QUEBEC ADMIRALTY DISTRICT

1958
Apr. 28
May 12

BETWEEN:

TRANSOCEAN MACHINE COMPANY INC. ..... PLAINTIFF;

AND

ORANJE LINE AND THE SHIP *PRINS WILLEM IV* ..... DEFENDANTS.

Shipping—Bill of lading—Transshipment of goods permitted by contract of affreightment—Art. III r. 8 of the Hague Rules—Action for damages dismissed.

Defendant by bill of lading accepted on board its ship *Prins Willem IV* two motor cars for carriage from Hamburg, Germany to Saint John, New Brunswick to be delivered to the order of the plaintiff, its agents or assignees. Plaintiff's claim is that the defendants transshipped the cars at Rotterdam to another ship and as a consequence delivery was delayed and the plaintiff suffered damages. The Court found that the defendants acted reasonably and within the authority conferred by the contract of affreightment in exercising their right to transship the goods.

Held: That since the bill of lading expressly gave the defendants liberty to transship the goods and it was provided that defendants should not be liable for delay caused by transshipment or prolongation of the voyage plaintiff is not entitled to recover the damages claimed.

2. That the provisions in the bill of lading covering transshipment and prolongation of the voyage apply notwithstanding Art. III, r. 8 of the Hague Rules.

ACTION for damages alleged to have been sustained by delay in delivery of goods.

The action was tried before the Honourable Mr. Justice Smith, District Judge in Admiralty for the Quebec Admiralty District at Montreal.

Marcel Piché, Q.C. for plaintiff.

Léon Lalande, Q.C. for defendants.

The facts and questions of law raised are stated in the reasons for judgment.

SMITH D.J.A. now (May 12, 1958) delivered the following judgment:

The plaintiff's claim is for damages alleged to have resulted from the failure of the defendants to carry out their obligations under a certain contract of affreightment

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by which the defendants agreed to transport two automobiles from Hamburg, Germany, to Saint John, New Brunswick.

By bill of lading signed on December 7, 1954, the defendant line accepted on board its ship *Prins Willem IV* 2 Porsche motor cars for carriage to Saint John, New Brunswick, to be delivered to the order of the plaintiff, or its agents or assignees.

The plaintiff's complaint is that, instead of carrying out its contract, the defendants illegally transshipped these cars at Rotterdam from the *Prins Willem IV* to the *Prins Willem George Frederik,* another ship owned by the defendant line. It is alleged that, as a consequence of this transshipment, the delivery of the motor vehicles was so delayed that they were not available for the Christmas trade, with the result that the plaintiff lost the sale of the said vehicles and sustained the damages claimed.

I am convinced that the plaintiff's action is unfounded.

The Bill of Lading (Clause 1 of the Terms and Conditions) expressly authorizes the carrier "to transship or land and reship the goods at ports of shipment and transshipment, or at any other ports or into any other vessels or crafts for any purposes and to forward to destination by another vessel or craft". Furthermore, it is provided by Clause 2 of the contract of affreightment that the carrier shall not be liable for delay caused by transshipment and prolongation of the voyage. It has been held that such clauses as these have application notwithstanding Art. III r. 8 of the Hague Rules (of which Article III r. 8 of the Schedule to the *Water Carriage of Goods Act* (1952) R.S.C. Chapter 291, is a reproduction). Carver's *Carriage of Goods by Sea,* 9th Edition, page 190:

> An express liberty to deviate in the Bill of Lading will be effective notwithstanding Art. III r. 8. So also will be a liberty to transship.

See Branson, J. in *Marcelino Gonzalez v. Nourse*[1].

The proof satisfies me that in exercising their right to transship the defendants acted reasonably and within the authority conferred upon them by the contract of affreightment.

[1] [1936] 1 K.B. 565 at 574.

In the course of the argument counsel for plaintiff suggested that Canadian law had no application, it being the law of Germany which should govern. I do not propose to deal with this argument further than to state that it cannot avail the defendants in any case, since the law of Germany must be presumed in the present case to be the same as that of the Province of Quebec in the absence of allegation or proof to the contrary.

There are additional reasons why, in my opinion, the plaintiff's action must fail.

The plaintiff failed to show that the transshipment complained of had the effect of depriving the plaintiff of the advantage of exhibiting these motor cars for the Christmas trade. On the contrary, it is clear from the evidence that, even if said vehicles had been transported throughout on the *Prins Willem IV* and on schedule, they would have reached Saint John only on December 30th, whereas in fact they had landed at Saint John by the *Prins Willem George Frederik* on January 9th or 10th.

Not only does the proof fail to support the claim that the plaintiff sustained loss or damage because the said vehicles were not available for the Christmas trade, but, in the opinion of the Court, it falls short of justifying the conclusion that the plaintiff was deprived of any sales or loss of profit due to the fact that the said vehicles were, as a consequence of the transshipment, delivered at Saint John on January 9, 1956, rather than on December 30, 1955.

The Court is convinced that the proof does not establish that the plaintiff sustained any damage attributable to the transshipment of the said motor cars from the *Prins Willem IV* to *Prins Willem George Frederik* and that, even if such damages had been proved, they would have been too remote to engage the responsibility of the defendants.

There is nothing either in the contract of affreightment or in the correspondence leading to it to indicate that the plaintiff required delivery on or before any particular date and nothing to give the defendants notice that time was of the essence of the contract. It is well established that in cases of breach of contract the only damages recoverable are

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those which both parties to the contract could have reasonably foreseen at the time it was entered into. *Hadley v. Baxendale*[1]:

> Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be, either such as may fairly and reasonably be considered arising naturally, i.e. according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties at the time they made the contract, as the probable result of the breach of it.
>
> Now, if the special circumstances under which the contract was actually made were communicated by the plaintiff to the defendant, and thus known to both parties, the damages resulting from the breach of such a contract which they would reasonably contemplate would be the amount of injury which would ordinarily follow from a breach of contract under those special circumstances, so known and communicated. But, on the other hand, if those special circumstances were wholly unknown to the party breaking the contract, he at the most could only be supposed to have had in contemplation the amount of injury which would arise generally, and in the great multitude of cases not affected by any special circumstances from such a breach of contract. For had the special circumstances been known, the parties might have especially provided for the breach of contract by special terms as to the damages in that case, and of this advantage it would be very unjust to deprive them.

Carver's *Carriage of Goods by Sea,* 9th Edition, pages 1014 and following.

On the whole therefore the Court concludes that the plaintiff's action must fail.

Action dismissed, with costs.

Judgment accordingly.