

CORDOBA Y CONDE, PLAINTIFFS AND APPELLEES, VS. CASTLE BROTHERS, WOLF & SONS, AND SMITH, BELL & COMPANY, DEFENDANTS AND APPELLANTS.*G.R. No. 5531. January 19, 1911*

Ponente: TRENT, J.

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On the 7th day of March, 1902, plaintiffs took delivery from the custom-house in the city of Manila a case of shoes containing eighteen pairs. On the 24th day of December, 1902, plaintiffs filed in the Court of First Instance a complaint in which the firms of Castle Brothers, Wolf & Sons, and Smith, Bell & Co. were made defendants, and in which the plaintiffs alleged that a firm in New York City had shipped them a case containing sixty-nine pairs of shoes; that this case of shoes was delivered in the city of San Francisco, California, in good order, to a steamship line of which Castle Brothers, Wolf & Sons were the Manila agents, and was transshipped in Hongkong in bad order and with a weight of 117 kilos to the steamer Loonsang, of which Smith, Bell & Co. were the Manila agents; that the Loonsang arrived in Manila on December 26, 1901, and delivered the case of shoes, weighing only 70 kilos; that the case was dispatched by the custom-house on the 7th of March, 1902, lacking fifty-one pairs of shoes; that the said fifty-one pairs of shoes were worth \$368.73 United States currency. To this complaint both of the defendants demurred and the demurrer was sustained. The plaintiffs subsequently thereto, and on the 30th day of September, 1903, filed an amended complaint in which Smith, Bell & Co., as consignee of the steamer Loonsang, of the Indo-China Navigation Company, was made the sole defendant. The defendant demurred to this amended complaint and the demurrer was sustained. Thereupon, and on the 3d day of December, 1903, plaintiffs filed a second amended complaint, making this appellant the sole defendant, the title of the case being "Cordoba y Conde, plaintiffs, vs. the Indo-China Navigation Company, whose local agent is Smith, Bell & Co., defendant."

The allegations in this amended complaint are essentially the same as those of the original and first amended complaints. On the 3d day of December, 1903, plaintiffs' counsel mailed a copy of this second amended complaint to Pillsbury & Sutro, who had appeared as attorneys for Castle Brothers, Wolf & Sons and Smith, Bell & Co. in the earlier proceedings. The court was at once notified that these attorneys were not retained by the Indo-China Navigation Company and had no authority to accept service upon behalf of the said company.

No further proceedings were had in the cause until the 10th day of March, 1908, when a summons was issued, directed to the Indo-China Navigation Company, which summons was served upon the appellant on the following day.

Appellant duly appeared by counsel, and on the 1st day of April, 1908, filed its answer, consisting of a general denial and a plea of prescription.

After a hearing, at which certain evidence was presented by plaintiffs and none by defendants, judgment was rendered in accordance with the prayer of the complaint. To this judgment the defendant excepted, and after the

appropriate motion for a new trial presented a bill of exceptions and instituted this appeal.

We think this case must be reversed upon the facts. It was proven that the case of shoes when delivered by the customs authorities to the plaintiffs contained only eighteen pairs. Plaintiffs alleged that the case when shipped from New York contained sixty-nine pairs. The only evidence offered to prove that the case did, in fact, contain sixty- nine pairs of shoes when shipped is plaintiffs' Exhibit C, which is a mere ex parte affidavit, and which was not competent evidence against the defendant. The defendant had no opportunity to cross-examine the maker of this affidavit upon the question of the number of pairs of shoes contained in this case.

The plaintiffs further alleged that the case of shoes was delivered to the steamer Loonsang in Hongkong weighing 117 kilos. No competent evidence was presented in support of this allegation. The only evidence presented on this point was that of Loewenstein, whose information was confessedly based upon hearsay, and a letter signed by Loewenstein which was also confessedly based upon hearsay.

The only evidence in support of the allegation that the case of shoes weighed but 47 kilos when it was delivered to the customs authorities by the steamer Loonsang and that it then contained but eighteen pairs, and that fifty-one pairs had been stolen while the case was in transit from; Hongkong to Manila, is to be found in Exhibits A and E-E, which are certificates of customs officers. Our attention has not been called to any provision of law making such certificates competent evidence of the facts which they recite. Our attention has been called to the apparent alteration of these two certificates. Exhibit E-E contains the phrase "caused by robbery in transit." The words "in transit" have obviously been inserted by some hand other than that which wrote the rest of the certificate. In Exhibit A appears the phrase "evidently caused by robbery in transit." The words "evidently" and "in transit" have been inserted by some person other than the one who prepared this exhibit. This evidence is not sufficient to support the conclusions of the trial court.

The judgment is, therefore, reversed, without any special ruling as to costs. So ordered.

Arellano, C. J., Mapa, Carson, and Moreland, JJ., concur.

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