formance of an act which was specifically enjoined by law, and for which there was no plain, speedy and adequate remedy in the ordinary course of law. The Answer of respondents which contained the usual admission and denial, sustained the contrary view. The CFI rendered judgment, the dispositive portion of which reads:—

"IN VIEW OF THE FOREGOING, the Court hereby declares the Justice of the Peace Court of Malangas to be without jurisdiction to try the case for interpleader and hereby sets aside its Order dated September 30, 1958, denying the motion to dismiss the interpleader case; and considering that Civil Cases 78 and 105 have long been pending, the respondent Justice of the Peace of Malangas is hereby ordered to proceed to try the same, without pronouncement as to costs."

The only issue raised in the present appeal is whether or not the Justice of the Peace Court has jurisdiction to take cognizance of the Interpleader case.

The petitioners claimed the possession of the respective portion of the lands belonging to them on which the respondents had erected their house after the fire which destroyed petitioner-appellants' buildings. This being the case, the contention of petitioners-appellants that the complaint to interplead, lacked cause of action, is correct.

Section 1, Rule 14 of the Rules of Court provides —

"*Interpleader when proper.*— Whenever conflicting claims upon the same subject-matter are or may be made against a person, who claims no interest whatever in the subject-matter, or an interest which in whole or in part is not disputed by the ants to compel them to interplead and litigate their several claims among themselves."

The petitioners did not have conflicting claims against the respondents. Their respective claim was separate and distinct from the other. De Camilo only wanted the respondents to vacate that portion of her property which was encroached upon by them when they erected their building. The same is true with Estrada and the Franciscos. They claimed possession of two different parcels of land, of different areas, adjoining each other. Furthermore it is not true that respondents Ong Peng Kee and Adelia Ong did not have any interest, in the subject matter. Their interest was the prolongation of their occupancy or possession of the portions encroached upon by them. It is, therefore, evident that the requirements for a complaint of Interpleader do not exist.

Even in the supposition that the complaint presented a cause of action for Interpleader, still we hold that the JP had no jurisdiction to take cognizance thereof. The complaint asking the petitioners to interplead, practically took the case out of the jurisdiction of the JP court, because the action would then necessarily "involve the title to or possession of real property or any interest therein" over which the CFI has original jurisdiction (par. [b], sec. 44, Judiciary Act, as amended). Then also, the subject-matter of the complaint (interpleader) would come under the original jurisdiction of the CFI, because it would not be capable of pecuniary estimation (Sec. 44, par.[a], Judiciary Act), there having been no showing that rentals were asked by the petitioners from respondents.

IN VIEW OF ALL THE FOREGOING, We find that the decision appealed from is in conformity with the law, and the same should be, as it is hereby affirmed, with costs against respondents-appellants Ong Peng Kee and Adelia Ong.

Bengzon, C.J., Padilla, Labrador, Concepcion, J.B.L. Reyes, and De Leon, JJ., concurred.

Bautista Angelo, Barrera and Dizon, JJ., took no part.

V

Delgado Brothers, Inc., Petitioner vs. The Court of Appeals, et al., Respondents, G.R. No. L-15654, December 29, 1960, Bautista Angelo, J.

1. COMMON CARRIER; EXEMPTION FROM RESPONSIBILITY ARISING FROM NEGLIGENCE MUST BE SO CLEARLY STATED IN A CONTRACT.— It should be noted that the clause in Exhibit 1 determinative of the responsibility for the use of the crane contains two parts, namely: one wherein the shipping company assumes full responsibility for the use of the crane, and the other where said company agreed *not to hold* the Delgado Brothers, Inc. liable *in any way*. While it may be admitted that under the first part the carrier may shift responsibility to petitioner when the damage caused arises from the negligence of the crane operator because exemption from responsibility for negligence must be stated in explicit terms, however, it cannot do so under the second part where it expressly agreed to exempt petitioner from liability *in any way* it may arise, which is a clear case of assumption of responsibility on the part of the carrier contrary to the conclusion reached by the Court of Appeals. In other words, the contract in question as embodied in Exhibit 1 fully satisfied the doctrine stressed by said court that in order that exemption from liability arising from negligence may be granted, the contract "must be so clear as to leave no room for the operation of the ordinary rules of liability consecrated by experience and sanctioned by the express provisions of law."
2. ID.; BILL OF LADING; SHIPPER SHALL BE BOUND BY THE CONDITIONS AND TERMS OF BILL OF LADING UPON ACCEPTANCE THEREOF.— 'IN ACCEPTING THIS BILL OF LADING the shipper, consignee and owner of the goods agree to be bound by all its stipulations, exceptions, and conditions whether written, printed, or stamped on the front or back thereof, any local customs or privileges to the contrary notwithstanding.' This clause says that a shipper or consignee who accepts the bill of lading becomes bound by all stipulations contained therein whether on the front or back thereof. Respondent cannot elude its provisions simply because they prejudice him and take advantage of those that are beneficial. Secondly, the fact that respondent shipped his goods on board the ship of petitioner and paid the corresponding freight thereon shows that he impliedly accepted the bill of lading which was issued in connection with the shipment in question, and so it may be said that the same is binding upon him as if it has been actually signed by him or by any person in his behalf. This is more so where respondent is both the shipper and the consignee of the goods in question.
3. ID.; LAW GOVERNING LIABILITY IN CASE OF LOSS, DESTRUCTION OR DETERIORATION OF GOODS TRANSPORTED.— Article 1753 of the new Civil Code provides that the law of the country to which the goods are to be transported shall govern the liability of the common carrier in case of loss, destruction or deterioration. This means the law of the Philippines, or our new Civil Code.
4. ID.; ID.; LAWS GOVERNING RIGHTS AND OBLIGATIONS OF COMMON CARRIERS; CARRIAGE OF GOODS BY SEA ACT SUPPLETORY TO CIVIL CODE.—Article 1766 of the new Civil Code provides that 'In all matters *not* regulated by this Code, the rights and obligations of common carriers shall be governed by the Code of Commerce and by special laws,' and said rights and obligations are governed by Articles 1736, 1737, and 1738 of the new Civil Code. Therefore, although Section 4(5) of the Carriage of Goods by Sea Act states that the carrier shall not be liable in an amount exceeding ₱500.00 per package unless the value of the goods had been declared by the shipper and inserted in the bill of lading,

said section is merely suppletory to the provisions of the Civil Code.

DECISION

Richard A. Klepper brought this action before the Court of First Instance of Manila to recover the sum of ₱6,729.50 as damages allegedly sustained by his goods contained in a lift van which fell to the ground while being unloaded from a ship owned and operated by the American President Lines, Ltd. to the pier, plus the sum of ₱2,000.00 as sentimental value of the damaged goods and attorney's fees.

It appears that on February 17, 1955, Klepper shipped on board the S. S. President Cleveland at Yokohama, Japan one lift van under bill of lading No. 82, containing personal and household effects. The ship arrived in the port of Manila on February 22, 1955 and while the lift van was being unloaded by the gantry crane operated by Delgado Brothers, Inc., it fell on the pier and its contents were spilled and scattered. A survey was made and the result was that Klepper suffered damages totalling ₱6,729.50 arising out of the breakage, denting and smashing of the goods.

The trial court, on November 5, 1957, rendered decision ordering the shipping company to pay plaintiff the sum of ₱6,729.50, value of the goods damaged, plus ₱500.00 as their sentimental value, with legal interest from the filing of the complaint, and the sum of ₱1,000.00 as attorney's fees. The court ordered that, once the judgment is satisfied, co-defendant Delgado Brothers, Inc. should pay the shipping company the same amount by way of reimbursement. Both defendants appealed to the Court of Appeals which affirmed *in toto* the decision of the trial court. Delgado Brothers, Inc. interposed the present petition for review.

The main issue which this Court needs to determine is whether petitioner may be held liable for the damage done to the goods of respondent Richard A. Klepper subsidiarily to the liability attached to its co-defendant American President Lines, Ltd. as held by the trial court and affirmed by the Court of Appeals.

Petitioner disclaims liability upon the ground that it has been expressly relieved therefrom by its co-defendant shipping company under a contract entered into between them relative to the gantry crane belonging to petitioner which was used by said shipping company in unloading the goods in question. Petitioner plants its case on Exhibit 1 (Delgado) which reads:

"Please furnish us ONE gantry to be used on hatch #2 of the S/S PRES. CLEVELAND Reg. from 1300 hrs. to FINISH hrs. on 22 February 1955.

"We hereby assume full responsibility and liability for damages to cargoes, ship or otherwise arising from use of said crane and we will not hold the Delgado Brothers, Inc. liable or responsible in any way thereof.

"We hereby agree to pay the corresponding charges for above-requested services."

The Court of Appeals, in holding that petitioner cannot disclaim liability under the terms of the above contract because it cannot elude responsibility for the negligence of its own employee, made the following comment:

"This appellant asserts that negligence of its employee, the crane operator, is within the coverage of the foregoing document. Exhibit 1-Delgado calls for one gantry 'to be used' on hatch No. 2 of the vessel. The American President Lines, Ltd., only answered 'for use of said crane.' The phraseology thus employed would not induce a conclusion that the American President Lines, Ltd. assumed responsibility for the negligence of the crane operator who was employed by the other appellant, Delgado Brothers, Inc. Responsibility was not shifted to the steamship company.

"Exhibit 1-Delgado was prepared in mimeographed form by Delgado Brothers, Inc. At best, the stipulation therein are obscure. That is a count against Delgado Brothers, Inc. And again, it must answer for the damages. O.B. Ferry Service Co. vs. P.M.P. Navigation C., 50. O.G. No. 5, pp. 2109, 2113.

"A familiar legal precept is that which states that a person is liable for the negligence of his employees. That is a duty owing by him to others. To exculpate him from liability for such negligence, the contract must say so in express terms. The contract conferring such exemption 'must be so clear as to leave no room for the operation of the ordinary rules of liability consecrated by experience and sanctioned by the express provisions of law.' The Manila Railroad Co. vs. La Campaña Trasatlantica and the Atlantic, Gulf & Pacific Co., 38 Phil., 875, 886. The time honored rule still is *Renuntiatio non praesumitir*. Strictly construed and giving every reasonable intendment against the party claiming exemption, we hold that Exhibit 1-Delgado affords no protection for Delgado Brothers, Inc."

We cannot agree with the finding that the phraseology employed in Exhibit I would not "induce a conclusion that the American President Lines Ltd. assumed responsibility for the negligence of the crane operator who was employed by the other appellant, Delgado Brothers, Inc." and that for that reason the latter should be blamed for the consequence of the negligent act of its operator, because in our opinion the phraseology thus employed conveys precisely that conclusion. It should be noted that the clause determinative of the responsibility for the use of the crane contains two parts, namely: one wherein the shipping company assumes full responsibility for the use of the crane, and the other where said company agreed *not to hold* the Delgado Brothers, Inc. liable *in any way*. While it may be admitted that under the first part the carrier may shift responsibility to petitioner when the damage caused arises from the negligence of the crane operator because exemption from responsibility for negligence must be stated in explicit terms, however it cannot do so under the second part where it expressly agreed to exempt petitioner from liability *in any way* it may arise, which is a clear case of assumption of responsibility on the part of the carrier contrary to the conclusion reached by the Court of Appeals. In other words, the contract in question as embodied in Exhibit 1 fully satisfies the doctrine stressed by said court that in order that exemption from liability arising from negligence may be granted, the contract "must be so clear as to leave no room for the operation of the ordinary rules of liability consecrated by experience and sanctioned by the express provisions of law."

The case of The Manila Railroad Co. v. La Campaña Trasatlantica et al., 38 Phil., 875, invoked in the appealed decision, is not, therefore, in point. In the latter case, the evidence adduced is not clear as to the exemption of responsibility. Here the contrary appears. Hence, the doctrine therein laid down is not controlling.

With regard to the errors assigned relative to the disregard made by the Court of Appeals of clause 17 of the bill of lading which limits the amount of liability of the carrier, as well as the non-application of the Carriage of Goods by Sea Act, particularly Section 4(5) thereof, we don't deem necessary to discuss them here. The same have already been disposed of in the appeal taken by the shipping company from the same decision, docketed as G.R. No. L-15671 (promulgated November 29, 1960), wherein we held the following:

"We are inclined to agree to this contention. Firstly, we cannot but take note of the following clause printed in red ink that appears on the very face of the bill of lading: 'IN ACCEPTING THIS BILL OF LADING the shipper, consignee and owner of the goods agree to be bound by all its stipulations, exceptions, and conditions whether written, printed, or stamped on the front or back thereof, any local customs or privileges to the contrary notwithstanding. This clause is very revealing. It says that a shipper or consignee who accepts the bill of lading becomes bound by all stipulations contained therein whether on

the front or back thereof. Respondent cannot elude its provisions simply because they prejudice him and take advantage of those that are beneficial. Secondly, the fact that respondent shipped his goods on board the ship of petitioner and paid the corresponding freight thereon shows that he impliedly accepted the bill of lading which was issued in connection with the shipment in question, and so it may be said that the same is binding upon him as if it has been actually signed by him or by any person in his behalf. This is more so where respondent is both the shipper and the consignee of the goods in question. These circumstances take this case out of our ruling in the Mirasol case (invoked by the Court of Appeals) and place it within our doctrine in the case of Mendoza v. Philippine Air Lines Inc., L-3678, promulgated on February 29, 1952, x x x.

x x x x x x

"With regard to the contention that the Carriage of Goods by Sea Act should also control this case the same is of no moment. Article 1753 (New Civil Code) provides that the law of the country to which the goods are to be transported shall govern the liability of the common carrier in case of loss, destruction or deterioration. This means the law of the Philippines, or our new Civil Code. Under Article 1766, 'In all matters *not* regulated by this Code, the rights and obligations of common carriers shall be governed by the Code of Commerce and by special laws,' and here we have provisions that govern said rights and obligations (Articles 1736, 1737, and 1738). Therefore, although Section 4(5) of the Carriage of Goods by Sea Act states that the carrier shall not be liable in an amount exceeding $500.00 per package unless the value of the goods had been declared by the shipper and inserted in the bill of lading, said section is merely suppletory to the provisions of the Civil Code. In this respect, we agree to the opinion of the Court of Appeals.

Wherefore, the decision appealed from is modified in the sense that petitioner Delgado Brothers, Inc. should not be made liable for the damage caused to the goods in question, without pronouncement as to costs.

Bengzon, C.J., Padilla, Labrador, J.B.L. Reyes, Barrera, Gutierrez David and Paredes, JJ., concurred.

VI

Paz Fores, Petitioner, vs. Ireneo Miranda, Respondent, G.R. No. L-12163, March 4, 1959, Reyes, J.B.L., J.

1. PUBLIC SERVICE COMMISSION; APPROVAL OF CONVEYANCE OR ENCUMBRANCE OF PROPERTIES OF OPERATOR OF PUBLIC SERVICE. — The provisions of Section 20 of the Public Service Act (Commonwealth Act 146) prohibit the sale, alienation, lease, or encumbrance of the property, franchise, certificate, privileges or rights, or any part thereof, of the owner or operator of the public service without approval or authorization of the Public Service Commission.

2. ID.; ID.; PURPOSE OF THE LAW. — The law was designed primarily for the protection of the public interest; and until the approval of the Public Service Commission is obtained, the vehicle is, in contemplation of law, still under the service of the owner or operator standing in the records of the Commission, to which the public has right to rely upon.

3. MORAL DAMAGES; CANNOT BE RECOGNIZED IN DAMAGE ACTION BASED ON A BREACH OF CONTRACT OF TRANSPORTATION.—It has been held in Cachero vs. Manila Yellow Taxicab Co., Inc., G.R. No. L-8721, May 23, 1957; Necesito, et al vs. Paras, G.R. No. L-10605-10606, June 30, 1958, that moral damages are not recoverable in damage actions predicated on a breach of the contract of transportation, in view of Articles 2219 and 2220 of the new Civil Code.

4. ID.; REQUISITE TO JUSTIFY AN AWARD. — In cases of breach of contract, including one of transportation, proof of bad faith or fraud (dolus), i.e., wanton or deliberately injurious conduct, is essential to justify an award of moral damages.

5. ID.; BREACH OF CONTRACT NOT INCLUDED IN THE TERM "ANALOGOUS CASES" USED IN ARTICLE 2219, CIVIL CODE. — A breach of contract can not be considered in the descriptive term "analogous cases" used in Art. 2219; not only because Art. 2220 specifically provides for the damages that are caused by the contractual breach, but because the definition of quasi-delict in Art. 2176 of the Code expressly excludes the cases where there is a "preexisting contractual relation between the parties."

6. ID.; MERE CARELESSNESS OF CARRIER'S DRIVER DOES NOT PER SE CONSTITUTE AN INFERENCE OF BAD FAITH OF CARRIER.—The mere carelessness of the carrier's driver does not *per se* constitute or justify an inference of malice or bad faith on the part of the carrier.

7. ID.; AWARD OF MORAL DAMAGES FOR BREACH OF CONTRACT WITHOUT PROOF OF BAD FAITH WOULD BE A VIOLATION OF LAW. — To award moral damages for breach of contract, without proof of bad faith or malice would be to violate the clear provisions of the law, and constitute unwarranted judicial legislation.

8. ID.; PRESUMPTION OF LIABILITY OF CARRIER; BURDEN OF PROOF. — The action for breach of contract imposes on the defendant carrier a presumption of liability upon mere proof of injury to the passenger; the latter is relieved from the duty to establish the fault of the carrier, or of his employees, and the burden is placed on the carrier to prove that it was due to an unforeseen event or to *force majeure* (Cangco vs. Manila Railroad Co., 38 Phil. 768, 777).

DECISION

Defendant-petitioner Paz Fores brings this petition for review of the decision of the Court of Appeals (C. A. Case No. 1437-R) awarding to the plaintiff-respondent Ireneo Miranda the sums of ₱5,000.00 by way of actual damages and counsel fees, and ₱10,000.00 as moral damages, with costs.

Respondent was one of the passengers on a jeepney driven by Eugenio Luga. While the vehicle was descending the Sta. Mesa bridge at an excessive rate of speed, the driver lost control thereof, causing it to swerve and to hit the bridge wall. The accident occurred on the morning of March 22, 1953. Five of the passengers were injured, including the respondent who suffered a fracture of the upper high humoruz. He was taken to the National Orthopedic Hospital for treatment, and later was subjected to a series of operations: the first on May 23, 1953, when wire loops were wound around the broken bones and screwed into place; a second, effected to insert a metal splint, and a third one to remove such splint. At the time of the trial, it appears that respondent had not yet recovered the use of his right arm.

The driver was charged with serious physical injuries through reckless imprudence, and upon interposing a plea of guilty was sentenced accordingly.

The contention that the evidence did not sufficiently establish the identity of the vehicle as that belonging to the petitioner was rejected by the appellate court which found, among other things, that it carried plate No. TPU-1163, series of 1952, Quezon City, registered in the name of Paz Fores, (appellant herein) and that the vehicle even had the name of "Doña Paz" painted below its windshield. No evidence to the contrary was introduced by the petitioner, who relied on an attack upon the credibility of the two

A point to be further remarked is petitioner's contention that on March 21, 1953, or one day before the accident happened, she allegedly sold the passenger jeep that was involved therein policemen who went to the scene of the incident.
to a certain Carmen Sackerman.