

THE YNCHAUSTI STEAMSHIP COMPANY, PETITIONER, VS. I. B. DEXTER, AS AUDITOR OF THE PHILIPPINE ISLANDS, AND C. E. UNSON, AS ACTING PURCHASING AGENT OF THE PHILIPPINE ISLANDS, RESPO...*G. R. No. 15652. December 14, 1920*

Ponente: STREET, J.

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This is a petition for a writ of mandamus filed in this court by the Ynchausti Steamship Company to compel the Purchasing Agent of the Philippine Islands and the Insular Auditor to sign, countersign, and deliver to the petitioner a warrant upon the Treasurer of the Philippine Islands for the sum of P82.79 in satisfaction of a claim for that amount, which is alleged to be due the petitioner as a common carrier for freight earned in transporting for the Government two distinct consignments of mineral oil from Manila to two other ports in the Philippine Islands. After the defendants had duly answered, denying all the allegations of the petition except such as relate to the character and places of residence of the parties to the petition (which are admitted) the controversy was submitted for determination by this court upon an agreed statement of facts as follows:

"On July 23, 1918, the Government of the Philippine Islands, acting by and through the respondent Insular Purchasing Agent, employed the services of the petitioner, Ynchausti Steamship Co., a common carrier, for the transportation, on board the steamship Venus, from the port of Manila to the port of Aparri, Cagayan, of a consignment of merchandise, consisting of thirty (30) cases of 'White Rose' mineral oil of two five-gallon cans to the case; and on September 18, 1918, the said Government likewise employed the services of petitioner for the transportation on board the steamship Venus, from Manila to Aparri, Cagayan, of ninety-six cases of 'Cock' brand mineral oil, ten gallons to the case. The goods were delivered by the shipper to the carrier, which accordingly received them, and to evidence the contract of transportation, the parties duly executed and delivered what is popularly called the Government bill of lading (General Form 9-A), hereto attached, marked Exhibit A and made a part hereof, wherein and whereby it was stipulated that the carrier, the petitioner Ynchausti & Co., received the above-mentioned supplies in apparent good condition, obligating itself to carry said supplies to the place agreed upon, in accordance with the authorized and prescribed rates and classifications, and subject to the law of common carriers in force on the date of the shipment, and to the conditions prescribed by the Insular Collector of Customs in Philippine Marine Regulations at page 16 under the heading of 'Bill of Lading Conditions,' hereto attached, marked Exhibit B and made a part hereof.

"Upon the delivery of the said shipment of 'Cock' brand oil the consignee claimed that one case was delivered empty, and noted such claim upon the bill of lading; and upon the delivery of the said shipment of 'White Rose,' brand oil the consignee claimed that one case was delivered empty, and noted said claim upon the bill of lading.

"Thereafter, notwithstanding the protestations of the petitioner, Ynchausti Steamship Co., that said shortages were due to causes entirely unknown to it, and were not due to any fault or negligence on its part, or on the part of its agents or servants, the Acting Insular Purchasing Agent of the Philippine Islands notified the petitioners

herein that after due investigation the Insular Auditor found and decided that the leakages of the two whole cases were due to its negligence and that the deduction of the sum of P22.53, the invoice value of the goods lost, and held by the Auditor to be the true value thereof had been authorized by the said Insular Auditor.

"Petitioner thereupon protested against the threatened deduction, and demanded that it be paid the full amount due for the transportation of the two said shipments of merchandise, to wit, the sum of P82.79, as shown by its transportation voucher presented in this cause, hereto attached, marked Exhibit C and made a part hereof.

"Thereafter, notwithstanding the protest and demand of the petitioner as aforesaid, the Insular Auditor, in conformity with his ruling, declined and still declines to issue to the petitioner a warrant for the full sum of P82.79, and has tendered to it a warrant for the sum of P60.26, which the petitioner has refused to accept.

"The sum of P22.53 authorized to be deducted by the Insular Auditor, as appears herein, has not at any time been liquidated by consent, agreement, or by the judgment of any court of competent jurisdiction."

Upon a perusal of the foregoing agreed statement it will be seen that the present litigation had its origin in a situation practically identical with that considered by this court in *Compañia General de Tabacos vs. French and Unson* (39 Phil., 34). It will be noted, however, that the case mentioned was decided upon demurrer, while the one now before us is to be heard and determined upon the petition, answer, and the admitted facts.

We note that in this case, as in the case of *Compañia General de Tabacos vs. French and Unson* (supra), the petition alleges that the leakage of the lost gasoline was due to causes unknown to the petitioner and was not due to any fault or negligence of petitioner, its agents, or servants. The respondents, by demurring to the petition in the earlier case, admitted that allegation. In the case now before us that allegation is put in issue, and we find nothing in the admitted statement of facts to support it. It results that if that allegation is material to the relief here sought, the petition must fail.

We are of the opinion that the allegation in question is material and that the relief sought in this case cannot be granted.

In section 646 of the Administrative Code it is provided that when Government property is transmitted from one place to another by carrier, it shall be upon proper bill of lading, or receipt, from such carrier; and it shall be the duty of the consignee, or his representative, to make full notation of any evidence of loss, shortage, or damage, upon the bill of lading, or receipt, before accomplishing it. It is admitted by the petitioner in the agreed statement of facts that the consignee, at the time the oil was delivered, noted the loss in the present case upon the two respective bills of lading. The notation of these losses by the consignee, in obedience to the precept of section 646 of the Administrative Code, is competent evidence to show that the shortage in fact existed. As the petitioner admits that the oil was received by it for carriage and inasmuch as the fact of loss is proved in the manner just stated, it results that there is a presumption that the petitioner was to blame for the loss; and it was incumbent upon the petitioner in order to entitle it to relief in this case to rebut that presumption by proving, as is alleged in the petition, that the loss was not due to any fault or negligence of the petitioner.

The mere proof of delivery of goods in good order to a carrier, and of their arrival at the place of destination in bad order, makes out a prima facie case against the carrier, so that if no explanation is given as to how the injury occurred, the carrier must be held responsible. (4 R. C. L., p. 917.) It is incumbent upon the carrier to prove that the loss was due to accident or some other circumstance inconsistent with its liability. (Articles 361-363, Code of Commerce.) Indeed, if the Government of the Philippine Islands had instituted an action in a court of law against the petitioner to recover the value of the oil lost while these consignments, were in the course of transportation, it would, upon the facts appearing before us, have been entitled to judgment.

From this it is apparent that the mandamus prayed for cannot be granted. It is a rule of universal application that a

petition for extraordinary relief of the character here sought must show merit. That is, the petitioner's right to relief must be clear. Such cannot be said to be the case where, as here, a presumption of responsibility on the part of the petitioner stands unrefuted upon the record.

We are of the opinion that, in the absence of proof showing that the carrier was not at fault in respect to the matter under discussion, the Insular Auditor was entitled to withhold, from the amount admittedly due to the petitioner for the freight charges, a sum sufficient to cover the value of the oil lost in transit.

The petition will be dismissed, with costs against the petitioner. So ordered.

Mapa, C. J., Araullo, Avanceña and Villamor, JJ., concur.

Malcolm, J., concurs in the result.

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