

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLANT, VS. YNCHAUSTI & COMPANY, DEFENDANT AND APPELLEE.

G.R. No. 14191. September 29, 1919

Ponente: JOHNSON, J.

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JOHNSON, J.:

The purpose of this action was to recover the sum of P200 as damages to certain cargo of roofing tiles shipped by the plaintiff from Manila to Iloilo on a vessel belonging to the defendant. The tiles were delivered by the defendant to the consignee of the plaintiff at Iloilo. Upon delivery it was found that some of the tiles had been damaged; that the damage amounted to about P200. Upon a submission of that question to the lower court a judgment was rendered against the plaintiff in favor of the defendant, absolving the latter from all liability under the complaint.

There seems to be no dispute about the facts, except whether or not the tiles were broken by the negligence of the defendant. The defendant denied that the tiles were broken by reason of its negligence. The defendant proved, and the plaintiff did not attempt to dispute, that the roofing tiles in question were of a brittle and fragile nature; that they were delivered by the plaintiff to the defendant in bundles of ten each, tied with bejucoi [rattan], without any packing or protective covering. The plaintiff did not even attempt to prove any negligence on the part of the defendant. On the other hand, the defendant offered proof to show that there was no negligence on its part, by showing that the tiles were loaded, stowed, and discharged by handlabor, and not by mechanical devices which might have caused the breakage in question.

It appears from the record that the tiles in question were received by the defendant from the plaintiff, as represented on a Government bill of lading known as "General Form No. 9-A," which was made out and submitted by a representative of the Bureau of Supply to the defendant. (Exhibit A.) At the head of Exhibit A is found the following:

"You are hereby authorized to receive, carry, and deliver the following described merchandise to treasurer of Iloilo at Iloilo in accordance with the authorized and prescribed rates and classifications, and according to the laws of common carriers in force on the date hereof, settlement and payment of charges to be made by Bureau of Supply. (Sgd.). T. R. Schoon, Chief Division of Supplies, Bureau of Supply."

On the said bill of lading we find the following, which was stamped thereon by the defendant:

"The goods have been accepted for transportation subject to the conditions prescribed by the Insular Collector of Customs in Philippine Marine Regulations, page 16, under the heading 'Bill of Lading Conditions'"

The lower court, in discussing the said bill of lading with the two conditions found thereon, reached the conclusion that the plaintiff was bound by the terms of the bill of lading as issued by the defendant and not by the terms which the plaintiff attempted to impose,—that is to say, that such merchandise was to be carried at owner's

risk only; that there was no presumption of negligence on the part of the defendant from the fact that the tiles were broken when received by the consignee; and that since the plaintiff did not prove negligence on the part of the defendant, the former was not entitled to recover damages from the latter. The lower court rendered judgment absolving the defendant from all liability under the complaint.

The important questions presented by the appeal are: (a) Were the terms and conditions stamped by the defendant upon the Government's bill of lading binding upon the plaintiff? (&) Was there a presumption of negligence on the part of the defendant?

The record shows that ever since the Government began to use the bill of lading, General Form No. 9-A, the shipowners had always used the "stamp" in question; that in the present case the defendant placed said stamp upon the bill of lading before the plaintiff shipped the tiles in question; that having shipped the goods under the said bill of lading, with the terms and conditions of the carriage stamped thereon, the appellant must be deemed to have assented to the said terms and conditions thereon stamped.

The appellant contends also that it was not bound by the terms and conditions inserted by the appellee, because (a) the reference made by the appellee to the "Philippine Marine Regulations" prescribed by the Collector of Customs was vague; that the appellee should have expressed the conditions fully and clearly on the face of the bill of lading; and ("&) that the Insular Collector of Customs had no authority to issue such regulations.

As to the first contention, it seems that the appellant fully knew the import and significance of the reference made in said regulations. The appellant attempted to show that prior to the transaction in question the Government notified the defendant and other shipowners that it would not be bound by the "stamp" that was placed by the shipowners on the Government's bill of lading.

With reference to the contention of the appellant that the Collector of Customs had no authority to make such regulations, it may be said in the present case that the binding effect of the conditions stamped on the bill of lading did not proceed from the authority of the Collector of Customs but from the actual contract which the parties made in the present case. Each bill of lading is a contract and the parties thereto are bound by its terms.

Finding as we do that the tiles in question were shipped at the owner's risk, under the law in this jurisdiction, the carrier is only liable where the evidence shows that he was guilty of some negligence and that the damages claimed were the result of such negligence. As was said above, the plaintiff offered no proof whatever to show negligence on the part of the defendant.

The plaintiff cites some American authorities to support its contention that the carrier is an absolute insurer of merchandise shipped and that the proof of breakage or damage to goods shipped in the hands of the carrier makes out a prime facie case, of negligence against him, and that the burden of proof is thrown on him to show due care and diligence.

The law upon that question in this jurisdiction is found in articles 361 and 362 of the Commercial Code. Article 361 provides:

"Art. 361. Merchandise shall be transported at the risk and venture of the shipper, if the contrary be not expressly stipulated.

"Therefore, all damages and impairment, suffered by the goods in transportation by reason of accident, force majeure, or by virtue of the nature or defect of the articles, shall be for the account and risk of the shipper.

"The proof of these accidents is incumbent upon the carrier."

Article 362 provides:

"ART. 362. The carrier, however, shall be liable for the losses and damages arising from the causes mentioned in the foregoing article, if it be proved against him that they occurred on account of his negligence or because he did not take the precautions usually adopted by careful persons, unless the shipper committed fraud in the bill of lading stating that the goods were of a class or quality different from what they really were. * * *"

Under the provisions of article 361 the defendant, in order to free itself from liability, was only obliged to prove that the damages suffered by the goods were "by virtue of the nature or defect of the articles." Under the provisions of article 362 the plaintiff, in order to hold the defendant liable, was obliged to prove that the damages to the goods by virtue of their nature, occurred on account of its negligence or because the defendant did not take the precaution usually adopted by careful persons.

The defendant herein proved, and the plaintiff did not attempt to dispute, that the tiles in question were of a brittle and fragile nature and that they were delivered by the plaintiff to the defendant without any packing or protective covering. The defendant also offered proof to show that there was no negligence on its part, by showing that the tiles were loaded, stowed, and discharged in a careful and diligent manner.

In this jurisdiction there is no presumption of negligence on the part of the carriers in case like the present. The plaintiff, not having proved negligence on the part of the defendant, is not entitled to recover damages.

For the foregoing reasons, the judgment of the lower court is hereby affirmed, with costs. So ordered.

Arellano, C.J., Araullo, Street, Malcolm, and Avanceña, JJ., concur.

Judgment affirmed.

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