

THE CITY OF MANILA, PLAINTIFF AND APPELLEE, VS. THE ATLANTIC, GULF AND PACIFIC COMPANY, DEFENDANT AND APPELLANT.

G.R. No. 4510. December 19, 1908

Ponente: TRACEY, J.

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TRACEY, J.:

This is an appeal from a judgment of the Court of First Instance of the city of Manila awarding the plaintiff P1,020.50 damages for injuries to a launch in a collision.

On November 20, 1906, the plaintiff's launch Jan, towing six small scows up the River Pasig at Santa Ana came into collision with a large lighter, heavily laden, towed by the launch Oriente of the defendant. She was run aground with her frame near the port bow smashed in.

It is proved that the Jan carried lights; that both she and the scows she was towing were properly manned, and according to the testimony of the plaintiff's witnesses as soon as they saw the light ahead of the Oriente their whistle was blown and on receiving an answering whistle, in order to avoid a shock, they veered to starboard, leaving the channel and running into shoal water. Defendant's witnesses admit that they saw the Jan and its tow with the lights thereon and blew their own whistle, but say that they did not hear any whistle from the other launch, which kept the middle of the stream; that their boat was also put to starboard and the launches successfully passed one another, but, their scow in tow, being slow in changing direction, struck against the Jan, and they claim that they did all in their power to avoid a collision in view of the difficulty of controlling the boat on their course downstream. It appears that this tow was secured to their launch by a single cable, forking in the shape of the letter "Y" so that each end was fastened to one side of the lighter.

The judge of the court below in rendering judgment for the plaintiff appears to have relied upon several incidents; that the captain of the Oriente had no license but only a permit to navigate from the surveyor of customs; that it was easier to control the boat going with the current than the one going against it; that there was but one tow rope when there might have been more, and that there was no helmsman on the lighter.

The testimony, however, of expert witnesses shows, and it is indeed of common knowledge, that a boat going against the current is quicker to mind her helm than one borne along by it, and the plaintiff's expert also testified that whereas in ocean tows several cables were used,, on the River Pasig it was customary to employ but one in order to leave the vessel under tow greater freedom of movement and therefore better self-control.

Aboard this lighter there was no light, there was no crew, and it seems there was no rudder. The absence of the light may not have contributed to the accident, but the lack of a rudder and of any person to direct the boat so clearly deprived it of control of its own movements that we are satisfied that when under tow of the forked rope it was not handily manageable. Therefore, instead of following approximately in the wake of the launch, it struck out on a tangent thereto, thus causing the collision. We attach no importance to the character of the permit of the Oriente's captain as a cause of the accident.

The defendant has sought to show by witnesses that the channel was so obstructed by a boat alongside each bank a short distance from the scene of the accident that it was impossible for the Oriente and its tow to so maneuver as to escape the shock, but the testimony of these witnesses is not definite as to the location of these boats at the time of the accident, nor does the consequence sought to be deduced from their location, if proved, appear to us a necessary one. In our opinion the accident occurred for the reason that the scow of the defendant was unmanageable because she was not properly provided with helm and steersman. The judgment of the Court of First Instance is affirmed, with the costs of this instance. So ordered.

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

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