

**VALENZUELA HARDWOOD AND INDUSTRIAL SUPPLY, INC.,
PETITIONER, VS. COURT OF APPEALS AND SEVEN BROTHERS
SHIPPING CORPORATION, RESPONDENTS.**

G.R. No. 102316. June 30, 1997

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Is a stipulation in a charter party that the “(o)wners shall not be responsible for loss, split, short-landing, breakages and any kind of damages to the cargo”[1] valid? This is the main question raised in this petition for review assailing the Decision of Respondent Court of Appeals[2] in CA-G.R. No. CV-20156 promulgated on October 15, 1991. The Court of Appeals modified the judgment of the Regional Trial Court of Valenzuela, Metro Manila, Branch 171, the dispositive portion of which reads:

“WHEREFORE, Judgment is hereby rendered ordering South Sea Surety and Insurance Co., Inc. to pay plaintiff the sum of TWO MILLION PESOS (P2,000,000.00) representing the value of the policy of the lost logs with legal interest thereon from the date of demand on February 2, 1984 until the amount is fully paid or in the alternative, defendant Seven Brothers Shipping Corporation to pay plaintiff the amount of TWO MILLION PESOS (P2,000,000.00) representing the value of lost logs plus legal interest from the date of demand on April 24, 1984 until full payment thereof; the reasonable attorney’s fees in the amount equivalent to five (5) percent of the amount of the claim and the costs of the suit.

Plaintiff is hereby ordered to pay defendant Seven Brothers Shipping Corporation the sum of TWO HUNDRED THIRTY THOUSAND PESOS (P230,000.00) representing the balance of the stipulated freight charges.

Defendant South Sea Surety and Insurance Company’s counterclaim is hereby dismissed.”

In its assailed Decision, Respondent Court of Appeals held:

“WHEREFORE, the appealed judgment is hereby AFFIRMED except in so far (sic) as the liability of the Seven Brothers Shipping Corporation to the plaintiff is concerned which is hereby REVERSED and SET ASIDE.”[3]

The Facts

The factual antecedents of this case as narrated in the Court of Appeals Decision are as follows:

“It appears that on 16 January 1984, plaintiff (Valenzuela Hardwood and Industrial Supply, Inc.) entered into an agreement with the defendant Seven Brothers (Shipping Corporation) whereby the latter undertook to load on board its vessel M/V Seven Ambassador the former’s lauan round logs numbering 940 at the port of Maconacon, Isabela for shipment to Manila.

On 20 January 1984, plaintiff insured the logs against loss and/or damage with defendant South Sea Surety and Insurance Co., Inc. for P2,000,000.00 and the latter issued its Marine Cargo Insurance Policy No. 84/24229 for

P2,000,000.00 on said date.

On 24 January 1984, the plaintiff gave the check in payment of the premium on the insurance policy to Mr. Victorio Chua.

In the meantime, the said vessel M/V Seven Ambassador sank on 25 January 1984 resulting in the loss of the plaintiff's insured logs.

On 30 January 1984, a check for P5,625.00 (Exh. 'E') to cover payment of the premium and documentary stamps due on the policy was tendered due to the insurer but was not accepted. Instead, the South Sea Surety and Insurance Co., Inc. cancelled the insurance policy it issued as of the date of the inception for non-payment of the premium due in accordance with Section 77 of the Insurance Code.

On 2 February 1984, plaintiff demanded from defendant South Sea Surety and Insurance Co., Inc. the payment of the proceeds of the policy but the latter denied liability under the policy. Plaintiff likewise filed a formal claim with defendant Seven Brothers Shipping Corporation for the value of the lost logs but the latter denied the claim.

After due hearing and trial, the court a quo rendered judgment in favor of plaintiff and against defendants. Both defendants shipping corporation and the surety company appealed.

Defendant-appellant Seven Brothers Shipping Corporation impute (sic) to the court a quo the following assignment of errors, to wit:

'A. The lower court erred in holding that the proximate cause of the sinking of the vessel Seven Ambassadors, was not due to fortuitous event but to the negligence of the captain in stowing and securing the logs on board, causing the iron chains to snap and the logs to roll to the portside.

B. The lower court erred in declaring that the non-liability clause of the Seven Brothers Shipping Corporation from logs (sic) of the cargo stipulated in the charter party is void for being contrary to public policy invoking article 1745 of the New Civil Code.

C. The lower court erred in holding defendant-appellant Seven Brothers Shipping Corporation liable in the alternative and ordering/directing it to pay plaintiff-appellee the amount of two million (P2,000,000.00) pesos representing the value of the logs plus legal interest from date of demand until fully paid.

D. The lower court erred in ordering defendant-appellant Seven Brothers Shipping Corporation to pay appellee reasonable attorney's fees in the amount equivalent to 5% of the amount of the claim and the costs of the suit.

E. The lower court erred in not awarding defendant-appellant Seven Brothers Corporation its counter-claim for attorney's fees.

F. The lower court erred in not dismissing the complaint against Seven Brothers Shipping Corporation.'

Defendant-appellant South Sea Surety and Insurance Co., Inc. assigns the following errors:

A. The trial court erred in holding that Victorio Chua was an agent of defendant-appellant South Sea Surety and Insurance Company, Inc. and likewise erred in not holding that he was the representative of the insurance broker Columbia Insurance Brokers, Ltd.

B. The trial court erred in holding that Victorio Chua received compensation/commission on the premiums paid on the policies issued by the defendant-appellant South Sea Surety and Insurance Company, Inc.

C. The trial court erred in not applying Section 77 of the Insurance Code.

D. The trial court erred in disregarding the 'receipt of payment clause' attached to and forming part of the Marine Cargo Insurance Policy No. 84/24229.

E. The trial court in disregarding the statement of account or bill stating the amount of premium and documentary stamps to be paid on the policy by the plaintiff-appellee.

F. The trial court erred in disregarding the indorsement of cancellation of the policy due to non-payment of premium and documentary stamps.

G. The trial court erred in ordering defendant-appellant South Sea Surety and Insurance Company, Inc. to pay plaintiff-appellee P2,000,000.00 representing value of the policy with legal interest from 2 February 1984 until the amount is fully paid,

H. The trial court erred in not awarding to the defendant-appellant the attorney's fees alleged and proven in its counterclaim.'

The primary issue to be resolved before us is whether defendants shipping corporation and the surety company are liable to the plaintiff for the latter's lost logs."[4]

The Court of Appeals affirmed in part the RTC judgment by sustaining the liability of South Sea Surety and Insurance Company ("South Sea"), but modified it by holding that Seven Brothers Shipping Corporation ("Seven Brothers") was not liable for the lost cargo.[5] In modifying the RTC judgment, the respondent appellate court ratiocinated thus:

"It appears that there is a stipulation in the charter party that the ship owner would be exempted from liability in case of loss.

The court a quo erred in applying the provisions of the Civil Code on common carriers to establish the liability of the shipping corporation. The provisions on common carriers should not be applied where the carrier is not acting as such but as a private carrier.

Under American jurisprudence, a common carrier undertaking to carry a special cargo or chartered to a special person only, becomes a private carrier.

As a private carrier, a stipulation exempting the owner from liability even for the negligence of its agent is valid (Home Insurance Company, Inc. vs. American Steamship Agencies, Inc., 23 SCRA 24).

The shipping corporation should not therefore be held liable for the loss of the logs."[6]

South Sea and herein Petitioner Valenzuela Hardwood and Industrial Supply, Inc. ("Valenzuela") filed separate petitions for review before this Court. In a Resolution dated June 2, 1995, this Court denied the petition of South Sea.[7] There the Court found no reason to reverse the factual findings of the trial court and the Court of Appeals that Chua was indeed an authorized agent of South Sea when he received Valenzuela's premium payment for the marine cargo insurance policy which was thus binding on the insurer.[8]

The Court is now called upon to resolve the petition for review filed by Valenzuela assailing the CA Decision which exempted Seven Brothers from any liability for the lost cargo.

The Issue

Petitioner Valenzuela's arguments revolve around a single issue: "whether or not respondent Court (of Appeals) committed a reversible error in upholding the validity of the stipulation in the charter party executed between the petitioner and the private respondent exempting the latter from liability for the loss of petitioner's logs arising from the negligence of its (Seven Brothers') captain."[9]

The Court's Ruling

The petition is not meritorious.

Validity of Stipulation is Lis Mota

The charter party between the petitioner and private respondent stipulated that the "(o)wners shall not be responsible for loss, split, short-landing, breakages and any kind of damages to the cargo." [10] The validity of this stipulation is the lis mota of this case.

It should be noted at the outset that there is no dispute between the parties that the proximate cause of the sinking of M/V Seven Ambassadors resulting in the loss of its cargo was the "snapping of the iron chains and the subsequent rolling of the logs to the portside due to the negligence of the captain in stowing and securing the logs on board the vessel and not due to fortuitous event." [11] Likewise undisputed is the status of Private Respondent Seven Brothers as a private carrier when it contracted to transport the cargo of Petitioner Valenzuela. Even the latter admits this in its petition. [12]

The trial court deemed the charter party stipulation void for being contrary to public policy, [13] citing Article 1745 of the Civil Code which provides:

"Art. 1745. Any of the following or similar stipulations shall be considered unreasonable, unjust and contrary to public policy:

- (1) That the goods are transported at the risk of the owner or shipper;
- (2) That the common carrier will not be liable for any loss, destruction, or deterioration of the goods;
- (3) That the common carrier need not observe any diligence in the custody of the goods;
- (4) That the common carrier shall exercise a degree of diligence less than that of a good father of a family, or of a man of ordinary prudence in the vigilance over the movables transported;
- (5) That the common carrier shall not be responsible for the acts or omissions of his or its employees;
- (6) That the common carrier's liability for acts committed by thieves, or of robbers who do not act with grave or irresistible threat, violence or force, is dispensed with or diminished;
- (7) That the common carrier is not responsible for the loss, destruction, or deterioration of goods on account of the defective condition of the car, vehicle, ship, airplane or other equipment used in the contract of carriage."

Petitioner Valenzuela adds that the stipulation is void for being contrary to Articles 586 and 587 of the Code of Commerce [14] and Articles 1170 and 1173 of the Civil Code. Citing Article 1306 and paragraph 1, Article 1409 of the Civil Code, [15] petitioner further contends that said stipulation "gives no duty or obligation to the private respondent to observe the diligence of a good father of a family in the custody and transportation of the cargo."

The Court is not persuaded. As adverted to earlier, it is undisputed that private respondent had acted as a private carrier in transporting petitioner's lauan logs. Thus, Article 1745 and other Civil Code provisions on common carriers which were cited by petitioner may not be applied unless expressly stipulated by the parties in their charter party. [16]

In a contract of private carriage, the parties may validly stipulate that responsibility for the cargo rests solely on the charterer, exempting the shipowner from liability for loss of or damage to the cargo caused even by the negligence of the ship captain. Pursuant to Article 1306 [17] of the Civil Code, such stipulation is valid because it is freely entered into by the parties and the same is not contrary to law, morals, good customs, public order, or

public policy. Indeed, their contract of private carriage is not even a contract of adhesion. We stress that in a contract of private carriage, the parties may freely stipulate their duties and obligations which perforce would be binding on them. Unlike in a contract involving a common carrier, private carriage does not involve the general public. Hence, the stringent provisions of the Civil Code on common carriers protecting the general public cannot justifiably be applied to a ship transporting commercial goods as a private carrier. Consequently, the public policy embodied therein is not contravened by stipulations in a charter party that lessen or remove the protection given by law in contracts involving common carriers.

The issue posed in this case and the arguments raised by petitioner are not novel; they were resolved long ago by this Court in *Home Insurance Co. vs. American Steamship Agencies, Inc.*[18] In that case, the trial court similarly nullified a stipulation identical to that involved in the present case for being contrary to public policy based on Article 1744 of the Civil Code and Article 587 of the Code of Commerce. Consequently, the trial court held the shipowner liable for damages resulting from the partial loss of the cargo. This Court reversed the trial court and laid down, through Mr. Justice Jose P. Bengzon, the following well-settled observation and doctrine:

“The provisions of our Civil Code on common carriers were taken from Anglo-American law. Under American jurisprudence, a common carrier undertaking to carry a special cargo or chartered to a special person only, becomes a private carrier. As a private carrier, a stipulation exempting the owner from liability for the negligence of its agent is not against public policy, and is deemed valid.

Such doctrine We find reasonable. The Civil Code provisions on common carriers should not be applied where the carrier is not acting as such but as a private carrier. The stipulation in the charter party absolving the owner from liability for loss due to the negligence of its agent would be void only if the strict public policy governing common carriers is applied. Such policy has no force where the public at large is not involved, as in this case of a ship totally chartered for the use of a single party.”[19] (Underscoring supplied.)

Indeed, where the reason for the rule ceases, the rule itself does not apply. The general public enters into a contract of transportation with common carriers without a hand or a voice in the preparation thereof. The riding public merely adheres to the contract; even if the public wants to, it cannot submit its own stipulations for the approval of the common carrier. Thus, the law on common carriers extends its protective mantle against one-sided stipulations inserted in tickets, invoices or other documents over which the riding public has no understanding or, worse, no choice. Compared to the general public, a charterer in a contract of private carriage is not similarly situated. It can -- and in fact it usually does -- enter into a free and voluntary agreement. In practice, the parties in a contract of private carriage can stipulate the carrier's obligations and liabilities over the shipment which, in turn, determine the price or consideration of the charter. Thus, a charterer, in exchange for convenience and economy, may opt to set aside the protection of the law on common carriers. When the charterer decides to exercise this option, he takes a normal business risk.

Petitioner contends that the rule in *Home Insurance* is not applicable to the present case because it “covers only a stipulation exempting a private carrier from liability for the negligence of his agent, but it does not apply to a stipulation exempting a private carrier like private respondent from the negligence of his employee or servant which is the situation in this case.”[20] This contention of petitioner is bereft of merit, for it raises a distinction without any substantive difference. The case of *Home Insurance* specifically dealt with “the liability of the shipowner for acts or negligence of its captain and crew”[21] and a charter party stipulation which “exempts the owner of the vessel from any loss or damage or delay arising from any other source, even from the neglect or fault of the captain or crew or some other person employed by the owner on board, for whose acts the owner would ordinarily be liable except for said paragraph.”[22] Undoubtedly, *Home Insurance* is applicable to the case at bar.

The naked assertion of petitioner that the American rule enunciated in *Home Insurance* is not the rule in the

Philippines[23] deserves scant consideration. The Court there categorically held that said rule was “reasonable” and proceeded to apply it in the resolution of that case. Petitioner miserably failed to show such circumstances or arguments which would necessitate a departure from a well-settled rule. Consequently, our ruling in said case remains a binding judicial precedent based on the doctrine of stare decisis and Article 8 of the Civil Code which provides that “(j)udicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines.”

In fine, the respondent appellate court aptly stated that “[in the case of] a private carrier, a stipulation exempting the owner from liability even for the negligence of its agent is valid.”[24]

Other Arguments

On the basis of the foregoing alone, the present petition may already be denied; the Court, however, will discuss the other arguments of petitioner for the benefit and satisfaction of all concerned.

Articles 586 and 587, Code of Commerce

Petitioner Valenzuela insists that the charter party stipulation is contrary to Articles 586 and 587 of the Code of Commerce which confer on petitioner the right to recover damages from the shipowner and ship agent for the acts or conduct of the captain.[25] We are not persuaded. Whatever rights petitioner may have under the aforementioned statutory provisions were waived when it entered into the charter party.

Article 6 of the Civil Code provides that “(r)ights may be waived, unless the waiver is contrary to law, public order, public policy, morals, or good customs, or prejudicial to a person with a right recognized by law.” As a general rule patrimonial rights may be waived as opposed to rights to personality and family rights which may not be made the subject of waiver.[26] Being patently and undoubtedly patrimonial, petitioner’s right conferred under said articles may be waived. This, the petitioner did by acceding to the contractual stipulation that it is solely responsible for any damage to the cargo, thereby exempting the private carrier from any responsibility for loss or damage thereto. Furthermore, as discussed above, the contract of private carriage binds petitioner and private respondent alone; it is not imbued with public policy considerations for the general public or third persons are not affected thereby.

Articles 1170 and 1173, Civil Code

Petitioner likewise argues that the stipulation subject of this controversy is void for being contrary to Articles 1170 and 1173 of the Civil Code[27] which read:

“Art. 1170. Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages

Art. 1173. The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds with the circumstances of the persons, of the time and of the place. When negligence shows bad faith, the provisions of articles 1171 and 2201, shall apply.

If the law does not state the diligence which is to be observed in the performance, that which is expected of a good father of a family shall be required.”

The Court notes that the foregoing articles are applicable only to the obligor or the one with an obligation to perform. In the instant case, Private Respondent Seven Brothers is not an obligor in respect of the cargo, for this obligation to bear the loss was shifted to petitioner by virtue of the charter party. This shifting of responsibility, as earlier observed, is not void. The provisions cited by petitioner are, therefore, inapplicable to the present case.

Moreover, the factual milieu of this case does not justify the application of the second paragraph of Article 1173 of the Civil Code which prescribes the standard of diligence to be observed in the event the law or the contract is silent. In the instant case, Article 362 of the Code of Commerce[28] provides the standard of ordinary diligence for the carriage of goods by a carrier. The standard of diligence under this statutory provision may, however, be modified in a contract of private carriage as the petitioner and private respondent had done in their charter party.

Cases Cited by Petitioner Inapplicable

Petitioner cites *Shewaram vs. Philippine Airlines, Inc.*[29] which, in turn, quoted *Juan Ysmael & Co. vs. Gabino Barreto & Co.*[30] and argues that the public policy considerations stated there vis-à-vis contractual stipulations limiting the carrier's liability be applied "with equal force" to this case.[31] It also cites *Manila Railroad Co. vs. Compañia Transatlantica*[32] and contends that stipulations exempting a party from liability for damages due to negligence "should not be countenanced" and should be "strictly construed" against the party claiming its benefit.[33] We disagree.

The cases of *Shewaram* and *Ysmael* both involve a common carrier; thus, they necessarily justify the application of such policy considerations and concomitantly stricter rules. As already discussed above, the public policy considerations behind the rigorous treatment of common carriers are absent in the case of private carriers. Hence, the stringent laws applicable to common carriers are not applied to private carriers. The case of *Manila Railroad* is also inapplicable because the action for damages there does not involve a contract for transportation. Furthermore, the defendant therein made a "promise to use due care in the lifting operations" and, consequently, it was "bound by its undertaking"; besides, the exemption was intended to cover accidents due to hidden defects in the apparatus or other unforeseeable occurrences" not caused by its "personal negligence." This promise was thus construed to make sense together with the stipulation against liability for damages.[34] In the present case, we stress that the private respondent made no such promise. The agreement of the parties to exempt the shipowner from responsibility for any damage to the cargo and place responsibility over the same to petitioner is the lone stipulation considered now by this Court.

Finally, petitioner points to *Standard Oil Co. of New York vs. Lopez Costelo*,[35] *Walter A. Smith & Co. vs. Cadwallader Gibson Lumber Co.*,[36] *N. T. Hashim and Co. vs. Rocha and Co.*,[37] *Ohta Development Co. vs. Steamship "Pompey"*[38] and *Limpangco Sons vs. Yangco Steamship Co.*[39] in support of its contention that the shipowner be held liable for damages.[40] These however are not on all fours with the present case because they do not involve a similar factual milieu or an identical stipulation in the charter party expressly exempting the shipowner from responsibility for any damage to the cargo.

Effect of the South Sea Resolution

In its memorandum, *Seven Brothers* argues that petitioner has no cause of action against it because this Court has earlier affirmed the liability of *South Sea* for the loss suffered by petitioner. Private respondent submits that petitioner is not legally entitled to collect twice for a single loss.[41] In view of the above disquisition upholding the validity of the questioned charter party stipulation and holding that petitioner may not recover from private respondent, the present issue is moot and academic. It suffices to state that the Resolution of this Court dated June 2, 1995[42] affirming the liability of *South Sea* does not, by itself, necessarily preclude the petitioner from proceeding against private respondent. An aggrieved party may still recover the deficiency from the person causing the loss in the event the amount paid by the insurance company does not fully cover the loss. Article 2207 of the Civil Code provides:

"ART. 2207. If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance

company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury.”

WHEREFORE, premises considered, the petition is hereby DENIED for its utter failure to show any reversible error on the part of Respondent Court. The assailed Decision is AFFIRMED.

SO ORDERED.

Narvasa, C.J., (Chairman), Davide, Jr., Melo, and Francisco, JJ., concur.

[1] Charter Party, p. 2; Record of the Regional Trial Court, p. 202.

[2] Seventeenth Division, composed of J. Fernando A. Santiago, ponente, and JJ. Pedro A. Ramirez, Chairman, and Fermin A. Martin, Jr., concurring.

[3] Rollo, p. 24.

[4] Decision of the Court of Appeals, pp. 1-4; Rollo, pp. 19-22.

[5] Ibid., p. 6; rollo, p. 24.

[6] Ibid., p. 4; rollo, p. 22.

[7] South Sea Surety and Insurance Company, Inc. vs. Hon. Court of Appeals and Valenzuela Hardwood and Industrial Supply, Inc., G.R. No. 102253, p. 4, June 2, 1995.

[8] Ibid., pp. 5-7.

[9] Memorandum for Petitioner, p. 5; rollo, p. 47.

[10] Charter Party of January 16, 1984; Petitioner’s Memorandum, p. 2; rollo, p. 62. See first, second, and third versions of charter party in Record of the Regional Trial Court, pp. 201-206.

[11] Decision of the Regional Trial Court, p. 17; Record of the Regional Trial Court, p. 383.

[12] Petition, p. 13; rollo, p. 14.

[13] Decision of the Regional Trial Court, p. 17; Record of the Regional Trial Court, p. 383.

[14] Petition, p. 2, rollo, p. 9. The Code of Commerce provides:

“Art. 586. The shipowner and the ship agent shall be civilly liable for the acts of the captain and for the obligations contracted by the latter to repair equip, and provision the vessel, provided the creditors prove that the amount claimed was invested therein.

Art. 587. The ship agent shall also be civilly liable for the indemnities in favor of third persons which arise from the conduct of the captain in the vigilance over the goods which the vessel carried; but he may exempt himself therefrom by abandoning the vessel with all her equipments and the freight he may have earned during the voyage.”

[15] Ibid., p. 11; rollo, p. 53.

[16] See Hernandez, Eduardo F. and Peñasales, Antero A., Philippine Admiralty and Maritime Law, p. 250, (1987).

[17] “Art. 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.” See also, Section 10, Article III, Constitution; *People vs. Pomar*, 46 Phil. 440, 449, (1924).

[18] 23 SCRA 24, April 4, 1968.

[19] *Ibid.*, pp. 27-28.

[20] Petitioner’s Memorandum, p. 12; rollo, p. 57.

[21] *Home Insurance Co. vs. American Steamship Agencies, Inc.*, *supra*, p. 27.

[22] *Ibid.*

[23] Petitioner’s Memorandum, pp. 8-9; rollo, pp. 50-51.

[24] Decision, p. 4; rollo, p. 22.

[25] Petitioner’s Memorandum, p. 15; rollo, p. 57.

“Art. 586. The shipowner and the ship agent shall be civilly liable for the acts of the captain and for the obligations contracted by the latter to repair, equip, and provision the vessel, provided the creditor proves that the amount claimed was invested therein.

By ship agent is understood the person intrusted with the provisioning of a vessel, or who represents her in port in which she may be found.

Art. 587. The ship agent shall also be civilly liable for the indemnities in favor of third persons which arise from the conduct of the captain in the vigilance over the goods which the vessel carried; but he may exempt himself therefrom by abandoning the vessel with all her equipment and the freight he may have earned during the voyage.”

[26] Tolentino, Arturo M., *Commentaries and Jurisprudence on the Civil Code of the Philippines*, p. 29, Volume I, (1990).

[27] Petitioner’s Memorandum, p. 15; rollo, p. 54.

[28] “Art. 362. Nevertheless, the carrier shall be liable for the losses and damages resulting from causes mentioned in the preceding article if it is proved, as against him, that they arose through his negligence or by reason of his having failed to take the precautions which usage has established among careful persons, unless the shipper has committed fraud in the bill of lading, representing the goods to be of a kind or quality different from what they really were.

If notwithstanding the precautions referred to in this article, the goods transported run the risk of being lost, on account of their nature or by reason of unavoidable accident, there being no time for their owners to dispose of them, the carrier may proceed to sell them, placing them for the purpose at the disposal of the judicial authority or of the officials designated by special provisions.”

[29] 17 SCRA 606, July 7, 1966.

[30] 51 Phil. 90, (1927).

[31] Petitioner’s Memorandum, pp. 9-10; rollo, pp. 51-52.

[32] 38 Phil. 875, (1918).

[33] Petitioner’s Memorandum, p. 13, rollo, p. 55.

[34] Manila Railroad vs. Compañia Transatlantica, supra, pp. 886-887.

[35] 42 Phil. 256, (1921).

[36] 55 Phil. 517 (1930).

[37] 18 Phil. 315, (1911).

[38] 49 Phil. 117, (1926).

[39] 34 Phil. 597, (1916).

[40] Petitioner's Memorandum, p. 7; rollo, p. 49.

[41] Memorandum For Private Respondent, p. 8; rollo, p. 68.

[42] Supra.

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