

COMPAÑIA MARITIMA, PETITIONER VS. INSURANCE COMPANY OF NORTH AMERICA, RESPONDENT.

G.R. No. 18965. October 30, 1964

Ponente: BAUTISTA ANGELO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-18965/>

BAUTISTA ANGELO, J.:

Sometime in October, 1952, Macleod and Company of the Philippines contracted by telephone the services of the Compañia Maritima, a shipping corporation, for the shipment of 2,645 bales of hemp from the former's Sasa private pier at Davao City to Manila and for their subsequent trans-shipment to Boston, Massachusetts, U.S.A. on board the S.S. Steel Navigator. This oral contract was later on confirmed by a formal and written booking issued by Macleod's branch office in Sasa and hand carried to Compañia Maritima's branch office in Davao in compliance with which the latter sent to Macleod's private wharf LCT Nos. 1023 and 1025 on which the loading of the hemp was completed on October 29, 1952. These two lighters were manned each by a patron and an assistant patron. The patron of both barges issued the corresponding carrier's receipts and that issued by the patron of Barge No. 1025 reads in part:

"Received in behalf of S.S. Bowline Knot in good order and condition from MACLEOD AND COMPANY OF THE PHILIPPINES, SASA, Davao, for transshipment at Manila onto S.S. Steel Navigator.

"FINAL DESTINATION: Boston"

Thereafter, the two loaded barges left Macleod's wharf and proceeded to and moored at the government's marginal wharf in the same place to await the arrival of the S.S. Bowline Knot belonging to Compañia Maritima on which the hemp was to be loaded. During the night of October 29, 1952, or at the early hours of October 30, LCT No. 1025 sank resulting in the damage or loss of 1,162 bales of hemp loaded therein. On October 30, 1952, Macleod promptly notified the carrier's main office in Manila and its branch in Davao advising it of its liability. The damaged hemp was brought to Odell Plantation in Madaum, Davao, for cleaning, washing, reconditioning, and redrying. During the period from November 1-15, 1952, the carrier's trucks and lighters hauled from Odell to Macleod at Sasa a total of 2,197.75 piculs of the reconditioned hemp out of the original cargo of 1,162 bales weighing 2,324 piculs, which had a total of P116,835.00. After reclassification, the value of the reconditioned hemp was reduced to P84,887.28, or a loss in value of P31,947.72. Adding to this last amount the sum of P8,863.30 representing Macleod's expenses in checking, grading, rebaling, and other fees for washing, cleaning and redrying in the amount of P19,610.00, the total loss adds up to P60,421.02.

All abaca shipments of Macleod, including the 1,162 bales loaded on the carrier's LCT No. 1025, were insured with the Insurance Company of North America against all losses and damages. In due time, Macleod filed a claim for the loss it suffered as above stated with said insurance company, and after the same had been processed, the sum of P64,018.55 was paid, which was noted down in a document which, aside from being a receipt of the amount paid, was a subrogation agreement between Macleod and the insurance company wherein the former assigned to the latter its rights over the insured and damaged cargo. Having failed to recover from the carrier the

sum of P60,421.02, which is the only amount supported by receipts, the insurance company instituted the present action on October 28, 1953.

After trial, the court a quo rendered judgment ordering the carrier to pay the insurance company the sum of P60,421.02, with legal interest thereon from the date of the filing of the complaint until fully paid, and the costs. This judgment was affirmed by the Court of Appeals on December 14, 1960. Hence, this petition for review.

The issues posed before us are: (1) Was there a contract of carriage between the carrier and the shipper even if the loss occurred when the hemp was loaded on a barge owned by the carrier which was loaned free of charge and was not actually loaded on the S.S. Bowline Knot which would carry the hemp to Manila and no bill of lading was issued therefor?; (2) Was the damage caused to the cargo or the sinking of the barge where it was loaded due to a fortuitous event, storm or natural disaster that would exempt the carrier from liability?; (3) Can respondent insurance company sue the carrier under its insurance contract as assignee of Macleod in spite of the fact that the liability of the carrier as insurer is not recognized in this jurisdiction?; (4) Has the Court of Appeals erred in regarding Exhibit NNN-1 as an implied admission by the carrier of the correctness and sufficiency of the shipper's statement of accounts contrary to the burden of proof rule?; and (5) Can the insurance company maintain this suit without proof of its personality to do so?

1. This issue should be answered in the affirmative. As found by the Court of Appeals, Macleod and Company contracted by telephone the services of petitioner to ship the hemp in question from the former's private pier at Sasa, Davao City, to Manila, to be subsequently transhipped to Boston, Massachusetts, U.S.A., which oral contract was later confirmed by a formal and written booking issued by the shipper's branch office, Davao City, in virtue of which the carrier sent two of its lighters to undertake the service. It also appears that the patrons of said lighters were employees of the carrier with due authority to undertake the transportation and to sign the documents that may be necessary therefor so much so that the patron of LCT No. 1025 signed the receipt covering the cargo of hemp loaded therein as follows:

"Received in behalf of S.S. Bowline Knot in good order and condition from MACLEOD AND COMPANY OF THE PHILIPPINES, Sasa, Davao, for transhipment at Manila onto S.S. Steel Navigator.

"FINAL DESTINATION: Boston."

The fact that the carrier sent its lighters free of charge to take the hemp from Macleod's wharf at Sasa preparatory to its loading unto the ship Bowline Knot does not in any way impair the contract of carriage already entered into between the carrier and the shipper, for that preparatory steps is but a part and parcel of said contract of carriage. The lighters were merely employed as the first step of the voyage, but once that step was taken and the hemp delivered to the carrier's employees, the rights and obligations of the parties attached thereby subjecting them to the principles and usages of the maritime law. In other words, here we have a complete contract of carriage the consummation of which has already begun: the shipper delivering the cargo to the carrier, and the latter taking possession thereof by placing it on a lighter manned by its authorized employees, under which Macleod became entitled to the privilege secured to him by law for its safe transportation and delivery, and the carrier to the full payment of its freight upon completion of the voyage.

"The receipt of goods by the carrier has been said to lie at the foundation of the contract to carry and deliver, and if actually no goods are received there can be no contract. The liability and responsibility of the carrier under a contract for the carriage of goods commence on their actual delivery to, or receipt by, the carrier or an authorized agent. * * * and delivery to a lighter in charge of a vessel for shipment on the vessel, where it is the custom to deliver in that way, is a good delivery and binds the vessel receiving the freight, the liability commencing at the time of delivery to the lighter. * * * and, similarly, where there is a contract to carry goods from one port to another, and they cannot be loaded directly on the vessel, and lighters are sent by the vessel to

bring the goods to it, the lighters are for the time its substitutes, so that the bill of lading is applicable to the goods as soon as they are placed on the lighters." (80 C.J.S., p. 901, *Italics supplied*)

"* * * The test as to whether the relation of shipper and carrier had been established is, had the control and possession of the cotton been completely surrendered by the shipper to the railroad company? Whenever the control and possession of goods passes to the carrier and nothing remains to be done by the shipper, then it can be said with certainty that the relation of shipper and carrier has been established. *Railroad Co. vs Murphy*, 60 Ark. 333, 30 S. W. 419, 46 A. St. Rep. 202; *Pine Bluff & Arkansas River Ry. vs. MaKenzie*, 75 Ark. 100, 86 S.W. 834; *Mathews & Hood vs. St. L., I. M. & S. R. Co.*, 123 Ark. 365, 185 S. W. 461, L. R.A. 1916E, 1194." (*W. F. Bogart & Co., et al. vs. Wade, et al.*, 200 S. W. 148)

The claim that there can be no contract of affreightment because the hemp was not actually loaded on the ship that was to take it from Davao City to Manila is of no moment, for, as already stated, the delivery of the hemp to the carrier's lighter is in line with the contract. In fact, the receipt signed by the patron of the lighter that carried the hemp stated that he was receiving the cargo "in behalf of S.S. Bowline Knot in good order and condition." On the other hand, the authorities are to the effect that a bill of lading is not indispensable for the creation of a contract of carriage.

"Bill of lading not indispensable to contract of carriage.—As to issuance of a bill of lading, although Article 350 of the Code of Commerce provides that 'the shipper as well as the carrier of merchandise of goods may mutually demand that a bill of lading be made,' still, said bill of lading is not indispensable. 'As regards the form of the contract of carriage it can be said that provided that there is a meeting of the minds and from such meeting arise rights and obligations, there should be no limitations as to form.' The bill of lading is not essential to the contract, although it may become obligatory by reason of the regulations of railroad companies, or as a condition imposed in the contract by the agreement of the parties themselves. The bill of lading is juridically a documentary proof of the stipulations and conditions agreed upon by both parties. (*Del Viso* p. 314-315; *Robles vs. Santos*, 44 Off. Gaz., 2268). In other words, the Code does not demand, as necessary requisite in the contract of transportation, the delivery of the bill of lading to the shipper, but gives right to both the carrier and the shipper to mutually demand of each other the delivery of said bill. (*Sp. Sup. Ct. Decision*, May 6, 1895)." (*Martin, Philippine Commercial Laws*, Vol. II, Revised Edition, pp. 12-13)

"The liability of the carrier as common carrier begins with the actual delivery of the goods for transportation, and not merely with the formal execution of a receipt or bill of lading; the issuance of a bill of lading is not necessary to complete delivery and acceptance. Even where it is provided by statute that liability commences with the issuance of the bill of lading, actual delivery and acceptance are sufficient to bind the carrier." (13 C.J.S., p. 288)

2. Petitioner disclaims responsibility for the damage of the cargo in question shielding itself behind the claim of force majeure or storm which occurred on the night of October 29, 1952. But the evidence fails to bear this out. Rather, it shows that the mishap that caused the damage or loss was due, not to force majeure, but to lack of adequate precaution or measures taken by the carrier to prevent the loss as may be inferred from the following findings of the Court of Appeals:

"Aside from the fact that, as admitted by appellant's own witness, the ill-fated barge had cracks on its bottom (pp. 18-19, t.s.n., Sept. 13, 1959) which admitted sea water in the same manner as rain entered 'thru tank manholes,' according to the patron of LCT No. 1023 (exh. JJJ-4)—conclusively showing that the barge was not seaworthy—it should be noted that on the night of the nautical accident there was no storm, flood, or other natural disaster or calamity. Certainly, winds of 11 miles per hour, although stronger than the average 4.6 miles per hour then prevailing in Davao on October 29, 1952 (exh. 5), cannot be classified as storm. For according to Beaufort's wind scale, a storm has wind velocities of from 64 to 75 miles per hour; and by Philippine Weather Bureau standards winds should have a velocity of from 55 to 74 miles per hour in order to be classified as a

storm (Northern Assurance Co., Ltd. vs. Visayan Stevedore Transportation Co., CA-G. R. No. 23167-R. March 12, 1959)."

The Court of Appeals further added: "the report of R. J. del Pan & Co., Inc., marine surveyors, attributes the sinking of LCT No. 1025 to the non-watertight conditions of various bouyancy compartments' (exh. JJJ); and this report finds confirmation on the above mentioned admission of two witnesses for appellant concerning the cracks of the lighter's bottom and the entrance of the rain water 'thru manholes.'" We are not prepared to dispute this finding of the Court of Appeals.

3. There can also be no doubt that the insurance company can recover from the carrier as assignee of the owner of the cargo for the insurance amount it paid to the latter under the insurance contract. And this is so because since the cargo that was damaged was insured with respondent company and the latter paid the amount represented by the loss, it is but fair that it be given the right to recover from the party responsible for the loss. The instant case, therefore, is not one between the insured and the insurer, but one between the shipper and the carrier, because the insurance company merely stepped into the shoes of the shipper. And since the shipper has a direct cause of action against the carrier on account of the damage of the cargo, no valid reason is seen why such action cannot be asserted or availed of by the insurance company as a subrogee of the shipper. Nor can the carrier set up as a defense any defect in the insurance policy not only because it is not a privy to it but also because it cannot avoid its liability to the shipper under the contract of carriage which binds it to pay any loss that may be caused to the cargo involved therein. Thus, we find fitting the following comments of the Court of Appeals:

"It was not imperative and necessary for the trial court to pass upon the question of whether or not the disputed abaca cargo was covered by Marine Open Cargo Policy No. MK-134 issued by appellee. Appellant was neither a party nor privy to this insurance contract, and therefore cannot avail itself of any defect in the policy which may constitute a valid reason for appellee, as the insurer, to reject the claim of Macleod, as the insured. Anyway whatever defect the policy contained, if any, is deemed to have been waived by the subsequent payment of Macleod's claim by appellee. Besides, appellant is herein sued in its capacity as a common carrier, and appellee is suing as the assignee of the shipper pursuant to Exhibit M. Since, as above demonstrated, appellant is liable to Macleod and Company of the Philippines for the loss of or damage to the 1,162 bales of hemp after these were received in good order and condition by the patron of appellant's LCT No. 1025, it necessarily follows that appellant is likewise liable to appellee who, as assignee of Macleod, merely stepped into the shoes of and substituted the latter in demanding from appellant the payment for the loss and damage aforesaid."

4. It should be recalled in connection with this issue that during the trial of this case the carrier asked the lower court to order the production of the books of accounts of the Odell Plantation containing the charges it made for the loss of the damaged hemp for verification of its accountants, but later it desisted therefrom on the claim that it finds their production no longer necessary. This desistance notwithstanding, the shipper however presented other documents to prove the damage it suffered in connection with the cargo and on the strength thereof the court a quo ordered the carrier to pay the sum of P60,421.02. And having the Court of Appeals affirmed this award upon the theory that the desistance of the carrier from producing the books of accounts of Odell Plantation implies an admission of the correctness of the statements of accounts contained therein, petitioner now contends that the Court of Appeals erred in basing the affirmance of the award on such erroneous interpretation.

There is reason to believe that the act of petitioner in waiving its right to have the books of accounts of Odell Plantation presented in Court is tantamount to an admission that the statements contained therein are correct and their verification not necessary because its main defense here, as well as below, was that it is not liable for the loss because there was no contract of carriage between it and the shipper and the loss caused, if any, was due to a fortuitous event. Hence, under the carrier's theory, the correctness of the account representing the loss was not so

material as would necessitate the presentation of the books in question. At any rate, even if the books of accounts were not produced, the correctness of the accounts cannot now be disputed for the same is supported by the original documents on which the entries in said books were based which were presented by the shipper as part of its evidence. And according to the Court of Appeals, these documents alone sufficiently establish the award of P60,421.02 made in favor of respondent.

5. Finally, with regard to the question concerning the personality of the insurance company to maintain this action, we find the same of no importance, for the attorney himself of the carrier admitted in open court that it is a foreign corporation doing business in the Philippines with a personality to file the present action.

Wherefore, the decision appealed from is affirmed, with costs against petitioner.

Bengzon, C.J., Concepcion, Reyes, J.B.L., Barrera, Paredes, Dizon, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.