1958
*Nov. 21, 24
1959
Feb. 26

ANTICOSTI SHIPPING COMPANY (*Defendant*) ..... APPELLANT;

AND

VIATEUR ST-AMAND (*Plaintiff*) .. RESPONDENT.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC

Shipping—Contracts—Carriage of goods by water—Bill of lading not issued—Truck damaged en route—Limitation of liability—The Water Carriage of Goods Act, R.S.C. 1952, c. 291, art. IV, rule (5).

*PRESENT: Taschereau, Rand, Fauteux, Abbott and Martland JJ.

[1] [1945] S.C.R. 438, 83 C.C.C. 207, 2 D.L.R. 598.
[2] [1942] S.C.R. 80, 77 C.C.C. 191, 2 D.L.R. 401.
[3] [1951] S.C.R. 248, 99 C.C.C. 167, 11 C.R. 255, 2 D.L.R. 594.

The plaintiff, through his agent R, entered into a contract of carriage with the defendant for the transport by sea of the plaintiff's truck. A bill of lading was filled out at the time but apparently no original or copy of it was given to R. The original of the bill was not signed and became mislaid. The truck was damaged through the fault of the defendant which paid all costs of the repairs amounting to more than $500. This action was brought for loss of use during the time the repairs were carried out. The trial judge maintained the action and rejected the plea of limitation of liability. This judgment was affirmed by the Court of Appeal.

Held: The action should be dismissed. The liability of the defendant must be limited to $500.

The proper inference to be drawn from the facts of this case was that the contract was for the carriage to be made under the terms of a bill of lading. In the absence of evidence to the contrary, the shipping clerk's authority was to accept articles for transportation on the basis only of the defendant's bill of lading. The plaintiff's agent requested no special terms. It was an ordinary transaction and if the agent did not see fit to demand a bill of lading, as he had the right to do, it could not affect what was contemplated on both sides. *Pyrene v. Scindia Navigation Company* (1954), 2 Q.B. 402, applied.

No value of the truck was declared or inserted in the bill of lading. Rule (5) of art. IV distributes all liability for damages; therefore, the limit of $500 "per package or unit" must be applied. The word "package" was clearly not appropriate here, and the truck must be taken as being the "unit". The responsibility for seeing that the value of the thing shipped is declared and inserted on the bill is on the shipper and any consequential hardship must be charged against his own failure to respect that requirement.

APPEAL from a judgment of the Court of Queen's Bench, Appeal Side, Province of Quebec[1], affirming a judgment of Lacroix J. Appeal allowed.

L. Lalande, Q.C., for the defendant, appellant.

L. A. Pouliot, Q.C., and *B. V. Tremblay,* for the plaintiff, respondent.

The judgment of the Court was delivered by

RAND J.:—The main question in this appeal is whether a contract for the carriage by water of a motor truck from Port Menier, on the island of Anticosti, to Rimouski, Quebec, was or was not "covered" by a bill of lading within the meaning of art. I definition (b) of the Rules relating to bills of lading contained in the schedule to the *Water Carriage of Goods Act,* R.S.C. 1952, c. 291. The circumstances of the shipment were those now stated.

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The respondent, then on the mainland, who had previously been working his truck on the island, sent a message to one Riddell at Port Menier, to have the truck shipped back to Rimouski by a vessel of the appellant company plying between Anticosti and various mainland ports along the St. Lawrence river, and arrangements were made accordingly. Riddell was an operating foreman of a paper company of which the appellant is a subsidiary and was generally familiar with the latter's customary mode of undertaking transportation. Following that practice, the shipping clerk filled out a bill of lading, using the standard printed form of the company, no original or copy of which was apparently given to Riddell. The evidence is most sketchy on the details, but it is clear that once having informed the shipping clerk of the shipper's name, of the article to be shipped, its make, weight and destination, and having otherwise arranged to have it loaded on the vessel, he paid no further attention to the matter. In the result, the original of the bill of lading, although completed as to its substantive matter, was not actually signed, and evidently remaining in the office of the company became mislaid. In the course of the transportation the truck was damaged through the fault of the company which paid all costs of repair amounting to more than $500; but for loss of use during the time the work was being done this action was brought.

As the judgment of the Court of Queen's Bench[1] states, the authority given Riddell was general and unrestricted, and the first inquiry is this: from the simple facts placed before us, which undoubtedly truly describe what happened, what is the proper inference to be drawn from them that the contract so arising was one for the carriage to be made under the terms of a bill of lading or on no terms beyond those implied by law? In this we are in as good a position as the Courts below; and on it I have no doubt. In the absence of evidence to the contrary the shipping clerk's authority was to accept articles for transportation on the basis only of the company's bill of lading, following which he proceeded to fill out the standard form with the required matter. His and the company's understanding was therefore beyond question. When Riddell requested

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the shipment to be made, what terms could he possibly have had in mind other than those on which invariably goods were carried by the company? His bald request implies, carry this truck "according to your regular practice". How can we possibly say that anything else could be intended? It was an ordinary transaction, and if, as the respondent's agent, he did not see fit to demand a bill of lading—as by art. III rule (3) he had the right to do—it cannot affect what on both sides was contemplated.

In *Pyrene v. Scindia Navigation Company*[1], Devlin J. says:

> In my judgment whenever a contract of carriage is concluded, and it is contemplated that a bill of lading will, in due course, be issued in respect of it, that contract is from its creation "covered" by a bill of lading, and is therefore in its inception a contract of carriage within the meaning of the Rules and to which the Rules apply. There is no English decision on this point; but I accept and follow without hesitation the reasoning of Lord President Clyde in Harland and Wolff v. Burns and Laird Lines.

With this view I respectfully agree.

But a further question arises out of the consequences of that contract. The appellant pleaded art. IV rule (5) which provides:

> 5. Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding five hundred dollars per package or unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.
>
> This declaration if embodied in the bill of lading shall be *prima facie* evidence, but shall not be binding or conclusive on the carrier.

The trial court found the limitation inapplicable where the nature of the article shipped was known and where the company "peut . . . en apprécier la valeur". On this the reasons in appeal stated,

> I would not agree with this interpretation of Article IV of the Water Carriage of Goods Act but it is unnecessary for me to deal with this point in detail in view of the fact that I have come to the conclusion that the contract of carriage in this case was not covered by a bill of lading . . .

I share that expression of opinion.

[1] [1954] 2 Q.B. 402 at 419, 2 All E.R. 158.

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Here no value of the truck was declared or inserted in the bill; it is not suggested that the rule does not distribute all liability for damages, and the limit of $500 "per package or unit" must then be applied. The word "package" is clearly not appropriate to describe a truck in the condition of that here and may be disregarded; and this leaves our enquiry to the term "unit".

The limitation is clearly for the benefit of carriers by water, dictated by considerations of important policy. I see no ground for implying any duty on the part of the carrier to bring the fact of limitation to the notice of a shipper or in any other respect to concern himself with the requirement which the statute makes equally apparent to both parties. By s. 2 of the statute

> . . . the Rules relating to bills of lading as contained in the Schedule . . . have effect in relation to and in connection with the carriage of goods by water in ships carrying goods from any port in Canada to any other port whether in or outside Canada.

and that imperative is likewise binding on both of them.

The word "unit" would, I think, normally apply only to a shipping unit, that is, a unit of goods; the word "package" and the context generally seem so to limit it. But there has been suggested and in some cases the rule specifies the unit of the charge for freight. Neither the bill of lading nor the evidence here throws any light on the freight rate unit. There seems to have been only a flat charge of $48 plus $3 wharfage fee; there is no indication, for example, of a rate based on tonnage or any other weight quantity. The weight of the truck is shown, but to assume that the charge is calculated on a rate for 100 pounds would bring a fractional figure which is most unlikely to represent the actual basis. The sum of $500 would scarely be taken as a fair limitation of the value of the average 100 pounds weight of freight; in this case the amount would be the product of 102.16 units at $500 each or $51,000 which seems disproportionate to any policy estimate to be attributed to the rule. And the absence itself of any reasonable ground for extending the word to that type of measure, with the other considerations, excludes its application here.

We are left, then, to take the unit as being that of the article. That this may produce anomalies is indisputable, but the rule does not seem to permit qualification. The

responsibility for seeing that the value of the thing shipped is declared and inserted on the bill is on the shipper and any consequential hardship must be charged against his own failure to respect that requirement.

An analogous case came before the United States Court of Appeal, Second Circuit, in *Isbrandtsen Company, Inc. v. United States of America*[1]. There the provision of the rule was,

> In case of any loss or damage to or in connection with goods, exceeding in actual value $500 lawful money of the United States, per package, or, in case of goods not shipped in packages, per customary freight unit, the value of the goods shall be deemed to be $500 per package or per unit, on which basis the freight is adjusted and the Carrier's liability, if any, shall be determined on the basis of a value of $500 per package or per customary freight unit, . . .

The shipping unit was a locomotive and tender which was likewise the unit for the freight charge in the flat sum of $10,000. There were 10 in all of these units. Augustus Hand, Ct. J., at p. 92 uses this language:

> This interpretation may lead to a strange result, for freight on small locomotives under twenty-five tons is computed per ton and consequently would involve a larger liability than is imposed for the more expensive locomotives involved here. But the language of the limitation is controlling and applies to the locomotives and tenders here by its express terms. Our conclusion accordingly is that Isbrandtsen's liability is limited to $500 per unit of locomotive and tender, or $5,000 in all.

The application there was much more serious than that here and I see no warrant for any other conclusion than that the damage in this case must be limited to the same sum of $500.

I would, therefore, allow the appeal and direct that the action be dismissed with costs throughout.

Appeal allowed with costs.

Attorneys for the defendant, appellant: Beauregard, Brisset, Reycraft & Lalande, Montreal.

Attorney for the plaintiff, respondent: Bertrand V. Tremblay, Ste. Anne des Monts.

[1] (1953), A.M.C. 86.