

JOSE NEGRE, PLAINTIFF AND APPELLANT, VS. CABAHUG SHIPPING & CO., DEFENDANT AND APPELLEE.

G.R. No. L-19609. April 29, 1966

Ponente: DIZON, J.

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DIZON, J.:

Appeal taken by José Negre from the order of the Court of First Instance of Cebu in Civil Case No. R-7150 dismissing his complaint against the Cabahug Shipping & Co., on the ground of lack of jurisdiction over the subject-matter.

On August 14, 1961, appellant herein filed his complaint against appellee, a common carrier engaged in the business of transporting persons and goods for a price within Philippine waters, to recover the sum of P3,774.90, representing the value of a cargo of dried fish belonging to him which was loaded on the latter's vessel, the JACOBA, at the port of Santa Fe, and which was totally destroyed on board thereof, before it could be transported to its place of destination, due to the gross negligence of the officers and members of the crew of said vessel, and to recover the additional amount of P500.00 as attorney's fees.

As appellee's answer admitted liability for the loss of said cargo, but only up to the amount of P3,733.78, appellant moved for a judgment on the pleadings. In replying thereto, however, appellee moved to dismiss the case on the ground that the amount of the claim did not fall within the jurisdiction of the court. Resolving this motion, the court dismissed the complaint for lack of jurisdiction, without prejudice to the right of appellant to file the same with the corresponding municipal court.

Appellant maintains in this appeal that his action is one in admiralty and maritime jurisdiction, which, pursuant to the provisions of Section 44 of the Judiciary Act, as amended, falls within the exclusive original jurisdiction of the courts of first instance, irrespective of the amount or the value of the goods involved.

Appellant's contention is meritorious.

The complaint filed in the lower court contains the following fundamental allegations:

* * * * *

"2—That defendant is a public utility, engaged in the business of transportation of passengers and cargo for hire in the seas of the Philippines; and as such public utility, it is the owner and operator of a motorboat named 'JACOBA' plying between the ports of Hagnaya, Santa Fe, and Cebu City, all in the province of Cebu;

"3—That on or about March 24, 1961, plaintiff and defendant entered into a contract of transportation under which the former caused to be loaded on said motorboat 211 cases of dried fish worth P3,774.90 in Santa Fe, Cebu and the latter bound itself to transport same safely to its destination, for a certain consideration;

"4—That on said date March 24, 1961, while said motorboat was still docked at the wharf, of the port of Santa Fe, Cebu, and despite the fact that the weather was very calm, it became flooded with sea water due to the inexcusable fault and gross negligence of its officers and members of the crew, as a result of which the said

cargo of dried fish was totally destroyed;

"5—That in a communication dated May 22, 1961, defendant admits that the loss or destruction of said cargo was due to the inexcusable fault or gross negligence of its employees in said motorboat, and accepts liability therefor to plaintiff in the amount of P3,774.90;"

It is therefore beyond question that the action was based upon an oral contract for the transportation of goods by water. It has been held that, to give admiralty jurisdiction over a contract, the same must relate to the trade and business of the sea (*The James T. Furber* 129 Fed. 808, cited in 66 LRA 212). Admiralty jurisdiction, it has also been held, extends to all maritime torts (*Allen vs. Newberry*, 21 How. (U.S.) 244, 16 L. Ed. 110).

Moreover, the allegations of the complaint clearly show: first, that the contract entered into between the parties had already been partially performed with the loading of the goods subject-matter thereof on board appellee's vessel and the acceptance thereof by said appellee, and second, that the maritime contract binding the parties was breached by the carrier because through his fault and that of his agents and representatives the cargo became a total loss.

All the foregoing shows, in our opinion, that the action was one in admiralty and was therefore within the original and exclusive jurisdiction of the lower court.

Wherefore, the order appealed from is hereby reversed and the case is remanded to the court of origin for proper proceedings in accordance with this decision. With costs.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J.B.L., Barrera, Regala, Makalintal, Bengzon, J.P., Zaldivar, and Sanchez, JJ., concur.

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