

FELIX ROBLES, PLAINTIFF AND APPELLANT, VS. LIZARRAGA HERMANOS, DEFENDANT AND APPELLANT; MANUELA GAY, DEFENDANT AND APPELLEE.*G. R. No. 10152. March 29, 1917*

Ponente: ARAULLO, J.

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On the afternoon of February 15, 1913, the lorch *Tafalla*, the property of the defendants *Lizarraga Hermanos*, of Iloilo, while laden with sugar belonging to the plaintiff, *Felix Robles*, of Occidental Negros, enroute to Iloilo, was passing through one of the channels of the mouth of the river of the town of *Pontevedra*. On coming abreast of another lorch named the *Fortuna*, belonging to the de-fendant *Manuela Gay*—which was stranded in that place and maneuvering with its anchor to extricate itself from its position—the *Tafalla* ran afoul of one of the flukes of the said anchor. The collision stove a hole in the bottom of the *Tafalla* through which the water entered and dam-aged the cargo of sugar to the extent of P3,935.27.

The plaintiff, the owner of the sugar damaged by the ac-cident, alleged as a cause of action that the collision be-tween the *Tafalla* and the anchor attached to the cable of the *Fortuna* was due to the carelessness and negligence of the masters and crews of said two lorchas—a fact which was duly reported to the Collector of Customs of the port of Iloilo. Plaintiff therefore prayed the court to order the defendants, *Lizarraga Hermanos* and *Manuela Gay*, to pay him P4,000, the amount of said damage, and the costs.

The defendant *Manuela Gay* denied the allegations con-tained in the complaint, with the exception of those ad-mitted by her in her special defense in which she acknowledged that, in effect, the *Fortuna* was maneuvering with its anchor—which, fastened to a cable, had been drop-ped in the channel—at the time when the *Tafalla* attempted to pass by that same place in the mouth of the river; that the latter vessel first took soundings in order to ascertain the depth of the water and the exact location of the anchor; that that part of the channel was not obstructed by the *Fortuna* and its anchor and, in view of the height of the tide at that time, was not absolutely necessary as a pas-sage way to the sea; that the patron and crew of the *Fortuna* had complied with their duties within the most elemental rules of navigation; that there had been no negligence, carelessness, or abandonment on their part, but that, on the contrary, the damage to the *Tafalla* was caused by the inexcusable negligence, carelessness, and abandon-ment of its own patron, notwithstanding the efforts of the *Fortuna* to prevent the disaster. Defendant therefore prayed the court to absolve her from the complaint, with the costs against the plaintiff.

The other defendants, *Lizarraga Hermanos*, in their answer, after denying the facts set forth in the complaint and in the other defendant's answer, alleged in special defense that said channel was the only one to the *Pontevedra* River, Iloilo, of sufficient water and depth to enable vessels to get through; that the patron of the *Fortuna* imprudently dropped his anchor in the middle of said channel while stranded and did not take account of the im-minent danger and risk to other lorchas and vessels that were obliged to pass through said channel on that

route; that the channel was absolutely necessary for the Tafalla; that the patron of the Fortuna placed no buoy, boat, or other signal whatever to warn other vessels; that his anchor lay in the middle of the channel; that, being unaware of the location of the anchor, the patron of the lorch Tafalla passed through said channel and ran afoul of said anchor, which stove in the bottom of his vessel and thereby caused damage to the cargo of sugar it carried; and that this damage was due solely and exclusively to the imprudence and negligence of the patron of the Fortuna. In another special defense these same defendants set up a written agreement between the plaintiff and themselves, Lizarraga Hermanos, made for a lawful consideration, wherein it was stipulated that Lizarraga Hermanos should not be liable for any risks or accidents to the plaintiff's sugar while being transported to Iloilo in these defendants' vessels, and that said agreement was applicable to the case at bar. In conclusion they prayed the court to absolve them from the complaint, to exempt them from all liability for the damage to plaintiff's sugar, to hold that the patron of the Fortuna was alone liable for the accident, and, accordingly, to make the proper finding with regard to the costs of the case, and to reserve to the owners of the Tafalla the right to bring the proper action for damages against the patron of the Fortuna because of his fault and negligence.

At the trial the parties introduced evidence to prove the facts alleged in their respective pleadings and the court rendered judgment in which he held that, as the defendants Lizarraga Hermanos were common carriers under the law, the agreement made between them and the plaintiff Robles, and mentioned by the former in their answer, could not exempt these defendants from payment of the damage claimed in the complaint if such damage was caused by their negligence; and that from the evidence presented it appeared clear to him that plaintiff was entitled to recover the damage aforementioned from the defendants, the owners of the lorch that carried the sugar. He therefore ordered the defendants Lizarraga Hermanos to pay to plaintiff said sum of P3,935.27, together with legal interest thereon at six per cent per annum until paid, and the costs; and dismissed the case against the defendant Manuela Gay, without finding as to costs.

From this judgment the defendants Lizarraga Hermanos appealed with the right to have a review of the evidence, and submitted to this court the proper bill of exceptions in which the plaintiff Felix Robles, on his own part, also joined.

The question presented for decision in this appeal is whether the patron of the lorch Tafalla, while in the channel of the mouth of the Pontevedra River, bound for Iloilo, and abreast of the lorch Fortuna, and knowing that the latter was stranded and maneuvering with its anchor to extricate itself from its situation, was imprudent and acted carelessly and negligently in continuing his way through the channel, or whether the patron of the Fortuna was imprudent and acted carelessly and negligently in dropping his anchor in the place where it lay in the channel, inasmuch as the Tafalla had to pass there.

In the judgment appealed from, the lower court discusses the testimony given by the witness at the trial and in connection therewith says:

"The evidence in this case shows that the Fortuna, loaded with sugar in going out of the river at Pontevedra, ran ashore on one side of the channel. This was shown to have been known by both the lorch Tafalla and the lorch Bilbao. Both of them had gone up the river during the morning, passed by the Fortuna, knew she was stranded, and they started out in the afternoon after they had been loaded. The Bilbao went out first, the Tafalla followed, there being so far as I can judge a very short time between the two, probably no more than half an hour. The Bilbao, somewhat a larger boat than the Tafalla, passed by the Fortuna safely. The Tafalla on going down the river ran afoul of the anchor of the Fortuna and stove a hole in the bottom.

The question of course arises as to which of these two boats was responsible for the accident. Of course, the

Fortuna's anchor which she had out in the river was prima-ri-ly the cause of the wreck. The claim of the Tudela's master that the anchor should have been across the stream on the opposite shallow bank does not seem to hold good in his case, because the customs circular says that nothing should be put out that would tend to obstruct the channel, but that one side of the river must be left free at all times.

"The question is raised whether signals were placed out by the stranded vessel and there seem to be a great variety of opinions about it and I am unable to say what is the custom about that in these little streams. This accident however was in broad daylight, the crew of the Tafalla knew that the Fortuna was stranded; they knew that she was trying to pull off by her anchor chain with her anchor planted in the stream; the evidence shows all this unmis-takably. Then the question arises. Did the Tafalla take due precautions in trying to avoid the anchor? The helmsman, who, after the death of the master of the Tafalla was the principal witness for Lizarraga Brothers, testified that they were drawing on the Tafalla 5 1/2 feet; he said the stream had only 6 feet of water. The Fortuna was a little larger. The fact remains that the Bilbao, a larger vessel than the Tafalla, sailed safely out of this narrow channel by the side of the stranded vessel Fortuna under exactly similar circumstances. There could not have been more than half an hour between them, because the captain of the Bilbao testified that when he went out, the Tufalla had all her sails up and was following along behind him. There could have been very little difference between them and no perceptible difference in the water although the tide was running in. In fact, the tide coming in made the con-ditions a little more favorable for the Tafalla than for the Bilbao, which went by safely. The evidence of the helms-man of the Tafalla himself indicates that the crew of the Fortuna were on the lookout to prevent accidents and that they had ceased pulling on the chain attached to the anchor when the boats were going out, because the helmsman said that he noticed the anchor chain of the Fortuna hanging straight over the tide, which would indicate that the chain had been dropped and allowed to settle on the bottom, so that the boat could go over.

"It cannot be said in my opinion that the Fortuna was to blame entirely for this accident. It behooved them to get their ship off and they were entitled in my opinion to use the means they did in order to get off the shoal. They took every precaution so far as I can see from the evidence to assist the outgoing lorchas in passing her without accident, and the fact, as already stated', that the Bilbao went out under a trifle less favorable circumstances than the Tafalla, safely reaching the outside, would indicate that the master of the Tafalla did not use the same precautions as did the master of the Bilbao or he too with a smaller vessel would have gotten safely out."

From the foregoing statements of the trial court, state-ments which entirely agree with the evidence, it is manifest that the patron of the lorchas Tafalla knew that another lorchas, the Fortuna, was stranded in that part of the channel where he desired to pass enroute to Iloilo and that the Fortuna was maneuvering with its anchor. The patron of the Tafalla was well aware that the passage in that part of the channel was somewhat dangerous on account of its narrowness, and more especially when another vessel lay in that same part of the channel; but in spite of all this he insisted in continuing his voyage and passed through instead of waiting for the Fortuna to work herself free. The fact that the patron of the Tafalla attempted to take soundings in that part of the channel and to ascertain whether there was any obstacle there, particularly when he saw the Fortuna stranded to one side, shows that the crew of the Tafalla, who executed the orders given by its patron, did not take all the care and pay the attention necessary to ascertain whether the Fortuna's anchor was lying in the channel. Nor can the patron of the Tafalla excuse his insistence in continuing his voyage through the channel under those circumstances by alleging as he did that the patron of the Fortuna had his anchor, not to one side, or on the very edge of the river or channel, but in the channel itself, or close to it, so as more easily to work himself afloat. This excuse fails because the chief pilot of the port of Iloilo testified at the trial that a stranded vessel may employ all the means at its disposal to get out of its embarrassment; that a vessel under way and which knows that another is stranded assumes liability for all risks taken in trying to pass; and that the stranded vessel is not in duty bound to notify other vessels of the place where its anchors lie.

Aside from this, when the patron of the Tafalla saw that the Fortuna was stranded and that he would necessarily meet with some difficulty in passing by and going through that part of the channel, he ought to have used every kind of precaution to avoid an accident, and there is not sufficient proof that such precautions were taken by him. On the other hand, some of the evidence adduced at trial was to the effect that some moments before the Tafalla went through and was damaged by the accident, the lorchas Bilbao, and before that, the lorchas Tudela, had both passed by. An attempt was made to prove that the Bilbao left the mouth of the river when the tide was lower than at the time the Tafalla tried to leave and that though the Bilbao drew more water than the Tafalla, she still had enough room to maneuver in the stream without running afoul of the Fortuna's anchor. The trial court considered those facts proven and the correctness of its findings in this respect is shown by the evidence of record; but however it may be, the fact that the said two lorchas passed alongside the Fortuna through the narrow part of that channel without any mishap demonstrates that had the patron of the Tafalla taken proper precautions and had he not been careless or negligent, he also could have taken his vessel through without getting stoved in on the Fortuna's anchor, thereby causing the damage to the cargo of sugar the Tafalla was carrying. There is no reason whatever for discriminating between the Tafalla and the Bilbao in respect to their passage through that place and all that is shown by the evidence is that the damages caused to the Tafalla and to the plaintiff's cargo of sugar on board this vessel were due to the unskillfulness, imprudence, and carelessness of its patron.

Pursuant to article 618 of the Code of Commerce, for those damages the patron of the Tafalla must be held civilly liable to the agents of this vessel, the defendants Lizarraga Hermanos, and the latter, to the third person who contracted with him, that is, Felix Robles, the owner of the cargo of sugar that suffered the damage which, by agreement of the parties, amounts to P3,935.27.

As regards the written agreement pleaded by the defendants Lizarraga Hermanos themselves, executed by and between them and the plaintiff Felix Robles previous to the accident and whereby the latter, in mortgaging to the former his property specified in the mortgage deed (record, p. 262), assumed, among other obligations, that of shipping his sugar to Iloilo in the defendant's vessels and also agreed that all the risks and expenses incurred on account of the sugar until it should be sold and delivered to the purchaser, or purchased by the creditors Lizarraga Hermanos, should be borne by himself, the mortgage debtor, Felix Robles,—said written agreement, we repeat, cannot be construed to exempt the defendants Lizarraga Hermanos from liability to the plaintiff for said damage, and the lower court very correctly so held and the appellant correctly so maintains. Such a construction would be unwarranted, not only for the reason stated by the court in the judgment appealed from, but also on account of the positive provision of article 620 of the Code of Commerce, pursuant to which masters are liable for the damage caused to the vessel or to the cargo—no agreement to the contrary being valid—when such damage arises through their own fault.

For the foregoing reasons we affirm the judgment appealed from, with the costs of this instance against the defendant-appellant. So ordered.

Torres, Carson, and Trent, JJ., concur.

Moreland, J., dissents.

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