

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLANT, VS. INCHAUSTI & CO., DEFENDANT AND APPELLEE.

G.R. No. 6957. February 14, 1913

Ponente: TRENT, J.

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TRENT, J.:

An appeal by the plaintiff from an order which both parties treat as final, sustaining the defendant's demurrer.

The appellant insists (1) that articles 366 and 952 of the Code of Commerce have been repealed by section 43 of the Code of Civil Procedure; and (2) that if articles 366 and 952 of the Code of Commerce have not been so repealed, they have been repealed by section 67 of Act No. 1792.

According to the complaint, the plaintiff, on June 3, 1909, placed aboard the defendant's steamer Venus 500 barrels of cement consigned to the district engineer of the Province of Albay, to be shipped to Tabaco, Albay. The cement, when placed aboard the steamer in Manila Bay, was in good order and condition. On arrival of the steamer at the port of Tabaco, the defendant, through its agents, unloaded the 500 barrels of cement and received a receipt therefor from the consignee stating that the property had, been received in good condition. Subsequently thereto (the exact time not alleged in the complaint) the consignee discovered that 42 barrels had been broken open and about half of the cement in each barrel lost, and it is alleged that this loss was due to the careless handling on the part of the defendant's agents. There is no allegation in the complaint showing that either the plaintiff or the consignee or anyone else representing them made any complaint or demand on the defendant company at any time prior to the presentation of this complaint, which was filed on February 18, 1911, to be reimbursed for the loss of the cement.

Articles 866 and 952 of the Code of Commerce read:

"Art. 366. Within the twenty-four hours following, the receipt of the merchandise a claim may be brought against the carrier on account of damage or average found therein on opening the packages, provided that the indications of the damage or average giving rise to the claim cannot be ascertained from the exterior of said packages, in which case said claim would only be admitted on the receipt of the packages.

"After the periods mentioned have elapsed, or after the transportation charges have been paid, no claim whatsoever shall be admitted against the carrier with regard to the condition in which the goods transported were delivered.

"Art. 952. The following (actions) shall prescribe after one year:

* * * * *

"2. The actions relating to the delivery of the cargo in maritime or land transportation or to the indemnity for delays and damages suffered by the goods transported, the period of the prescription to be counted from the day of the delivery of the cargo at the place of its destination, or from the day on which it should have been delivered according to the conditions of its transportation.

"The actions for damages or defaults cannot be brought if at the time of the delivery of the respective shipments or within the twenty-four hours following, when damages which do not appear on the exterior of the packages received are in question, the proper protests or reservations should not have been made."

Section 67 of Act No. 1792 reads:

"When public funds or property are shipped from one place to another and the consignee whether an agent of the Government or otherwise shall accomplish the bill of lading or receipt therefor without notation thereon of a shortage in or damage to the public property covered by such bill of lading, such consignee shall be held for the full amount and value of such public property in default of competent evidence to the contrary satisfactory to the Auditor, a district auditor, or other committee appointed under the provisions of this Act: Provided, That evidence of the opening or tampering with any package of public property shall bind the carrier for any shortage or damage that may appear therein, and when notation is made upon the bill of lading or receipt of such evidence the burden of proof that the shortage or damage occurred after the shipment left the carrier's possession shall be upon such carrier."

Section 43 of the Code of Civil Procedure relates to the limitation or prescription of civil actions other than for the recovery of real property. Such actions must be brought within the periods therein set forth after the right of action accrues.

The first paragraph of clause No. 2 of article 952 of the Code of Commerce relates to the same matter as that covered by section 43 of Act No. 190, and may properly be said to have been repealed by said section 43. Article 366 and the last paragraph of clause No. 2 of article 952 of the Code of Commerce do not relate to the prescription or limitation of actions. They create conditions precedent to the accruing of the right of action against carriers for damages caused to merchandise, and have not been repealed by section 43.

"If the plaintiff's right of action depends upon a condition precedent, he must allege and prove the fulfillment of the condition or a legal excuse for its nonfulfillment. And if he omits such allegation his declaration, complaint, or petition will be bad on demurrer." (9 Cyc, 699, and cases cited.)

It is urged that section 67, *supra*, changes the rules of law applicable to the liability of carriers of merchandise belonging to the Government. A careful examination of this section will show that it has made no change whatever in the existing law except with respect to the liability of the consignee as an officer or agent of the Government. The section first appeared as section 23 of Act No. 215 under the heading of "Transportation of Property," the title of that Act being "An Act establishing, and regulating accountability for public property in the Philippine Archipelago." The Act as a whole relates solely to the liability of officers of the Government by reason of the possession of Government funds and other property. This Act, including the section in question, went through a series of amendments until the section was finally inserted in its present form in the Accounting Act as section 67, *supra*.

It is quite clear from a reading of this section (section 67 of Act No. 1792) that the only part which can by any possibility be construed as affecting the liability of common carriers is that which follows the word "Provided." All the rest of the section in terms relates to the liability of the consignee. The latter part, of this section makes the carrier liable for any shortage in any package of public property or any damage thereto upon proof of the opening or tampering with such package, and when a notation is made upon the bill of lading or receipt of such evidence, the burden of proof that the shortage or damage occurred after the shipment left the carrier's possession is upon the carrier.

Before the passage of Act No. 1792, evidence of the "opening" of a package or "tampering" with the goods delivered to him for transportation made the carrier liable for the loss, provided the required notice was given in time. And when the fact that the packages in which goods have been received showed evidence of having been

opened or tampered with at the time of delivery, and this fact was noted upon the bill, of lading, the burden rested upon the carrier to show that, although the package may have been broken at the time of delivery, the contents were intact. This being so, the mere repetition in the Act or section of a part of the existing law on the subject of the liability of common carriers cannot be construed so as to have the effect of repealing by implication the unrepealed parts of that law in the absence of a clear intention on the part of the Legislature to effect such repeal. In other words, the statement that an annotation of the receipt of goods in bad condition on the bill of lading throws the burden of proof on the carrier to show that they were in fact intact and in good condition at the time of delivery does involve as a necessary corollary the proposition that when the goods are received and receipted for as being in good condition, that the shipper can bring an action against the carrier at any time within the ten years allowed by section 43 of Act No. 190, within which to sue on an obligation arising from a contract in writing and recover upon proof that the goods, although receipted for as being in good condition, were really received in bad condition. The whole purpose of the law according to the Code of Commerce is to give the carrier an opportunity to ascertain whether the claim is a well-founded one before the goods leave his hands with respect to damages which are observable upon the exterior of the goods or of the packages in which they are contained, and before the goods have been consumed or their identity destroyed in cases in which it is alleged that the damage has been discovered after the goods were received by the consignee. To impose upon the carrier the liability which plaintiff seeks to impose by his action would be to make the business of a common Carrier a most hazardous one so hazardous, indeed, that carriers would be obliged to charge much higher rates for carrying goods belonging to the Government than for carrying goods belonging to other persons not entitled to any such exemption from the general provisions of law relating to rights and liabilities of shippers and carriers as is here claimed on behalf of this plaintiff.

With reference to the question insisted upon by the plaintiff that article 366 of the Code of Commerce is not applicable to maritime transportation, it is sufficient to say that this court has decided this point in the case of *Cordoba vs. Warner, Barnes & Co.* (1 Phil. Rep., 7) adversely to the contention of the plaintiff. We now see no reason for changing the doctrine announced in that case.

For the foregoing reasons the order appealed from is affirmed, with costs against the appellant. So ordered.

Arellano, C. J., Torres, Mapa, and Johnson, JJ.. concur.

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