

**URQUIJO, ZULUAGA & ESCUBI, PLAINTIFFS AND APPELLEES,
VS. HIJOS DE I. DE LA RAMA AND ESTEBAN DE LA RAMA,
DEFENDANTS AND APPELLANTS.***G.R. No. 10513. September 21, 1917*

Ponente: JOHNSON, J.

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The purpose of the present action was to recover damages for the loss of the sailing vessel Carmencita, the property of the plaintiffs, and her cargo which was lost at high sea in a collision with the steamship Taculin which belonged to the defendants. The plaintiffs alleged that the said Carmencita was lost at sea through the negligence of the agents and representatives of the defendants in managing and operating the said steamship Taculin. It is alleged that on or about midnight of the 27th day of April, 1914, the said Carmencita was sailing south from the city of Cebu and, at the time of the collision, was just east of the Island of Guimaras between the point Culasi of the Island of Guimaras and Pulupandan, a part of the municipality of Valladolid of the province of Occidental Negros; that the steamship Taculin was sailing north and had come from the said port of Pulupandan; and that at that point a collision took place between the said two ships, caused by the negligence of the captain and crew of the said Taculin; and that as a result of said collision the sailing vessel Carmencita was totally destroyed together with her cargo as well as the life of one of the passengers, the daughter of the captain; that the value of the cargo was P225; and that the value of the said sailing vessel was P5,500.

The defendants filed a general denial. Upon the issue presented by the petition and the answer the case was brought on for trial. After hearing the evidence, the Honorable J. S. Powell, judge, found that a preponderance of the evidence showed that the defendants, through their agents and representatives, in managing the steamship Taculin negligently destroyed the sailing vessel Carmencita together with her cargo, and rendered a judgment in favor of the plaintiffs and against the defendants for the sum of P5,225 with interest from the 22d day of October, 1914, until paid, and the costs. From that judgment the defendants appealed to this court.

In their first assignment of error the appellants alleged that the lower court committed an error in finding that the said sailing ship Carmencita carried lights at the time of the collision. Upon that question the captain of the Carmencita and several members of her crew swore positively that the said ship was lighted in accordance with the requirements of navigation. She had a green light upon the starboard and a red light upon the larboard side of the boat as well as other lights. The statements of the captain and his crew were also supported by the captain of another boat, the Estrella, who passed the Carmencita a short time before the collision took place. That captain swore that the Carmencita had the usual lights; that he passed near by the said Carmencita on the night in question. The captain of the Taculin swore that he did not see any lights upon the Carmencita at the time of or immediately before the collision took place. Upon the first assignment of error there seems to be a large preponderance of evidence in favor of the finding of the lower court.

The appellants in their second assignment of error alleged that the court erred in finding that the captain of the

Taculin was guilty of negligence. The captain of the Taculin swore that he did not see the Carmencita until he was right upon her; that he was within twenty brazas before he saw her. The captain of the Carmencita swore that he saw the Taculin approaching; that he first saw the red light of the Taculin; that almost immediately he saw the green light of the Taculin; and that then the collision occurred. If it be true that the captain of the Carmencita first saw the red light of the Taculin and then very shortly saw the green light that fact is proof positive that the Taculin had changed her course; for if she had continued in the direction in which she was going at the time the captain of the Carmencita saw the red light, she would have passed upon the port side of the Carmencita. To have changed her course, which the captain of the Taculin admitted so as to display the green light upon the starboard side is proof positive that such a change in course brought the Taculin in a direction which would cross the path of the Carmencita. The proof shows that the Taculin collided with the Carmencita upon the port side which was the natural result of the change of course of the Taculin; and it was the change of the course, as above indicated, by the Taculin which enabled the captain of the Carmencita to see the green light of the Taculin after he had first seen the red light. It will be remembered that the red lights are always put upon the port side, while the green lights are always put upon the starboard side of a ship at sea. As further proof of the negligence of the captain of the Taculin we have the declaration of captain Echevaria. He testified that had the Taculin been properly managed, the collision might have been avoided after the time when the captain of the Taculin first saw the Carmencita at a distance of twenty brazas or about 120 feet. Captain Echevaria testified that even in a shorter distance than 120 feet the collision might have been avoided.

In considering the question of negligence we must not overlook the fact that the Carmencita was a sailing vessel while the Taculin was a ship operated by steam, nor the International Rules (article 20) for the Prevention of Collisions at Sea that; "If two ships, one of which is a sailing ship and the other a steamship, are proceeding in such directions as to involve risk of collision, the steamship shall keep out of the way of the sailing ship."

Article 21 of the International Rules for the Prevention of Collisions at Sea provides that; "Where by any of these rules one of two vessels is to keep out of the way, the other shall keep her course and speed."

The proof shows that the captain of the Taculin changed the course of his ship in a way that brought it cross the path of the Carmencita. We are of the opinion that a large preponderance of the proof supports the conclusion of the lower court that the captain of the Taculin was negligent in the management of his ship, which directly caused the loss of the said Carmencita.

In their third assignment of error the appellants alleged that the lower court committed an error in rendering a judgment against them for the sum of P5,225. It is admitted that the cargo was valued at P225. Several witnesses testified that the Carmencita was worth more than P5,000. Some of the witnesses testified that she was worth, at least P5,500. There is sufficient proof in the record to justify the conclusion of the lower court that the Carmencita was worth, at least P5,000. Valuing the ship at P5,000 and the cargo at P225 a judgment was rendered for the sum of P5,225. We think that part of the judgment of the lower court is fully sustained by a preponderance of the proof.

After a careful examination of the evidence we find no reasons for altering or modifying the judgment of the lower court. The same is, therefore, hereby affirmed, with costs. So ordered.

Arellano, C. J., Carson, Araullo, Street, and Malcolm, JJ., concur.

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