

**JUAN YSMAEL & CO., INC., PLAINTIFF AND APPELLEE, VS.
GABINO BARRETTO & CO., LTD., ET AL., DEFENDANTS. ANDRES
H. LIMGENGCO AND VICENTE JAVIER, APPELLANTS.**

G.R. No. 28028. November 25, 1927

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STATEMENT

In this action plaintiff, a domestic corporation, seeks to recover from the defendants P9,940.95 the .alleged value of four cases of merchandise which it delivered to the steamship Andres on October 25, 1922, at Manila to be shipped to Surigao, but which were never delivered to Salomon Sharuff, the consignee, or returned to the plaintiff. The original complaint was amended to include Gabino Barretto and P. E. Soon as members of the limited partnership of Gabino Barretto & Company, Limited.

In their amended answers defendants make a specific denial of all of the material allegations of the complaint, and as a special defense allege that the four cases of merchandise in question were never delivered to them, and that under the provisions of paragraph 7 of the printed conditions appearing on the back of the bill of lading, plaintiff's right of action is barred for the reason that it was not brought within sixty days from the time the cause of action accrued. The defendant Soon did not answer the complaint, and the defendants further alleged:

"I. That under and by virtue of provision 12 of the bill of lading referred to in plaintiff's amended complaint, the defendants are not liable in excess of three hundred pesos (P300) for any package of silk unless the value and contents of such packages are correctly declared in the bill of lading at the time of shipment, etc."

The evidence was taken upon such issues, and the lower court rendered judgment for the plaintiff for the full amount of its claim, from which the defendants Andres H. Limgengco and Vicente Javier appeal and assign the following errors:

"I. The lower court erred in finding that one hundred sixty-four cases of goods were delivered to and loaded on the steamship Andres.

"II. The lower court erred in holding that appellee was not bound by the terms of the bills of lading covering the shipments.

"III. The trial court erred in failing to take into consideration appellants' special defense based on clause 12 of the bills of lading.

"IV. The lower court erred in rendering judgment against appellants in the sum of P9,940.95."

JOHNS, J.:

The only question involved in the first assignment of error is one of fact upon which in its decision the trial court said:

"With regard to the first question, plaintiff's testimony, together with the manifest (Exhibit D) signed by 'G. Barretto, Agents,' for Andres Heras Limgengco covering the shipment of the merchandise in question, wherein 165 cases of merchandise appear as belonging to the plaintiff corporation and the bills of lading, Exhibits I, J

and K, signed by the second officer, Claro Galleros, for the shipment of the 165 cases, and Exhibit H, which is a triplicate copy of the bill of lading No. 62, on which the first officer of the steamer Andres, Francisco Masingsong, made a note that among the merchandise discharged in Surigao were the four cases in question, clearly shows that the defendants received from the plaintiff corporation 164 cases of merchandise, and delivered at Surigao only 160 cases of such merchandise, and that defendants failed to deliver the said four cases in Surigao when plaintiff's representative took delivery of the cargo at that port, and that the original figure '1' and the word 'bulto' appearing on the back of Exhibit 1 were changed by Galleros to read '5' and 'bultos.' The said Galleros admitted as a witness that he had Exhibit 1 in his possession from the time the steamer sailed from Manila until the cargo was recounted in Surigao in the presence of the first officer, Francisco Masingsong, Salomon Sharuff, the bodeguero and himself (Galleros).

"The testimony of Claro Galleros to the effect that, according to the tallies made by him on the back of Exhibit 1 during the course of loading, only 160 cases were loaded on board the steamer Andres stands uncorroborated, and it is not supported by the tallies themselves, as these tallies give a total of 161 cases. Mr. Galleros testified that he had shown the annotation on the back of Exhibit 1 reading '5 bultos en duda de menos' to Salomon Sharuff, and that Salomon Sharuff gave his conformity to the shortage, and that on this occasion, among others, were present the first officer, Francisco Masingsong, and the bodeguero in Surigao. Upon this point, besides the testimony of Salomon Sharuff, who denied emphatically the assertion of Galleros just mentioned, we have the note made and signed by the first officer on the face of Exhibit H that all the merchandise therein was discharged in Surigao. The said Masingsong certainly would not have made such annotation after the delivery in Surigao, if Salomon Sharuff had in fact agreed to the shortage as testified by Galleros, especially when we consider that the four cases, the value of which is claimed by plaintiff, were included in said Exhibit H, and the fact that said Claro Galleros, in an affidavit signed by him before the Notary Public, Fernando Viola with regard to the lost of the four cases, did not mention the conformity of Salomon Sharuff to the said annotation of '5 bultos en duda de menos.' The defendants, without showing any legal reason therefor, did not present as witnesses the first officer, Francisco Masingsong, and the helmsman of the steamer Andres and the bodeguero in Surigao to corroborate the testimony of Glaro Galleros."

There is ample evidence to support that finding. In fact it is sustained by a preponderance of the evidence.

The second assignment of error upon which appellants rely is founded upon paragraph 7 of the bill of lading, which is as follows:

"All claims for shortage or damage must be made at the time of delivery to consignee or his agent, if the packages or containers show exterior signs of damage; otherwise to be made in writing to the carrier within twenty-four hours from the time of delivery. Claims for nondelivery or shipment must be presented in writing to the carrier within thirty days from the date of accrual. Suits based upon claims arising from shortage, damage, or nondelivery of shipment shall be instituted within sixty days from date of accrual of the right of action. Failure to make claims or to institute judicial proceedings as herein provided shall constitute a waiver of the claim or right of action."

The goods in question were shipped from Manila on October 25, 1922, to be delivered to Salomon Sharuff in Surigao. Plaintiff's original complaint was filed on April 17, 1923, or a little less than six months after the shipment was made.

Appellants cite and rely upon section 505 C, Corpus Juris, vol. 10, pp. 343-344, which is as follows:

"Contractual Limitations As To Time For Bringing Suit.—1. In General.—In the absence of any express statutory prohibition, according to the great weight of authority, it is competent for the parties to a contract of shipment to agree on a limitation of time shorter than the statutory limitation, within which action for breach of the contract shall be brought, and such a limitation will be enforced if reasonable, although there is, some authority to the contrary. Nevertheless to be effective such limitation must be reasonable; and it has been said that the

only limitations as to the validity of such contracts are that they must be reasonable, and that there must be prompt action on the part of the carrier in denying its liability, to the end that the shipper may be duly apprised of the fact that suit will be necessary. Stipulations of this character are not opposed to public policy, and do not operate as a restriction on the common-law liability of the carrier."

Also Ruling Case Law, volume 4, pp. 798-799, which reads:

"256. Stipulations Limiting Time for Bringing Suit.—Similar in character to the stipulations just considered prescribing a certain time within which notice of loss must be given, are the provisions frequently met with in bills of lading which require that any action to recover for loss or damage to the article shipped should be begun within a specified period. The parties may, if they see fit, fix by agreement a shorter time for the bringing of suit on the contract than that provided by the statute of limitations, and if the period therein limited is reasonable, suit must be brought within that time or the shipper's right of action will be barred. Such a provision is prohibited by no rule of law nor by any consideration of public policy. Nor is it at all affected by the existence within the jurisdiction of a statutory or constitutional prohibition against carriers limiting or restricting their common law liability, since it is held that such a stipulation does not in any way defeat the complete vestiture of the right to recover, but merely requires the assertion of that right by action at an earlier period than would be necessary to defeat it through the operation of the ordinary statute of limitations. But the limitation must be reasonable, and if the period of time specified is such that under the facts of the particular case the shipper could not with reasonable diligence be enabled to bring suit before it expired, the attempted limitation is void. Thus, a provision that suit must be brought within thirty days after the loss or damage occurred has been held unreasonable where it appeared that the transit might reasonably consume the whole of that time. A period of forty days has on the other hand been held to be a reasonable limitation."

Upon that question the trial court said:

"Assuming, however, that the above quoted conditions came to the knowledge of the plaintiff, the Supreme Court of the Philippine Islands, has held that such stipulations in the bill of lading are not reasonable, and therefore, do not bar an action."

And it also said:

"Granting, without deciding, that said conditions appearing on the back of the originals might have legal effect, the court is of the opinion that in view of the fact that said conditions are not printed on the triplicate copies which were delivered to the plaintiff, such conditions are not binding upon the plaintiff."

It appears that the plaintiff made its claim of loss within seven days after receipt of information that 160 cases only were delivered. Its second claim was made on December 29, 1922, in which it said that, if the claim was not paid before January 3, 1923, it would be placed in the hands of attorneys for collection. On January 3, 1923, Gabino Barretto & Company advised the plaintiff that it would not pay the claim, and on April seventeenth plaintiff filed its complaint.

In the case of *Aguinaldo vs. Daza*, (G. R. No. 25961),^[1] in which the printed conditions on the bill of lading were identical with those in the instant case, the action was not commenced for more than a year after the delivery of the goods by the plaintiff and the receipt of the bill of lading, and it was there held that:

"We are of the opinion that, having regard to the situation involved in this shipment, and the slowness of communication between Manila and Catbalogan, the contractual limitation stated in this bill of lading with respect to the time for presentation of the written claim was insufficient. The same considerations are necessarily decisive with respect to the time required for the institution of judicial action. It results that the stipulations relied upon by the defendant-appellee constitute no obstacle to the maintenance of the present action."

All things considered, we are clearly of the opinion that the action was brought within a "reasonable time" as those words are specified and defined in the authorities cited. It is true that both the plaintiff and the defendants are residents of the City of Manila, but it is also true that Surigao where the goods in question were to be delivered is one of the most distant places from Manila in the Philippine Islands. In the very nature of things, plaintiff would not want to commence its action until such time as it had made a full and careful investigation of all of the material facts and even the law of the case, so as to determine whether or not the defendants were liable for its loss.

In its third assignment of error, appellants rely on clause 12 of the bill of lading, which is as follows:

"It is expressly understood that carrier shall not be liable for loss or damage from any cause or for any reason to an amount exceeding three hundred pesos (P300) Philippine currency for any single package of silk or other valuable cargo, nor for an amount exceeding one hundred pesos (P100) Philippine currency for any single package of other cargo, unless the value and contents of such packages are correctly declared in this bill of lading at the time of shipment and freight paid in accord with the actual measurement or weight of the cargo shipped."

The condition is printed on the back of the bill of lading.

In disposing of that question, the lower court points out that the conditions in question, "are not printed on the triplicate copies which were delivered to the plaintiff," and that by reason thereof they "are not binding upon the plaintiff." The clause in question provides that the carrier shall not be liable for loss or damage from any cause or for any reason to an amount in excess of P300 for any single package of silk or other valuable cargo."

The ship in question was a common carrier and, as such, must have been operated as a public utility. It is a matter of common knowledge that large quantities of silk are imported in the Philippine Islands, and that after being imported they are sold by the merchants in Manila and other large seaports, and then shipped to different points and places in the Islands. Hence, there is nothing unusual about the shipment of silk. In truth and in fact, it is a matter of usual and ordinary business. There was no fraud or concealment in the shipment in question. Clause 12 above quoted places a limit of P300 "for any single package of silk." The evidence shows that 164 "cases" were shipped, and that the value of each case was very near P2,500. In this situation, the limit of defendants' liability for each case of silk "for loss or damage from any cause or for any reason" would put it in the power of the defendants to have taken the whole cargo of 164 cases of silk at a valuation of P300 for each case, or less than one-eighth of its actual value. If that rule of law should be sustained, no silk would ever be shipped from one island to another in the Philippines. Such a limitation of value is unconscionable and void as against public policy.

Corpus Juris, volume 10, p. 154, says:

"PAR. 194. 6. Reasonableness of Limitation.—The validity of stipulations limiting the carrier's liability is to be determined by their reasonableness and their conformity to the sound public policy, in accordance with which the obligations of the carrier to the public are settled. It cannot lawfully stipulate for exemption from liability, unless such exemption is just and reasonable, and unless the contract is freely and fairly made. No contractual limitation is reasonable which is subversive of public policy.

"PAR. 195. 7. What Limitations of Liability Permissible.—a. Negligence—(1) Rule in America—(a) In Absence of Organic or Statutory Provisions Regulating Subject—aa. Majority Rule.—In the absence of statute, it is settled by the weight of authority in the United States, that whatever limitations against its common-law liability are permissible to a carrier, it cannot limit its liability for injury to or loss of goods shipped, where such injury or loss is caused by its own negligence. This is the common-law doctrine and it makes no difference that there is no statutory prohibition against contracts of this character.

"PAR. 196. bb. Considerations on Which Rule Based.—The rule, it is said, rests on considerations of public policy. The undertaking is to carry the goods, and to relieve the shipper from all liability for loss or damage arising from negligence in performing its contract is to ignore the contract itself. The natural effect of a limitation of liability against negligence is to induce want of care on the part of the carrier in the performance of its duty. The shipper and the common carrier are not on equal terms; the shipper must send his freight by the common carrier, or not at all; he is therefore entirely at the mercy of the carrier, unless protected by the higher power of the law against being forced into contracts limiting the carrier's liability. Such contracts are wanting in the element of voluntary assent.

"PAR. 197. cc. Application and Extent of Rule—(aa) Negligence of Servants.—The rule prohibiting limitation of liability for negligence is often stated as a prohibition of any contract relieving the carrier from loss or damage caused by its own negligence or misfeasance, or that of its servants; and it has been specifically decided in many cases that no contract limitation will relieve the carrier from responsibility for the negligence, unskillfulness, or carelessness of its employees."

Based upon the findings of fact of the trial court which are sustained by the evidence, the plaintiff delivered to the defendants 164 cases of silk consigned and to be delivered by the defendants to Salomon Sharuff in Surigao, Four of such cases were never delivered, and the evidence shows that their value is the amount alleged in the complaint.

There is no merit in the appeal. The judgment of the lower court is affirmed, with costs.

Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, and Villa-Real, JJ., concur.

[1] Promulgated March 1, 1927, not reported.

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