

**H. E. HEACOCK COMPANY, PLAINTIFF AND APPELLANT, VS.
MACONDRA Y & COMPANY, INC., DEFENDANT AND APPELLANT.**

G. R. No. 16598. October 03, 1921

Ponente: JOHNSON, J.

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JOHNSON, J.:

This action was commenced in the Court of First Instance of the City of Manila to recover the sum of P420 together with interest thereon. The facts are stipulated by the parties, and are, briefly, as follows:

(1) On or about the 5th day of June, 1919, the plaintiff caused to be delivered on board the steamship Bolton Castle, then in the harbor of New York, four cases of merchandise. one of which contained twelve (12) 8-day Edmond clocks, properly boxed and marked for transportation to Manila, and paid freight on said clocks from New York to Manila in advance. The said steamship arrived in the port of Manila on or about the 10th day of September, 1919, consigned to the defendant herein as agent and representative of said vessel in said port. Neither the master, of said vessel nor the defendant herein, as its agent, delivered to the plaintiff the aforesaid twelve 8-day Edmond clocks, although demand was made upon them for their delivery.

(2) The invoice value of the said twelve 8-day Edmond clocks in the city of New. York was P22 and the market value of the same in the City of Manila at the time when they should have been delivered to the plaintiff was P420.

(3) The bill of lading issued and delivered to the plaintiff by the master of the said steamship Bolton Castle contained, among others, the following clauses:

"1. It is mutually agreed that the value of the goods receipted for above does not exceed \$500 per freight ton, or, in proportion for any part of a ton, unless the value be expressly stated herein and ad valorem freight paid thereon."

"9. Also, that in the event of claims for short delivery of, or damage to, cargo being made, the carrier shall not be liable for more than the net invoice price plus freight and insurance less all charges saved, and any loss or damage for which the carrier may be liable shall be adjusted pro rata on the said basis."

(4) The case containing the aforesaid twelve 8-day Edmond clocks measured 3 cubic feet, and the freight ton value thereof was \$1,480, U. S. currency.

(5) No greater value than \$500, U. S. currency, per freight ton was declared by the plaintiff on the aforesaid clocks, and no ad valorem freight was paid thereon.

(6) On or about October 9, 1919, the defendant tendered to the plaintiff P76.36, the proportionate freight ton value of the aforesaid twelve 8-day Edmond clocks, in payment of plaintiff's claim, which tender plaintiff rejected.

The lower court, in accordance with clause 9 of the bill of lading above quoted, rendered judgment in favor of the plaintiff against the defendant for the sum of P226.02, this being the invoice value of the clocks in question plus

the freight and insurance thereon, with legal interest thereon from November 20, 1919, the date of the complaint, together with costs. From that judgment both parties appealed to this court.

The plaintiff-appellant insists that it is entitled to recover from the defendant the market value of the clocks in question, to wit: the sum of P420. The defendant-appellant, on the other hand, contends that, in accordance with clause 1 of the bill of lading, the plaintiff is entitled to recover only the sum of P76.36, the proportionate freight value of the said clocks. The claim of the plaintiff is based upon the argument that the two clauses in the bill of lading above quoted, limiting the liability of the carrier, are contrary to public order and, therefore, null and void. The defendant, on the other hand, contends that both of said clauses are valid, and that clause 1 should have been applied by the lower court instead of clause 9.

I. The appeal of the plaintiff presents this question: May a common carrier, by stipulations inserted in the bill of lading, limit its liability for the loss of or damage to the cargo to an agreed valuation of the latter?

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.

The authorities relied upon by the plaintiff-appellant (the Harter Act [Act of Congress of February 13, 1893]; *Louisville Ry. Co. vs. Wynn*, 88 Tenn., 320; and *Gait vs. Adams Express Co.*, 4 McAr., 124; 48 Am. Rep., 742) support the proposition that the first and second stipulations in a bill of lading are invalid which either exempt the carrier from liability for loss or damage occasioned by its negligence, or provide for an unqualified limitation of such liability to an agreed valuation.

A reading of clauses 1 and 9 of the Bill of lading here in question, however, clearly shows that the present case falls within the third stipulation, to wit: That a clause in a bill of lading limiting the liability of the carrier to a certain amount unless the shipper declares a higher value and pays a higher rate of freight, is valid and enforceable. This proposition is supported by a uniform line of decisions of the Supreme Court of the United States rendered both prior and subsequent to the passage of the Harter Act, from the case of *Hart vs. Pennsylvania R. R. Co.* (decided Nov. 24, 1884; 112 U. S., 331), to the case of the *Union Pacific Ry. Co. vs. Burke* (decided Feb. 28, 1921, *Advance Opinions*, 1920-1921, p. 318).

In the case of *Hart vs. Pennsylvania R. R. Co.*, supra, it was held that "where a contract of carriage, signed by the shipper, is fairly made with a railroad company, agreeing on a 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 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 protecting himself against extravagant and fanciful valuations

In the case of *Union Pacific Railway Co. vs. Burke*, supra, the court 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. 1918 E, 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."

The syllabus of the same case reads as follows: "A carrier may not, by a valuation agreement with a shipper, limit its liability in case of the loss by negligence of an interstate shipment to less than the real value thereof, unless the shipper is given a choice of rates, based on valuation."

"A limitation of liability based upon an agreed value to obtain a lower rate does not conflict with any sound principle of public policy; and it is not conformable to plain principles of justice that a shipper may understate value in order to reduce the rate and then recover a larger value in case of loss." (Adams Express Co. vs. Croninger, 226 U. S., 491, 492.) See also Reid vs. Fargo (130 C. C. A., 285) ; Jennings vs. Smith (45 C. C. A., 249) ; George N. Pierce Co. vs. Wells, Fargo & Co. (236 U. S., 278) ; Wells, Fargo & Co. vs. Neiman-Marcus Co. (227 U. S., 469).

It seems clear from the foregoing authorities that the clauses (1 and 9) of the bill of lading here in question are not contrary to public order. Article 1255 of the Civil Code provides that "the contracting parties may establish any agreements, terms and conditions they may deem advisable, provided they are not contrary to law, morals or public order." Said clauses of the bill of lading are, therefore, valid and binding upon the parties thereto.

II. The question presented by the appeal of the defendant is whether clause 1 or clause 9 of the bill of lading here in question is to be adopted as the measure of defendant's liability. Clause 1 provides as follows:

"1. It is mutually agreed that the value of the goods receipted for above does not exceed \$500 per freight ton, or, in proportion for any part of a ton, unless the value be expressly stated herein and ad valorem freight paid thereon." Clause 9 provides:

"9. Also, that in the event of claims for short delivery of, or damage to, cargo being made, the carrier shall not be liable for more than the net invoice price plus freight and insurance less all charges saved, and any loss or damage for which the carrier may be liable shall be adjusted pro rata on the said basis."

The defendant-appellant contends that these two clauses, if construed together, mean that the shipper and the carrier stipulate and agree that the value of the goods receipted for does not exceed \$500 per freight ton, but should the invoice value of the goods be less than \$500 per freight ton, then the invoice value governs; that since in this case the invoice value is more than \$500 per freight ton, the latter valuation should be adopted and that according to that valuation, the proportionate value of the clocks in question is only P76.36, which the defendant is ready and willing to pay to the plaintiff.

It will be noted, however, that whereas clause 1 contains only an implied undertaking to settle in case of loss on the basis of not exceeding \$500 per freight ton, clause 9 contains an express undertaking to settle on the basis of the net invoice price plus freight and insurance less all charges saved. "Any loss or damage for which the carrier may be liable shall be adjusted pro rata on the said basis," clause 9 expressly provides. It seems to us that there is an irreconcilable conflict between the two clauses with regard to the measure of defendant's liability. It is difficult to reconcile them without doing violence to the language used and reading exceptions and conditions into the undertaking contained in clause 9 that are not there. This being the case, the bill of lading in question should be interpreted against the defendant carrier, which drew said contract. "A written contract should, in case of doubt, be interpreted against the party who has drawn the contract." (6 R. C. L., 854.) It is a well-known principle of construction that ambiguity or uncertainty in an agreement must be construed most strongly against the party causing it. (6 R. C. L., 855.) These rules are applicable to contracts contained in bills of lading. "In construing a

bill of lading given by the carrier for the safe transportation and delivery of goods shipped by a consignor, the contract will be construed most strongly against the carrier, and favorably to the consignor, in case of doubt in any matter of construction." (Alabama, etc. R. R. Co. vs. Thomas, 89 Ala., 294; 18 Am. St. Rep., 119.)

It follows from all of the foregoing that the judgment appealed from should be affirmed, without any finding as to costs. So ordered.

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

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