

**PONS Y COMPAÑIA, PLAINTIFF AND APPELLEE, VS. LA COMPAÑIA MARITIMA, DEFENDANT AND APPELLANT.***G.R. No. 3676. October 26, 1907*

Ponente: JOHNSON, J.

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On or about the 19th day of February, 1906, the plaintiff turned over to the defendant certain goods, wares, and merchandise to be transported from the city of Manila to the pueblo of Tabaco. These goods were put on board the steamship Venus, which ship belonged to and was under the control of the defendant.

The said ship left Manila with the goods, wares, and merchandise on board on or about the said 19th day of February and arrived at the pueblo of Tabaco some days later. Upon the arrival of the ship at the pueblo of Tabaco, and in fact some days before, the captain in charge of the vessel discovered that a portion of the said goods, wares, and merchandise were submerged in water in the hold of the ship and were practically destroyed. The plaintiff claims that the damages done to his goods amounted to the sum of P738.45, and no question is raised as to the amount of damage done.

On the 26th day of April, 1906, the plaintiff commenced an action in the Court of First Instance of the city of Manila against the defendant, for the purpose of recovering the sum of P738.45, the amount of damage alleged to have been done to said goods, wares, and merchandise. To the complaint of the plaintiff the defendant filed a general and special answer, alleging for his special defense that the damages occasioned to said merchandise were not caused by his negligence, but by circumstances over which he had no control. The issue thus formed was finally brought on for trial on the 11th day of October, 1906. The judge of the Court of First Instance of the city of Manila, after hearing the evidence adduced during the trial of the cause, made the following finding of facts:

- That the plaintiff is a regular company registered and doing business in the city of Manila.
- That the defendant is a corporation authorized and registered in the city of Manila.
- That the defendant is the owner and does business in vessels for the transportation of passengers and merchandise between the city of Manila and other points in the Philippine Islands.
- That on or about the 20th or 22d of February, 1906, the plaintiff delivered certain merchandise to the defendant, under an agreement to transport the same from the city of Manila to the pueblo of Tabaco in the steamship Venus of the property of the defendant.
- That among the merchandise so delivered there was a box of shoes; that when the said box of shoes had arrived at the pueblo of Tabaco it was found to have been immersed in water during the voyage, while it was deposited in the bodega (hold) of the ship, and that the contents of said box were entirely destroyed; "that the value of the shoes contained in said box was P738.45.

Upon these facts the judge of the lower court concluded that there was nothing in the proof adduced during the

trial of the cause which was sufficient to relieve the defendant of the responsibility occasioned by the damage done to said merchandise, and therefore rendered a judgment against the defendant and in favor of the plaintiff for the sum of P738.45, with interest at the rate of 6 per cent from the 26th day of April, 1906, and costs. From this judgment the defendant appealed to this court and made the following assignment of errors:

- In making the defendant-appellant responsible for damages caused by force majeure.
- In declaring that the third person, to whom the damaged merchandise appears to have been sold by the plaintiff, refused to pay the said plaintiff for the value thereof.
- In not declaring the plaintiff's lack of right to bring this action.

In the lower court practically the only defense that was offered by the defendant was to the effect that a pipe or tube running from one of the tanks in the stern of the vessel, for the purpose of allowing air to escape, had become rusted and punctured full of holes, so that when the tank was filled with water on that side of the vessel, owing to the list of the ship, the water ran up into this tube or pipe and escaped through the holes into the bodega of the vessel and thus some of the merchandise in transportation became wet and was damaged. This was the defense relied upon by the defendant and the one relied upon in the above first assignment of error.

The defendant and appellant claims that the injuries occasioned to the merchandise in question were caused by fuerza mayor. If it is true that the injuries were the result of fuerza mayor, then the defendant is entirely relieved from responsibility and liability. (Art. 620, Commercial Code.)

Upon the question of the cause of the injury the chief engineer, in charge during the voyage when the said damage was done, testified as follows:

"Q. After the damage did you see the pipe?—A. After the damage took place the inspector was informed when we arrived in Manila.

"Q. Did you see the pipe at that time?—A. Yes, sir; after the wooden covering was opened.

"Q. In what condition was the pipe?—A. It was broken.

"Q. How was it broken?—A. There were porous holes in the pipe and the water came out.

"Q. Will you explain what you mean by porous?—A. The pipe was made of cast iron and I believe the pipe, on account of being old, had rusted through.

"Q. Do you mean on account of the age of the pipe it had rusted and eaten through?—A. Yes, sir.

"Q. So the damage caused was on account of the pipe having been old?—A. I am unable to tell you.

"Q. So owing to the rust you have seen, you believe that the holes that you found in that pipe were on account of the pipe being old?—A. I suppose so.

"Q. What was the thickness of that pipe?—A. One-half inch.

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"Q. Was that pipe unfit for use?—A. Yes, sir." Carlos Pombo, ship inspector, testified relating to the cause of the injury as follows:

"Q. To what do you attribute the breaking of that pipe?—A. It could be attributed to many causes; it was probably more or less to the amount of water in the bilge keel; it might be through some accident; it might have been caused by the filling up of the tank; very likely the loading of some heavy stuff on board and it falling on the board covering of the pipe might have caused the breaking

of it."

We are satisfied from an examination of the record brought to this court that the damages occasioned were not of such a character as to be characterized as force majeure. Where the officers of a vessel fail to make such frequent inspection of their ship as to discover the existence of rusted parts, from which injuries to cargo result, we are of the opinion that such injuries can not be attributed to force majeure, but rather to the negligence of the officials of such ship.

An examination of the Spanish and American authorities concerning the meaning of force majeure shows that the jurisprudence of these two countries practically agree upon the meaning of this phrase.

Blackstone, in his Commentaries on English Law, defines it as—

"Inevitable accident or casualty; an accident produced by any physical cause which is irresistible; such as lightning, tempest, perils of the sea, inundation, or earthquake; the sudden illness or death of a person." (2 Blackstone's Commentaries, 122; Story on Bailments, sec. 25.)

Escrive, in his Diccionario de Legislation y Jurisprudencia, defines fuerza mayor as follows:

"The event which we could neither foresee nor resist; as, for example, the lightning stroke, hail, inundation, hurricane, public enemy, attack by robbers; Vis major est, says Cayo, ea quæ consilio humano neque provideri neque vitari potest. Accident and mitigating circumstances." Bouvier defines the same as—

"Any accident due to natural causes, directly, exclusively without human intervention, such as could not have been prevented by any kind of oversight, pains, and care reasonably to have been expected." (Law Reports, 1 Common Pleas Division, 423; Law Reports, 10 Exchequer, 255.)

Cockburn, chief justice, in a well-considered English case (1 Common Pleas Division, 34, 432), said that where a captain—

"Uses all the known means to which prudent and experienced captains ordinarily have recourse, he does all that can be reasonably required of him; and if, under such circumstances, he is overpowered by storm or other natural agency, he is within the rule which gives immunity from the effects of such vis major."

The term generally applies, broadly speaking, to natural accidents, such as those caused by lightning, earthquake, tempests, public enemy, etc.

Article. 618 of the Commercial Code provides, among other things, that—

"The captain shall be civilly liable to the agent and the latter to the third persons who may have made contracts with the former, for all the damages suffered by the vessel and its cargo by reason of want of skill or negligence on his part."

In the present case the captain admits that the injury was occasioned by reason of a rusted pipe. The rust, of course, was occasioned by natural causes, but the failure to discover the unsafe condition of the pipe was due to the negligence of the persons in charge of the vessel and for this negligence the owner of the boat is liable to the persons injured.

Upon the second assignment of error above noted, the plaintiff contends that the merchandise in question was by him to be delivered to the purchaser of the same at Tabaco, and that he was under obligation to deliver the same in good condition. If this be true, then whatever damages were done to the said merchandise prior to delivery were damages done to the plaintiff. This contention of the plaintiff is supported by the fact that the purchaser of the merchandise, immediately upon discovering the damaged condition of the same, presented a claim against the plaintiff concerning the said damages. Upon this question the lower court, in its decision, said:

"The evidence is rather meager upon this question, but I find that the person to whom the merchandise was sold immediately reclaimed from the plaintiff the loss thereof, and refused to pay for the merchandise, and that the plaintiff suffered the loss of the merchandise and the damages arising therefrom."

We are of the opinion, therefore, and so hold, that the plaintiff herein was the proper party to bring said action. This conclusion, in our opinion, also disposes of the third assignment of error above noted.

For all of the foregoing reasons, we are of the opinion, and so hold, that the judgment of the lower court should be affirmed, with costs.

After the expiration of twenty days let judgment be entered against the defendant and in favor of the plaintiff for the sum of P738.45, with interest at the rate of 6 per cent from the 26th day of April, 1906, with costs. So ordered.

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

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