

FAUSTO RUBISO AND BONIFACIO GELITO, PLAINTIFFS AND APPELLEES, VS. FLORENTINO E. RIVERA, DEFENDANT AND APPELLANT.

G.R. No. 11407. October 30, 1917

Ponente: TORRES, J.

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TORRES, J.:

This appeal by bill of exceptions was filed by counsel for Florentino E. Rivera against the judgment of September 6, 1915, in which the defendant and appellant was ordered to place at the disposal of the plaintiff Fausto Rubiso the pilot boat in litigation. No special finding was made for costs.

On April 10, 1915, counsel for plaintiffs brought suit in the Court of First Instance of this city and alleged in the complaint that his clients were the owners of the pilot boat named Valentino, which had been in bad condition since the year 1914 and, on the date of the complaint, was stranded in the place called Tingloy, of the municipality of Bauan, Batangas; that the defendant Florentino E. Rivera took charge or possession of said vessel without the knowledge or consent of the plaintiffs and refused to deliver it to them, under claim that he was the owner thereof; and that such procedure on the defendant's part caused the plaintiffs to suffer damages, not only because they could not proceed to repair the vessel, but also because they were unable to derive profit from the voyages for which said pilot boat was customarily used; and that the net amount of such uncollected profit was P1,750. The complaint terminated with a petition that judgment be rendered by ordering the defendant to deliver said pilot boat to the plaintiffs and indemnify them in the " amount aforementioned or in such amount as should be proven at trial, and to pay the costs.

Counsel for the defendant entered a general and specific denial of all the facts set forth in the complaint, with the exception of those admitted in the special defense and consisting in that said pilot boat belonged to the concern named "Gelito & Co.," Bonifacio Gelito being a copartner thereof to the extent of two-thirds, and the Chinaman Sy Qui, to that of one-third, of the value of said vessel; that subsequently Bonifacio Gelito sold his share to his copartner Sy Qui, as attested by the instrument Exhibit A, registered in the office of the Collector of Customs and made a part of his answer; that later said Chinaman, the absolute owner of the vessel, sold it in turn to the defendant Rivera, according to the public instrument, also attached to his answer as Exhibit B; and that, for this reason, Rivera took possession of said pilot boat Valentino,, as its sole owner. He therefore petitioned that the defendant be absolved from the complaint, with the costs against the plaintiffs.

After the hearing of the case and the introduction of documentary evidence, the judgment of September 6, 1915, was rendered, from which counsel for the defendant appealed and moved for a new trial. This motion was denied and the appellant excepted.

The record shows it to have been fully proven that Bonifacio Gelito sold his share in the pilot boat Valentina, consisting of a two-thirds interest therein, to the Chinaman Sy Qui, the coowner of the other one-third interest in said vessel; wherefore this vendor is no longer entitled to exercise any action whatever in respect to the boat in

question. Gelito was one of the partnership owners of the Valentina, as in fact his name appears in the certificate of protection issued by the Bureau of Customs, and the rights he held are evidenced by the articles of partnership; but, the whole ownership in the vessel having been consolidated in behalf of the Chinaman Sy Qui, this latter, in the use of his right as the sole owner of the Valentina, sold this boat to Florentino E. Rivera for P2,500, on January 4, 1915, which facts are set forth in a deed ratified on the same date before a notary. This document was registered in the Bureau of Customs on March 17th of the same year.

On the 23d of January of that year, that is, after the sale of the boat to the defendant Rivera, suit having been brought in the justice of the peace court against the Chinaman Sy Qui to enforce payment of a certain sum of money, the latter's creditor Fausto Rubiso, the herein plaintiff, acquired said vessel at a public auction sale and for the sum of P55.45. The certificate of sale and adjudication of the boat in question was issued by the sheriff on behalf of Fausto Rubiso, in the office of the Collector of Customs, on January 27 of the same year and was also entered in the commercial registry on the 14th of March, following.

So that the pilot boat Valentina was twice sold: first privately by its owner Sy Qui to the defendant Florentino E. Rivera, on January 4, 1915, and afterwards by the sheriff at public auction in conformity with the order contained in the judgment rendered by the justice of the peace court, on January 23 of the same year, against the Chinaman Sy Qui and in behalf of the plaintiff, Fausto Rubiso.

It is undeniable that the defendant Rivera acquired by purchase the pilot boat Valentina on a date prior to that of the purchase and adjudication made at public auction, by and on behalf of the plaintiff Rubiso; but it is no less true that the sale of the vessel by Sy Qui to Florentino E. Rivera, on January 4, 1915, was entered in the customs registry only on March 17, 1915, while its sale at public auction to Fausto Rubiso on the 23d of January of the same year, 1915, was recorded in the office of the Collector of Customs on the 27th of the same month, and in the commercial registry on the 4th of March, following; that is, the sale on behalf of the defendant Rivera was prior to that made at public auction to Rubiso, but the registration of this latter sale was prior by many days to the sale made to the defendant.

Article 573 of the Code of Commerce provides, in its first paragraph:

"Merchant vessels constitute property which may be acquired and transferred by any of the means recognized by law. The acquisition of a vessel must be included in a written instrument, which shall not produce any effect with regard to third persons if not recorded in the commercial registry."

So that, pursuant to the above-quoted article, inscription in the commercial registry was indispensable, in order that said acquisition might affect, and produce consequences with respect to third persons.

However, since the enactment of Act No. 1900, on May 18, 1909, said article of the Code of Commerce was amended, as appears by section 2 of that Act, herebelow transcribed.

"The documenting, registering, enrolling, and licensing of vessels in accordance with the Customs Administrative Act and customs rules and regulations shall be deemed to be a registry of vessels within the meaning of title two of the Code of Commerce, unless otherwise provided in said Customs Administrative Act or in said customs rules and regulations, and the Insular Collector of Customs shall perform the duties of commercial register concerning the registering of vessels, as defined in title two of the Code of Commerce."

The requisite of registration in the registry, of the purchase of a vessel, is necessary and indispensable in order that the purchaser's rights may be maintained against a claim filed by a third person. Such registration is required both by the Code of Commerce and by Act No. 1900. The amendment solely consisted in charging the Insular Collector of Customs, as at present, with the fulfillment of the duties of the commercial register concerning the registering of vessels; so that the registration of a bill of sale of a vessel shall be made in the office of the Insular

Collector of Customs, who, since May 18, 1909, has been performing the duties of the commercial register in place of this latter official.

In view of said legal provisions, it is undeniable that the defendant Florentino E. Rivera's rights cannot prevail over those acquired by Fausto Rubiso in the ownership of the pilot boat Valentino,, inasmuch as, though the latter's acquisition of the vessel at public auction on January 23, 1915, was subsequent to its purchase by the defendant Rivera, nevertheless said sale at public auction was antecedently recorded in the office of the Collector of Customs, on January 27, and entered in the commercial registry—an unnecessary proceeding—on March 4th; while the private and voluntary purchase made by Rivera on a prior date was not recorded in the office of the Collector of Customs until many days afterwards, that is, not until March 17, 1915.

The legal rule set down in the Mercantile Code subsists, inasmuch as the amendment solely refers to the official who shall make the entry; but, with respect to the rights of the two purchasers, whichever of them first registered his acquisition of the vessel is the one entitled to enjoy the protection of the law, which considers him the absolute owner of the purchased boat, and this latter to be free of all encumbrance and all claims by strangers for, pursuant to article 582 of the said code, after the bill of the judicial sale at auction has been executed and recorded in the commercial registry, all the other liabilities of the vessel in favor of the creditors shall be considered canceled.

The purchaser at public auction, Fausto Rubiso, who was careful to record his acquisition, opportunely and on a prior date, has, according to the law, a better right than the defendant Rivera who subsequently recorded his purchase. The latter is a third person, who was directly affected by the registration which the plaintiff made of his acquisition.

Ships or vessels, whether moved by steam or by sail, partake, to a certain extent, of the nature and conditions of real property, on account of their value and importance in the world commerce; and for this reason the provisions of article 573 of the Code of Commerce are nearly identical with those of article 1473 of the Civil Code.

With respect to the indemnity for losses and damages, requested by the plaintiff, aside from the fact, as shown by the evidence, that, subsequent to the date when the judgment appealed from was rendered, the vessel in question emerged unharmed from the place where it was stranded, and was, at the time of the trial, anchored in the port of Maricaban, the record certainly does not furnish any positive evidence of the losses and damages alleged to have been occasioned. On the other hand, it cannot be affirmed that the defendant acted in bad faith specifically because he acquired the vessel on a date prior to that of its acquisition at public auction by the plaintiff Rubiso, who, for the reasons aforesaid, is the true and sole owner of said pilot boat.

For the foregoing considerations, whereby the errors assigned to the judgment appealed from are deemed to have been refuted, it is our opinion that said judgment should be, as it is hereby, affirmed, with the costs against the appellant. So ordered.

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

Araullo, J., did not take part.

Judgment affirmed.

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