7 Phil. 532

[G.R. No. 3066. February 25, 1907]

H. L. HEATH, PLAINTIFF AND APPELLEE, VS. THE STEAMER "SAN NICOLAS," DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

On the 19th of October, 1904, the plaintiff filed a complaint in the Court of First Instance of Manila against the steamer *San Nicolas*, alleging that on the 15th day of September, 1904, the schooner *Anita*, owned by the plaintiff, had been in collision with the *San Nicolas*; that it had been damaged by the collision, and that the *San Nicolas* was wholly at fault. The prayer of the complaint is as follows:

> "Por lo tanto, suplica el demandante que se expida contra dicho vapor *San Nicolas*, su aparejo y pertrechos, un mandamiento de embargo de conformidad con la practica de este honorable Juzgado en asuntos de esta clase, y que todas cuantas personas tengan interes cualquiera en los mismos queden emplazadas a comparecer y a contestar a todo lo preinserto, y que tenga a bien este honorable Juzgado ordenar que se satisfagan los daños ya mencionados y que a ese efecto sea condenado y vendido dicho vapor *San Nicolas*, y que al demandante se le concedan cuantos demas remedios en justicia procedan."

No natural or juridical person was named as defendant in the complaint. On the same day, the 19th of October, the court made an order directing that the *San Nicolas* be seized, and that all persons who claimed any interest in her should be summoned to appear before the court on the 28th of October, 1904. Under this order the ship was attached and on the 20th day of October Esperidion G. Borja filed a document in the proceeding in which he stated that he was the owner of the *San Nicolas*; that the grounds alleged in the complaint were insufficient to ask for and obtain the remedy sought by the plaintiff; that the seizure would

cause him serious damages, as the steamer was ready to sail on the same day, and he asked that the order therefore be vacated upon his giving a bond. This bond was given and the order vacated.

On the 8th of November Borja made a motion to vacate the order of seizure and also presented a demurrer to the complaint. The demurrer is as follows:

> "1. Because the court has no jurisdiction of either the defendant or the subject-matter of the action, there being no defendant in the suit.
>
> "2. There is a defect of parties defendant, there being no party defendant in the action, the action being *ex parte*.
>
> "3. The procedure employed in this case is wholly unknown to the law of the Philippine Islands, is anomalous, and is not according to the due course of the law of the land.
>
> "4. The procedure adopted in this case would, if followed and sustained, deprive the owners of the steamship *San Nicolas* of their property without due process of law."

The demurrer was overruled and the motion to vacate the order of seizure was denied. To both of these orders Borja excepted.

On the 21st of November, Borja answered the complaint, denying all the allegations thereof. A trial was had and on the 26th of October, 1905, judgment was rendered in favor of the plaintiff fixing the amount of the damages suffered by him at P4,317.61, Philippine currency. The judgment further provided as follows:

> "It further appears to the court that the boat *San Nicolas* was attached in this case and that the attachment was released upon the execution of a bond by the owner, Espiridion G. Borja, with Geronimo Jose as surety thereon. It is therefore ordered, adjudged, and decreed by the court that the plaintiff, H. L. Heath, recover of the defendant, Espiridion G. Borja, and Geronimo Jose, surety, the said sum of P4,317.61, Philippine currency, and the costs of this case, for which execution may issue. It is further ordered by the court that the above judgment

> as to the surety, Geronimo Jose, except as to costs, will be satisfied by the delivery of the said boat *San Nicolas* to the sheriff of the city of Manila."

Borja duly excepted to this judgment and moved for a new trial on the ground that the judgment was plainly and manifestly against the weight of the evidence. This motion was denied and to the denial thereto Borja duly excepted and he has brought the case here for review.

The important question discussed in the briefs in this court, and to be decided, is whether such a proceeding as the one in question, directed against the ship itself, without naming any natural or juridical person as defendant, can be maintained in these Islands.

Act No. 136, section 56, provides in paragraph 4 that Courts of First Instance shall have original jurisdiction in all actions in admiralty and maritime jurisdiction, irrespective of the value of the property in controversy or the amount of the demand.

The claim of the plaintiff is that the use of the phrase "admiralty and maritime jurisdiction" in this section has introduced into the law in force in these Islands all the provisions of practice and procedure in force in similar cases in the United States. This same contention has been made once before in this court. (Ivancich *vs*. Odlin, 1 Phil. Rep., 284.) In the opinion in that case it is said that the judge below held "that the word 'admiralty' used in paragraph 4 of section 56 of the Organic Act passed by the United States Philippine Commission *ex propio vigore* brought to the court all the procedure in use in the maritime courts of the United States." The court then said at page 287:

> "Had a case such as this occurred in the time of the Spanish sovereignty, there would have been no difficulty in finding laws applicable to it, for it is certain that in the Philippines we had a complete legislation, both substantive and adjective, under which to bring an action *in rem* against a vessel for the purpose of enforcing certain liens. The substantive law is found in article 580 of the Code of Commerce. * * * The procedural law is to be found in article 584 of the same code. * * * The reason why provisions of adjective law are to be found in a code which purports to be substantive law is that the old Law of Civil Procedure of the Philippines was promulgated prior to the Code of Commerce now in force in the Philippines, and in this Code of Commerce certain changes were made which were not to be found in the old code of 1829. At all events, the judge would then

> have proceeded in accordance with the provisions of article 580 for the purpose of determining the existence of the right, and for procedure would have turned to articles 584 and 579, not overlooking the provisions of articles 1526 and 1527 of the Law of Civil Procedure. * * * Hence the judicial procedure for the attachment and sale of a vessel is defined in the articles above cited of the Code of Commerce and the old Code of Civil Procedure of the Philippines in force under the former government. By proclamation of the commanding general of the American Army in these Islands, dated August 14, 1898, all these laws were kept in force, and although the old Law of Civil Procedure has been repealed by the new Code of Civil Procedure enacted by the new Government, the Code of Commerce is still operative. The result, is, therefore, that in the Philippines any vessel, even though it be a foreign vessel, found in any port of this Archipelago may be attached and sold under the substantive law, which defines the right, and the procedural law contained in the same code by which this right is to be enforced. There is no necessity for applying any other procedure while that described above is in force, as we understand it to be."

This case holds that the law, practice, and procedure in force in the admiralty courts of the United States were not brought to these Islands by the insertion of the phrase "admiralty and maritime jurisdiction" in section 56 of Act No. 136.

This view is confirmed by the legislation of the Commission on this subject. Act No. 76, enacted January 24, 1901, provided in section 1 that "admiralty jurisdiction over all maritime contracts, torts, injuries, or offenses is hereby conferred upon the several provost courts organized and existing in the open ports of the Philippine Islands, under authority of the Military Governor." Section 2 provides that "the civil jurisdiction of the provost courts in admiralty shall be exercised in the manner provided by General Orders, Numbered Twenty-three, of the Military Governor, issued on June twenty-fourth, eighteen hundred and ninety-nine, and its decisions shall be governed by the rules therein stated."

This general order provided that:

> "These provost courts, in the exercise of the civil jurisdiction conferred, will formulate their own procedure, which will be simple and brief. In the decisions rendered they will be guided by the provisions of the Spanish law recognized in General Orders, Nos. 20 and 21, current series, this office, as continuing in force

> in places in the Philippine Islands under United States military occupation, when such provisions can be ascertained, and by principles of equity and justice."

The Spanish law, which was entirely adequate, was thus made the law of these tribunals and it necessarily excluded the American law. Act No. 136, which established courts of justice, in its section 78 expressly took away from provost courts their civil jurisdiction and its section 56, paragraph 4, conferred admiralty jurisdiction on the Courts of First Instance as before stated. The criminal jurisdiction in admiralty of these courts was taken away by Act No. 400, enacted May 16, 1902, which conferred it upon Courts of First Instance.

Cases of admiralty and maritime jurisdiction now arising must be determined by the laws in force here at the time of the transfer of sovereignty and the laws subsequently passed by the Commission or by the Congress of the United States. From 1898 to June, 1901, those laws were found in the Code of Commerce and in the Spanish Law of Civil Procedure. For cases arising since the last named date, resort must be had to the same Code of Commerce and to the present Code of Civil Procedure.

The first question to be considered is whether this action was properly brought against the ship and whether an action can now be maintained when the only defendant named is neither a natural nor a juridical person. Under the law in force prior to 1898 there was no doubt upon this subject. It was absolutely indispensable for the maintenance of a contentious action in the courts of justice to have as defendant some natural or juridical person. A suit against a ship, such as is permitted in the English and the American admiralty courts, was unknown to the Spanish law. It is true that the Spanish Law of Civil Procedure contained certain provisions relating to voluntary jurisdiction in matters of commerce, but none of these provisions had any application to a contentious suit of this character.

It being impossible to maintain an action of this character against a ship as the only defendant prior to June, 1901, it follows that if such an action can now be maintained it must be by virtue of some provision found in the Code of Civil Procedure and which is the only new law now in force relating to this matter. An examination of the provisions of that code will show that no such action is authorized. It can not, therefore, be now maintained, and the demurrer of Borja should have been sustained on that ground.

The court committed an error also in denying the motion of Borja to vacate the order of seizure. Before a final judgment, property can not be seized unless by virtue of some provision of law. The Code of Civil Procedure, in its sections 173 and following, authorizes

such seizure in cases of receivership; in its sections 262 and following, in cases of replevin; and in its sections 424 and following, in cases of attachment. In the present case no attempt was made to comply with the provisions of the law relating to seizure in any one of these three cases. The order allowing such seizure without compliance with any of these provisions was therefore erroneous and should have been set aside on motion.

In cases of admiralty and maritime jurisdiction, the question as to which one of the three ways pointed out by the code should be resorted to must be resolved by reference to the facts of each particular case. Article 580 of the Code of Commerce specifies the order of payment in case of the sale of a vessel. It is said in the case of Ivancich *vs*. Odlin (1 Phil Rep., 284) that the creditors named in this article have a lien upon the ship.

Where neither the law nor the contract between the parties creates any lien or charge upon the vessel, the only way in which it can be seized before judgment is by pursuing the remedy relating to attachment pointed out in sections 424 and following.

In view of the claim of Borja that the vessel was ready to sail when it was seized, attention should be called, however, to the provisions of article 584 of the Code of Commerce.

It is claimed by the appellee that these errors in procedure are of no consequence, because the owner, Borja, voluntarily appeared in the action, the merits of the cause were tried, and a judgment was rendered against him. In other words, that after his appearance the action was converted into an action against him and the manner in which he was brought into court is of no importance.

In answer to this contention, it may be said in the first place that the appearance of Borja was in no sense voluntary. His vessel was seized, according to his claim, upon the very day it was to sail. He was really forced into court for the purpose of securing the release of it.

It is to be noted further that he never in any way consented to the irregular procedure adopted in this case. In the first document which he presented he stated that the reasons alleged in the complaint were insufficient as a ground for the special relief asked by the plaintiff. The next document he presented was a motion to vacate the order of seizure on the ground that there was no authority for its issuance, and the next document was a demurrer on the ground that such procedure was entirely irregular. Under the circumstances, we do not think that what he did can be construed as a waiver of his right to make the objections which we consider now to have been well founded.

In the case of *The Monte A* (12 Fed. Rep., 331) this question was considered. It is said at page 333:

> "As the owner of the vessel, however, is a nonresident who appeared generally in the action and contested his liability upon the merits without taking any exception to the form of remedy as he might and should have done at the commencement of the action, and as the situation as respects him after the release of the vessel on bond is claimed to be essentially the same as if the action had been commenced *in personam*, it is urged that if he is found clearly liable for the damages alleged in the libel, a personal judgment against him ought to be rendered."

It will be seen that the claim made in that case is identical with the claim made in this case, with the important difference, however, that in this case the owner did immediately upon his first appearance object to the form of the remedy. The point thus raised in the case was discussed and it was decided that the judgment against the owner for damages in such an appearance could not be sustained, and we hold that in this case Borja did not waive his rights to object to the irregular procedure. Neither the judgment nor the orders refusing to vacate the order of seizure and overruling the demurrer can be sustained.

There is nothing in any of the former decisions of this court inconsistent with what we here hold. In the case of Ivancich *vs*. Odlin the plaintiff was a lien-creditor. The order of seizure was sought to be reviewed, not by an appeal from an order refusing to vacate it as in this case, but in an original suit in this court based upon the proposition that the court below acted without jurisdiction. What was really decided in that case is apparent from the following quotation from the opinion:

> "The judge did not, therefore, act *without* jurisdiction when directing the attachment of the vessel in question, and has not exceeded his jurisdiction. If the excess of jurisdiction upon which the argument was based consists in his having levied the attachment without the fulfillment of the necessary conditions and without following the form prescribed by some law of procedure applicable to the case, it is our opinion that this error is not such an excess of jurisdiction as can be cured by prohibition, and the petitioner has other means whereby this error of procedure may be corrected or remedied." (1 Phil. Rep., 289.)

In this case the defendant availed himself of those other means, and appealed from the various orders which were rendered against him. In the case of Fleming *vs*. The *Lorcha Nuestra Sra. del Carmen*[1] (5 Off. Gaz., 56) no objection was made to the procedure. In other cases such as United States *vs*. Smith, Bell & Co.,[2] No. 1876, September 30, 1905, and Philippine Shipping Co. *vs*. Vergara,[3] No. 1600, June 1, 1906, the action was directed against the owner.

The order of the court below of November 12, 1904, overruling the demurrer and refusing to vacate the order of seizure, is reversed. The judgment of October 26, 1905, is vacated and the cause is remanded to the court below for further proceedings not inconsistent with this opinion. No costs will be allowed to either party in this court. After the expiration of twenty days let judgment be rendered in accordance herewith, and ten days thereafter let the case 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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[1] Page 200, *supra*.

[2] 5 Phil. Rep., 85.

[3] 6 Phil. Rep., 281.

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