER, VS. RAFAEL CARRASCOSO AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.

G.R. No. L-21438. August 28, 1966

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

The Court of First Instance of Manila [1] sentenced petitioner to pay respondent Rafael Carrascoso P25,000.00 by way of moral damages; P10,000.00 as exemplary damages; P393.20 representing the difference in fare between first class and tourist class for the portion of the trip Bangkok-Rome, these various amounts with interest at the legal rate, from the date of the filing of the complaint until paid; plus P3,000.00 for attorneys' fees; and the costs of suit.

On appeal, [2] the Court of Appeals slightly reduced the amount of refund on Carrascoso's plane ticket from P393.20 to P383.10, and voted to affirm the appealed decision "in all other respects", with costs against petitioner.

The case is now before us for review on certiorari.

The facts declared by the Court of Appeals as "fully supported by the evidence of record", are:

"Plaintiff, a civil engineer, was a member of a group of 48 Filipino pilgrims that left Manila for Lourdes on March 30, 1958.

On March 28, 1958, the defendant, Air France, through its authorized agent, Philippine Air Lines, Inc., issued to plaintiff a 'first class' round trip airplane ticket from Manila to Rome. From Manila to Bangkok, plaintiff travelled in 'first class', but at Bangkok, the Manager of the defendant airline forced plaintiff to vacate the 'first class' seat that he was occupying because, in the words of the witness Ernesto G. Cuento, there was a 'white man', who, the Manager alleged, had a 'better right' to the seat. When asked to vacate his 'first class' seat, the plaintiff, as was to be expected, refused, and told defendant's Manager that his seat would be taken over his dead body; a commotion ensued, and, according to said Ernesto G. Cuento, 'many of the Filipino passengers got nervous in the tourist class; when they found out that Mr. Carrascoso was having a hot discussion with the white man [manager], they came all across to Mr. Carrascoso and pacified Mr. Carrascoso to give his seat to the white man' (Transcript, p. 12, Hearing of May 26, 1959); and plaintiff reluctantly gave his 'first class' seat in the plane." [3]

1. The thrust of the relief petitioner now seeks is that we review "all the findings" [4] of respondent Court of Appeals. Petitioner charges that respondent court failed to make complete findings of fact on all the issues properly laid before it. We are asked to consider facts favorable to petitioner, and then, to overturn the appellate court's decision.

Coming into focus is the constitutional mandate that "No decision shall be rendered by any court of record without expressing therein clearly and distinctly the facts and the law on which it is based". [5] This is echoed in the statutory demand that a judgment determining the merits of the case shall state "clearly and distinctly the facts and the law on which it is based"; [6] and that "Every decision of the Court of Appeals shall contain complete

findings of fact on all issues properly raised before it". [7]

A decision with absolutely nothing to support it is a nullity. It is open to direct attack. [8] The law, however, solely insists that a decision state the "essential ultimate facts" upon which the court's conclusion is drawn. [9] A court of justice is not hidebound to write in its decision every bit and piece of evidence [10] presented by one party and the other upon the issues raised. Neither is it to be burdened with the obligation "to specify in the sentence the facts" which a party "considered as proved". [11] This is but a part of the mental process from which the Court draws the essential ultimate facts. A decision is not to be so clogged with details such that prolixity, if not confusion, may result. So long as the decision of the Court of Appeals contains the necessary facts to warrant its conclusions, it is no error for said court to withhold therefrom "any specific finding of facts with respect to the evidence for the defense". Because, as this Court well observed, "There is no law that so requires". [12] Indeed, "the mere failure to specify (in the decision) the contentions of the appellant and the reasons for refusing to believe them is not sufficient to hold the same contrary to the requirements of the provisions of law and the Constitution". It is in this setting that in *Manigque*, it was held that the mere fact that the findings "were based entirely on the evidence for the prosecution without taking into consideration or even mentioning the appellant's side in the controversy as shown by his own testimony", would not vitiate the judgment. [13] If the court did not recite in the decision the testimony of each witness for, or each item of evidence presented by, the defeated party, it does not mean that the court has overlooked such testimony or such item of evidence. [14] At any rate, the legal presumptions are that official duty has been regularly performed, and that all the matters within an issue in a case were laid before the court and passed upon by it. [15]

Findings of fact, which the Court of Appeals is required to make, maybe defined as "the written statement of the ultimate facts as found by the court x x x and essential to support the decision and judgment rendered thereon". [16] They consist of the court's "conclusions with respect to the determinative facts in issue". [17] A question of law, upon the other hand, has been declared as "one which does not call for an examination of the probative value of the evidence presented by the parties." [18]

2. By statute, "only questions of law may be raised" in an appeal by certiorari from a judgment of the Court of Appeals. [19] That judgment is conclusive as to the facts. It is not appropriately the business of this Court to alter the facts or to review the questions of fact. [20]

With these guideposts, we now face the problem of whether the findings of fact of the Court of Appeals support its judgment.

3. Was Carrascoso entitled to the first class seat he claims?

It is conceded in all quarters that on March 28, 1958 he paid to and received from petitioner a first class ticket. But petitioner asserts that said ticket did not represent the true and complete intent and agreement of the parties; that said respondent knew that he did not have confirmed reservations for first class on any specific flight, although he had tourist class protection; that, accordingly, the issuance of a first class ticket was no guarantee that he would have a first class ride, but that such would depend upon the availability of first class seats.

These are matters which petitioner has thoroughly presented and discussed in its brief before the Court of Appeals under its third assignment of error, which reads: "The trial court erred in finding that plaintiff had confirmed reservations for, and a right to, first class seats on the 'definite' segments of his journey, particularly that from Saigon to Beirut". [21]

And, the Court of Appeals disposed of this contention thus:

"Defendant seems to capitalize on the argument that the issuance of a first-class ticket was no guarantee that

the passenger to whom the same had been issued, would be accommodated in the first-class compartment, for as in the case of plaintiff he had yet to make arrangements upon arrival at every station for the necessary first-class reservation. We are not impressed by such a reasoning. We cannot understand how a reputable firm like defendant airplane company could have the indiscretion to give out tickets it never meant to honor at all. It received the corresponding amount in payment of first-class tickets and yet it allowed the passenger to be at the mercy of its employees. It is more in keeping with the ordinary course of business that the company should know whether or not the tickets it issues are to be honored or not." [22]

Not that the Court of Appeals is alone. The trial court similarly disposed of petitioner's contention, thus:

"On the fact that plaintiff paid for, and was issued a 'First class' ticket, there can be no question. Apart from his testimony, see plaintiff's Exhibits 'A', 'A-1', 'B', 'B-1', 'B-2', 'C' and 'C-1', and defendant's own witness, Rafael Altonaga, confirmed plaintiff's testimony and testified as follows:

Q. In these tickets there are marks 'O.K.' From what you know, what does this O.K. mean?

A. That the space is confirmed.

Q. Confirmed for first class?

A. Yes, 'first class'. (Transcript, p. 169)

x x x x

"Defendant tried to prove by the testimony of its witnesses Luis Zaldariaga and Rafael Altonaga that although plaintiff paid for, and was issued a 'first class' airplane ticket, the ticket was subject to confirmation in Hongkong. The court cannot give credit to the testimony of said witnesses. Oral evidence cannot prevail over written evidence, and plaintiff's Exhibits 'A', 'A-1', 'B', 'B-1', 'C' and 'C-1' belie the testimony of said witnesses, and clearly show that the plaintiff was issued, and paid for, a first class ticket without any reservation whatever.

Furthermore, as hereinabove shown, defendant's own witness Rafael Altonaga testified that the reservation for a 'first class' accommodation for the plaintiff was confirmed. The court cannot believe that after such confirmation defendant had a verbal understanding with plaintiff that the 'first class' ticket issued to him by defendant would be subject to confirmation in Hongkong." [23]

We have heretofore adverted to the fact that except for a slight difference of a few pesos in the amount refunded on Carrasco's ticket, the decision of the Court of First Instance was affirmed by the Court of Appeals in all other respects. We hold the view that such a judgment of affirmance has merged the judgment of the lower court. [24] Implicit in that affirmance is a determination by the Court of Appeals that the proceeding in the Court of First Instance was free from prejudicial error and that "all questions raised by the assignments of error and all questions that might have been so raised are to be regarded as finally adjudicated against the appellant". So also, the judgment affirmed "must be regarded as free from all error". [25] We reached this policy construction because nothing in the decision of the Court of Appeals on this point would suggest that its findings of fact are in any way at war with those of the trial court. Nor was said affirmance by the Court of Appeals upon a ground or grounds different from those which were made the basis of the conclusions of the trial court. [26]

If, as petitioner underscores, a first-class-ticket holder is not entitled to a first class seat, notwithstanding the fact that seat availability in specific flights is therein confirmed, then an air passenger is placed in the hollow of the hands of an airline. What security then can a passenger have? It will always be an easy matter for an airline aided by its employees, to strike out the very stipulations in the ticket, and say that there was a verbal agreement to the contrary. What if the passenger had a schedule to fulfill? We have long learned that, as a rule, a written document speaks a uniform language; that spoken word could be notoriously unreliable. If only to achieve stability in the

relations between passenger and air carrier, adherence to the ticket so issued is desirable. Such is the case here. The lower courts refused to believe the oral evidence intended to defeat the covenants in the ticket.

The foregoing are the considerations which point to the conclusion that there are facts upon which the Court of Appeals predicated the finding that respondent Carrascoso had a first class ticket and was entitled to a first class seat at Bangkok, which is a stopover in the Saigon to Beirut leg of the flight. [27] We perceive no "welter of distortions by the Court of Appeals of petitioner's statement of its position", as charged by petitioner. [28] Nor do we subscribe to petitioner's accusation that respondent Carrascoso "surreptitiously took a first class seat to provoke an issue". [29] And this because, as petitioner states, Carrascoso went to see the Manager at his office in Bangkok "to confirm my seat and because from Saigon I was told again to see the Manager". [30] Why, then, was he allowed to take a first class seat in the plane at Bangkok, if he had no seat? Or, if another had a better right to the seat?

4. Petitioner assails respondent court's award of moral damages. Petitioner's trenchant claim is that Carrascoso's action is planted upon breach of contract; that to authorize an award for moral damages there must be an averment of fraud or bad faith; [31] and that the decision of the Court of Appeals fails to make a finding of bad faith. The pivotal allegations in the complaint bearing on this issue are:

"3. That x x x plaintiff entered into a contract of air carriage with the Philippine Air Lines for a valuable consideration, the latter acting as general agents for and in behalf of the defendant, under which said contract, plaintiff was entitled to, as defendant agreed to furnish plaintiff, First Class passage on defendant's plane during the entire duration of plaintiff's tour of Europe with Hongkong as starting point up to and until plaintiff's return trip to Manila, x x x

4. That, during the first two legs of the trip from Hongkong to Saigon and from Saigon to Bangkok, defendant furnished to the plaintiff First Class accommodation but only after protestations, arguments and/or insistence were made by the plaintiff with defendant's employees.

5. That finally, defendant failed to provide First Class passage, but instead furnished plaintiff only Tourist Class accommodations from Bangkok to Teheran and/or Casablanca, x x x the plaintiff has been compelled by defendant's employees to leave the First Class accommodation berths at Bangkok after he was already seated.

6. That consequently, the plaintiff, desiring no repetition of the inconvenience and embarrassments brought by defendant's breach of contract was forced to take a Pan American World Airways plane on his return trip from Madrid to Manila. [32]

x x x x

2. That likewise, as a result of defendant's failure to furnish First Class accommodations aforesaid, plaintiff suffered inconveniences, embarrassments, and humiliations, thereby causing plaintiff mental anguish, serious anxiety, wounded feelings, social humiliation, and the like injury, resulting in moral damages in the amount of P30,000.00." [33]

The foregoing, in our opinion, substantially aver: First, That there was a contract to furnish plaintiff a first class passage covering, amongst others, the Bangkok-Teheran leg; Second, That said contract was breached when petitioner failed to furnish first class transportation at Bangkok; and Third, That there was bad faith when petitioner's employee compelled Carrascoso to leave his first class accommodation berth "after he was already seated" and to take a seat in the tourist class, by reason of which he suffered inconvenience, embarrassments and humiliations, thereby causing him mental anguish, serious anxiety, wounded feelings and social humiliation, resulting in moral damages. It is true that there is no specific mention of the term bad faith in the complaint. But, the inference of bad faith is there; it may be drawn from the facts and circumstances set forth therein. [34] The

contract was averred to establish the relation between the parties. But the stress of the action is put on wrongful expulsion.

Quite apart from the foregoing is that (a) right at the start of the trial, respondent's counsel placed petitioner on guard on what Carrascoso intended to prove: That while sitting in the plane in Bangkok, Carrascoso was ousted by petitioner's manager who gave his seat to a white man; [35] and (b) evidence of bad faith in the fulfillment of the contract was presented without objection on the part of the petitioner. It is, therefore, unnecessary to inquire as to whether or not there is sufficient averment in the complaint to justify an award for moral damages. Deficiency in the complaint, if any, was cured by the evidence. An amendment thereof to conform to the evidence is not even required. [36] On the question of bad faith, the Court of Appeals declared:

"That the plaintiff was forced out of his seat in the first class compartment of the plane belonging to the defendant Air France while at Bangkok, and was transferred to the tourist class not only without his consent but against his will, has been sufficiently established by plaintiff in his testimony before the court, corroborated by the corresponding entry made by the purser of the plane in his notebook which notation reads as follows:

'First-class passenger was forced to go to the tourist class against his will, and that the captain refused to intervene',

and by the testimony of an eye-witness, Ernesto G. Cuento, who was a co-passenger. The captain of the plane who was asked by the manager of defendant company at Bangkok to intervene even refused to do so. It is noteworthy that no one on behalf of defendant ever contradicted or denied this evidence for the plaintiff. It could have been easy for defendant to present its manager at Bangkok to testify at the trial of the case, or yet to secure his deposition; but defendant did neither. [37]

The Court of Appeals further stated -

"Neither is there evidence as to whether or not a prior reservation was made by the white man. Hence, if the employees of the defendant at Bangkok sold a first-class ticket to him when all the seats had already been taken, surely the plaintiff should not have been picked out as the one to suffer the consequences and to be subjected to the humiliation and indignity of being ejected from his seat in the presence of others. Instead of explaining to the white man the improvidence committed by defendant's employees, the manager adopted the more drastic step of ousting the plaintiff who was then safely ensconced in his rightful seat. We are strengthened in our belief that this probably was what happened there, by the testimony of defendant's witness Rafael Altonaga who, when asked to explain the meaning of the letters 'O.K.' appearing on the tickets of plaintiff, said 'that the space is confirmed' for first class. Likewise, Zenaida Faustino, another witness for defendant, who was the chief of the Reservation Office of defendant, testified as follows:

'Q. How does the person in the ticket-issuing office know what reservation the passenger has arranged with you?

A. They call us up by phone and ask for the confirmation,' (t.s.n., p. 247, June 19, 1959)

In this connection, we quote with approval what the trial Judge has said on this point:

'Why did the, using the words of the witness Ernesto G. Cuento, 'white man' have a 'better right' to the seat occupied by Mr. Carrascoso? The record is silent. The defendant airline did not prove 'any better', nay, any right on the part of the 'white man' to the 'First class' seat that the plaintiff was occupying and for which he paid and was issued a corresponding 'first class' ticket.

'If there was a justified reason for the action of the defendant's Manager in Bangkok, the defendant could have easily proven it by having taken the testimony of the said Manager by deposition, but defendant did not do so; the

presumption is that evidence willfully suppressed would be adverse if produced [Sec. 69, par. (e), Rules of Court]; and, under the circumstances, the Court is constrained to find, as it does find, that the Manager of the defendant airline in Bangkok not merely asked but threatened the plaintiff to throw him out of the plane if he did not give up his 'first class' seat because the said Manager wanted to accommodate, using the words of the witness Ernesto G. Cuento, the 'white man'" [38]

It is really correct to say that the Court of Appeals in the quoted portion first transcribed did not use the term "bad faith". But can it be doubted that the recital of facts therein points to bad faith? The manager not only prevented Carrascoso from enjoying his right to a first class seat; worse, he imposed his arbitrary will; he forcibly ejected him from his seat, made him suffer the humiliation of having to go to the tourist class compartment - just to give way to another passenger whose right thereto has not been established. Certainly, this is bad faith. Unless, of course, bad faith has assumed a meaning different from what is understood in law. For, "bad faith" contemplates a "state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purpose." [39]

And if the foregoing were not yet sufficient, there is the express finding of bad faith in the judgment of the Court of First Instance, thus:

"The evidence shows that defendant violated its contract of transportation with plaintiff in bad faith, with the aggravating circumstances that defendant's Manager in Bangkok went to the extent of threatening the plaintiff in the presence of many passengers to have him thrown out of the airplane to give the 'first class' seat that he was occupying to, again using the words of the witness Ernesto G. Cuento, a 'white man' whom he (defendant's Manager) wished to accommodate, and the defendant has not proven that this 'white man' had any 'better right' to occupy the 'first class' seat that the plaintiff was occupying, duly paid for, and for which the corresponding 'first class' ticket was issued by the defendant to him." [40]

5. The responsibility of an employer for the tortious act of its employees need not be essayed. It is well settled in law. [41] For the willful malevolent act of petitioner's manager, petitioner, his employer, must answer. Article 21 of the Civil Code says:

"ART. 21. Any person who wilfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage."

In parallel circumstances, we applied the foregoing legal precept; and, we held that upon the provisions of Article 2219 (10), Civil Code, moral damages are recoverable. [42]

6. A contract to transport passengers is quite different in kind and degree from any other contractual relation. [43] And this, because of the relation which an air-carrier sustains with the public. Its business is mainly with the travelling public. It invites people to avail of the comforts and advantages it offers. The contract of air carriage, therefore, generates a relation attended with a public duty. Neglect or malfeasance of the carrier's employees, naturally, could give ground for an action for damages.

Passengers do not contract merely for transportation. They have a right to be treated by the carrier's employees with kindness, respect, courtesy and due consideration. They are entitled to be protected against personal misconduct, injurious language, indignities and abuses from such employees. So it is, that any rude or discourteous conduct on the part of employees towards a passenger gives the latter an action for damages against the carrier. [44]

Thus, "Where a steamship company [45] had accepted a passenger's check, it was a breach of contract and a tort, giving a right of action for its agent in the presence of third persons to falsely notify her that the check was worthless and demand payment under threat of ejection, though the language used was not insulting and she was

not ejected. [46] And this, because, although the relation of passenger and carrier is "contractual both in origin and nature" nevertheless "the act that breaks the contract may be also a tort". [47] And in another case, "Where a passenger on a railroad train, when the conductor came to collect his fare, tendered him the cash fare to a point where the train was scheduled not to stop, and told him that as soon as the train reached such point he would pay the cash fare from that point to destination, there was nothing in the conduct of the passenger which justified the conductor in using insulting language to him, as by calling him a lunatic," and the Supreme Court of South Carolina there held the carrier liable for the mental suffering of said passenger. [48]

Petitioner's contract with Carrascoso is one attended with public duty. The stress of Carrascoso's action as we have said, is placed upon his wrongful expulsion. This is a violation of public duty by the petitioner-air carrier - a case of quasi-delict. Damages are proper.

7. Petitioner draws our attention to respondent Carrascoso's testimony, thus -

"Q. You mentioned about an attendant. Who is that attendant and purser?

A. When we left already - that was already in the trip - I could not help it. So one of the flight attendants approached me and requested from me my ticket and I said, What for? and she said, 'We will note that you were transferred to the tourist class'. I said, 'Nothing of that kind. That is tantamount to accepting my transfer.' And I also said, 'You are not going to note anything there because I am protesting to this transfer'.

Q. Was she able to note it?

A. No, because I did not give my ticket.

Q. About that purser?

A. Well, the seats there are so close that you feel uncomfortable and you don't have enough leg room, I stood up and I went to the pantry that was next to me and the purser was there. He told me, 'I have recorded the incident in my notebook.' He read it and translated it to me - because it was recorded in French - 'First class passenger was forced to go to the tourist class against his will, and that the captain refused to intervene.'

MR. VALTE -

I move to strike out the last part of the testimony of the witness because the best evidence would be the notes. Your Honor.

COURT -

I will allow that as part of his testimony." [49]

Petitioner charges that the finding of the Court of Appeals that the purser made an entry in his notebook reading "First class passenger was forced to go to the tourist class against his will, and that the captain refused to intervene" is predicated upon evidence [Carrascoso's testimony above] which is incompetent. We do not think so. The subject of inquiry is not the entry, but the ouster incident. Testimony on the entry does not come within the proscription of the best evidence rule. Such testimony is admissible. [49A]

Besides, from a reading of the transcript just quoted, when the dialogue happened, the impact of the startling occurrence was still fresh and continued to be felt. The excitement had not as yet died down. Statements then, in this environment, are admissible as part of the *res gestae*. [50] For, they grow "out of the nervous excitement and mental and physical condition of the declarant". [51] The utterance of the purser regarding his entry in the notebook was spontaneous, and related to the circumstances of the ouster incident. Its trustworthiness has been guaranteed. [52] It thus escapes the operation of the hearsay rule. It forms part of the *res gestae*.

At all events, the entry was made outside the Philippines. And, by an employee of petitioner. It would have been an easy matter for petitioner to have contradicted Carrascoso's testimony. If it were really true that no such entry was made, the deposition of the purser could have cleared up the matter.

We, therefore, hold that the transcribed testimony of Carrascoso is admissible in evidence.

8. Exemplary damages are well awarded. The Civil Code gives the court ample power to grant exemplary damages - in contracts and quasi-contracts. The only condition is that defendant should have "acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner". [53] The manner of ejection of respondent Carrascoso from his first class seat fits into this legal precept. And this, in addition to moral damages. [54]

9. The right to attorneys' fees is fully established. The grant of exemplary damages justifies a similar judgment for attorneys' fees. The least that can be said is that the courts below felt that it is but just and equitable that attorneys' fees be given. [55] We do not intend to break faith with the tradition that discretion well exercised - as it was here - should not be disturbed.

10. Questioned as excessive are the amounts decreed by both the trial court and the Court of Appeals, thus: P25,000.00, as moral damages; P10,000.00, by way of exemplary damages, and P3,000.00 as attorneys' fees. The task of fixing these amounts is primarily with the trial court. [56] The Court of Appeals did not interfere with the same. The dictates of good sense suggest that we give our imprimatur thereto. Because, the facts and circumstances point to the reasonableness thereof. [57]

On balance, we say that the judgment of the Court of Appeals does not suffer from reversible error. We accordingly vote to affirm the same. Costs against petitioner.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Barrera, Dizon, Regala, Makalintal, Zaldivar and Ruiz Castro, JJ., concur.
Bengzon, J.P., J., no part.

[1] Civil Case No. 38810, "Rafael Carrascoso, plaintiff, vs. Air France, defendant," R. A., pp. 79-80.

[2] C. A.-G.R. No. 26522-R, "Rafael Carrascoso, plaintiff-appellee, vs. Air France, defendant-appellant".

[3] Appendix A, petitioner's brief, pp. 146-147. See also R.A., pp. 66-67.

[4] Petitioner's brief, p. 142.

[5] Section 12, Article VIII, Constitution.

[6] Section 1, Rule 36, Rules of Court. See also Section 2, Rule 120, in reference to judgments in criminal cases.

[7] Sec. 4, Rule 51; Sec. 33 (2), Judiciary Act of 1948, as amended.

[8] *Edwards vs. McCoy*, 22 Phil., 598, 601; *Yangco vs. Court of First Instance of Manila, et al.*, 29 Phil., 183, 191.

[9] *Braga vs. Millora*, 3 Phil., 458, 465.

[10] *Id.*

[11] *Aringo vs. Arena*, 14 Phil., 263, 266; emphasis supplied.

[12] Reyes vs. People, 71 Phil. 598, 600.

[13] People vs. Manigque, 35 O.G., No. 94, pp. 1682, 1683, citing Section 133 of the Code of Civil Procedure and Section 12, Art. VIII, Constitution, *supra*.

[14] Badger, et al., vs. Boyd, 65 S.W. (2d), pp. 601, 610.

[15] Section 5, (m) and (o), Rule 131, Rules of Court.

[16] In re Good's Estate, 266 P. (2d), pp. 719, 729.

[17] Badger, et al., vs. Boyd, *supra*.

[18] Goduco vs. Court of Appeals, et al., L-17647, February 28, 1964.

[19] Section 2, Rule 45, Rules of Court, formerly Section 2, Rule 46 of the Rules of Court.

[20] Medel, et al., vs. Calasanz, et al., L-14835, August 31, 1960; Astraquillo, et al., vs. Javier, et al., L-20034, January 30, 1965.

[21] Petitioner's brief in the Court of Appeals, pp. 82-98.

[22] Decision of the Court of Appeals, Appendix A, petitioner's brief, pp. 148-149.

[23] R. A., pp. 67, 73.

[24] 5 B C.J.S., p. 295; 3 Am. Jur. p. 678.

[25] 3 Am. Jur., pp. 677-678.

[26] See Garcia Valdez vs. Soteraña Tuason, 40 Phil. 943, 951.

[27] Carrascoso's ticket, according to petitioner (brief, pp. 7-8), shows:

1. Manila to Hong Kong

PAL

300A

March 30

2. Hong Kong to Saigon

VN (Air Vietnam)

693

March 31

3. Saigon to Beirut

AF (Air France)

245

March 31

[28] Petitioner's brief, p. 50; see also *id.*, pp. 37 and 46.

[29] *Id.*, p. 103.

[30] *Ibid.*, p. 102.

[31] Article 2220, Civil Code reads: "Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith."

[32] R. A., p. 2-4; underscoring supplied.

[33] R. A., p. 5; second cause of action

[34] *Copeland vs. Duneboo, et al.*, 138 S.E., 267, 270. See also 25 C.J.S., pp. 758-759; 15 Am. Jur., pp. 766-767.

[35] Statement of Attorney Villegas for respondent Carrascoso in open court. Respondent's brief, p. 33.

[36] Section 5, Rule 10, Rules of Court, in part, reads: "SEC. 5 Amendment to conform to or authorize presentation of evidence. - When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects, as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues. x x x"; *Co Tiamco vs. Diaz, etc., et al.*, 75 Phil. 672, 679; *J.M. Tuason & Co., Inc., etc., vs. Bolaños*, 95 Phil. 106, 110.

[37] Decision, Court of Appeals, Appendix A of petitioner's brief, pp. 147-148.

[38] Decision of the Court of Appeals, Appendix A petitioner's brief; pp. 147-151.

[39] Words & Phrases, Perm. Ed., Vol. 5, p. 13, citing *Warfield Natural Gas Co., vs. Allen*, 59 S.W. (2d.) 534, 538.

[40] R. A., p. 74; emphasis supplied.

[41] Article 2180, Civil Code.

[42] *Philippine Refining Co. vs. Garcia, et al.*, L-21871 and L-21962, September 27, 1966.

[43] See Section 4, Chapter 3, Title VIII, Civil Code.

[44] 4 R.C.L., pp. 1174-1175.

[45] An air carrier is a common carrier; and air transportation is similar or analogous to land and water transportation. *Mendoza vs. Philippine Air Lines, Inc.*, 90 Phil. 836, 841-842.

[46] *Austro-American S.S. Co. vs. Thomas*, 248 F. 231.

[47] *Id.*, p. 233.

[48] *Lipman vs. Atlantic Coast Line R. Co.*, 93 S.E., 714, 716.

[49] Petitioner's brief, pp. 104-105.

[49A] V Moran, Comments on the Rules of Court, 1963 ed., p. 76.

[50] Section 36, Rule 130, Rules of Court.

[51] IV Martin, Rules of Court in the Philippines, 1966 ed., p. 324.

[52] Ibid.

[53] Article 2232, Civil Code.

[54] Article 2229, Civil Code.

[55] Article 2208, (1) and (11), Civil Code.

[56] Coleongco vs. Claparols, L-18616, March 31, 1964; Corpus vs. Cuaderno, et al., L-23721, March 31, 1965.

[57] Cf. Yutuk vs. Manila Electric Company, L-13016, May 31, 1961; Lopez, et al., vs. Pan American World Airways, L-22415, March 30, 1966.

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