

**CHAN KEEP ET AL., PLAINTIFFS AND APPELLEES, VS. LEON CHAN GIOCO ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. 4378. August 18, 1909*

Ponente: CARSON, J.

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This is an appeal taken by the defendant, Leon Chan Gioco, from a judgment of the Court of First Instance of the Province of La Union in favor of the plaintiffs in an action to recover the value of 120 cavanos of rice, which plaintiffs claim to have delivered to defendants upon a contract for its transportation by boat (parao) from the port of Luna, in the Province of La Union, to the port of San Fernando, in the same province, in consideration of the sum of twenty-five centavos per cavan; the rice, as it is alleged, having been lost through the negligence, carelessness, and lack of due precaution taken by the defendants in the management of the boat on which it was being transported, as a result of which the boat sank as she entered the port of San Fernando, on the night of the 8th of April, 1907.

Leon Chan Gioco denied having entered into the transportation contract, as alleged by the plaintiffs, and the testimony introduced by plaintiffs and defendants as to the execution of the contract with this defendant is, as stated by the trial court in its decision, contradictory in the extreme; in our opinion, however, the weight of the evidence sustains the finding of the trial judge that plaintiffs succeeded in establishing the transportation contract set out in the complaint, and the delivery of the rice to the defendant Leon Chan Gioco and his codefendant, Anastasio Atrengenio, the latter being the patron or captain of the boat on which the rice was loaded, employed as such by Leon Chan Gioco.

Counsel for appellants contends that the loss of the rice was due to the sinking of the boat on which it was loaded, as a result of a strong wind which struck her as she was entering the port of San Fernando; and that appellants should not be held responsible therefor, the loss having resulted from an act of God (*fuerza mayor*) or an unavoidable accident (*caso fortuito*), and without blame upon their part.

In support of this contention, they cite article 1602 of the Civil Code, which is as follows:

"Carriers (by land or sea) are also responsible for losses and damages of the articles intrusted to them, unless they prove that the loss or damage was the result of unavoidable accident (*caso fortuito*) or an act of God (*fuerza mayor*) "

We do not think, however, that the evidence in support of appellants' claim that the loss of the rice was the result of an act of God or an unavoidable accident is satisfactorily established; and, as appears from an examination of the above-cited article of the code, the burden of proof in this regard rested upon the defendants.

The only evidence in support of this contention is the testimony of the captain and one of the members of the crew, from which it appears that about 10 o'clock at night, when the boat laden with rice arrived in front of the buoy just outside the harbor or port of San Fernando, the wind was blowing strong (*fuerte*); that while changing the course to enter the harbor, the wind blew the boat over on one side so that she shipped so much water that the

crew were compelled to strike sail, cast anchor, and escape to shore by swimming with the aid of the oars; and that, having been abandoned in that condition, the running of the tide aided the wind in throwing the boat still further upon one side, and swamped her.

Neither of these witnesses pretend that at the time when the disaster occurred there was a storm raging or that the seas were running dangerously high, and we are satisfied from their testimony, read together with the testimony of the agent of the Weather Bureau stationed at San Fernando, which was introduced by the plaintiffs, that, while there may have been a strong wind moving on the night in question, there was no such heavy wind or violent storm blowing as would unavoidably swamp a boat manned by a capable crew, commanded by a careful navigator, and properly equipped for sailing the high seas.

It not having been otherwise expressly stipulated, it is to be presumed that the owner of the boat, Leon Chan Gioco, when he contracted to transport the rice in question over the high seas, obligated himself to furnish a boat suitable for the work which he undertook to perform, and a capable crew to man her (In the matter of the "Caledonia," 157 U. S., 124; The "Edwin I. Morrison," 153 U. S., 199); and the mere fact that a strong wind was blowing when the boat changed its course is not in itself sufficient to excuse her owners for losses incurred as a result of so poor an execution of this maneuver as to result in sinking her. In the absence of proof of such a violent storm or such an exceptionally high sea that, despite the proper equipment of the boat and the exercise of due skill and diligence by the patron and crew, those in charge of the boat were overpowered by the force of the elements, we do not think that the sinking of the boat can justly be said to have been the result of an act of God or of an unavoidable accident; the blowing of strong winds must always be anticipated by men who go down into the sea in ships, and in the absence of evidence of some unusual intervening cause, we must hold that the exercise of due diligence in the performance of their duty by the patron and the members of his crew, had they been reasonably expert as seafaring men, could have and would have avoided the accident which actually occurred, provided the boat was suited to the work required of her.

We would not be understood as holding that ships and boats are not sometimes lost as a result of unavoidable accident or an act of God when storms are not raging and even when the sea is comparatively calm. Instances of such losses are of frequent occurrence. Losses resulting from an accident caused by a sudden and unexpected gust of wind have under some circumstances been held to be attributable to an act of God (11 111., 519; 95 Penn., 287); and the books contain many instances of losses attributed to an act of God or inevitable accident, other than those resulting from the action of storms and high seas, but it will be found that in all such cases the evidence introduced at the trial sustains a finding that the loss was due to exceptional circumstances or conditions, beyond the control of those who would otherwise be responsible for the loss, notwithstanding the exercise of due diligence, foresight, pains and care to avoid it; and, as has been said, mere proof that a strong wind is blowing when a properly manned and equipped sailing boat tacks its course is not sufficient to sustain such a finding.

The judgment appealed from should be and is hereby affirmed, with the costs against the appellants.

Arellano, C. J., Torres, Johnson, and Moreland, JJ., concur.

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