

FREIXAS AND COMPANY, PLAINTIFF AND APPELLANT, VS. PACIFIC MAIL STEAMSHIP CO., DEFENDANT AND APPELLEE.

G. R. No. 16569. October 03, 1921

Ponente: JOHNSON, J.

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JOHNSON, J.:

The facts in the present case are stipulated by the parties. They may be stated, briefly, as follows:

On the 23d day of May, 1918, the plaintiff, a regular general copartnership, caused to be delivered on board the defendant's steamship Colusa, then in the harbor of San Francisco, California, one case of hat bands, described in the bill of lading as one case of dry goods, properly boxed and marked for transportation to the port of Manila. The plaintiff paid the freight—not on ad valorem value but on space—on said merchandise from San Francisco to Manila, in advance, to the defendant's authorized representatives in San Francisco. The master of the said steamship issued and delivered to the plaintiff his bill of lading for said merchandise, which bill of lading was introduced in evidence as Exhibit B.

The said steamship Colusa arrived in the port of "Manila on or about June 19, 1918, but neither the master thereof nor the defendant herein delivered to the plaintiff the aforesaid one case of hat bands, although demand was made upon them for its delivery, and the said steamship departed from the port of Manila without landing said plaintiff's merchandise.

The invoice value of the said one case of hat bands at the time of its delivery to the steamship Colusa was the sum of P1,624.78. This amount was claimed by the plaintiff from the defendant as damages for failure to deliver the said merchandise, but the defendant tendered to the plaintiff only the sum of \$100, U. S. currency, in payment of plaintiff's claim, which tender plaintiff rejected. Whereupon the present action was instituted.

Upon the foregoing facts in relation with clauses 25 and 27 of the bill of lading, Exhibit B, the Honorable Geo. R. Harvey, judge, in a carefully prepared opinion, rendered a judgment in favor of the plaintiff and against the defendant for the sum of P200, Philippine currency, with costs against the plaintiff. From that judgment the plaintiff appealed to this court.

The issue presented by the present case hinges on clauses 25 and 27 of the bill of lading, Exhibit B. Said clauses read as follows:

"25. All liability for loss or damage to goods shall be determined by their invoice cost plus freight. It is expressly understood that the Steamship Company is not accountable for weight, leakage, breakage, insecure packages, chafage to goods in bales, nor for loss or damage from the effects of climate or decay, or caused by other cargo in contact or otherwise when properly stowed; nor for explosion of articles on freight or otherwise, nor from unavoidable detention or delay, and it is expressly agreed that the goods named in this Bill of Lading are hereby valued at not exceeding \$100 per package, and unless a different or other value is expressly written and declared herein, the liability of the companies therefor, in case of the total loss of all or any of the said goods from any cause, shall not exceed \$100 per package, and in case of the partial loss of or damage to

any of said goods, the liability of the carriers shall not exceed such proportion thereof per package as the loss or damage on each package shall bear to the sum of \$100."

"27. The shipper hereby represents and declares that the value of each package described on the face of this bill of lading does not exceed the sum of \$100, unless the shipper shall expressly declare and there shall be written on the face thereof a different value; and upon such basis of valuation of said packages, the rate of freight thereon is adjusted."

The appellant indirectly attacks the validity of the foregoing clauses upon grounds which may be summarized as follows:

- (1) That said clauses (25 and 27) of the bill of lading are in contravention of the principles of article 1601 of our Civil Code;
- (2) That said clauses "were probably not within the contemplation of the parties" when the bill of lading was executed; and
- (3) That there was no consideration for said clauses "because the amount of the freight was not based on the value of the merchandise but on the cubic foot space occupied by it."

- With reference to the first ground above set forth, article 1601 of the Civil Code provides:

"ART. 1601. Carriers of goods by land or by water shall be subject, with respect to the care and preservation of the things entrusted to them, to the same obligations as those imposed on innkeepers by articles 1783 and 1784.

"The provisions of this article shall be understood to be without prejudice to those of the Code of Commerce with respect to transportation by sea and land."

Quoting the foregoing article together with articles 1783 and 1784 and the commentaries of Manresa thereon, appellant contends "that the Civil Code does not permit any limitation of liability on the carrier's part unless the loss or damage occurred through force majeure or an act of God," for such limitation would be contrary to public policy. We have discussed this same question in the case of *H. E. Heacock Co. vs. Macondray & Co.* (42 Phil., p. 205, post), which is analogous to the present case. In that case we said:

"Three kinds of stipulations have often been made in a bill of lading. The first is one exempting the carrier from any and all liability for loss or damage occasioned by its own negligence. The second is one providing for an unqualified limitation of such liability to an agreed valuation. And the third is one limiting the liability of the carrier to an agreed valuation unless the shipper declares a higher value and pays a higher rate of freight. According to an almost uniform weight of authority, the first and second kinds of stipulations are invalid as being contrary to public policy, but the third is valid and enforceable." (See cases cited.)

The clauses of the bill of lading here in question fall within the third kind of stipulation above described, and are therefore valid and enforceable. (*Union Pacific Ry. Co. vs. Burke*, No. 10, Advance Opinions, April 1, 1921, U. S. Supreme Court.)

- With reference to the second ground invoked by the appellant, to wit: That the said clauses were probably not within the contemplation of the parties when the bill of lading was executed, the following statement clearly appears on the face of said bill of lading:

"All the provisions above and on the reverse side of this bill of lading are hereby agreed to on the part of the shipper.

(Sgd.)

"B. BERTOLOME,

"Shipper."

The foregoing statement, in our opinion, is conclusive against the plaintiff in the absence of proof that its representative, B. Bertolone, signed the same through error or fraud.

- With reference to the third contention of the appellant, it is undisputed that the latter did not declare the merchandise in question to be of a higher value than \$100 per package, but paid the freight therefor upon the express understanding and agreement between the parties that its value did not exceed \$100 per package. The bill of lading shows that the appellant paid \$18.18 on two packages or cases of dry goods (hat bands), measuring 29 cubic feet. While it is true that the unit of measure adopted in fixing the rate of freight was the cubic foot of space occupied by the merchandise, it is clear that such rate was charged upon the stipulation that the value of each package, for which the carrier stood responsible, did not exceed \$100. (See clause 27, *supra*.) In other words, if the shipper had declared that each package was of the value of P1,624.78 instead of P200, he would have had to pay a much higher rate than that which he did pay on the basis of a valuation of P200 per package. We are, therefore, of the opinion that there was sufficient consideration for the clauses or stipulations of the bill of lading in question.

The appellant further contends that the appellee, not having shown what became of the merchandise in question, is liable for the entire value thereof, as otherwise it would enrich itself by appropriating the goods and then pleading limited liability. If this were an action for conversion of the plaintiff's chattel and the plaintiff proved that the defendant had really appropriated the goods in question, there would be no question but that the defendant would be liable for the full market value thereof to the plaintiff. But the present is an action to recover from the defendant carrier the value of the goods carried by it, which were alleged to have been wholly lost not "by an act of God or any other excusable event but by and in consequence of the negligence and carelessness of said defendant and its agents and servants." (Par. 3, complaint.) While it was possible for the defendant to have appropriated the goods in question, yet we are of the opinion that the defendant cannot be presumed to have done so by the mere fact that it admits the loss of said goods through its negligence and carelessness, as alleged in the complaint.

In the case of the Union Pacific Railway Company vs. Burke, *supra*, the Supreme Court of the United States, in discussing the question before us, said:

"In many cases, from the decision in Hart vs. Pennsylvania R. R. Co. (112 U. S., 331; 28 L. ed., 717; 5 Sup. Ct. Rep., 151, decided in 1884), to Boston & M. R. Co. vs. Piper (246 U.S., 439; 62 L. ed., 820; 38 Sup. Ct. Rep., 354; Ann. Cas. 1918E, 469, decided in 1918), it has been declared to be the settled Federal law that if a common carrier gives to a shipper the choice of two rates, the lower of them conditioned upon his agreeing to a stipulated valuation of his property in case of loss, even by the carrier's negligence, if the shipper makes such a choice, understandingly and freely, and names his valuation, he cannot thereafter recover more than the value which he thus places upon his property.

"As a matter of legal distinction, estoppel is made the basis of this ruling,—that, having accepted the benefit of the lower rate, in common honesty the shipper may not repudiate the conditions on which it was obtained,—but the rule and the effect of it are clearly established.

"This court has consistently held the law to be that it is against public policy to permit a common carrier to limit its common-law liability by contracting for exemption from the consequences of his own negligence or that of its servants (112 U. S., 331, 338, and 246 U. S., 439, 444, *supra*), and valuation agreements have been

sustained only on principles of estoppel, and in carefully restricted cases where choice of rates was given,—where 'the rate was tied to the release.' Thus in the Hart Case (p. 343), it is said:

" ' The distinct ground of our decision in the case at bar is, that where a contract of the kind, signed by the shipper, is fairly made, agreeing on the valuation of the property carried, with the rate of freight based on the condition that the carrier assumes liability only to the extent of the agreed valuation, even in case of loss or damage by the negligence of the carrier, the contract will be upheld as a proper and lawful mode of securing a due proportion between the amount for which the carrier may be responsible and the freight he receives, and of protecting himself against extravagant and fanciful valuations.' "

In the case of *Boston & M. R. Co. vs. Piper* (246 U. S., 439), it was said:

"In the previous decisions of this court upon the subject it has been said that the limited valuation for which a recovery may be had does not permit the carrier to defeat recovery because of losses arising from its own negligence, but serves to fix the amount of recovery upon an agreed valuation made in consideration of the lower rate stipulated to be paid for the service."

For all of the foregoing reasons the judgment of the lower court should be affirmed, without any finding as to costs in this instance. So ordered.

Araullo, Streett Avancena, and Villamor, JJ., concur.

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