

DAMPFSCHIEFFS RHEDEREI UNION, PLAINTIFF AND APPELLEE, VS. LA COMPAÑIA TRASATLANTICA, DEFENDANT AND APPELLANT.

G.R. No. 3423. March 27, 1907

Ponente: WILLARD, J.

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WILLARD, J.:

The judgment in this case was announced on the 11th day of March, 1907. The grounds on which that judgment was based are the following:

About 3 o'clock on the afternoon of June 1, 1905, the German steamship Albenga, the property of the plaintiff, was lying at anchor in the harbor at Manila, inside of the breakwater, about 600 feet from the wall and about 750 feet north of the opening between the two breakwaters into the inner harbor. This opening is 740 feet wide.

The Spanish steamer Alicante, the property of the defendant, at about 3 o'clock in the afternoon of this day, passed in through this opening from the outer harbor, stopped her engines, put her helm hard to port, proceeded on her way, and attempted to pass between the Albenga and the wall, following a launch owned by the defendant company, under the charge of one of its agents, who was conducting the Alicante to the anchorage which he thought had been indicated by the harbor master. As a matter of fact, he made a mistake in the anchorage thus indicated, which was to the south of the opening and not to the north as he believed.

The captain of the Alicante who was on the bridge, seeing that he could not clear the Albenga, went full speed astern, and dropped both anchors. A collision occurred notwithstanding, causing the damages for which this action was brought. Judgment was rendered in the court below for the plaintiff, and the defendant has brought the case here for review.

The principal claim of the defendant is that the Albenga was lying directly in the middle of the entrance to the inner harbor, and that this fact caused the accident.

As to the position of the Albenga, the preponderance of the evidence is as we have stated.

The exact theory of the appellant is apparent from this quotation from its brief:

"Here an incoming vessel had every reason to expect the fairway to be free in all directions, and the fact that it was obstructed to the north was obscured by the wall of the breakwater until the incoming vessel was past the entrance and it was too late to avoid the collision."

It is to be noted in the first place that the position of the Albenga could be seen by the persons on the Alicante, according to the testimony of the harbor master, 2 miles away, but the important defect in the appellant's argument lies in its assumption that the Alicante attempted to pass between the Albenga and the breakwater for the purpose of avoiding the collision. Nothing could be more erroneous. As the Alicante passed the entrance she had a full view of the breakwater, the Albenga, and the distance between them. The evidence is undisputed that there was a free and safe passage for her to the right of the Albenga past her bow. Instead of choosing this path, she deliberately, and for purposes of her own, and to get to her place of anchorage as quickly as possible, turned

sharply to the left and attempted to pass through the narrow space between the Albenga and the wall. How narrow this was is apparent from the testimony of one of the officers of the Alicante, who said that at the time of the accident the distance between the Albenga and the wall was less than the length of the Alicante, which was 300 feet. The accident was clearly caused by the captain of the Alicante choosing this dangerous passage instead of the perfectly safe one around the bow of the Albenga.

It is claimed by the appellant that, notwithstanding this negligence, the accident might have been avoided if the Albenga had let out her anchor chains. Upon this point the evidence does not preponderate in favor of the appellant. The captain of the Alicante said that if this had been done the damages would have been less. The captain of the Albenga testified that they would have been greater. There was no evidence on the part of the appellant to show that there was time to let out the anchor chains, and there was evidence on the part of the plaintiff to show that there was not time to do this.

The Albenga passed in behind the breakwater at about half past 7 in the morning of June 1, and anchored in the place where she was found at the time the accident happened in the afternoon. This anchorage had not been assigned to her by anyone, but was indicated to her by a stevedore who was on board. Shortly after this the harbor master boarded her and told her that she was in a dangerous place and must change her anchorage. Some talk was had about her taking the position then occupied by the German steamship Summerfield.

At 11 o'clock in the morning the harbor master sent her a written notice to take the position occupied by the Summerfield when that was vacant. The Summerfield had not vacated this berth at the time the accident happened. The board of marine inquiry, sitting at the custom-house, held that these facts constituted contributory negligence on the part of the Albenga and that neither vessel could recover damages against the other. The report of this board was received in evidence without objection.

We do not agree with the conclusion of that board to the effect that these facts constituted negligence on the part of the Albenga which contributed to the accident. Whatever order may have been given by the harbor master at 8 o'clock in the morning was entirely superseded by the written order which he gave at 11 o'clock. The effect of that order was that the Albenga should stay where she was until the Summerfield vacated her berth, and that then that berth should be taken by the Albenga. The evidence shows that no one but the harbor master or his assistant had any power to assign an anchorage to a vessel. If the accident had happened between 8 o'clock and 11, a different question would have been presented, but when it did happen at 3 o'clock in the afternoon, the Albenga was in a position which had been assigned to it by the harbor master and she had no right to change it until the berth of the Summerfield was vacated. Under these circumstances we do not think there was any contributory negligence on her part.

The appellant claims that the plaintiff, not having filed its articles of incorporation in the mercantile registry of Manila, can not maintain this action. The appellant has cited no provisions of law, and we have found none, which, at the time this action was commenced, required a company, such as the plaintiff, to so record its articles of incorporation. Articles 17 and 119 of the Code of Commerce, cited by the appellant, refer only to companies organized in accordance with the provisions of the Code of Commerce in force in these Islands. The plaintiff was not organized in accordance with such laws, but was organized in accordance with the laws of the German Empire. Article 21 of the Code of Commerce provides in its last paragraph as follows:

"Foreign associations which desire to establish themselves or create branches in the Philippines shall present and have recorded in the registry, besides their statutes and the documents prescribed for the Spanish ones, the certificate issued by the Spanish consul stating that said companies have been established and authorized according to the laws of the respective country."

This paragraph has no application to the plaintiff because there is no evidence that it had ever established itself in the Philippines or had created branches therein. There is no evidence that it was engaged in the transaction of any business in the Philippines. The fact that it had an agent here is not sufficient proof to show that it was engaged in the transaction of business here. The case is simply this: A foreign company that has never established itself in the Philippines, and has not engaged in business therein, has a cause of action arising out of a collision which took place here. For the purpose of enforcing such an action, it is not necessary that the foreign corporation record its articles in the mercantile registry.

The judgment of the court below is affirmed, with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Torres, Mapa, and Tracey, JJ., concur.

Johnson, J., dissents.

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