

[G.R. No. 3199. February 21, 1907]

**ANGEL ORTIZ, PLAINTIFF AND APPELLANT, VS. LA COMPAÑIA MARITIMA,
DEFENDANT AND APPELLEE.**

D E C I S I O N

WILLARD, J.:

About 11 o'clock on the night of May 6, 1905, the steamer *Adelante* and the steamer *Antonio Macleod* were in collision near the Island of Burias. The *Adelante* was going east and the *Antonio Macleod* was going west. As a result of the collision the *Adelante* sank in ten minutes. The plaintiff, claiming to have an interest in her and in her cargo, brought this action for damages against the defendant, the owner of the *Antonio Macleod*.

Several questions were presented at the trial in the court below and decided by that court in its judgment, but we find it necessary to consider only one of such questions. That court found as a fact that the plaintiff had failed to prove that the collision and consequent loss were caused by the negligence of the persons in charge of the *Antonio Macleod*. Unless this finding of fact is plainly and manifestly against the weight of the evidence we have no power to reverse the judgment. (De la Rama vs. De la Rama, 201 U. S., 303.)

The captain of the *Adelante*, who was on the bridge on watch at the time, testified that when he first saw the *Antonio Macleod* she was off his starboard bow, about 2 miles away and showing a green light. He kept on his course as he was showing the *Antonio Macleod* his green light, when, at a distance of about half a mile, the *Antonio Macleod* suddenly changed her course showing him her red light. When he saw that a collision was inevitable he went to port; he did not stop his engines nor slacken speed; the boat was moving at its maximum velocity of 5 to 6 miles an hour, and the *Antonio Macleod* was moving, until just before the collision, at a velocity of between 10 and 11 miles.

Two other witnesses who were on the *Adelante* at the time testified that the first light that they saw on the *Antonio Macleod* was a green light. It is undisputed that at the time of the

collision the *Antonio Macleod* showed to the *Adelante* a red light, and the *Adelante* showed to the *Antonio Macleod* a green light.

The second officer of the *Antonio Macleod*, who was on watch, testified that when he first saw the *Adelante* she showed a red light; that the course of his vessel was north 72 degrees west, and it was proved at the trial that the course of the *Adelante* was south 72 degrees east. This witness further stated that seeing that the boats were on very nearly the same line, he went to starboard, changing his course to north 61 degrees west, continuing thereon for about eight minutes at the rate of 10 miles an hour when he noticed the *Adelante* change her lights, showing him her green light. Examining her through glasses to see that there was no mistake and continuing his course for about two minutes, when seeing that a collision was imminent, he whistled once to indicate that he would go to starboard, stopped and reversed his engines. The *Antonio Macleod* suffered no damage whatever from the collision except the loss of a little paint. She was a much larger boat than the *Adelante*. Two other witnesses for the defendant, the chief engineer and the wheelman, testified that the first light that they saw on the *Adelante* was a red one. It is thus seen that three witnesses for the *Adelante* placed the *Antonio Macleod* to the south of the *Adelante*, and three witnesses for the *Antonio Macleod* placed her to the north of the *Adelante* when the boats first saw each other.

There was other testimony in the case tending to support the contention of both parties. It was admitted that the signal given by the whistle of the *Antonio Macleod* was not answered by the *Adelante*. The defendant presented as a witness a member of the crew of the *Adelante* who testified that he rushed to the bridge just before the collision and found the captain of the *Adelante* sitting down, apparently asleep.

The appellant in his brief in this court makes the following observations:

“En realidad los principales testigos respecto al hecho de autos, son el capitán Goitia, Tranquilino Radoc e Inocencio Navalta por parte del demandante y el Sr. Galleros, James Allison y Hermogenes Dalpo por parte de la demandada, pues son los únicos testigos que declaran respecto a lo ocurrido desde el momento en que los dos barcos, por medio de sus luces, aparecieron a la vista el uno del otro antes de la colisión.

“De los testimonios de estos testigos resultan, respecto a la forma en que sobrevino el accidente de la colisión, dos teorías diametralmente opuestas e

imposibles de armonizar entre si, siendo necesario determinar cual de las dos partes tiene la razon y dice la verdad, ajustandose a la credibilidad de los testigos y a mayor o menor verosimilitud de sus declaraciones.”

We agree with these statements and find it impossible to harmonize the evidence of the respective parties. Under these circumstances it is impossible to say that the finding of the court below that there was no negligence on the part of the *Antonio Macleod* is plainly and manifestly against the weight of the evidence.

It appeared that after the collision an investigation was made as to the cause thereof and the responsibility therefor by a board composed of officers of the customs service in Manila and the captains of vessels sailing in these waters. This report was approved by the Insular Collector of Customs and at the time of the trial of this case the report of the board and the approval of the Insular Collector were offered in evidence by the plaintiff to prove the negligence of the defendant. The court refused to admit this evidence, to which refusal the plaintiff excepted. This ruling of the court in rejecting same was correct. There was nothing to show what evidence the board had before it when it reached its conclusions; there was nothing to show that it made its findings upon the same evidence which was presented in this case.

And even if the evidence had been the same we do not see how, in the absence of a declaratory statute, the report of the board could be considered as competent evidence to prove the negligence of the defendant. In the absence of such statutory provisions it was no more than the opinion of several persons who had examined into the matter but who were not called as witnesses, were not sworn, and whom the defendant did not have opportunity of cross-examining.

The judgment of the court below acquitting the defendant of the complaint is affirmed with costs, on the ground that its finding of fact that there was no negligence on the part of the defendant is not plainly and manifestly against the weight of the evidence. Upon the other questions presented and decided in the court below we make no decision.

After expiration of twenty days judgment will be rendered in accordance herewith, and ten days thereafter the cause will be remanded to the court from whence it came for proper action. So ordered.

Arellano, C. J., Torres, Mapa, Carson, and Tracey, JJ., concur.

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