

JOSE GUZMAN, PLAINTIFF AND APPELLEE, VS. WILLIAM X, CAPTAIN OF THE STEAMER KUDAT, AND BEHN, MEYER & CO., DEFENDANTS AND APPELLANTS.*G.R. No. 3649. October 24, 1907*

Ponente: TORRES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-3649/>**TORRES, J.:**

On the 19th of February, 1904, Attorney A. Herrero, on behalf of the plaintiff, Jose Guzman, filed a complaint with the Court of First Instance of Manila against the captain and owners of the steamer Kudat, alleging that in the early part of January of said year an agent of the plaintiff contracted with Behn, Meyer & Co., agents of the said steamer, in the sum of P150, for the towing of the lorch Nevada, owned by the plaintiff, to the port of Iloilo. That on the 4th day of the month aforesaid the captain of the steamer Kudat took charge of the lorch, which was manned by a master and four sailors, and on the following day, the 5th, at noon, the steamer left the port of Manila with the lorch in tow; that at about 9.30 p. m. of the same date, as the Kudat with her tow was within sight of the Island of Cabras, between Luzon and the Island of Mindoro, the port tow line broke, and that thereupon the captain of the Kudat ordered the crew of the Nevada as the latter neared the stern of the steamer to come on board the Kudat and to abandon the lorch; that as the master (arraez) protested several times against such order, the captain insisted and threatened to cut the other tow line; that in consequence of the attitude of the captain the crew abandoned the lorch and boarded the steamer and the captain then ordered the abandonment of the lorch and cast her adrift by having the tow line cut, and the steamer then proceeded on her voyage to Iloilo.

It further appears that upon arriving at the latter port on the 7th day of the said month the master or pilot of the lorch went to the collector of customs and entered a protest, in which he stated that the weather was fair, the sea calm, that the moon was bright, and that the spot where one of the tow lines broke was close to the Islands of Mindoro, Cabras, and Luban, at any of which places the lorch might have been left in safety. The captain of the Kudat did not enter any protest at Iloilo in order to justify the abandonment of the lorch nor the circumstances connected therewith. The abandonment was evidently due to carelessness and unpardonable negligence because there was no force majeure nor any like reason to justify the nonfulfillment of his duty to tow the lorch to the port of Iloilo.

For the foregoing reasons the plaintiff asked that, after due process of law, judgment be entered sentencing the owners and captain of the steamer Kudat to pay him the sum of P49,000 as indemnity for damages suffered for the abandonment of the lorch Nevada, and to pay the costs of the proceedings, together with any other relief which the court might consider just and equitable.

It does not appear that the captain, William X, of the Kudat, was ever summoned to appear before the court, but Behn, Meyer & Co. were, and on the 23d of March of said year said firm, in answer to the complaint, denied each and all of the allegations therein contained.

Upon evidence being adduced by the plaintiff, the defendant moved for the dismissal of the case, and as the

motion was overruled by the court the defendant firm excepted thereto and afterwards produced its evidence, which was made of record. On the 19th of October judgment was rendered sentencing the defendants, Behn, Meyer & Co., to pay the plaintiff herein the sum of 9,000 pesos, Philippine currency, and costs. The judgment was excepted to by the defendant firm, who moved for a new trial on the ground that the decision was contrary to law and to the weight of the evidence, and because the findings of fact of the judgment are contrary to the preponderance of the proofs. This motion was overruled and the defendant duly excepted thereto.

The contract entered into between the agent of Jose (luzman, owner of the lorch Nevada, and the firm of Behn, Meyer & Co., as agents and representatives of the captain and owners of the steamer Kudat, is not a charter party. It is a contract for the hire of services by virtue of which the said firm, by means of the said steamer, under the management of its captain, officers, and crew, engaged to tow the said lorch from this port of Manila to that of Iloilo for a consideration of P150. The provisions of articles 652 et seq. of the Code of Commerce with reference to charter parties are not applicable in this case because the lorch was not shipped or placed on board the steamer, but, as had been agreed to, should have been towed from this port to Iloilo.

Notwithstanding the fact that the defendant has denied the making of the said contract, its existence is unquestionable, as proven by Exhibit E on page 12 of the record, this document not having been objected to or impugned by the defendant.

Notwithstanding the fact that the agreement entered into by the agent of the steamer Kudat was to tow the said lorch from the port of Manila to that of Iloilo, the truth of the matter is that the captain of the Kudat took charge of the lorch on the 4th of January, 1904, and sailed at noon of the following day, and when the steamer was within sight of the Island of Cabras, between the Islands of Luzon and Mindoro, at about 9.30 p. m. of the 5th, on account of the breaking of the port tow line, he ordered that by means of the starboard line the lorch be brought to the stern of the steamer. After compelling the crew of the lorch to board the steamer, the captain then ordered the steel tow line cut, and the lorch was thus abandoned entirely. As the lorch was lost sight of and became a total loss, she was not towed to nor did she ever reach the port of Iloilo, as had been stipulated between her owner and the firm of Behn, Meyer & Co.

Articles 1101 and 1601 of the Civil Code provide that—

"Those who in fulfilling their obligations are guilty of fraud, negligence, or delay, and those who in any manner whatsoever act in contravention of the stipulations of the same, shall be subject to indemnify for the losses and damages caused thereby". (Art. 1101.)

"Carriers of goods by land or by water shall be subject, with regard to the keeping and preservation of the things intrusted to them, to the same obligations as determined for innkeepers by articles seventeen hundred and eighty-three and seventeen hundred and eighty-four.

"The provisions of this article shall be understood without prejudice to what is prescribed by the Code of Commerce with regard to transportation by sea and land." (Art. 1601.)

It can not be doubted that the captain who commanded the steamer Kudat failed to comply with the contract for towage and acted in contravention of what had been stipulated therein between the owner of the lorch in tow and the agents who represented the owners of the steamer, and when abandoning the lorch in mid-ocean with the full knowledge that it would disappear and become a loss, he acted with marked negligence and a perfect knowledge of the loss and damage he was about to cause the owner. Therefore, pursuant to the provisions of law above quoted, the owner of the lorch must be indemnified, the contract of towage involving the obligation to use due diligence (art. 1104) the omission of which would imply fault or negligence on the part of the obligee, because the lorch Nevada was abandoned with the intent of casting her adrift to become a total loss.

The record does not show that force majeure or other such casualty intervened to cause the loss of the lorch in tow. Either to the contrary, as from the evidence adduced at the trial it is inferred that there was not only negligence but a willful intent to cause the total loss of the lorch, without any reason whatever which required its abandonment at the time. It should be noted, however, that the duty to prove or show the reasons for exemption from liability rests with the defendant, Avho thereupon bases his exception.

Article 624 of the Code of Commerce imposes on a captain, in case he has been wrecked or the cargo of his vessel damaged, the duty of making the corresponding protest before the proper authority at the first port where the vessel touches, within the twenty-four hours following his arrival.

The captain of the Kudat did not make any protest before any officer or competent authority at Iloilo stating the reasons which compelled him to abandon the lorch. On the other hand, the master or patron of the lost lorch complied with this duty imposed by law and appeared before the collector of customs of Iloilo and set forth his protest in duplicate, as per documents marked with the letters "A" and "F," wherein, upon request of the patron, a statement of what had occurred was inscribed. Articles 586 and 587 of the Code of Commerce provide that—

"The owner of a vessel and the agent shall be civilly liable for the acts of the captain and for the obligations contracted by the latter to repair, equip, and provision the vessel, provided the creditor proves that the amount claimed was invested therein.

"By agent is understood the person intrusted with the provisioning of a vessel or who represents her in the port in which she happens to be." (Art. 586.)

"The agent shall also be civilly liable for the indemnities in favor of third persons which arise from the conduct of the captain in the care of the goods which the vessel carried; but he may exempt himself therefrom by abandoning the vessel with all her equipments and the freight he may have earned during the trip." (Art. 587.)

The firm of Behn, Meyer & Co. contracted for the towage or conveyance by sea of the lorch Nevada from Manila to Iloilo, undoubtedly in their capacity of agents, charged by the owners of the steamer Kudat to represent them in this port of Manila. According to the provisions of the two foregoing articles of the Code of Commerce, therefore, the aforesaid firm is the only party bound to indemnify the owner of the Nevada in the amount of the damages sustained by him through the loss of the above-mentioned lorch, considering the negligent, not to say criminal, action of the captain, Avho, without any cause or reason and without any unforeseen accident or stress of weather, willfully abandoned the lorch, well knowing that it would be lost, as really happened.

Behn, Meyer & Co. were unable to deny the existence of said contract of towage, and, as a matter of fact, they actually tried to recover the amount of the consideration for such service which had not been rendered by the steamer KmUit, for which they were agents. The court, in the judgment appealed from, having considered the amount of the indemnity to be paid to the plaintiff, who, on his part, has consented thereto notwithstanding that in his complaint he claimed a larger amount, it is proper to affirm the same.

In view of the foregoing, and accepting those conclusions of the judgment appealed from which are in accordance with this decision, said judgment is hereby affirmed, with the costs against the appellants. So ordered.

Arellano, C. J., Johnson, Willard, and Tracey, JJ., concur.

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