

AUGUSTO LOPEZ, PLAINTIFF AND APPELLANT, VS. JUAN DURUELO ET AL., DEFENDANTS. ALBINO JISON, APPELLEE.*G.R. No. 29166. October 22, 1928*

Ponente: STREET, J.

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This action was instituted in the Court of First Instance of Occidental Negros by Augusto Lopez, for the purpose of recovering damages for personal injuries inflicted upon him by reason of the negligence of the defendants, Juan Duruelo and Albino Jison. The defendants demurred to the complaint, and the demurrer having been sustained, the plaintiff elected to stand upon his complaint, which was accordingly dismissed; and the plaintiff appealed.

The facts necessary to an understanding of the case as set out in the complaint are briefly these: On February 10, 1927, the plaintiff, who is a resident of the municipality of Silay, Occidental Negros, was desirous of embarking upon the interisland steamer San Jacinto in order to go to Iloilo. This boat was at the time in the anchoring-ground of the port of Silay, some half a mile distant from the port. The plaintiff therefore embarked at the landing in the motor boat Jison, which was then engaged in conveying passengers and luggage back and forth from the landing to boats at anchor, and which was owned and operated by the defendant Albino Jison, with Juan Duruelo as patron. The engineer (maquinista) aboard on this trip was one Rodolin Duruelo, a boy of only 16 years of age. He is alleged to have been a mere novice without experience in the running of motor boats; and the day of the occurrence now in contemplation is said to have been the third day of his apprenticeship in this capacity. It is alleged that the Jison, upon this trip, was grossly overladen, having aboard fourteen passengers, while its capacity was only for eight or nine.

As the motor boat approached the San Jacinto in a perfectly quiet sea, it came too near to the stern of the ship, and as the propeller of the ship had not yet ceased to turn, the blades of the propeller struck the motor boat and sank it at once. It is alleged in the complaint that the approach of the Jison to this dangerous proximity with the propeller of the San Jacinto was due to the fault, negligence and lack of skill of the defendant Juan Duruelo, as patron of the Jison. As the Jison sank, the plaintiff was thrown into the water against the propeller, and the revolving blades inflicted various injuries upon him, consisting of a bruise in the breast, two serious fractures of the bones of the left leg, and a compound fracture of the left femur. As a consequence of these injuries the plaintiff was kept in bed in a hospital in the City of Manila from the 28th of February until October 19 of the year 1927, or approximately eight months. In the conclusion of his complaint the plaintiff sets out the various items of damage which he suffered, amounting in all to something more than P120,000. These damages he seeks to recover of the defendants in this action.

As a general ground of demurrer it is assigned by the defendants that the complaint does not show a right of action, and in the course of the argument submitted with the demurrer attention is directed to the fact that the complaint does not allege that a protest had been presented by the plaintiff, within twenty-four hours after the occurrence, to the competent authority at the port where the accident occurred. It is accordingly insisted that, under article 835 of the Code of Commerce, the plaintiff has shown no cause of action.

Assuming that the article of the Code of Commerce relied upon states a condition precedent to the maintenance of an action in a case where protest is required and that the making of protest must be alleged in the complaint in order to show a good cause of action—an assumption that is possibly without basis, for the reason that lack of protest in a case where protest is necessary would seem to supply matter of defense proper to be set up in the answer,—we nevertheless are of the opinion that protest was not necessary in the case now before us. The article in question (835, Code of Com.) is found in the section dealing with collisions, and the context shows the collisions intended are collisions of sea-going vessels. Said article cannot be applied to small boats engaged in river and bay traffic. The Third Book of the Code of Commerce, dealing with Maritime Commerce, of which the section on Collisions forms a part, was evidently intended to define the law relative to merchant vessels and marine shipping; and, as appears from said Code, the vessels intended in that Book are such as are run by masters having special training, with the elaborate apparatus of crew and equipment indicated in the Code. The word "vessel" (Spanish, "buque," "nave"), used in the section referred to was not intended to include all ships, craft or floating structures of every kind without limitation, and the provisions of that section should not be held to include minor craft engaged only in river and bay traffic. Vessels which are licensed to engage in maritime commerce, or commerce by sea, whether in foreign or coastwise trade, are no doubt regulated by Book III of the Code of Commerce. Other vessels of a minor nature not engaged in maritime commerce, such as river boats and those carrying passengers from ship to shore, must be governed, as to their liability to passengers, by the provisions of the Civil Code or other appropriate special provisions of law.

This conclusion is substantiated by the writer Estasen who makes comment upon the word "vessel" to the following effect:

"When the mercantile codes speak of vessels, they refer solely and exclusively to merchant ships, as they do not include war ships, and furthermore, they almost always refer to craft which are not accessory to another as is the case of launches, lifeboats, etc. Moreover, the mercantile laws, "in making use of the words ship, vessel, boat, embarkation, etc., refer exclusively to those which are engaged in the transportation of passengers and freight from one port to another or from one place to another; in a word, they refer to merchant vessels and in no way can they or should they be understood as referring to pleasure craft, yachts, pontoons, health service and harbor police vessels, floating storehouses, warships or patrol vessels, coast guard vessels, fishing vessels, towboats, and other craft destined to other uses, such as for instance coast and geodetic survey, those engaged in scientific research and exploration, craft engaged in the loading and discharge of vessels from same to shore or docks, or in transshipment and those small craft which in harbors, along shore, bays, inlets, coves and anchorages are engaged in transporting passengers and baggage." (Estasen, *Der. Mer.*, vol. IV, p. 195.)

In *Yu Con vs. Ipil* (41 Phil., 770), this court held that a small vessel used for the transportation of merchandise by sea and for the making of voyages from one port to another of these Islands, equipped and victualled for this purpose by its owner, is a vessel, within the purview of the Code of Commerce, for the determination of the character and effect of the relations created between the owners of the merchandise laden on it and its owner. In the case before us the *Jison*, as we are informed in the complaint, was propelled by a second-hand motor, originally used for a tractor plow; and it had a capacity for only eight persons. The use to which it was being put was the carrying of passengers and luggage between the landing at Silay and ships in the harbor. This was not such a boat as is contemplated in article 835 of the Code of Commerce, requiring protest in case of collision.

In *Yu Con vs. Ipil*, *supra*, the author of the opinion quotes a passage from the treatise on Mercantile Law by Blanco. We now have before us the latest edition of Blanco, and we reproduce here, in both Spanish and English, not only the passage thus quoted but also the sentence immediately following said passage; and this latter part of the quotation is quite pertinent to the point now under consideration.

Says Blanco:

"Las palabras 'nave' y 'buque', en su sentido gramatical, se aplican para designar cualquier clase de embarcaciones, grandes o pequenas, mercantes o de guerra, significacion que no difiere esencialmente de la juridica, con arreglo a la cual se consideran buques para los efectos delCodigo y del Reglamento para la organizacion del Registro mercantile no solo las embarcaciones destinadas a la navegacion de cabotaje o altura, sino tambien los diques flotantes, pontones, dragas, ganguiles y cualquier otro aparato flotante destinado a servicios de la industria o del comercio maritimo

"Aun cuando, conforme a este concepto legal, parece que todo aparato flotante que sirve directamente para el transporte de cosas o personas, o que indirectamente se relacionen con esta industria, nan de sujetarse a los preceptos delCodigo sobre propiedad, transmision, derechos, inscripciones, etc., entendemos con el Sr. Benito (obra cit.) y asi ocurre en la practica, que no son aplicables a las pequenas embarcaciones, que solo estan sujetas a los de la administracion de marina para el servicio de los puertos o ejercicio de la industria de la pesca." (Blanco, Der. Mer., vol. II, pag. 22.)

"The words 'ship' (nave) and 'vessel' (buque), in their grammatical sense, are applied to designate every kind of craft, large or small, merchant vessels or war vessels, a signification which does not differ essentially from its juridical meaning, according to which vessels for the purposes of the Code and Regulations for the organization of the Mercantile Registry, are considered not only, those engaged in navigation, whether coastwise or on the high seas, but also floating docks, pontoons, dredges, scows and any other floating apparatus destined for the service of the industry or maritime commerce.

"Yet notwithstanding these principles from which it would seem that any floating apparatus which serves directly for the transportation of things or persons or which indirectly is related to this industry, ought to be subjected to the principles of the Code with reference to ownership, transfer, rights, registration, etc., we agree with Benito (obra cit.) and it so happens in practice that they are not applicable to small craft which are only subject to administrative (customs) regulations in the matter of port service and in the fishing industry."

We may add that the word "nave" in Spanish, which is used interchangeably with "buque" in the Code of Commerce, means, according to the Spanish-English Dictionary compiled by Edward R. Bensley and published at Paris in the year 1896, "Ship, a vessel with decks and sails." Particularly significant in this definition is the use of the word "decks," since a deck is not a feature of the smallest types of water craft.

In this connection a most instructive case from a Federal Court in the United States is that of *The Mamie* (5 Fed., 813), wherein it was held that only vessels engaged in what is ordinarily known as maritime commerce are within the provisions of law conferring limited liability on the owner in case of maritime disaster. In the course of the opinion in that case the author cites the analogous provisions in the laws of foreign maritime nations, especially the provisions of the Commercial Code of France; and it is observed that the word "vessel" in these codes is limited to ships and other sea-going vessels. "Its provisions are not applicable," said the court, "to vessels in inland navigation, which are especially designated by the name of boats." Quoting from the French author Dufour (1 *Droit Mer.*, 121), the writer of the opinion in the case cited further says: "Thus, as a general rule, it appears to me clearly, both by the letter and spirit of the law, that the provisions of the Second Book of the Commercial Code [French] relate exclusively to maritime and not to fluvial navigation; and that consequently the word 'ship,' when it is found in these provisions, ought to be understood in the sense of a vessel serving the purpose of maritime navigation or seagoing vessel, and not in the sense of a vessel devoted to the navigation of rivers."

It is therefore clear that a passenger on a boat like the *Jison*, in the case before us, is not required to make protest as a condition precedent to his right of action for the injury suffered by him in the collision described in the complain. In other words, article 835 of the Code of Commerce does not apply. But even if said provision had been considered applicable to the case in hand, a fair interpretation of the allegations of the complaint indicates, we think, that the injuries suffered by the plaintiff in this case were of such a nature as to excuse protest; for,

under article 836, it is provided that want of protest cannot prejudice a person not in a condition to make known his wishes. An individual who has suffered a compound fracture of the femur and received other physical injuries sufficient to keep him in a hospital for many months, cannot be supposed to have been in a condition to make protest within twenty-four hours of such occurrence. It follows that the demurrer in this case was not well taken and should have been overruled.

In their brief in this court the attorneys for the defendant have criticised the complaint for a general lack of certainty and precision in more than one respect. However, we have read the document attentively and, in our opinion, it states a good cause of action upon a civil liability arising from tort under articles 1902 and 1903 of the Civil Code, and our attention has not been drawn to any provision of law which would constitute an obstacle to the maintenance of the action.

We have repeatedly called the attention of trial courts to the general rule that a case should not be dismissed on demurrer when, under any reasonable interpretation of the complaint, a cause of action can be made out; and the fact that a complaint is inartificially drawn or in a certain degree lacking in precision constitutes no sufficient reason for dismissing it. In passing upon a demurrer, every reasonable intendment is to be taken in favor of the pleader. In this connection it should be borne in mind that if a complaint does not show a good cause of action, the action can be dismissed at a later stage of the proceedings; and even where no objection has been previously made, the point can be raised in the Supreme Court under section 93 of the Code of Civil Procedure (*Abiera vs. Orin*, 8 Phil., 193). Little or no appreciable prejudice to the defendant will therefore ordinarily result from overruling a demurrer, and no harm is done to anyone by requiring the defendant to answer. On the contrary, grave prejudice may result to a plaintiff from the erroneous sustaining of a demurrer, because of the delay and even expense necessary to set the matter right upon appeal.

The judgment appealed from is reversed, the demurrer overruled, and the defendant is required to answer the complaint within five days after notification of the return of this decision to the court of origin. So ordered, with costs against the appellee.

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

Ostrand, J., concurs in the result.

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