34 Phil. 626

[G.R. No. 9366. August 01, 1916]

YAP TICO & CO., PLAINTIFF AND APPELLANT, VS. H. C. ANDERSON, PERSONALLY, AND FRANCISCO ECHEVARRIA, MARIANO AGUILAR, F. C. CAIRNS, COLLECTOR OF CUSTOMS OF THE PORT OF ILOILO, H. C. ANDERSON, AS MEMBERS OF THE ILOILO PILOTS' ASSOCIATION, AND THE ILOILO PILOTS' ASSOCIATION, DEFENDANTS AND APPELLEES.

D E C I S I O N

JOHNSON, J.:

This action was commenced on the 29th of July, 1912, against H. C. Anderson personally and "The Iloilo Pilots' Association" and the individual members thereof to recover damages caused to the lorcha *Monserrat*, which lorcha belonged to the plaintiff company. The plaintiff alleged that said lorcha was lying alongside the steamer *Saint Michael* in the port of Iloilo, waiting to be loaded with a cargo of sugar, on the 24th of April, 1912; that on said day (the 24th of April, 1912), at about 1 o'clock in the afternoon, the steamship *Yesan Maru*, in charge of said H. C. Anderson, as pilot, in leaving the Iloilo River, through the negligence of the said Anderson, ran into the said lorcha, causing injury thereby to the extent of ₱10,000; that the injury was caused by the negligence of the said Anderson and not by the negligence of the captain of the said *Yesan Maru*. The plaintiff, in order to show the liability of the defendants, for the said alleged negligent act of Anderson, set out certain sections of Customs Administrative Circular No. 122. Said circular prescribes and fixes the duties and liabilities of pilot associations in the Philippine Islands. The plaintiff further alleges that a board of arbitration was called, as provided for under said circular and that said board found that the said Anderson was guilty of negligence; that the damages caused by said negligence exceed ₱3,000, which was the limit of the liability of the association under paragraph 26 of said circular. Upon the foregoing facts the plaintiff prayed for damages in the sum of ₱10,000. The plaintiff further prayed that a judgment be issued against the funds of the pilots' association, which prayer was granted by the lower court before issue was joined.

On August 27, 1912, the defendants having failed to answer the petition, the plaintiff moved for a judgment by default, which motion was granted by the lower court upon the same day. Later said order or judgment by default was upon motion of the defendants set aside. The defendants finally answered the petition and interposed thereby the defense: (a) That the said accident or damage was not caused by the negligence of the defendants, (b) That the said lorcha was occupying a place in the river not authorized by law or by the rules of the port and was an obstruction to free navigation, (c) That there was sufficient time for the plaintiff to remove the lorcha to a place of safety before the accident, (d) That the accident was not due to a lack of care on the part of the defendants, but to the narrowness of the river, the force of the wind and the current, and to other obstructions in the river. (e) That the crew of the *Yesan Maru* did not obey the orders of the pilot and the machinery was not in condition to properly manage the ship.

Upon the issue thus presented the lower court reached the conclusion that the alleged damages had not been caused by the negligence of the defendants, or by any one of them, and absolved them from all liability under the complaint. The lower court made the following finding of facts upon the question presented.

> "On the 24th of April, H. C. Anderson, one of the defendants, a pilot on duty, undertook to carry out of the river a vessel named *Yesan Maru* which had been discharging coal and was going out light. Up the river was another steamer loading with sugar and alongside at the bow hatch were two lighters, one the *Soncillo*, tied up against the ship, and the *Monserrat*, for which this damage is claimed by plaintiff, was tied up alongside the *Soncillo*. It did not appear exactly how much space there was between. It was shown that the wind was strong and that the ship had been at work about an hour or an hour and a half in turning around and getting out of the river. There was just barely room to turn around, the river being a little wider than the length of the ship, and as they pulled out on the anchor, which had been dropped in the river, it was discovered that the anchor had been fouled by the anchor of the ship above. By this time the boat had turned around with the bow down the stream headed out into the bay when this was discovered and the pilot noticing this ordered ship's officers to slack out the chain. He says this was not done. He said that the first mate of the ship was at the stern, but that he gave him no warning that the stern of the ship was approaching or about to approach the lorcha in question, but he discovered, on account of their not slacking out the anchor chain so they might go forward from

> the boat, that it was about to come into a collision with the lorcha and just before the impact he ordered the stopping of the engines. This, however, did not take place, because the ship backed into the lorcha and the propeller blades cut through the sides the width of about nine planks on the side of the lorcha. The blades of the propeller were examined after the collision and the boat had been anchored down at the mouth of the river in the bay and different ones were found to be broken off from 15 to 30 inches, all of them having been broken. The lorcha sunk in the river."

The court further found (p. 25):

> "The pilot can not handle the ship alone, and it is not the law, as I understand it, that he is responsible for whatever accident happens while he is on it, but if it happens that they fail to obey his orders in handling the ship, *as the evidence in this case shows,* then I don't believe the pilot can be held responsible. This fact alone is sufficient, in my mind, to show that the pilot and his association are not responsible for this accident. * * * As I understand the law concerning pilots and their duties, they are responsible for a full knowledge of the channel and the navigation only so far as he can accomplish it through the officers and crew of the ship, and I don't see that he can be held responsible for damage *when the evidence shows, as it does in this case,* that the officers and crew of the ship failed to obey his orders."

From the judgment of the lower court the plaintiff appealed. An examination of the record brought to this court shows that the plaintiff and appellant has failed to bring the evidence here. We cannot, therefore, examine the evidence. We can only examine the facts set out in the finding of facts made by the lower court for the purpose of ascertaining whether or not said facts are sufficient to justify its conclusion.

In an effort to obtain a copy of said Customs Administrative Circular No. 122, it was discovered that said circular has been substituted by Customs Marine Circular No. 17, and that said circular had been in force since December 29, 1908. It will appear, therefore, that said Circular No. 122 was not in force at the time of the alleged accident. Many of the provisions of said Circular No. 122 are included in said Customs Marine Circular No. 17. Paragraph 55 of said circular provides:

> "A pilot shall be held responsible for the direction of a vessel from the time he assumes control thereof until he leaves it anchored free from shoal: *Provided,* That his responsibility shall cease at the moment the master neglects or refuses to carry out his instructions."

The lower court found specifically that the crew of the ship failed to obey the orders of the pilot, Anderson. That being true, it must follow that Anderson and the other defendants are not liable for damages in the present case. Therefore, the judgment of the lower court should be and is hereby affirmed, with costs. So ordered.

Torres, Trent, and *Araullo, JJ.,* concur.
Moreland, J., concurs in the result.

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