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[G.R. No. 1600. June 01, 1906]

THE PHILIPPINE SHIPPING COMPANY ET AL., PLAINTIFFS AND APPELLANTS, VS. FRANCISCO GARCIA VERGARA, DEFENDANT AND APPELLEE.

D E C I S I O N

ARELLANO, C.J.:

The Philippine Shipping Company, the owner of the steamship *Nuestra Sra. de Lourdes*, claims an indemnification of 44,000 pesos for the loss of the said ship as a result of a collision. Ynchausti & Co. also claimed 24,705.64 pesos as an indemnification for the loss of the cargo of hemp and *coprax* carried by the said ship on her last trip. The defendant, Francisco Garcia Vergara, was the owner of the steamship *Navarra*, which collided with the *Lourdes*.

From the judgment of the trial court the Philippine Shipping Company and the defendant Vergara appealed, but the latter has failed to prosecute his appeal by a bill of exceptions or otherwise. The only appellant who has prosecuted this appeal now reduces its claim to 18,000 pesos, the value of the colliding vessel.

The court below found as a matter of fact that the steamship *Lourdes* was sailing in accordance with law, but that the *Navarra* was not, and was therefore responsible for the collision. (Bill of exceptions, p. 7.) The court also found as a fact that "both ships with their respective cargoes were entirely lost." Construing article 837 of the Code of Commerce, the court below held "that the defendant was not responsible to the plaintiff for the value of the steamship *Lourdes*, with the costs against the latter." (Bill of exceptions, p. 8.)

But the appellant, the Philippine Shipping Company, contends that the defendant should pay to it 18,000 pesos, the value of the *Navarra* at the time of its loss; that this is the sense in which the provisions of article 837 of the Code of Commerce should be understood, that said code has followed the principles of the English law and not those of the American law, and

that it was immaterial whether the *Navarra* had been entirely lost, provided her value at the time she was lost could be ascertained, since the extent of the liability of the owner of the colliding vessel for the damages resulting from the collision is to be determined in accordance with such value.

Article 837 of the Code of Commerce provides: "The civil liability contracted by the shipowners in the cases prescribed in this section shall be understood as limited to the value of the vessel with all her equipment and all the freight money earned during the voyage."

> "This section is a necessary consequence of the right to abandon the vessel given to the shipowner in article 587 of the code, and it is one of the many superfluities contained in the code." (Lorenzo Benito, *"Lecciones,"* 352.)
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> "ART. 587. The agent shall also be civilly liable for the indemnities in favor of third persons which arise from the conduct of the captain in the care of the goods which the vessel carried, but he may exempt himself therefrom by abandoning the vessel with all hep; equipments and the freight he may have earned during the trip.
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> "ART. 590. The part owners of a vessel shall be civilly liable, in the proportion of their contribution to the common fund, for the results of the acts of the captain referred to in article 587. Each part owner may exempt himself from this liability by the abandonment, before a notary, of the part of the vessel belonging to him."

The *"Exposicion de motivos"* of the Code of Commerce contains the following: "The present code (1829) does not determine the juridical status of the agent where such agent is not himself the owner of the vessel. This omission is supplied by the proposed code, which provides in accordance with the principles of maritime law that by agent it is to be understood the person intrusted with the provisioning of the vessel, or the one who represents her in the port in which she happens to be. This person is the only one who represents the vessel—that is to say, the only one who represents the interests of the owner of the vessel. This provision has therefore cleared the doubt which existed as to the extent of the liability,,both of the agent and of the owner of the vessel. Such liability is limited by the proposed code to the *value of the vesse*l and other things appertaining thereto."

There is no doubt that if the *Navarra* had not been entirely lost, the agent, having been held

liable for the negligence of the captain of the vessel, could have abandoned her with all her equipment and the freight money earned during the voyage, thus bringing himself within the provisions of article 837 in so far as the subsidiary civil liability is concerned. This abandonment which would have amounted to an offer of the value of the vessel, other equipment and freight money earned could not have been refused and the agent could not have been personally compelled, under such circumstances, to pay the 13,000 pesos, the estimated value of the vessel at the time of the collision.

This is the difference which exists between the lawful acts and lawful obligations of the captain and the liability which he incurs on account of any unlawful act committed by him. In the first case, the lawful acts and obligations of the captain beneficial to the vessel may be enforced as against the agent for the reason that such obligations arise from the contract of agency (provided, however, that the captain does not exceed his authority), while as to any liability incurred by the captain through his unlawful acts, the ship agent is simply subsidiarily civilly liable. This liability of the agent is limited to the vessel and it does not extend further. For this reason the Code of Commerce makes the agent liable to the extent of the value of the vessel, as the codes of the principal maritime nations provide, *with the vessel,* and not individually. Such is also the spirit of our code.

The spirit of our code is accurately set forth in a treatise on maritime law, from which we deem proper to quote the following as the basis of this decision:

> "That which distinguishes the maritime from the civil law and even from the mercantile law in general is the *real and hypothecary* nature of the former, and the many securities of a real nature that maritime customs from time immemorial, the laws, the codes, and the later jurisprudence, have provided for the protection of the various and conflicting interests which are ventured and risked in maritime expeditions, such as the interests of the vessel and of the agent, those of the owners of the cargo and consignees, those who salvage the ship, those who make loans upon the cargo, those of the sailors and members of the crew as to their wages, and those of a constructor as to repairs made to the vessel.
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> "As evidence of this '*real*' nature of the maritime law we have (1) the limitation of the liability of the agents to the actual value of the vessel and the freight money, and (2) the right to retain the cargo and the embargo and detention of the vessel

even in cases where the ordinary civil law would not allow more than a personal action against the debtor or person liable. It will be observed that these rights are correlative, and naturally so, because if the agent can exempt himself from liability by abandoning the vessel and freight money, thus avoiding the possibility of risking his whole fortune in the business, it is also just that his maritime creditor may for any reason attach the vessel itself to secure his claim without waiting for a settlement of his rights by a final judgment, even to the prejudice of a third person.

"This repeals the civil law to such an extent that, in certain cases, where the *mortgaged property* is lost no personal action lies against the owner or agent of the vessel. For instance, where the vessel is lost the sailors and members of the crew can not recover their wages; in case of collision, the liability of the agent is limited as aforesaid, and in case of shipwreck, those who loan their money on the vessel and cargo lose all their rights and can not claim reimbursement under the law.

"There are two reasons why it is impossible to do away with these privileges, to wit: (1) The risk to which the thing is exposed, and (2) the '*real*' nature of the maritime law, exclusively '*real*,' according to which the liability of the parties is limited to a thing which is at the mercy of the Waves. If the agent is only liable with the vessel and freight money and both may be lost through the accidents of navigation it is only just that the maritime creditor have some means of obviating this precarious nature of his rights by detaining the ship, his only security, before it is lost.

"The liens, tacit or legal, which may exist upon the vessel and which a purchaser of the same would be obliged to respect and recognize are—in addition to those existing in favor of the State by virtue of the privileges which are granted to it by all the laws—pilot, tonnage, and port dues and other similar charges, the wages of the crew earned during the last voyage as provided in article 646 of the Code of Commerce, salvage dues under article 842, the indemnification due to the captain of the vessel in case his contract is terminated on account of the voluntary sale of the ship and the insolvency of the owner as provided in article 608, and all other liabilities arising from collisions under articles 837 and 838." (Madariaga, pp. 60-62, 63, 85.)

We accordingly hold that the defendant is liable for the indemnification to which the plaintiff is entitled by reason of the collision, but he is not required to pay such indemnification for the reason that the obligation thus incurred has been extinguished on account of the *loss* of the thing bound for the payment thereof, and in this respect the judgment of the court below is affirmed except in so far as it requires the plaintiff to pay the costs of this action, which is not exactly proper. No special order is made as to the costs of this appeal. After the expiration of twenty days let judgment be entered in accordance herewith and ten days thereafter the record be remanded to the Court of First Instance for execution. So ordered.

Torres, Mapa, Johnson, and *Carson, JJ.,* concur.

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