

[Title]

Letter of Indemnity accompanying Clean Bill of Lading

[Deciding Court]

Tokyo District Court

[Date of Decision]

21 April 1961

[Case No.]

Case No. 3662 (wa) of 1953

[Case Name]

Claim for Damages

[Source]

Kaminshu Vol. 12 No. 4: 820

[Party Names]

Plaintiff X Inter-ocean Steamship Corporation

Vs.

Defendant Y Irimaru Sangyo K.K.

[Summary of Facts]

A shipping company X (a United States corporation) transported 300 tons of steel plate by a vessel that X chartered to a consignee A, who purchased the steel sheets from Company Y, who was in the business of import and export, in accordance with a transport contract with Y. The vessel departed the port of Yokohama on 17 October 1951, and discharged the cargo at the port of Los Angeles on 6 November 1951. In transporting the steel plate, Y issued X a letter of indemnity (Although the term “letter of guarantee” is used in the decision, the standard term is “letter of indemnity” and this accordingly been substituted hereinafter) with descriptions as follows: “Although the cargo receipt (mates receipt) issued at the time of loading contained the following notes, so long as your company approves the issuance of a clean bill of lading, we guarantee that you shall not be held liable for any liability or claims for losses that may arise as a result of its issuance. No liability for bending or rust. Rust exists on a few sheets. One plate slightly bent by a longshoreman onboard.” In exchange, X issued a clean bill of lading with respect to the transported goods described above, which merely stated “Thick plates of open-hearth steel of prime commercial quality” without any mention of defects in the appearance of the transported goods. Shortly after the arrival of the transported goods, the holder of the bill of lading, A, claimed losses from X for the balance after subtracting the price obtained by the sale of the actual transported goods from the total cost of the purchase of the bill of lading, on the grounds of defects not described on the bill of lading, which were discovered upon inspection at the discharge site. The defects included furrows, undulations, gaps, and bending, thickness levels so varied that it was difficult to identify the intended thickness, and severe rust on all corners and the surface of most of the steel plates. Under a settlement, X paid A a total of \$4,884 as the cost of removing the rust on the steel plates. X filed this suit against Y demanding payment of the

equivalent of the \$4,884 described above in Japanese currency as performance of the duty to indemnify pursuant to the letter of indemnity described above.

[Summary of Decision]

Claim dismissed.

“In order for Y to have a duty to compensate X, as a result of X’s duty to indemnify A for losses, X, at the time of the issuance of the bill of lading, must have given incorrect descriptions of the transported goods on the bill of lading, which differed from the actual transported goods, or neglected to describe items that should obviously have been described on the bill of lading, either knowingly or negligently, so that the goods described on the bill of lading are no longer the same as the actual cargo, or loss of the ability to discover, from the description on the bill of lading defects in the cargo that were in existence at the time the bill of lading was issued. Also a third party without knowledge must have suffered loss as a result of purchasing the bill of lading in the belief that the descriptions on the bill of lading were accurate. In other words, the carrier’s knowledge or negligence as described above, as well as a lack of knowledge on the part of the holder of the bill of lading (including the party who purchased the transported goods) were required. Moreover, this principle could also be inferred by analogy from the provisions in Article 9 of the *International Carriage of Goods by Sea Act*, a Japanese law prescribed in accordance with Article 3(4) of the United States *Carriage of Goods by Sea Act* as well as Article 3(4) of the *Bill of Lading Convention*.”

“The steel plate in this case was the subject matter of a sales contract between A’s agent, B and Y. The goods passed inspection by C, which was ultimately, to be final under the relevant contract and were in conformity with the purport of the contract. As B was also informed of existing rust in a degree normally tolerated, it was presumed that B knew about the condition of the steel plate at the time of loading. Since the issue of whether a party did or did not have knowledge under the sales contract should be determined with respect to their agent, it could not be said that A was without knowledge with regard to the condition of the steel plate at the time of loading. Although B could not be said to be A’s agent in a formal sense, given B’s status as the original holder of the bill of lading, we could not allow A to assert his lack of knowledge, turning a blind eye to the agent’s knowledge when the agent knew of the condition of the subject matter in a case such as this, where the holder of the bill of lading was himself the buyer who entered into a sales contract with the consignor through the agent with respect to the transported goods.”

“The expression ‘prime commercial quality’ described above was nothing but a meaningless description on the bill of lading, with no legal effect. It was therefore sufficient if the carrier delivered the goods to the consignee as ‘thick plates of open-hearth steel’ that were in a state such that the transaction could be carried out smoothly, as a matter of common sense, regardless of the descriptions described above. With respect to flaws not worth mentioning as below par from according to ordinary business standards, even if the flaws were not acceptable under an especially high standard, it was not necessary to describe these on the bill of lading, and there will be no liability in respect of the same.”

“X asserted that the purport of the agreement under the letter of guarantee was that Y would be completely responsible for expenses, even if X’s expenses were objectively speaking, inappropriate. It was difficult, however, to interpret the agreement described above as having such purport on the basis of the statement in the letter of guarantee described above and all the evidence in this case.”