

45 Phil. 416

[G.R. No. 20145. November 15, 1923]

VICENTE VERZOSA AND RUIZ, REMENTERIA Y CIA., S. EN C., PLAINTIFFS AND APPELLANTS, VS. SILVINO LIM AND SIY CONG BIENG & COMPANY, INC., DEFENDANTS AND APPELLANTS.

D E C I S I O N

STREET, J.:

This action was instituted in the Court of First Instance of the City of Manila by Vicente Verzosa and Ruiz, Rementeria y Compañia, as owners of the coastwise vessel *Perla*, against Silvino Lim and Siy Cong Bieng & Company, Inc., as owner and agent, respectively, of the vessel *Ban Yek*, for the purpose of recovering a sum of money alleged to be the damages resulting to the plaintiffs from a collision which occurred on March 9, 1921, between the two vessels mentioned, it being alleged that said collision was due to the inexperience, carelessness and lack of skill on the part of the captain of the *Ban Yek* and to his failure to observe the rules of navigation appropriate to the case. The defendants answered with a general denial, and by way of special defense asserted, among other things, that the collision was due exclusively to the inexperience and carelessness of the captain and officers of the steamship *Perla*; for which reason the defendants in turn, by way of counterclaim, prayed judgment for the damages suffered by the *Ban Yek* from the same collision. At the hearing the trial judge absolved the defendants from the complaint and likewise absolved the plaintiffs from the defendants' counterclaim. From this judgment both parties appealed.

It appears in evidence that at about five o'clock in the afternoon of March 9, 1921, the coastwise steamer *Ban Yek* left the port of Naga on the Bicol River, in the Province of Camarines Sur, with destination to the City of Manila. At the time of her departure from said port the sea was approaching to high tide

but the current was still running in through the Bicol River, with the result that the *Ban Yek* had the current against her. As the ship approached the Malbong bend of the Bicol River, in the municipality of Gainza, another vessel, the *Perla*, was sighted coming up the river on the way to Naga. While the boats were yet more than a kilometer apart, the *Ban Yek* gave two blasts with her whistle, thus indicating an intention to pass on the left, or to her own port side. In reply to this signal the *Perla* gave a single blast, thereby indicating that she disagreed with the signal given by the *Ban Yek* and would maintain her position on the right, that is, would keep to the starboard. The *Ban Yek* made no reply to this signal. As the *Perla* was navigating with the current, then running in from the sea, this vessel, under paragraph 163 of Customs Marine Circular No. 53, had the right of way over the *Ban Yek*, and the officers of the *Perla* interpreted the action of the *Ban Yek* in not replying to the *Perla's* signal as an indication of acquiescence of the officers of the *Ban Yek* in the determination of the *Perla* to keep to the starboard.

The river at this point is about two hundred and fifty feet wide, and the courses thus being respectively pursued by the two vessels necessarily tended to bring them into a head-on collision. When the danger of such an occurrence became imminent, Captain Garrido of the *Perla*, seeing that he was shut off by the *Ban Yek* from passing to the right, put his vessel to port, intending to avoid collision or minimize its impact by getting farther out into the stream. An additional reason for this maneuver, as stated by Captain Garrido, is that the captain of the *Ban Yek* waived his hand to Garrido, indicating that the latter should turn his vessel towards the middle of the stream. At about the same time that the *Perla* was thus deflected from her course the engine on the *Ban Yek* was reversed and three blasts were given by this vessel to indicate that she was backing.

Now, it appears that when the engine is reversed, a vessel swings to the right or left in accordance with the direction in which the blades of the propeller are set; and as the *Ban Yek* began to back, her bow was thrown out into the stream, a movement which was assisted by the current of the river. By this means the *Ban Yek* was brought to occupy an oblique position across the stream at the moment the *Perla* was passing; and the bow of the *Ban Yek* crashed into the starboard bumpers of the *Perla*, carrying

away external parts of the ship and inflicting material damage on the hull. To effect the repairs thus made necessary to the *Perla* cost her owners the sum of P17,827, including expenses of survey.

The first legal point presented in the case has reference to the sufficiency of the protest. In this connection it appears that within twenty-four hours after the arrival of the *Perla* at the port of Naga, Captain Garrido appeared before Vicente Rodi, the auxiliary justice of the peace of the municipality of Naga, and made before that officer the sworn protest which is in evidence as Exhibit B. This protest is sufficient in our opinion to answer all the requirements of article 835 of the Code of Commerce. A regular justice of the peace would without doubt be competent to take a marine protest, and the same authority must be conceded to the auxiliary justice in the absence of any showing in the record to the effect that the justice of the peace himself was acting at the time in the municipality (Adm. Code, sec. 211; sec. 334, Code of Civ. Proc., subsecs. 14, 15). We note that in his certificate to this protest Vicente Rodi added to the appellation of auxiliary justice of the peace, following his name, the additional designation "notary public ex-officio." However, under subsection (c) of section 242 of the Administrative Code, it is plain that an auxiliary justice of the peace is not an ex-officio notary public. It results that the taking of this protest must be ascribed to the officer in his character as auxiliary justice of the peace and not in the character of notary public ex-officio. It is hardly necessary to add that this court takes judicial notice of the fact that Naga is not a port of entry and that no customs official of rank is there stationed who could have taken cognizance of this protest.

Upon the point of responsibility for the collision we have no hesitancy in finding that the fault is to be attributed exclusively to the negligence and inattention of the captain and pilot in charge of the *Ban Yek*. The *Perla* undoubtedly had the right of way, since this vessel was navigating with the current, and the officers in charge of the *Perla* were correct in assuming, from the failure of the *Ban Yek* to respond to the single blast of the *Perla*, that the officers in charge of the *Ban Yek* recognized that the *Perla* had a right of way and acquiesced in her resolution to keep to the right. The excuse urged for the *Ban Yek* is that this vessel is somewhat larger than the *Perla* and that it was desirable

for the *Ban Yek* to keep on the side of the long arc of the curve of the river; and in this connection it is suggested that the river is deeper on the outer edge of the bend than on the inner edge. It is also stated that on a certain previous occasion the *Ban Yek* on coming out from this port had gotten stuck in the mud in this bend by keeping too far to the right. Moreover, it is said to be the practice of ships in navigating this stream to keep nearer the outside than to the inside of the bend. These suggestions are by no means convincing. It appears in evidence that the river bottom here is composed of mud and silt, and as the tide at the time of this incident was nearly at its flood, there was ample depth of water to have accommodated the *Ban Yek* if she had kept to that part of the stream which it was proper for her to occupy. We may further observe that the disparity in the size of the vessels was not such as to dominate the situation and deprive the *Perla* of the right of way under the conditions stated. Blame for the collision must therefore, as already stated, be attributed to the *Ban Yek*.

On the other hand no fault can be attributed to the officers navigating the *Perla* either in maintaining the course which had been determined upon for that vessel in conformity with the marine regulations applicable to the case or in deflecting the vessel towards the middle of the stream after the danger of collision became imminent. The trial judge suggests in his opinion that when Captain Garrido saw that the *Ban Yek* was holding her course to the left, he (Garrido) should have changed the course of the *Perla* to port more promptly. The validity of this criticism cannot be admitted. Among rules applicable to navigation none is better founded on reason and experience than that which requires the navigating officers of any vessel to assume that an approaching vessel will observe the regulations prescribed for navigation (G. Urrutia & Co. vs. Baco River Plantation Co., 26 Phil., 632, 637). Any other rule would introduce guess work into the control of ships and produce uncertainty in the operation of the regulations.

Our conclusion is that his Honor, the trial judge, was in error in not awarding damages to the *Perla*; but no error was committed in absolving the plaintiffs from the defendants' cross-complaint.

The sum of P17,827 in our opinion represents the limit of the plaintiffs' right of recovery. In the original complaint recovery is sought for an

additional amount of P18,000, most of which consists of damages supposed to have been incurred from the inability of the *Perla* to maintain her regular schedule while laid up in the dock undergoing repairs. The damages thus claimed, in addition to being somewhat of a speculative nature, are in our opinion not sufficiently proved to warrant the court in allowing the same.

Having determined the amount which the plaintiffs are entitled to recover, it becomes necessary to consider the person, or persons, who must respond for these damages. Upon this point we note that Silvino Lim is impleaded as owner; and Siy Cong Bieng & Co. is impleaded as the shipping agent (*casa naviera*), or person in responsible control of the *Ban Yek* at the time of the accident. We note further that in article 826 of the Code of Commerce it is declared that the *owner* of any vessel shall be liable for the indemnity due to any other vessel injured by the fault, negligence, or lack of skill of the captain of the first. We say "owner," which is the word used in the current translation of this article in the Spanish Code of Commerce. It is to be observed, however, that the Spanish text itself uses the word *naviero*; and there is some ambiguity in the use of said word in this article, owing to the fact that *naviero* in Spanish has several meanings. The author of the article which appears under the word *naviero* in the *Enciclopedia Juridica Española* tells us that in Spanish it may mean either owner, outfitter, charterer, or agent, though he says that the fundamental and correct meaning of the word is that of "owner." That *naviero*, as used in the Spanish text of article 826, means owner is further to be inferred from article 837, which limits the civil liability expressed in article 826 to the value of the vessel with all her appurtenances and all the freight earned during the voyage. There would have been no propriety in limiting liability to the value of the vessel unless the owner were understood to be the person liable. It is therefore clear that by special provision of the Code of Commerce the owner is made responsible for the damage caused by an accident of the kind under consideration in this case; and in more than one case this court has held the owner liable, when sued alone (*Philippine Shipping Co. vs. Garcia Vergara*, 6 Phil., 281; *G. Urrutia & Co. vs. Baco River Plantation Co.*, 26 Phil., 632).

But while it is thus demonstrated that Silvino Lim is liable for these damages in the character of owner, it does not necessarily follow that Siy Cong

Bieng & Co., as charterer or agent (*casa naviera*), is exempt from liability; and we are of the opinion that both the owner and agent can be held responsible where both are impleaded together. In *Philippine Shipping Co. vs. Garcia Vergara* (6 Phil., 281), it seems to have been accepted as a matter of course that both owner and agent of the offending vessel are liable for the damage done; and this must, we think, be true. The liability of the *naviero*, in the sense of charterer or agent, if not expressed in article 826 of the Code of Commerce, is clearly deducible from the general doctrine of jurisprudence stated in article 1902 of the Civil Code, and it is also recognized, but more especially as regards contractual obligations, in article 586 of the Code of Commerce. Moreover, we are of the opinion that both the owner and agent (*naviero*) should be declared to be jointly and severally liable, since the obligation which is the subject of this action had its origin in a tortious act and did not arise from contract. Article 1137 of the Civil Code, declaring that joint obligations shall be apportionable unless otherwise provided, has no application to obligations arising from tort.

For the reasons stated the judgment appealed from will be affirmed in so far as it absolves the plaintiffs from the defendants' cross-complaint but will be reversed in so far as it absolves the defendants from the plaintiffs' complaint; and judgment will be entered for the plaintiffs to recover jointly and severally from the defendants Silvino Lim and Siy Cong Bieng & Co. the sum of seventeen thousand eight hundred and twenty-seven pesos (P17,827), with interest from the date of the institution of the action, without special pronouncement as to costs of either instance. So ordered.

*Johnson, Malcolm, Avanceña,
Villamor, and Romualdez, JJ., concur.*

CONCURRING AND DISSENTING

JOHNS, J.:

I concur in all of that portion of the majority opinion which holds that the

defendant Silvino Lim, as owner, is liable for the damages in question, and I dissent from all of that portion of the opinion which holds that the defendant Siy Cong Bieng & Company, Inc., as charterer, is liable.

Under the pleadings here, the owner of the vessel only is liable.

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