

THE MARINE TRADING COMPANY (INC.), PLAINTIFF AND APPELLEE, VS. THE GOVERNMENT OF THE PHILIPPINE ISLANDS, DEFENDANT AND APPELLANT.

G.R. No. 13422. November 08, 1918

Ponente: MALCOLM, J.

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MALCOLM, J.:

Act No. 2630 empowered the Marine Trading Company (Inc.) to bring action in the Court of First Instance for the city of Manila to determine the responsibility and liability for a collision between its launch Active and a scow towed by the Government launch Bohol, and to fix the damages, if any, to which the Marine Trading Company (Inc.) is entitled on account of the collision. Acting under this authority, the Marine Trading Company (Inc.) began action to recover as damages from the Government of the Philippine Islands the sum of P9,677, with interest and costs, because of the reckless and negligent acts of the defendant's agent and employee. The Attorney-General interposed a general denial. Judgment was rendered by the Honorable George R. Harvey, judge of first instance, for the amount prayed for by plaintiff, with legal interest from September 25, 1916, the date of filing the complaint, and costs of suit.

On August 10, 1915, plaintiff owned a launch named Active and defendant owned a launch named Bohol. Both launches were in use upon the Pasig River in the city of Manila. About 8 o'clock in the morning of this date, in the Pasig River, below and near the bridge of Spain, the launch Bohol was towing up the river two rudderless scows or lighters, one behind the other. The scow nearest the launch was about 5 meters behind, was empty, and was high in the water. The second lighter was tied to the rear of the first one, with a distance of about 2 meters intervening, was loaded, and was lower in the water. The Active was coming down the river from Pandacan toward Manila Bay. The patron of the Active blew one blast of his whistle, and the patron of the Bohol answered with one whistle, which indicated that the Active had a clear way and should pass to starboard. When under the bridge of Spain, the Active passed the Bohol and the first scow towed by it. But when the Active was about to pass the second scow, the latter swerved to the left, and its forward left end corner struck the Active on the port side between the cabin and the bow with such force and impact that the launch sank immediately.

The Active was in good condition and state of operation before the collision occurred. The launch was so seriously damaged by the collision and the sinking that it took the sum of P9,677 to repair it.

The applicable provisions of law are found in articles 826, 827, 828, and 830 of the Code of Commerce, and in the Philippine Marine Regulations issued by the Insular Collector of Customs. These provisions of law and these regulations, in relation to the facts, present the issue of whether or not the accident occurred through the negligence of the Bohol only, or whether both launches can be blamed for the collision. If the first be the holding, then, under the law, plaintiff can recover. If the second be the result, plaintiff cannot recover.

The trial court was clearly of the opinion that there was negligence on the part; of the patron of the Bohol in operating his launch and the scow in such a way as to endanger the Active and its occupants. The court was

further of the opinion that there was no negligence on the part of the patron of the Active, With this view of the trial court, we are in accord.

Negligence on the part of the Bohol is demonstrated by the following:

- (1) The patron of the Bohol gave the whistle which indicated that the Active had a clear way and should pass to the starboard, and did not give four blasts of the whistle in quick succession in order to denote danger.
- (2) The two scows in tow by the Bohol were apparently not properly fastened together, as required by section 197 of the Philippine Marine Regulations.
- (3) The two launches passed each other under the bridge of Spain, and the Bohol, instead of steering so as to avoid danger of a collision between the Active and its scows, kept its course and crowded the Active almost against a buoy. While, in accordance with paragraph 163 of the Philippine Marine Regulations, steam vessels towing have the right of way over steam vessels not towing this does not mean that the vessel with a tow can usurp the entire river so as to force another vessel into the bank. In conformity with the doctrine cited by appellant, that the preferred steamer will not be held in fault for maintaining her course and speed, this is only true so long as it is possible for the other vessel to avoid her by the proper maneuver, (*The Delaware* [1895], 161 U. S., 459.)

As opposed to the foregoing, we find that the plaintiff's agent was in no way to blame for the collision.

This disposes of the three assignments of error and the principal issue in the case. It is to be noted, however, that the judgment was for legal interest and costs. Is this right?

It is the undoubted law that the State (in this jurisdiction, the Government of the Philippine Islands) never pays interest unless it expressly engages to do so. This is especially true in case the claim is an unliquidated one. Among other authorities, we find *Angarica vs. Bayard* ([1888], 127 U. S., 251), in which Justice Blatchford said:

"The case, therefore, falls within the well-settled principle, that the United States are not liable to pay interest on claims against them, in the absence of express statutory provision to that effect. It has been established, as a general rule, in the practice of the government, that interest is not allowed on claims against it, whether such claims originate in contract or in tort, and whether they arise in the ordinary business of administration or under private acts of relief, passed by Congress on special application. The only recognized exceptions are where the government stipulates to pay interest and where interest is given expressly by an Act of Congress, either by the name of interest or by that of damages."

The rule is equally well established that the State is not liable for costs unless the statute expressly makes it so.

Here, Act No. 2630 only authorized the court to fix the damages if any, and to enter judgment accordingly. Unless damages can be interpreted to include interest and costs, plaintiff cannot recover the same. This appearing to be a strained interpretation, we believe we should hold to the view that since the government has not stipulated to pay interest or costs, the courts should not include these items in the judgment. (See generally, 11 *Encyclopedia of U. S. Supreme Court Reports*, pp. 775-777; *Marine vs. Lyon* [1894], 62 Fed., 153; *McMaster vs. State*, [1888] 108 N. Y., 542; *Annotated Cases* [1914A], p. 361; *Hongkong and Shanghai Banking Corporation vs. Rafferty* [1918], p. 145, post.)

With the elimination of so much of the judgment as provides for interest and costs, judgment is affirmed, without special finding as to costs in this instance. So ordered.

Arellano, C. J., Torres, Araullo, Street, and Fisher, JJ., concur.

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