

**LA RAZON SOCIAL “GO TIAOCO Y HERMANOS”
PLAINTIFF AND APPELLANT, VS. UNION INSURANCE SOCIETY OF
CANTON, LTD., DEFENDANT AND APPELLEE.**

G.R. No. 13983. September 01, 1919

Ponente: STREET, J.

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STREET, J.:

This is an action on a policy of marine insurance issued by the Union Insurance Society of Canton, Ltd., upon a cargo of rice belonging to the plaintiffs, Go Tiaoco Brothers, which was transported in the early days of May, 1915, on the steamship Hondagua from the port of Saigon to Cebu.

On discharging the rice from one of the compartments in the after hold, upon arrival at Cebu, it was discovered that one thousand four hundred seventy-three sacks had been damaged by sea water. The loss so resulting to the owners of rice, after proper deduction had been made for the portion saved, was three thousand eight hundred seventy five pesos and twenty-five centavos (P3,875.25). The trial court found that the inflow of the sea water during the voyage was due to a defect in one of the drain pipes of the ship and concluded that the loss was not covered by the policy of insurance. Judgment was accordingly entered in favor of the defendant and the plaintiffs appealed.

The facts with reference to the manner in which the sea water effected entrance into the hold may be summarized as follows, substantially in accordance with the findings of the trial court:

The drain pipe which served as a discharge from the water closet passed down through the compartment where the rice in question was stowed and thence out to sea through the wall of the compartment, which was a part of the wall of the ship. The joint or elbow where the pipe changed its direction was of cast iron; and in course of time it had become corroded and abraded until a longitudinal opening had appeared in the pipe about one inch in length. This hole had been in existence before the voyage was begun, and an attempt had been made to repair it by filling with cement and bolting over it a strip of iron. The effect of loading the boat was to submerge the vent, or orifice, of the pipe until it was about 18 inches or 2 feet below the level of the sea. As a consequence the sea water rose in the pipe. Navigation under these conditions resulted in the washing out of the cement-filling from the action of the sea water, thus permitting the continued flow of the salt water into the compartment of rice.

The court found in effect that the opening above described had resulted in course of time from ordinary wear and tear and not from the straining of the ship in rough weather on that voyage. The court also found that the repairs that had been made on the pipe were slovenly and defective and that, by reason of the condition of this pipe, the ship was not properly equipped to receive the rice at the time the voyage was begun. For this reason the court held that the ship was unseaworthy.

The policy of insurance was signed upon a form long in use among companies engaged in maritime insurance. It purports to insure the cargo from the following among other risks: "Perils * * * of the seas, men, of war, fire, enemies, pirates, rovers, thieves, jettisons, * * * barratry of the master and mariners, and of all other perils, losses,

and misfortunes that have or shall come to the hurt, detriment, or damage of the said goods and merchandise or any part thereof."

The question whether the insurer is liable on this policy for the loss caused in the manner above stated presents two phases which are in a manner involved with each other. One has reference to the meaning of the expression "perils of the seas and all other perils, losses, and misfortunes," as used in the policy; the other has reference to the implied warranty, on the part of the insured, as to the seaworthiness of the ship.

The meaning of the expression "perils * * * of the seas * * * and all other perils, losses, and misfortunes," used in describing the risks covered by policies of marine insurance, has been the subject of frequent discussion; and certain propositions relative thereto are now so generally accepted as to be considered definitely settled.

In the first place it is determined that the words "all other perils, losses, and misfortunes" are to be interpreted as covering risks which are of like kind {ejusdem generis) with the particular risks which are enumerated in the preceding part of the same clause of the contract. ^According to the ordinary rules of construction," said Lord Macnaghten in *Thames and Mersey Marine Insurance Co. vs. Hamilton, Fraser & Co.* ([1887], 12 A. C, 484, 501), "these words must be interpreted with reference to the words which immediately precede them. They were no doubt inserted in order to prevent disputes founded on nice distinctions. Their office is to cover in terms whatever may be within the spirit of the cases previously enumerated, and so they have a greater or less effect as a narrower or broader view is taken of those cases. For example, if the expression 'perils of the seas' is given its widest sense the general words have little or no effect as applied to that case. If on the other hand that expression is to receive a limited construction, as apparently it did in *Cullen vs. Butler* (5 M. & S., 461), and loss by perils of the seas is to be confined to loss ex marine tempestatis discriminate, the general words become most important. But still, ever since the case of *Cullen vs. Butler*, when they first became the subject of judicial construction, they have always been held or assumed to be restricted to cases 'akin to' or 'resembling' or 'of the same kind as' those specially mentioned. I see no reason for departing from this settled rule. In marine insurance it is above all things necessary to abide by settled rules and to avoid anything like novel refinements or a new departure."

It must be considered to be settled, furthermore, that a loss which, in the ordinary course of events, results from the natural and inevitable action of the sea, from the ordinary wear and tear of the ship, or from the negligent failure of the ship's owner to provide the vessel with proper equipment to convey the cargo under ordinary conditions, is not a peril of the sea. Such a loss is rather due to what has been aptly called the "peril of the ship." The insurer undertakes to insure against perils of the sea and similar perils, not against perils of the ship. As was well said by Lord Herschell in *Wilson, Sons & Co. vs. Owners of Cargo per the Xantho* ([1887], 12 A. C., 503, 509), there must, in order to make the insurer liable, be "some casualty, something which could not be foreseen as one of the necessary incidents of the adventure. The purpose of the policy is to secure an indemnity against accidents which may happen, not against events which must happen."

In the present case the entrance of the sea water into the ship's hold through the defective pipe already described was not due to any accident which happened during the voyage, but to the failure of the ship's owner properly to repair a defect of the existence of which he was apprised. The loss was therefore more analogous to that which directly results from simple unseaworthiness than to that which results from perils of the sea.

The first of the two decisions of the House of Lords from which we have quoted (*Thames and Mersey Marine Insurance Co. vs. Hamilton, Fraser & Co.* [1887], 12 A. C, 484) arose upon the following state of facts: In March, 1884, the *Inchmaree* was lying at anchor off Diamond Island and was about to start upon her voyage. To this end it became necessary to fill up her boilers. There was a donkey-engine with a donkey-pump on board, and the donkey-engine was set to pump up water from the sea into the boilers. Those in charge of the operation did not

take the precaution of making sure that the valve of the aperture leading into one of the boilers was open. This valve happened to be closed. The result was that the water being unable to make its way into the boiler was forced back and split the air-chamber and so disabled the pump. It was held that whether the injury occurred through negligence or accidentally without negligence; it was not covered by the policy, since the loss did not fall either under the words "perils of the seas" or under the more general words "all other perils, losses, and misfortunes." Lord Bramwell, in the course of his opinion quoted with approbation a definition given by Lopes L. J. in *Pandorf vs. Hamilton* (16 Q. B. D., 629, 633), which is as follows: In a seaworthy ship damage to goods caused by the action of the sea during transit not attributable to the fault of anybody, is a damage from a peril of the sea.

The second of the decisions from the House of Lords from which we have quoted (*Wilson, Sons & Co. vs. Owners of Cargo per the Xantho* [1887], 12 A. C, 503) arose upon the following facts: The owners of certain cargo embarked the same upon the steamship *Xantho*. A collision took place in a fog between this vessel and another ship, *Valuta*. An action was thereupon instituted by the owners of the cargo against the owners of the *Xantho*. It was held that if the collision occurred without fault on the part of the carrying ship, the owners were not liable for the value of the cargo lost by such collision.

Still another case was decided in the House of Lords upon the same date as the preceding two, which is equally instructive as the others upon the question now under consideration. We refer to *Hamilton, Fraser & Co. vs. Pandorf & Co.* ([1887], 12 A. C, 518), where it appeared that rice was shipped under a charter party and bills of lading which excepted "dangers and accidents of the sea." During the voyage rats gnawed a hole in a pipe on board the ship, whereby sea water effected an entrance into the ship's hold and damaged the rice. It appeared that there was no neglect or default on the part of the shipowners or their servants in the matter of attending to the cargo. It was held that this loss resulted from an accident or peril of the sea and that the shipowners were not responsible. Said Bramwell: "No question of negligence exists in this case. The damage was caused by the sea in the course of navigation with no default in any one. I am, therefore, of opinion that the damage was caused by peril of the sea within the meaning of the bill of lading." The point which discriminates this decision from that now before us is that in the present case the negligence of the shipowners must be accepted as established. Undoubtedly, if in *Hamilton, Fraser & Co. vs. Pandorf & Co.* [1887], 12 A. C, 518, it had appeared that this hole had been gnawed by the rats prior to this voyage and the owners, after having their attention directed to it, had failed to make adequate repairs, the ship would have been liable.

The three decisions in the House of Lords above referred to contain elaborate discussions concerning the liability of shipowners and insurers, respectively, for damage happening to cargo in the course of a sea voyage; and it would be presumptuous for us to undertake to add to what has been there said by the learned judges of that high court. Suffice it to say that upon the authority of those cases there is no room to doubt the liability of the shipowner for such a loss as occurred in this case. By parity of reasoning the insurer is not liable; for, generally speaking, the shipowner excepts the perils of the sea from his engagement under the bill of lading, while this is the very peril against which the insurer intends to give protection. As applied to the present case it results that the owners of the damaged rice must look to the shipowner for redress and not to the insurer.

The same conclusion must be reached if the question be discussed with reference to the seaworthiness of the ship. It is universally accepted that in every contract of insurance upon anything which is the subject of marine insurance, a warranty is implied that the ship shall be seaworthy at the time of the inception of the voyage. This rule is accepted in our own Insurance Law (Act No. 2427, sec. 106). It is also well settled that a ship which is seaworthy for the purpose of insurance upon the ship may yet be unseaworthy for the purpose of insurance upon the cargo (Act No. 2427, sec. 106). In *Steel vs. State Line Steamship Co.* ([1877], L. R. 3 A. C, 72), a cargo of wheat was laden upon a ship which had a port-hole insecurely fastened at the time of the lading. This port-hole

was about one foot above the water line; and in the course of the voyage sea water entered the compartment where the wheat was stored and damaged the cargo. It was held that the ship was unseaworthy with reference to the cargo in question. In *Gilroy, Sons & Co. vs. Price & Co.* ([1893], 18 A. C, 56), a cargo of jute was shipped. During the voyage the vessel encountered stormy weather, as a consequence of which the cargo shifted its position and broke a pipe leading down through the hold from the water closet, with result that water entered the vessel and the jute was damaged. It was found that the cargo was improperly stowed and that the owners of the ship were chargeable with negligence for failure to protect the pipe by putting a case over it. It was accordingly held that the ship was unseaworthy.

From what has been said it follows that the trial court committed no error in absolving the defendant from the complaint. The judgment must therefore be affirmed, and it is so ordered, with costs.

Arellano, C.J., Johnson, Araullo, Malcolm, Avanceña, and Moir, JJ., concur.

Torres, J., dissents and is of the opinion that the judgment appealed from should be reversed.

Judgment affirmed.

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