

GORGONIO DE SARASOLA, PLAINTIFF AND APPELLEE, VS. YU BIAO SONTUA, DEFENDANT AND APPELLANT.*G.R. No. 22630. January 31, 1925*

Ponente: OPINION ON DEFENDANT'S MOTION TO RECONSIDER December 20, 1924, this court rendered an opinion[1] affirming the judgment of the lower court in favor of the plaintiff against the defendant for P27,106.89, with legal interest from the date of the filing of the complaint. In that opinion all of the members of this court concurred, except Justice Avanceña, who took no part in the consideration of the case. It was said in the opinion that "Admittedly, it is a close case. * * * Acknowledging¹ once again the closeness of the case, and the possibility of error, we have finally concluded, following painstaking consideration of the evidence, that we would not be justified in disturbing the findings of fact as made in the lower court. In its final analysis, the whole case comes down to this: That as far as can be judicially determined, the collision between the two vessels was caused by an improper maneuver by the captain of the Y. Sontua. The result, therefore, must be to hold the owner of the Y. Sontua responsible to the owner of the Mercedes for the damage caused to the Mercedes by the collision." After the decision was rendered the attorneys for the defendant filed a motion for a reconsideration in which they vigorously contend that, assuming, without conceding, that the collision "was caused by an improper maneuver by the captain of the Y. Sontua, the plaintiff was guilty of contributory negligence, and for such reason, he ought not to recover." [1] Not reported. JOHNS, J.

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OPINION ON DEFENDANT'S MOTION TO RECONSIDER

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JOHNS, J.:

The former opinion was founded upon article 826 of the Code of Commerce, as follows:

"If a vessel should collide with another through the fault, negligence, or lack of skill of the captain, sailing mate, or any other member of the complement, the owner of the vessel at fault shall indemnify the losses and damages suffered, after an expert appraisal."

The defendant now cites and relies upon article 827, as follows:

"If both vessels may be blamed for the collision, each one shall be liable for his own damages, and both shall be jointly responsible for the losses and damages suffered by their cargoes."

The testimony is conclusive that the negligence of the Y. Sontua was the primary cause of the collision. That if it had remained true to its course, it never would have happened.

It is equally true that even after the Y. Sontua changed its course, if the Mercedes had remained true to its course, there would not have been any collision.

It is vigorously contended that, through the actions and false maneuver of the Y. Sontua, an emergency was thrust upon the Mercedes, and that what it did was done under an emergency, and hence it was not negligent.

There is one important feature of this case upon which little stress has been laid by either counsel.

The complaint alleges "that at 12 on March 3, 1922, said motorboat Mercedes entered the Manila Bay through the Boca Grande, and at 6 p. m. it navigated with motor and sail in the direction of the lighthouse which indicates the entrance to the Pasig River." "That several minutes thereafter it was struck by the steamship Y. Sontua, and as a result of the collision it suffered damages by reason of which it sank within half an hour."

The findings of the lower court show that the collision took place on March 3, 1922, at 6.43 p. m.

It is a matter of common knowledge that at 6.30 p. m. on the present date, in ordinary weather, a person on the Luneta can plainly see a vessel on the Manila Bay anywhere within the breakwater. It is fair to assume that after an interval of six weeks, a person could also see a vessel anywhere within the breakwater thirteen minutes later or at 6.43 p. m. Hence, we have this situation. One vessel going out of the bay and the other coming in each on its own course, which if both had followed there would have been a full clearance and no collision. That the officers on the one vessel at a distance of two or three miles could clearly see the course and maneuvers of the other vessel. The Y. Sontua changed its course which was the primary cause of the collision. Even so, if the Mercedes had remained true to its course, there would have been a full clearance. If the collision had taken place after dark, there would be much force in plaintiff's contention that the Mercedes acted on an emergency, and that it ought not to be responsible for an error of judgment. But it appears from the physical facts that by the aid of natural light, at the time of and prior to the collision, either vessel could be clearly and distinctly seen for a considerable distance. Hence, we have a right to assume that without the aid of artificial light, the officers of the Y. Sontua saw the Mercedes and the course of the vessel. That the officers of the Mercedes saw the Y. Sontua and its course and the maneuver which it made. Under such a state of facts, the Mercedes either knew or should have known that, if it had remained true to its course, there would not have been any collision.

It follows from what has been said that the negligence of the Y. Sontua was the primary cause of the accident, and that the Mercedes was guilty of contributory negligence in failing to maintain its course, and that the case comes under the provisions of article 827.

It is but fair to say that this feature of the case was not seriously presented to or considered by the trial court.

The judgment in favor of the plaintiff is reversed, and the complaint dismissed, neither party to recover costs in this or the lower court. So ordered.

Johnson, Villamor, and Romualdez, JJ., concur.

Street, J., concurring: Upon a careful personal perusal of the proof I consider the case in its fundamental features very much like that presented in *Government of the Philippine Islands vs. Philippine Steamship Co. and Fernandez Hermanos* (44 Phil., 359), where we declared both vessels in the wrong. In my opinion the officers of the Mercedes, perhaps misjudging the relative speed of the two vessels, rashly attempted to cross the course of the Y. Sontua, after the change of course of the latter vessel had become apparent, and I can discover no excuse for this movement of the Mercedes in the situation that then existed. I therefore concur in the reversal of the judgment.

Malcolm and Ostrand, JJ., dissenting: We dissent. The decision of Judge Nepomuceno in the lower court and the original decision on appeal decided the question at issue. But even on the changed theory of appellant, we do not think that negligence on the part of the captain and crew of the Mercedes has been shown.

OPINION ON PLAINTIFF'S MOTION TO RECONSIDER

March 3, 1925

JOHNS, J.:

The plaintiff has filed an able and vigorous petition for a rehearing in which it is forcibly contended that there is no evidence that "if the Mercedes had remained true to its course, there would not have been any collision," and that for such reason article 827 of the Code of Commerce is not in point.

Suffice it to say that this case has received very careful consideration by every member of this court, and that the entire record had been read and portions of it reread by four different members, and that all of them have made more or less of an examination of the record. With all due respect to learned counsel, every member of this court is clearly of the opinion that if the Mercedes had remained true to its course, 'the collision would not have happened.

An attack is also made as to what the court said about the conditions surrounding and existing at the time of the accident, and it is claimed that the statements made in the opinion are unwarranted and not sustained by the record. Upon that point, the decision is founded upon volume 23, *Corpus Juris*, section 1990, page 164, which is as follows:

"Time, Days, and Dates—a. In General.—Most prominent perhaps among the facts of science judicially known to the court are those so to speak of the almanac. It is said that the almanac is a part of the law of the land. By this it is meant that the courts will judicially notice the things properly belonging to an almanac without pleading or proving them. The courts take judicial notice of the calendar and of the periods within the calendar. They take judicial notice of the computation of time, the subdivision of the year into months, weeks, and days, the days of the week, the order of succeeding days of the week, the number of days in a month, the coincidence of days of the week with days of the month, of the days of the month with those of the year, and of days of the month with days of a week in that month. The subdivision of the day into hours and their order of succession are sometimes judicially noticed, but not in all jurisdictions, and the general rule, subject to numerous exceptions, is against the recognition of fractions of days. The time when the moon or the sun rises or sets on a

particular day is judicially known, as well as the time of the several changes of the moon, and the speed at which the sun sinks below the horizon, the duration of twilight, and the presence or absence of daylight, the natural conditions of visibility, and the direction in which the sun casts a shadow at a given time of a particular day."

The italics are ours. That is good law.

The petition for a rehearing also points out that the question upon which the decision of December 20, 1924, is founded was not raised or presented in the lower court. That is true, and that fact is recognized in the decision itself. But it is also true that the decision is founded upon facts shown to exist in the record.

With all due respect to learned counsel, the petition for a rehearing is denied. So ordered.

Johnson, Villamor, and Romualdez, JJ., concur.

Malcolm and Ostrand, JJ., dissent.

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