

N. T. HASHIM & CO., PLAINTIFF AND APPELLANT, VS. ROCHA & CO., DEFENDANT AND APPELLEE.*G.R. No. 6195. January 17, 1911*

Ponente: MORELAND, J.

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There is presented in this appeal simply a question of fact. A careful study of the evidence presented on the trial leads us to the conclusion that the judgment should be reversed. We are of the opinion that it is against the great preponderance of the evidence. That the lorch containing the potatoes, the value of which is in controversy, was left for two days in the hot sun, tightly closed and without ventilation, was due entirely to the wrongful acts and to the gross carelessness of the employees of the defendant company, is conclusively established by the evidence. The captain of the ship from which the potatoes were being discharged, the first officer of the same, and the customs inspector who was stationed on board thereof during the discharge of its cargo, and other witnesses, demonstrate this fact beyond a reasonable doubt. That the potatoes, when discharged from the vessel into the lorch, were in good condition, is demonstrated with equal conclusiveness. This is shown not only by the testimony of the witnesses above mentioned, but by all the circumstances of the case. In addition to the potatoes discharged into the lorch, there had been discharged into numerous cascocs several thousand crates of potatoes from the same ship and from the same hold at the same time. It has been shown by uncontradicted proof that all of the potatoes, except those found in the lorch, were in good condition at the time of their discharge. Only those in the lorch, after two days of exposure to the heat of the sun, in tightly closed compartments, without ventilation, were found to be rotted beyond use or value. From the evidence we are satisfied that the potatoes in question when discharged from the ship into the lorch were in good condition. That such was the case is demonstrated from the evidence beyond cavil or question. The only witness who seriously questions that fact is the witness Villanueva, who was an employee of the plaintiff on board the vessel at the time the potatoes were discharged into the lorch, and was shortly afterwards discharged by the plaintiff. He testified that when so discharged they were so badly rotted as to be without value. Yet we find that this same witness, when he made a written report to the plaintiff, his employer, as to the condition of the potatoes when discharged, therein stated concerning the condition of those potatoes that out of the 1,085 crates so discharged into the lorch only 54 crates were in bad condition and a few were damp. The condition of the potatoes thus described by the written report which he at the time made to his employer describes a condition usual with potatoes at that time of the year and about the same as that of the potatoes discharged into the cascocs.

It has been shown by the evidence that the worthless and rotted potatoes of this cargo constituted about 5 per cent of the whole. This seems from the evidence to be the usual loss sustained in the transportation of potatoes at that season of the year. Gross negligence of the defendant in the handling and care of these potatoes being conclusively demonstrated by the proofs, he should pay to the plaintiff the value of those lost by such negligence. The value of the potatoes proved upon the trial was P3.75 a crate, amounting in all to P4,068.75. Deducting 5 per cent of this sum for the general loss on the whole cargo, there remains a balance of P3,865.31.

The judgment is reversed and a judgment is hereby given against the defendant and in favor of the plaintiff for the sum of P3,865.31, with costs of this appeal. So ordered.

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

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