

ALLAN A. BRYAN ET AL., PLAINTIFFS AND APPELLEES, VS. EASTERN & AUSTRALIAN S. S. CO., LTD., DEFENDANT AND APPELLANT.*G.R. No. 9403. November 04, 1914*

Ponente: MORELAND, J.

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This is an action to recover P1,915.30 damages alleged to have been caused by the negligence of the defendant in handling the plaintiffs' baggage, whereby it fell into the sea and was injured or destroyed.

The plaintiffs were passengers on the steamer *St. Albans*, which, at the time herein complained of, was the property of the defendant corporation and was engaged in carrying freight and passengers between Shanghai, China, and Manila, Philippine Islands. It arrived in Manila on the morning of the 7th of January, 1913. Shortly after its arrival plaintiffs' baggage was taken out of the hold of the ship for the purpose of being placed on the dock alongside of which the vessel was berthed. The baggage was placed in a sling, consisting of a single rope wound once around the trunks, and was swung from the side of the vessel. While still several feet above the wharf, the employee of the defendant company who was operating the winch, by some act or other, permitted the baggage to drop with great rapidity. In its passage downward it struck the side of the ship with such force as to release it from the sling and it dropped into the water alongside of the ship. The damages are stipulated at P1,188.

The defendant, while admitting the damage caused to plaintiffs' baggage, denied that it was the result of the company's negligence and set up as a special defense the limitation of liability established by the contract under which the defendant undertook to transport the plaintiffs from the city of Hongkong to Manila.

The record shows that on or about the end of December, 1912, the plaintiffs bought of the defendant's agent in Shanghai two first-class tickets for Manila, which entitled them to travel from Hongkong to Manila by the defendant's steamship *St. Albans*. The tickets delivered to them were in English, which language plaintiffs read with ease and understand perfectly, and bore on their face, in large print, a statement that they were issued subject to the conditions printed on the back. One of these conditions, printed in legible type, was as follows:

"This ticket is issued by the company and accepted by the passenger subject to the following conditions:

"The company will not hold itself responsible for any loss or damage passengers may sustain from the following causes: Prom advance in or delays after advertised date of sailing, either through the performance of His Majesty's mail service or any other cause, from detention on the voyage, or at any of the intermediate ports, or through steamers not meeting, or delays from accident, from perils of the sea, or from machinery, boilers or steam, or from any act, neglect or default whatsoever of the pilot, masters, or mariners, nor from any consequences arising from any sanitary regulations or precautions which the company's officers or local government authorities may deem necessary.

"Personal baggage.—In order to insure as far as possible the safe custody of luggage, passengers should personally see their luggage delivered on board. Each adult saloon passenger may carry, free of charge, but at his own risk, 20 cubic feet of luggage; and each steerage passenger 10 cubic feet, under similar conditions (all

in excess of these quantities must be paid for at the current rate of freight); but the company will not hold itself responsible for any loss, or damage to or detention, or overcarriage of luggage, under any circumstances whatsoever unless it has been booked and paid for as freight."

At the time the tickets were delivered to plaintiffs in Shanghai their attention was not especially drawn to the provisions on the back of the ticket. The plaintiffs put their baggage on the St. Albans without paying for its transportation as freight and traveled with such baggage to Manila.

The trial court's finding as to the negligence of defendant is based particularly on the testimony of J. S. Stanley, Deputy Collector of Customs, and I. V. Chapman, chief wharfinger in charge of pier No. 5.

Mr. Stanley testified: "While standing at the extreme end of Pier No. 5, I witnessed a number of trunks being lifted from the deck of the steamship St. Albans to an elevation of about 10 or 12 feet from the deck and practically the same height above the pier. The winchman was instructed to let go. The sling dropped suddenly and was not checked at the proper time, and the sling of trunks struck the side of the wharf, with the result that the trunks were forced from the sling and fell into the water. It is customary to use a rope sling or a cargo chute running from the deck to the pier. The slings vary in size but are sufficiently large to contain a large number of trunks and are formed of ropes running in opposite directions forming a rope net. If these trunks had been in a rope sling they would not have fallen in the water."

Mr. Chapman testified: "When the steamship St. Albans came alongside the pier I took all her lines and berthed her in a position for the gangway and hatchways to work. Immediately after the ship was made fast I requested to be informed from the chief officer where the baggage would be discharged from; he told me hatch No. 4; I went to No. 4 hatch and asked the second officer who was there in charge of the hatch where the baggage was to be discharged from; he said, 'Right here indicating No. 4 hatch. I then told him I would have a chute there for him right away and he answered: 'All right.' I immediately went into the pier and ordered one of the foremen and the men to take a chute to No. 4 hatch. I was following with the foreman and behind the chute when Mr. Stanley informed me that the baggage was over the side. The chute at this time was just through the door about 75 feet from the hatch. On arriving there I saw that the sling and these trunks were all lying in the water. The stevedore had a lot of his men over the side picking up the trunks with the men from the pier helping."

It is the contention of the defendant company that it is exempt from liability by virtue of the contract appearing on the tickets already referred to and quoted; as that contract was valid in the place where made, namely, the Colony of Hongkong, and that that being the case, it will be enforced according to its terms in the Philippine Islands. It is also urged that it was not necessary specifically to direct the attention of the passengers to the stipulations on the back of the ticket introduced in evidence.

The evidence relative to the law governing these contracts in Hongkong consists of the testimony of a Hongkong barrister, learned in the law of England and her colonies, and is to the effect that, under the law in force at the place where the contract was made, the contract was valid and enforceable, and that it is not necessary that the attention of persons purchasing tickets from common carriers be drawn specially to the terms thereof when printed upon a ticket which on its face shows that it is issued subject to such conditions. The barrister also testified that under the law of England and her colonies everything was done which was necessary to make the terms printed on the back of the tickets a part of the contract between the parties.

It is our conclusion that the judgment must be affirmed.

It is undoubted that the contract found upon the back of the tickets is a contract perfectly valid in England and her colonies and one which would be enforced according to its terms in British jurisdictions. The question is what were its terms? It will be remembered that the contract provides "the company will not hold itself responsible for

any loss, or damage to or detention, or overcarriage of luggage, under any circumstances whatsoever, unless it has been booked and paid for as freight." Ordinarily this language would seem to be broad enough to cover every possible contingency, including the negligent act of defendant's servant. To so hold, however, would run counter to the established law of England and the United States on that subject. In the case of *Price and Company vs. Union Lighterage Company* (King's Bench Division, 1903, Vol. 1, pp. 750, 754), the court said:

"An exemption in general words not expressly relating to negligence, even though the words are wide enough to include loss by negligence or default of carriers' servants, must be construed as limiting the liability of the carrier as insurer, and not as relieving him from the duty of exercising reasonable skill and care."

The result of this decision seems to be that unless the contract of exemption specifically refers to exemption for negligence, it will be construed as simply exempting the carrier from his liability as insurer, in other words, from his common law liability as carrier. This decision of the King's Bench Division is supported by many authorities and apparently has never been questioned. Among other references made in that case is that of *Compania de Navegación La Flecha vs. Brauer* (168 U. S., 104), in which the opinion was rendered by Mr. Justice Gray, who reviews with great thoroughness and erudition both the English and American authorities, many of which contain exemptions quite as comprehensive as those contained in the condition under which plaintiffs' baggage was accepted by the defendant in this case, such as that the baggage "was to be carried at the risk of the owner" and that the "carrier is not to be responsible for any loss under any circumstances whatsoever." (See also *Wheeler vs. O. S. N. Co.*, 125 N. Y., 155; *Nicholas vs. N. Y. C. & H. R. R. R. Co.*, 89 N. Y., 370.)

The reasonableness of the strict rule of construction that the courts of England and of the State of New York apply to contracts restricting the liability of carriers with respect to their negligence is apparent when one considers that such contracts are held to be contrary to public policy and invalid in the Federal courts and in most of the State courts of the Union. (*The Kensington*, 183 U. S., 263.)

In this connection, it may not be amiss to state that a critical examination of the deposition of Mr. Ernest Hamilton Sharpe, Master of Arts and Bachelor of Civil Law of the University of Oxford, Barrister at Law of London, Shanghai and Hongkong, and King's Counsel at the latter colony, does not disclose anything contradictory to the rule just stated. Mr. Sharpens examination was confined to the question of the validity of the contract indorsed upon plaintiffs' ticket exempting the defendant company from liability for damage to their baggage. In view of the accurate answers of the learned witness to the questions put to him as to the validity of the condition in question under English law, there is no reason to suppose that he would not have stated correctly the rule as to the construction of the condition had his attention been directed to that point. In any event, this court is not, by reason of the opinion expressed by an expert witness, precluded from advising itself as to the common law of England. (Sec. 302, Code of Civil Procedure.)

The judgment is affirmed, with costs against the appellant.

Arellano, C. J., Torres, Carson, and Araullo, JJ., concur.

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