

MANUEL PEREZ Y GOMEZ, PLAINTIFF AND APPELLEE, VS. ANTONIO HERRANZ Y CACERES ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 2982. March 08, 1907

Ponente: TRACEY, J.

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TRACEY, J.:

This is an action to recover possession of the steamer Alfred, together with a share of its earnings, from the 16th day of March, 1903.

After negotiations with the defendant, Herranz, running through the summer and early autumn, the firm of Smith, Bell & Co., as agents for the Manila Shipping and Transportation Company, on the 20th day of September, 1902, executed a bill of sale of the steamer to the plaintiff, for the sum of 58,000 pesos, Mexican currency, and the purchase price was paid by check of the defendant. A copy of the bill of sale and of the statutory affidavit of one of the vendors was filed in the office of the Collector of Customs and a certificate with a license for coastwise trade was thereupon issued to the steamer, probably on the 25th of September. Neither the certificate nor the license nor any renewal thereof is found in the evidence.

It further appears that of the sum of 58,000 pesos the defendant retained an interest amounting to 48,000 pesos, the other 10,000 pesos being furnished by the plaintiff, but the title was put in the name of the plaintiff alone, for the reason that he, as a native inhabitant of the Philippine Islands, was qualified under our statutes to hold it, whereas the defendant as a Spaniard was not, nor were his other friends whom he afterwards associated with him. The reliance of the plaintiff is upon the illegality of this arrangement, as one in contravention of the coastwise trading laws of the United States and of the Philippine Islands. Such an arrangement in the United States, involving a false affidavit or statement upon which the official certificate issues, is in fraud of the law, renders the vessel and cargo subject to forfeiture or fine and is not only null itself but vitiates any contract springing out of it, so that upon such contract no recovery can be had and no affirmative defense be based. (*Mabin vs. Coulon*, 4 Dallas, 298, Pa. Supreme Court; *Cambioso vs. Moffet*, Federal Case 2330; *U. S. vs. Grundy*, 3 Cranch, 337; *Sloop Active vs. U. S.*, 7 Cranch, 100.)

The sale to a foreigner of a coastwise trading vessel already registered in the name of the American owner has been sustained as between the parties (*Philips vs. Sadley*, Federal Case 11096) where there was no false statement made to induce the issuing of a new license and no apparent purpose of evading the law. Nevertheless the vessel was said to be subject to forfeiture.

By the Philippine Customs Administrative Act, No. 355, enacted February 6, 1902, it is provided in section 117 that certificates for the coastwise trade may be issued to citizens of the United States resident in the Islands, or to natives of the Islands on taking the oath of allegiance, or to Spanish subjects who have duly taken the oath of abjuration to the Crown of Spain and allegiance to the United States.

By section 119 such certificate subjects the vessel to the same disabilities as are prescribed in article 20 of the Consular Regulations of the United States. Such regulations refer to forfeiture under the United States Revised

Statutes, section 2497.

Section 133 restricts the right to engage in the coastwise trade to vessels possessing such a certificate and the license to be issued thereupon.

Section 139 provides that no merchandise shall be transported in the Islands in any other vessels and section 140 that passengers shall not be received in any other in any Philippine ports unless by special permission; section 150, that nonlicensed vessels shall be fined.

It is unnecessary to determine whether a vessel for which a certificate and license have been fraudulently obtained incurs forfeiture under these or any other provisions of this act. It is enough for this case that the statute prohibits such an arrangement as that between the plaintiff and defendant so as to render illegal both the arrangement itself and all contracts between the parties growing out of it.

It does not, however, follow that the plaintiff can succeed in this action. There are two answers to his claim as urged in his brief. It is a familiar principle that the courts will not aid either party to enforce an illegal contract, but will leave them both where it finds them; but where the plaintiff can establish a cause of action without exposing its illegality, the vice does not affect his right to recover. The American authorities cited by the plaintiff fully sustain this doctrine. The principle applies equally to a defense. The law in these Islands applicable to the case is found in articles 1305 and 1306 of the Civil Code, shutting out from relief either of the two guilty parties to an illegal or vicious contract.

In the case at bar the plaintiff could establish prima facie his sole ownership by the bill of sale from Smith, Bell & Co. and the official registration. The defendant, on his part, might overthrow this title by proof through a certain subsequent agreement between him and the plaintiff, dated March 16, 1902, that they had become owners in common of the vessel, the agreement not disclosing the illegal motive for placing the formal title in the plaintiff. Such an ownership is not in itself prohibited, for the United States courts recognize the equitable ownership of a vessel as against the holder of a legal title, where the arrangement is not one in fraud of the law. (Weston vs. Penniman, Federal Case 17455; Scudder vs. Calais Steamboat Company, Federal Case 12566.)

On this proof, the defendant being a part owner of the vessel, would have defeated the action for its exclusive possession by the plaintiff. The burden would then be cast upon the plaintiff to show the illegality of the arrangement, which under the cases cited he would not be allowed to do.

Another answer to his claim and a more radical one grows out of the statutory law itself.

By Act No. 520 of the Philippine Commission, passed November 7, 1902, a temporary license was authorized for interisland or coastwise trade to foreign vessels during the period while the laws regulating the coastwise trade of the United States should be inapplicable under the act of Congress of March 8, 1902. By the act of Congress of April 15, 1904, this period was extended to July 1, 1906, and by the act of April 30, 1906, was further extended to April 11, 1909. Therefore less than two months after the purchase of this vessel the law was so changed that such an arrangement as that between the plaintiff and the defendant became legal and a vessel owned wholly or in part by a Spaniard was entitled, upon complying with the statute, to engage in the coastwise trade under a special license.

The proofs do not indicate that these parties ever took advantage of this enactment and applied for such a license, nor on the other hand do they show that the license under which the vessel was thereafter operated did not, in fact, comply with the new law. We are not required, however, to pass upon this question of fact nor upon the effect of the statute unaided, upon the preexisting ownership.

On the 16th of March, 1903, the plaintiff and the defendant entered into an agreement relating back to the date of purchase for the operation of the vessel for a period of two years from date by them as a society for cuentas en participacion, under the Code of Commerce. This agreement contained the following clause:

"First. I, Don Manuel Perez, grant to Don Antonio Herranz a share in the said vessel equivalent to the quantity of 48,228 pesos, my share being 10,000 pesos, fixing the actual total value of the steamer at the sum of 58,228 pesos. The profits and losses of this society of cuentas en participacion shall be distributed in proportion to the share of each person."

This clause has a greater effect than a mere arrangement for a temporary partnership and greater even than a recognition of ownership, for it includes words of transfer effective between the parties, even in a private document, conferring upon the defendant an actual ownership in the vessel in proportion to his investment in her. Such an arrangement, after the passage of Act No. 520, was in conformity with the law and valid, whatever may have been its prior quality.

From the other evidence in the case it appears that the respective shares of these parties were 10,000 pesos and 48,000 pesos, which are the sums apparently accepted by them in their discussion of the question, rejecting the odd pesos stated in the instrument quoted, as erroneous or superfluous.

The plaintiff and the defendant, Antonio Herranz, or those to whom he may have transferred his rights, being as between themselves the owners in common of this vessel, the plaintiff may not in this action recover its possession from the defendant, who now holds it. He must assert his right of partial ownership in another way.

He is, however, entitled to an accounting and to the payment of the share of the earnings due him. It appears that in another action between these plaintiffs, No. 2907, brought to recover the earnings of the vessel from the time of her purchase up to March 16, 1903, the plaintiff, before the judgment in this case in the Court of First Instance, secured a judgment for an accounting and for his share of the amount earned down to March 16, 1904, on the basis of ten fifty-eighths of the whole. He can not have two judgments for the earnings of the same period. The defendant must therefore pay to the plaintiff ten fifty-eighths of the net earnings from the 16th of March, 1904, to the date of his accounting, with interest.

The judgment of the Court of First Instance is reversed. The plaintiff is declared the owner of a ten fifty-eighths interest in the steamship Alfred, and the defendant, or his assigns, the owner of a forty-eight fifty-eighths interest therein. The defendant is directed to account to the plaintiff and to pay over to him ten fifty-eighths of the net earnings of the said steamship Alfred, from the 16th of March, 1904, to the date of the accounting, with interest, as provided in section 508 of the Code of Civil Procedure, for the purpose of which accounting the case is remitted to the Court of First Instance; no costs allowed in either instance. After expiration of twenty days let judgment be rendered in accordance with this decision, and ten days thereafter let the case be remanded to the lower court for proper action. So ordered.

Arellano, C. J., Torres, Mapa, Carson, and Willard, JJ., concur.

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