

TRITON INSURANCE COMPANY, LTD., PLAINTIFF AND APPELLANT. VS. ANGEL JOSE, DEFENDANT AND APPELLEE.

G.R. Nos. 10381 and 10714. January 14, 1916

Ponente: JOHNSON, J.

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JOHNSON, J.:

The said two cases were tried separately in the court below. A bill of exceptions was presented in each case. By reason of the fact, however, that but one question of law is presented, they were argued together in this court and the appellants and appellee each presented but one brief.

The purpose of said actions was to recover of the defendant a sum of money as damages resulting from damage done to merchandise in the course of transshipment in a lorch from a boat in Manila Bay, to a point located upon the Binondo canal, in the city of Manila. The facts as they appear in the record are undisputed, and may be stated as follows:

- That a certain consignment of flour for each of the firms "Connell Brothers Company" and "W. F. Stevenson & Company," arrived at the port of Manila on the steamship Prinz Sigismund, in the first days of January, 1914.
- That said firms entered into a verbal contract with the defendant, by which said cargoes of flour were to be transhipped from said steamship Prinz Sigismund, to the bodegas of said firms, located on the Binondo canal in the city of Manila.
- That the defendant, in transshipping said cargoes of flour, used the lorch Petroning. It is not denied that said lorch was a new one and was duly licensed for the purpose for which it was used in the present case.
- That during the transshipment, the said lorch sprung a leak; that water entered the same and the cargoes of flour were damaged; that said cargoes of flour were placed on said lorch; that on January 6, 1914, C. B. Nelson, a marine surveyor, examined said cargoes of flour for the plaintiffs (the insurance companies); that on or about January 7 or 8, 1914, the cargoes of flour were delivered to the respective companies, "Connell Brothers Company," and "W. F. Stevenson & Company," and were by them accepted, without protest; that said companies later also paid the charges of transportation to the defendant, without protest. Later, on or about the 21st or 22d of January, 1914, a formal protest was made by each of the plaintiffs in each of said causes.
- Later the damage done to said cargoes of flour was paid by the said insurance companies, to the respective owners of the same. Those actions are now brought by the insurance companies, upon the theory that they have been subrogated to the rights of the owners of said cargoes of flour.

Upon the foregoing facts, the lower court, in a very interesting opinion, said:

"Without discussing the other questions involved in the case, the court is of the opinion that under article 366 of the Code of Commerce, and the rule laid down in the case of the Government of the Philippine Islands vs. Inchausti & Co. (24 Phil. Rep., 316), recovery is barred, through the failure of the assignee to present a claim for damages within twenty-four hours from the time of the delivery of the flour. The court appreciates the force

of the plaintiff's contention, that articles 366 (supra) applies only to river and land transportation, but the analogy between the present case and the Inchausti case is so close, that the distinction, if any, may best be drawn by the Supreme Court itself, and not by an inferior court."

The appellant, in a very carefully prepared brief, attempts to show that the facts in the present case are not analogous to the facts in the case of the Government of the Philippine Islands vs. Inchausti & Co. (supra). We have again examined the facts and the law announced in said case, and are of the opinion that the rule of law therein announced is applicable to the facts in the present case, and without a further discussion, and basing our conclusions upon the facts in the present case and the rule of law announced in the case of the Government of the Philippine Islands vs. Inchausti & Co., the judgments of the lower court in the present cases are hereby affirmed, with costs. So ordered.

Arellano, C. J., Torres, Moreland, Trent, and Araullo, JJ., concur.

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