

AMANDO MIRASOL, PLAINTIFF AND APPELLANT, VS. THE ROBERT DOLLAR CO., DEFENDANT AND APPELLANT.*G.R. No. 29721. March 27, 1929*

Ponente: JOHNS, J.

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Plaintiff's contention that he is entitled to P700 for his Encyclopedia Britannica is not tenable. The evidence shows that with the P400 which the court allowed, he could buy a new set which would contain all of the material and subject matter of the one which he lost. Plaintiff's third assignment of error is well taken, as under all of the authorities, he is entitled to legal interest from the date of his judgment rendered in the lower court and not the date when it becomes final. The lower court found that plaintiff's damage was P2,080, and that finding is sustained by the evidence. There was a total loss of one case and a partial loss of the other, and in the very nature of things, plaintiff could not prove his loss in any other way or manner than he did prove it, and the trial court who heard him testify must have been convinced of the truth of his testimony.

There is no claim or pretense that the plaintiff signed the bill of lading or that he knew of its contents at the time it was issued. In that situation he was not legally bound by the clause which purports to limit defendant's liability. That question was squarely met and decided by this court in *bane in Juan Ysmael & Co., vs. Gabino Barretto & Co.* (51 Phil., 90; see numerous authorities there cited).

Among such authorities is the case of *The Kensington* decided by the Supreme Court of the United States January 6, 1902 (46 Law. ed., 190), in which the opinion was written by the late Chief Justice White, the syllabus of which is as follows:

"1. Restrictions of the liability of a steamship company for its own negligence or failure of duty toward a passenger, being against the public policy enforced by the courts of the United States, will not be upheld, though the ticket was issued and accepted in a foreign country and contained a condition making it subject to the law thereof, which sustain such stipulations.

"2. A stipulation in a steamship passenger's ticket, which compels him to value his baggage, at a certain sum, far less than it is worth, or, in order to have a higher value put upon it, to subject it to the provisions of the Harter Act, by which the carrier would be exempted from all liability therefor from errors in navigation or management of the vessel or other negligence, is unreasonable and in conflict with public policy.

"3. An arbitrary limitation of 250 francs for the baggage of any steamship passenger, unaccompanied by any right to increase the amount by adequate and reasonable proportional payment, is void as against public policy."

Both the facts upon which it is based and the legal principles involved are square in point in this case.

The defendant having received the two boxes in good condition, its legal duty was to deliver them to the plaintiff in the same condition in which it received them. From the time of their delivery to the defendant in New York until they were delivered to the plaintiff in Manila, the boxes were under the control and supervision of the

defendant and beyond the control of the plaintiff. The defendant having admitted that the boxes were damaged while in transit and in its possession, the burden of proof then shifted, and it devolved upon the defendant to both allege and prove that the damage was caused by reason of some fact which exempted it from liability. As to how the boxes were damaged, when or where, was a matter peculiarly and exclusively within the knowledge of the defendant, and in the very nature of things could not be in the knowledge of the plaintiff. To require the plaintiff to prove as to when and how the damage was caused would force him to call and rely upon the employees of the defendant's ship, which in legal effect would be to say that he could not recover any damage for any reason. That is not the law.

Shippers who are forced to ship goods on an ocean liner or any other ship have some legal rights, and when goods are delivered on board ship in good order and condition, and the shipowner delivers them to the shipper in bad order and condition, it then devolves upon the shipowner to both allege and prove that the goods were damaged by reason of some fact which legally exempts him from liability; otherwise, the shipper would be left without any redress, no matter what may have caused the damage.

The lower court in its opinion says:

"The defendant has not even attempted to prove that the two cases were wet with sea water by fortuitous event, force majeure or nature and defect of the things themselves. Consequently, it must be presumed that it was by causes entirely distinct and in no manner imputable to the plaintiff, and of which the steamer President Garfield or any of its crew could not have been entirely unaware."

And the evidence for the defendant shows that the damage was largely caused by "sea water" from which it contends that it is exempt under the provisions of its bill of lading and the provisions of article 361 of the Code of Commerce, which is as follows:

"Merchandise shall be transported at the risk and venture of the shipper, if the contrary was not expressly stipulated.

"Therefore, all damages and impairment suffered by the goods during the transportation, by reason of accident, force majeure, or by virtue of the nature or defect of the articles, shall be for the account and risk of the shipper.

"The proof of these accidents is incumbent on the carrier."

In the final analysis, the cases were received by the defendant in New York in good order and condition, and when they arrived in Manila, they were in bad condition, and one was a total loss. The fact that the cases were damaged by "sea water," standing alone and within itself, is not evidence that they were damaged by force majeure or for a cause beyond the defendant's control. The words "perils of the sea," as stated in defendant's brief apply to "all kinds of marine casualties, such as shipwreck, foundering, stranding," and among other things, it is said: "Tempest, rocks, shoals, icebergs and other obstacles are within the expression," and "where the peril is the proximate cause of the loss, the shipowner is excused." "Something fortuitous and out of the ordinary course is involved in both words 'peril' or 'accident.'"

Defendant also cites and relies on the case of *Government of the Philippine Islands vs. Ynchausti & Company* (40 Phil., 219), but it appears from a reading of that case that the facts are very different and, hence, it is not in point. In the instant case, there is no claim or pretense that the two cases were not in good order when received on board the ship, and it is admitted that they were in bad order on their arrival at Manila. Hence, they must have been damaged in transit. In the very nature of things, if they were damaged by reason of a tempest, rocks, icebergs, foundering, stranding or the perils of the sea, that would be a matter exclusively within the knowledge of the officers of defendant's ship, and in the very nature of things would not be within plaintiff's knowledge, and upon

all of such questions, there is a failure of proof.

The judgment of the lower court will be modified, so as to give the plaintiff legal interest on the amount of his judgment from the date of its rendition in the lower court, and in all other respects affirmed, with costs. So ordered.

Johnson, Malcolm, Ostrand, Romualdez, and Villa-Real, JJ., concur.

DISSENTING

STREET, J.:

I gave a hesitating adherence to the decision of this case in division, and upon further reflection, I am now constrained to record my belief that the decision is in part erroneous. I agree with the court that the defendant is liable to the plaintiff, but I think that its liability is limited, under clause 13, printed on the back of the bill of lading, to the amount of 250 dollars for each of the two boxes of books comprising this consignment. While the law does not permit a carrier gratuitously to exempt itself from liability for the negligence of its servants, it can effectually do so for a valuable consideration; and where freight rates are adjusted upon the basis of a reasonable limited value per package, where a higher value is not declared by the shipper, the limitation as to the value is binding. This court in two well considered decisions has heretofore upheld a limitation of exactly the character of that indicated in clause 13 (H. E. Heacock Co. vs. Macondray & Co., 42 Phil., 205; Freixas & Co, vs. Pacific Mail Steamship Co., 42 Phil., 198); and I am unable to see any sufficient reason for ignoring those decisions.

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