

OVERSEAS FACTORS, INC. AND GERTRUDES CARLOS, PLAINTIFFS AND APPELLEES, VS. SOUTH SEA SHIPPING CO., LTD. A. MAGSAYSAY INC., THE CAPTAIN AND CREW OF THE S. S. OCEAN TRADER AND THE...

G.R. No. 12138. February 27, 1962

Ponente: PADILLA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-12138/>

PADILLA, J.:

On 3 and 9 September 1954 the National Rice and Corn Corporation and the Overseas Factors, Inc. entered into two contracts whereby the latter undertook to supply the former with 5,000 metric tons of Kangni rice at P.51 per ganta and 5,000 metric tons of Joshi rice at P.49 per ganta (Exhibits A & B). On 10 September 1954 the National Rice and Corn Corporation established for its account with the Philippine National Bank in Manila two irrevocable letters of credit (Nos. 62655 & 62656) in the amounts of \$529,125 and \$508,375, United States currency, in favor of the Pakistan Development Corporation, Ltd., Karachi, Pakistan (Exhibits A-2 & B-2).

On 30 October 1954, S. M. Yeung, authorized representative of the South Sea Shipping Co., Ltd., wrote to Jose W. Diokno, authorized representative of the Overseas Factors, Inc., in Karachi, Pakistan, enumerating the terms and conditions of the charter party they have agreed upon for shipment of the rice to be imported by the Overseas Factors, Inc. from Pakistan aboard the SS Ocean Trader owned by the South Sea Shipping Co., Ltd. At the foot of the letter, Jose W. Diokno affixed his signature signifying his intention to confirm the terms and conditions therein enumerated (Exhibit 10). On the same date, 30 October 1954, S. M. Yeung, in behalf of the South Sea Shipping Co., Ltd., and Chung Kien Tieng, in behalf of the Overseas Factors, Inc., entered into a formal contract of charter party in Karachi, Pakistan, incorporating the terms and conditions enumerated in the letter (Exhibit 11). (See Exhibit C.) On 12 November 1954 the terms and conditions of the charter party regarding the rate and payment of freight were amended by the parties in Hongkong (Exhibit 12).

On 4 November 1954 Juan A. Magsino, in behalf of Overseas Factors, Inc. entered into an agreement with Abdulaye A. Badat, sole proprietor of Ivlom Corporation, in Karachi, Pakistan, whereby the said corporation undertook to supply the Overseas Factors, Inc., with 5,000 metric tons of Kangni rice of the quality and specifications enumerated in Philippine National Bank Letter of Credit No. 62655 (Exhibit 6). Badruddin H. Mavani undertook to supply the Overseas Factors, Inc, with the needed Joshi rice.

On 5 November 1954 the Overseas Factors, Inc. and Gertrudes Carlos, co-financier of the former in its contract with the National Rice and Corn Corporation to supply it with the needed rice, jointly and severally applied to the South Sea Surety & Insurance Co., Inc. to act as surety upon a bond demanded by the South Sea Shipping Co., Ltd. in the amount of P315,000 to guarantee the payment by the charterers in Hongkong of the freight, demurrage, dead freight and other losses that might arise (Exhibit B-South Sea Surety & Insurance Co., Inc.). On the same date, 5 November 1954, the Overseas Factors, Inc., as principal, and Gertrudes Carlos, as co-principal, and the South Sea Surety & Insurance Co., Inc., as surety, executed a performance bond in the amount of P315,000 in

favor of the South Sea Shipping Co., Ltd. to guarantee the full payment by the charterers at Hongkong of all freight, demurrage, dead freight and other losses that might arise, within 14 days from the date of departure of the vessel from Karachi, Pakistan (Exhibits 14; A—South Sea Surety & Insurance Co., Inc.).

From 16 to 23 November 1954, 2,567.6053 metric tons gross of Joshi rice and from 20 to 25 November 1954, 5,054.0662 metric tons gross of Kangni rice or a total of 7,621.6715 metric tons of rice were loaded on board the SS Ocean Trader in Karachi, Pakistan (Exhibits Q—Naric; E—Naric).

On 25 and 29 November the bills of lading covering the said shipments of rice duly signed by the shipper's agent were issued in the name of the Philippine National Bank, Manila, as consignee. It appears in the two bills of lading that the party to be notified upon arrival in Manila was the National Rice and Corn Corporation (Exhibits D & E).

On 25 November 1954 the SS Ocean Trader sailed from Karachi, Pakistan (Exhibits 1 & 17) and arrived in Manila on 18 December 1954 (Exhibit 15). The captain and crew members of the SS Ocean Trader refused to unload the cargo of rice unless the balance of the freight and other charges due were paid by the charterers. Hence an action was brought on 29 December 1954 in the Court of First Instance of Manila praying the Court to direct the defendants to convert the amount in rupees paid by the plaintiffs in Karachi, Pakistan, into British sterling pounds, computed at the legal rate of exchange as allowed by the Government of Pakistan; to deliver to the plaintiffs the bills of lading of the cargo of rice; to permit the unloading by the plaintiffs of the cargo of rice from the SS Ocean Trader pending trial of the case; to desist or refrain from interfering with such unloading upon the filing of an additional surety bond, if necessary, in an amount that the Court may fix to answer for damages that the defendants may suffer as a result of such injunction, and to pay the costs; and the Collector of Customs to see to it that the cargo of rice from the SS Ocean Trader be unloaded. Plaintiffs also pray that the demurrages sought to be collected by the defendants be computed at the rate £300 and not at £700 a day; and for other just and equitable relief (civil No. 24972). The defendants answered the complaint and set up a counterclaim of P316,364.38 for freightage, demurrage, charges for detention and other expenses of the vessel while on detention. The plaintiffs controverted the defendants' counterclaim. The National Rice and Corn Corporation filed a complaint in intervention to protect its interest and the South Sea Surety & Insurance Co., Inc. filed a cross-claim against the plaintiffs.

The other pleadings filed by the parties and orders issued by the Court in connection with the disposition of the cargo of rice in question need not be stated for the determination of the case.[1]

After trial, the Court rendered judgment, the dispositive part of which is as follows:

In view of the foregoing, the Court believes and so holds that the preponderance of evidence is in favor of the plaintiffs and against the defendant South Sea Shipping Co., Ltd. The total amount of 369,000 Pakistan rupees received by S. M. Yeung was in full payment of the transportation of the rice in question from Karachi to Manila, and that the delay in the unloading of such rice in Manila was not due to plaintiffs' fault.

The claim tor lien on the shipment of rice has no legal basis for the reason that the freight had already been paid in Karachi, Pakistan, before such shipment arrived in Manila.

The injunction bond filed by plaintiffs as well as the performance bond executed to guaranty the payment of freight are hereby ordered cancelled.

The complaint with respect to defendants A. Magsaysay, Inc., the Captain and the Crew of the S.S. Ocean Trader, and the Collector of Customs of Manila, is hereby dismissed, it appearing that they have nothing to do with the controversy between plaintiff Overseas Factors, Inc. and South Sea Shipping Co. Ltd. Defendants' counterclaim is hereby dismissed.

Defendant South Sea Shipping Co. Ltd. shall pay the costs.

SO ORDERED.

Manila, Philippines, December 28, 1956.

The defendants South Sea Shipping Co., Ltd. and A. Magsaysay, Inc. have appealed.

In the letter written by S. M. Yeung, authorized representative of the appellant shipping company, to Jose W. Diokno, authorized representative of the appellees, on 30 October 1954 in Karachi, Pakistan, summing up the principal terms and conditions of the charter party agreed upon by them, it appears that they have agreed, among others, as follows:

Freight :

Sterling one hundred shillings (100) per metric ton gross weight, F10 and free stowed;

Payment of Freight :

Charterers to pay full freight to the Owners at Hongkong in British Pound Sterling upon signing of bill or bills of lading, ship lost or not lost;

Performance Bond :

Charterers to arrange a performance bond in Hongkong satisfactory to the Owners at Hongkong, latest before noon on the 1st November 1954 to guarantee the due performance of this charter and full payment of all freight at Hongkong within fourteen (14) days from date of vessel's departure from Karachi. Charter Party Form (as adopted 1922). (Exhibit 10.)

On the same date, 30 October 1954, the parties executed in Karachi, Pakistan, a formal contract of charter party in a printed form of the uniform general charter adopted by the documentary committee of the Chamber of Shipping of the United Kingdom, as revised in 1922. Chung Kien Tieng signed in behalf of the appellees and Yeung Siu Man in behalf of the appellant shipping company.

The pertinent terms of the contract are:

Rate of Freight :

Sterling One hundred Shillings (100/—) per metric ton, free in, free out and free, stowed.

Payment of Freight :

The freight to be paid in case without discount on signing bills of lading in British Pound Sterling transferable to the Owners at Hongkong within fourteen (14) days from the date of the vessel's departure from Karachi. (Exhibit C or 11.)

On 12 November 1954 the two clauses were amended by adding the following to the first clause:

or according to Owners' option of Forty Two Pesos (Pesos 42.— per metric tons, free in, free out and free stowed.

And the following to the second clause:

or according to Owners' option of payment at Manila at the rate stated in clause No. 1. (Exhibit 12.)

In the performance bond executed and signed by the appellees in favor of the appellants, it was stipulated that—

* * * the condition of this bond is such that if the Principal and co-Principal shall well and duly comply with the conditions and stipulations enumerated in the above mentioned agreement charter and contract of charter party as well as pay all freight at Hongkong within fourteen (14) days from the date of vessel's departure from Karachi, then this obligation shall be null and void; otherwise, it shall remain in full force and effect. (Exhibits 14; A-South Sea Surety & Insurance Co., Inc.)

According to the appellant shipping company, the amount due from the appellees as freightage of the 7,621.6715 metric tons of rice at 100 shillings per metric ton was £38,108-7-1d (Exhibit 16-A) and that the appellees had paid it only £13,888-17-9d (Exhibit 1).

Juan A. Magsino testifies that he was the agent of the appellees; that he went to Karachi, Pakistan, at the instance of his principals, where he stayed for three months to take charge of screening the rice being imported by his principals, loading them on board the SS Ocean Trader and paying the freight due for their shipment to Manila; that he requested Abdulaye A. Badat, proprietor or manager of Ivlom Corporation, with whom his principals had an agreement to supply them with Kangni rice for export to Manila, to pay Yeung, the authorized representative of the appellant shipping company, the sum of 250,000 Pakistani rupees as payment for the freight due; that on 29 November 1954 he called up Yeung to go to the Philippine Legation and receive from him payment of the freight, and to bring with him the bill of lading but he answered that he could not surrender the bill of lading unless the freight was fully paid; that at about 11:00 o'clock in the morning or 12:00 o'clock noon of the same day, 29 November 1954, Badat paid to Yeung the sum of 250,000 Pakistani rupees in 100 rupee denomination in the presence of Consul General Tagakotta Sotto, Eustacio Barrera, a gentleman from T. K. Brothers, attorney Emigdio Arcilla, and the witness inside the office of the Philippine Legation in Karachi; that Yeung requested the witness to help him count the money and it took them two hours to finish counting it; that after the sum of 250,000 Pakistani rupees was received by Yeung, he surrendered to Badat the original of the bill of lading for 5,000 metric tons of Kangni rice and gave the witness a copy thereof (Exhibit D); that between 6 and 8 December 1954 the sum of 119,221-5-0 Pakistani rupees in check as payment for the freight of the Joshi rice was paid to Yeung inside the National Bank of India by Badruddin H. Mavani in his (the witness') presence; and that after receiving payment, Yeung delivered to Mavani the bill of lading for the Joshi rice (Exhibit E).

Appellant shipping company admits that it has received payment of the sum of £13,888-17-9d. In his letter addressed to Magsino, Yeung—

* * * acknowledges that my Head Office in Hongkong has this day, the 29th November 1954, received the sum of Sterling thirteen thousand eight hundred eighty eight pounds seventeen shillings nine pence only (£13,888-17-9-d) being your first partial payment of freight due to us under our charter party dated the 30th October 1954. This amount has now been credited to your freight account with us in Hongkong pending the final settlement of the aforementioned charter, without prejudice to the Bond executed by South Sea Surety Company at Manila in favour of Owners' Agents M/s A. Magsaysay, Inc., Manila for payment of full freight, etc., in Sterling at Hongkong within 14 days from 25th November 1954 being the date of departure of SS "Ocean Trader" from Karachi. (Exhibit 1.)

However, the appellants deny having received the sum of £12,838-0-6d from the appellees and claim that the sum of 119,221-5-0 Pakistani rupees that Yeung received from Mavani could not be credited as part payment of the freight.

The contract between the parties is that payment shall be made in British Pound Sterling payable to the appellants

in Hongkong within 14 days from date of departure of the vessel from Karachi, Pakistan, or in Philippine currency.

On 5 November 1954 Magsino wrote to Kazi & Kazi, agents of the South Sea Shipping Co., Ltd. in Karachi, requesting them to write a letter to the Shipping Controller and furnishing a copy thereof to the Food Ministry, confirming that they have booked a cargo of 2,500 tons of Joshi rice and 5,000 tons of Kangni rice to be shipped by Badruddin H. Mavani and Ivlom Corporation, respectively, to the National Rice and Corn Corporation at the rate of Sterling One Hundred Shillings per metric ton gross, so that the approval of the Government for the remittance of the freight to the South Sea Shipping Co., Ltd. in Hongkong may be obtained (Exhibit 2). In the last paragraph Magsino wrote:

We do understand quite well that your Principal, South Sea Shipping Co. Ltd., Hongkong, are not concerned or obliged in any way, under the terms of our Charter Party dated 30th October 1954 on the subject vessel, in respect of the application for the approval of remittance of freight to Hongkong, therefore we hereby confirm that your acceptance of our present request shall not prejudice the terms and conditions of the above mentioned Charter Party and shall have no effect on the Charter Party whatsoever, and we shall assume all responsibilities and consequences in this regard. (Exhibit 2-A.)

On the same date, 5 November 1954, Magsino wrote to T. K. Brothers & Co., agents of the South Sea Shipping Co., Ltd. in Hongkong, requesting them to write a similar letter to the same Government officials of Pakistan (Exhibit 3). In the last paragraph, he wrote:

This is without prejudice to the terms and conditions of the above-mentioned Charter Party entered into between South Sea Shipping Co. Ltd., Hongkong and ourselves and has no effect on the Charter Party whatsoever. (Exhibit 3-A.)

On 1 January 1955 Magsino wrote to Yeung acknowledging receipt of two signed copies of the bill of lading covering the shipment of 2,567,6053 metric tons of Joshi rice shipped by Badruddin H. Mavani on board the SS Ocean Trader consigned to the Philippine National Bank (Exhibit 4). In the second paragraph of the letter, he said:

I find all particulars in these bills of lading to be all in order and confirm that your issuance of such bills of lading indicating only the charges of freight in conformity with Messrs. Kazi & Kazi's letter addressed to the Shipping Controller, Karachi, dated 5th November 1954 upon my written request of same date, shall not prejudice your interests in respect of our Charter Party dated 30th October 1954.

At the foot of the said letter, he stated over his signature that:

The necessity to replace the clause "Freight Payable as per C/P on steamer 'Ocean Trader'" dated 30th Oct. 1954 by the new "Freight Paid" clause upon the insistence of our shippers in order to facilitate to remit the freight officially is hereby acknowledged specifically not to prejudice your position in respect of the said charter. (Exhibit 4-A.)

In reply, on 5 January 1955 Yeung wrote to Magsino as follows:

With reference to your letter dated 1st January 1955, I beg to confirm that our agents, Messrs. Kazi & Kazi, Karachi, are now holding for your account, the sum of Rs 119,221-5-0, being freight in Pakistan Rupees equivalent to £12,838-0-6d, paid by Messrs. Badruddin H. Mavani on 2,567.6053 metric tons gross of Joshi Rice as per B/L No. 2 of ss "Ocean Trader", pending Government approval for transfer of the same to my Head Office in Hongkong in accordance with our charter party dated 30th October 1954.

While we would be glad to request Kazi & Kazi to do all the usual formalities for applying for the remittance of the total freight on your behalf, we have to inform you that it is necessary for both you shippers to approach

the Government Authorities concerned for explanation of certain details before such approval for remittance of freight will be given. Therefore, in your interests, it would be advisable for you to ask your shippers to follow up the matter immediately until the permit for transfer of the freight is obtained from the State Bank. (Exhibit 5.)

In the bill of lading Exhibit E, it is written that—

FREIGHT PAID IN PAKISTANI RS. 119,221-5-0 BEING EQUIVALENT TO £12,838-0-6d BY BADRUDDIN H. MAVANI ON ACCOUNT OF MINISTRY OF FOOD, GOVERNMENT OF PAKISTAN, KARACHI, PENDING TRANSFER TO HONGKONG. (EXHIBIT E-1.)

It is, therefore, clear that the sum of £12,838-0-6d (in British Pound Sterling) due for freight on the Joshi rice shipped on board the SS Ocean Trader has not yet been paid to the appellant shipping company by the appellees in accordance with their contract. Moreover, payment of the sum of 119,221-5-0 Pakistani rupees to Yeung made by Mavani in check was held by Kazi & Kazi merely for the account of the appellees pending Government approval for transfer to the Office of the appellant shipping company in Hongkong (Exhibit 5).

Magsino claims that the possession by any individual of British pounds sterling is outlawed in Pakistan in the same way that the possession by any person of United States dollars is prohibited in the Philippines, and for that reason it was impossible for him to have paid Yeung in British pounds sterling. If that were true, why was the first payment of 250,000 Pakistani rupees made by Abdulaye A. Badat and received by S. M. Yeung for the 5,000 tons of Kangni rice converted into £13,888-17-9d and credited by the appellant shipping company to the freight account with it in Hongkong?

Under the charter party, the appellant shipping company has the option to demand payment of the freight in British pounds sterling payable in Hongkong at the rate of 100 shillings per metric ton or P42, Philippine currency, per metric ton (Exhibits C & 12). In the appellant's answer and counterclaim they demand that the appellees pay them the freight at P42 per metric ton, Philippine currency. The amount due as freightage for 7,621,6715 metric tons of rice computed at P42, Philippine currency, per metric ton, is P320,110.20. Deducting therefrom the sum of £13,888.17-9d or P116,660.62, computed at P8.40 to £1 or P42 to £5 per metric ton, there is still due the appellant shipping company from the appellees the sum of P203,449.57, Philippine currency.

Clauses Nos. 5, 7, 11 and 20 of the charter party (Ex. hibit C) provide:

5. Cargo to be brought alongside in such a manner as to enable vessel to take the goods with her own tackle and to load the full cargo in nine (9) running days free of expense to the vessel. Charterers to procure and pay the necessary men on shore or on board the lighters to do the work there, vessel only heaving the cargo on board.

Any pieces and/or packages of cargo over two tons weight, shall be loaded, stowed and discharged by Charterers at their risk and expense.

Time shall commence at 1 p.m. on the 30th October 1954.

Time lost in waiting for berth to count as loading time.

7. Four running days on demurrage at the rate of £300.—Sterling per day or pro rata for any part of a day, payable day by day, at Hongkong to be allowed Merchants altogether at ports of loading and discharging, £100.— per day for despatch.

11. Should the cargo not be brought alongside to load (whether in berth, or not) on or before the 8th Nov. 1954 Owners have the option of cancelling this contract.

20. Any dispute arising under this charter to be referred to arbitration in London, one Arbitrator to be nominated by the Owners and the other by the Charterers, and in case the Arbitrators shall not agree then to the decision of an Umpire to be appointed by them, the Award of the Arbitrators or the Umpire to be final and binding upon both parties.

The period of nine days of loading time free of expenses for the account of the vessel from 10:00 o'clock p.m., 30 October, expired at 1:00 o'clock p.m., 8 November 1954. It was only on 25 November 1954 that the vessel was fully loaded and able to sail for Manila (Exhibits 1 & 17) after a delay of seventeen days. Pursuant to clause No. 7 of the charter party (Exhibit C), four running days on demurrage shall be paid to the appellant shipping company at the rate of £300 or a total of £1,200. Computed at the rate of exchange prevailing in December 1954, which is P5.60 to £1 (50 Off. Gaz. 4744), the appellant shipping company should be paid by the appellees the sum of P6,720, Philippine currency. The demurrage for the remaining delay of thirteen days is subject to arbitration in London pursuant to clause No. 20 of the charter party (Exhibit C).

The appellees cannot be charged with £700 a day for demurrage on the remaining thirteen days of delay because they are only answerable for that much "for all detention charges" "if the ship is so detained after loading of the cargo." (Exhibit 13) The departure of the vessel was not delayed after the cargo was finally loaded. As a matter of fact it sailed for Manila on 25 November 1954 after it was loaded.

Clause No. 6 of the charter party (Exhibit C) provides:

Cargo to be received by Merchants at their risk and expense alongside the vessel not beyond the reach of her tackle and to be discharged in seven (7) running days, free of expenses to the vessel. Time to commence at 1 p.m. if notice of readiness to discharge is given before noon, and at 6 a.m. next working day if notice given during office hours after noon.

Time lost in waiting for berth to count as discharging time.

The SS Ocean Trader arrived in Manila at 4:55 o'clock in the morning (1655 hours) of 18 December 1954 (Exhibit 15). The day following, 19 December, the vessel and cargo were fumigated by the health authorities. Notice of its arrival and readiness to unload the cargo was served upon the appellees by the Captain of the vessel at 10:20 o'clock in the morning of 20 December 1954 (Exhibit 15). Pursuant to clause No. 6 of the charter party (Exhibit C), the unloading was to be made in seven running days, free of expenses for the account of the vessel, beginning at 1:00 o'clock in the afternoon of 20 December and expiring at 1:00 o'clock in the afternoon of 27 December 1954. However, because of the refusal of the appellees to pay the balance of the freight and other charges, the captain and crew of the vessel refused to unload the cargo and the vessel was placed under detention from 1:00 o'clock in the afternoon of 27 December 1954 to 6:00 o'clock in the morning of 5 January 1955. During that time the cargo was unloaded pursuant to the order of the Court and deposited in the warehouse of the National Rice and Corn Corporation. The unloading was finished at 6:00 o'clock in the morning of 5 January 1955 resulting in 8 days and 17 hours of detention. Under clause No. 7 of the charter party (Exhibit C) the appellant shipping company is entitled to collect from the appellees four running days on demurrage for detention at the rate of £300 or a total of £1,200. Computed at the rate of exchange prevailing in January 1955, which is P5.60 to £1 (51 Off. Gaz 1271), the appellant shipping company should be paid by the appellees the sum of P6,720, Philippine currency. The demurrage for the remaining detention of four days and 17 hours and other charges claimed by the appellant shipping company are subject to arbitration in London pursuant to clause No. 20 of the charter party (Exhibit C).

As held by this Court in the case of National Rice and Corn Corporation vs. Macadaeg, supra, the fact that the freight was already included in the purchase price paid by it to the appellees did not free the cargo of rice from the carrier's lien provided for in article 665 of the Code of Commerce, if the freight has not yet been fully paid by the

charterer. Moreover, clause No. 8 of the charter party (Exhibit C) provides:

Owners shall have a lien on the cargo for freight, dead-freight, demurrage and damages for detention. Charterers shall remain responsible for dead-freight and demurrage (including damages for detention), incurred at port of loading. Charterers shall also remain responsible for freight and demurrage (including damages for detention) incurred at port of discharge, but only to such extent as the Owners have been unable to obtain payment thereof by exercising the lien on the cargo.

The contention that the omission of this clause in the letter dated 30 October 1954 where the principal terms and conditions of the charter party were enumerated by Yeung, the shipowner's representative, and confirmed by Diokno, the charterer's representative, and that in lieu thereof a clause requiring the charterer to file a performance bond in favor of the shipowners, amounted to a waiver of the shipowners' or carrier's lien on the cargo is untenable. The last part of the letter (Exhibit 10), which says:

This agreement is subject to the arrangement of the performance bond being computed before the time as specified above. Two copies of the formal Charter Party shall be signed immediately upon confirmation of the performance bond being established at the stipulated bank,

shows that the letter Exhibit 10 was written before the formal contract of charter party (Exhibit C) was executed by the parties. Hence it cannot be said that the shipowners waived their lien provided for in the formal contract of charter party (Exhibit C).

The addendum of the charter party contract (Exhibit C) executed by the parties on 12 November 1954 in Hongkong varying the clauses on the rate and payment of freight without the consent of the surety (Exhibit 12) was a novation of the contract. For that reason the surety's obligation in the performance bond was extinguished (Exhibits 14; A-South Sea Surety & Insurance Co., Inc.).

The foregoing notwithstanding, the Court is of the opinion that the sum of Rs119,221-5-0 equivalent to £12,838-0-6d paid by Badruddin H. Mavani for the account of the appellees to pay the freight of 2,567.6053 metric tons gross of Joshi rice and received by S. M. Yeung as agent or representative of the appellant shipping company should be set off against the sum due the said appellant shipping company for freight and demurrages, at the official rate of exchange in Karachi, Pakistan, on the day of receipt thereof by the agent of the appellant shipping company, for aside from the fact that the latter should not be allowed to enrich itself at the expense of the appellees, the forfeiture of the amount to be deposited with the Chartered Bank of India, Australia and China in Karachi to the credit of the appellant shipping company, offered by Magsino, the agent of the appellees, to pay the freight of the cargo of rice (Exhibits 7 and 7-A) was not accepted by S. M. Yeung, the agent of the shipowners. (See p. 29, appellants' brief.) And the difference after the set off in favor of any party shall bear the legal rate of interest, to wit: if in favor of the appellees, from the date of receipt of the amount in Karachi, Pakistan, by the agent of the appellant shipping company; or, if in favor of the appellant shipping company, from the date of the filing of its counterclaim for the amount of freight and demurrages.

The judgment appealed from is modified by ordering the appellees to pay the appellant shipping company the sums of P203,449.57, the balance of the freightage still unpaid, P6,720 as demurrage in loading the cargo and P6,720 as demurrage for detention of the vessel, without prejudice to any amount sought to be collected for demurrage which is to be submitted to arbitration in London, against which the equivalent amount in Philippine currency of the sum of £12,838-0-6d or Rs119,221-5-0 as above stated is set off; and holding that the appellant shipping company did not lose its lien on the cargo of rice, without pronouncement as to costs. The complaint and the complaint in intervention are dismissed as to the other defendant appellants and the counterclaim against the appellee South Sea Surety & Insurance Co. and the latter's cross-claim are likewise dismissed.

Bengzon, C. J., Bautista Angela, Labrador, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon and De Leon, JJ., concur.

Judgment modified.

[1] See National Rice and Corn Corporation vs. Macadaeg, G. R. No. L-9025, 27 September 1957.

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.