

KUI PAI & CO., PLAINTIFF AND APPELLANT, VS. DOLLAR STEAMSHIP LINE, DEFENDANT AND APPELLEE.

G.R. No. 30019. March 02, 1929

Ponente: JOHNS, J.

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JOHNS, J.:

In the very nature of things, the American Consul at Hongkong could not and did not personally examine the specific contents of the six boxes or cases alleged to have been shipped from Hongkong by Mee Hing Chan, and by the same token and for the same reason, the defendant did not make any examination or have any personal knowledge of the contents of the six boxes of which it took delivery in Hongkong. Hence, the real question here is whether or not the defendant delivered to the plaintiff in Manila the six identical boxes or cases which were delivered on board its ship in Hongkong.

Counsel for the appellant cites and relies upon the following legal propositions:

"The liability of the carrier shall begin from the moment he receives the merchandise, in person or through a person entrusted thereto in the place indicated for their reception. (Art. 355, Code of Commerce.)

"* * * the carrier shall be obliged to deliver the goods transported in the same condition in which, according to the bill of lading, they were at the time of their receipt, without any detriment or impairment, and should he not do so, he shall be obliged to pay the value of the goods not delivered at the point where they should have been and at the time the delivery should have taken place.

* * * (Art. 363, Code of Commerce).

"* * * Consequently the law, proceeding on the moral principle of prudent prevention, cut off from the carrier all temptation of pecuniary gain and made him absolutely liable with the exception of causes for which he could not be supposed to be responsible—namely the act of God or the public enemy. (4 R. C. L., 700.)

"The relation of carrier endures from the shipment of the goods until their arrival at their destination, and continues after the arrival of the goods at their destination until they are ready to be delivered- at the usual place of delivery, and the owner or consignee has a reasonable opportunity, during the hours when such goods are usually delivered there, of examining them sufficiently to judge from their outward appearance of their identity, and whether they are in proper condition, and to take them away. (4 R. C. L., 548.)

"Art. 1602, Civil Code. Carriers are also liable for the loss of and damage to the things which they receive, unless they prove that the loss or damage arose from a fortuitous event or force majeure."

That is a correct statement of defendant's liability as a carrier. But assuming that to be the law, A the question here is one of fact as to what the defendant did receive in Hongkong, and what it should deliver to the plaintiff in Manila.

The trial court who saw and heard the witnesses testify in a well written opinion found all of the material facts for the defendant. It is conceded that six boxes or cases consigned to the plaintiff were delivered to the defendant in

Hongkong to be shipped to Manila. It is also conceded that at the time of delivery, the boxes were measured as to their width, length and depth, and that the boxes which the defendant delivered and tendered to the plaintiff are each exact in their respective measurements with those which the defendant received on board of its ship in Hongkong, and the trial court found as a fact that the six boxes were originally marked "K. P.," and that the marks on two of them have been changed, and upon that point, said:

"The evidence is also clear and convincing that these two identical cases KP 3 and 4 were delivered from hold No. 9 of the ship on to pier No. 7 at Manila. These two cases were offered in evidence by defendants and are marked Exhibits 1 and 2, respectively. On each of said exhibits the marks appear on three sides of each case; thus there are six separate and distinct marks on these two exhibits. The marks are in green ink or paint. Without the aid of a magnifying glass but by ocular inspection, it is perfectly clear and indisputable that the six letters K have been changed or altered to R and the letters P to B and that the numeral 1 has been placed in front of the numerals 3 and 4 so as to give them the appearance of 13 and 14, but it is to be observed that the numeral 1 is omitted from one of the three sides of each of said Exhibits 1 and 2. The changes or alterations in the lettering and the addition of the numeral 1 are very crude, to say the least. The ink or paint used in making the changes is not of the same shade of green as the original letters and numerals. No one can possibly be deceived by the changes or alterations and additions. The court is convinced that the original markings on these two Exhibits 1 and 2, formerly read KP, 3 and 4 and that they were changed, altered and added to so as to now read RB 13 and 14, except, as previously observed, that the numeral 1 is omitted on one side of each of said cases."

It also found that such Exhibits 1 and 2 were opened in the presence of the court, and that their contents were "found to be Chinese cigarette papers of very little value." The evidence is also conclusive that, including the two boxes in question, the number of cases or articles as shown by the ship's invoice is exact and correct, and that if two boxes are not included, the cargo of the ship would be short two boxes. It is very apparent, as the trial court says, that the marks on the two boxes in question were changed, and it is also significant that after a diligent search, no one has ever appeared or claimed to be the owner of those two boxes.

It is a matter of common knowledge that there is no port of call between Hongkong and Manila, and it appears from the records, which are confirmed by the testimony of the checker at the time the ship was unloaded and that of the Manila Terminal Company, that the cargo of the ship exactly tallies with the bills of lading which were issued by the defendant, as to the number of pieces, boxes or cases in the cargo. That is to say, that the number of pieces of cargo on board the ship, which were to be delivered at Manila, including the two boxes in question, correspond exactly with the number of pieces or cargo found on the ship at the time it was unloaded in Manila. The evidence for the plaintiff shows that the six boxes were placed in hold No. 9 of the ship in Hongkong, and that upon its arrival in Manila, six boxes of the same cubical contents were taken out of that same hold. Hence, it must follow that, in the very nature of things, the contents of two of those boxes could not be taken out and replaced with Chinese cigarette papers after the defendant's ship left Hongkong and while in transit to Manila, and that the short change artist must have appeared on the scene in Hongkong. Much more could be said, but suffice it to say that the findings of the lower court are well sustained by the evidence, and that we are clearly of the opinion that the six cases placed on board the defendant's ship in Hongkong, consigned to plaintiff, were actually tendered and delivered to the plaintiff in Manila in the same condition as when received, and with the identical contents which they had in them when placed in Hold No. 9 aboard the defendant's ship in Hongkong.

The judgment of the lower court is affirmed, with costs. So ordered.

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

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