

BEHN, MEYER & CO., PLAINTIFFS AND APPELLANTS, VS. J. MCMICKING ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 4536. September 17, 1908*

Ponente: TORRES, J.

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On the 3d of December, 1907, counsel for the firm of Behn, Meyer & Co. filed a written complaint with the Court of First Instance of this city praying that, upon bond being furnished by them to the amount that the court might see fit to fix, and in accordance with the provisions of section 166 of the Code of Civil Procedure, a writ of preliminary injunction be granted him restraining the sheriff of Manila, Jose McMicking, his deputies and assistants, and the other defendants, from attaching or seizing any kind of property belonging to the plaintiffs, and from taking any measures for the purpose of carrying into effect or executing the judgment entered in case No. 2485[1] of said court, pending the final decision in the litigation; and that judgment be entered therein in favor of the plaintiff company, authorizing the same to pay to the sheriff, of Manila, or to any of the defendants who may be entitled thereto, the sum of P2,279.67, in full satisfaction of the judgment rendered in the said case No. 2485; and that, upon such payment, the said preliminary injunction be made perpetual, and that costs be allowed, together with any other just and equitable relief.

Upon bond in the amount, of P2,000 having been furnished, the preliminary writ of injunction applied for was issued on the same date.

The defendants, on being notified, summoned, and cited to appear on the 4th of the said month, interposed a demurrer alleging that the facts set out by the complaint did not constitute a cause of action, and that the said complaint was ambiguous, unintelligible, and vague. On the 16th of the said month the demurrer was sustained, and, although in accordance with the law the injunction should have been dissolved, the court below, however, ordered the same continued pending the appeal that the plaintiff might interpose. The plaintiff company excepted thereto and informed the court and the defendants that it preferred not to amend its former complaint; thereupon the court below entered judgment in favor of the defendants on the 24th of December of the same year, dismissing the complaint with costs against the plaintiff.

Counsel for the plaintiff company excepted to the above decision, and immediately moved for a new trial on the ground that said judgment was contrary to law; the motion was overruled on the 4th of January, 1908, and the appellant company at once gave notice of its intention to present and perfect a bill of exceptions, in order that the same might be certified and approved.

The appellant company after claiming in its brief that the court below erred in having admitted the demurrer offered to its complaint by counsel for defendants, and in having dismissed the said complaint, concluded by asking the repeal of the order sustaining the demurrer, inasmuch as Behn, Meyer & Co. are entitled to exemption from the liability imposed in case No. 2485 by placing in the hands of the sheriff, for delivery to the claimants, the sum of P2,279.67, received as freight of the steamship Kudat, and earned on the voyage during which the loss of

the lorch Nevada took place, without however, making delivery of the said steamer and her equipment.

In the main case cited above, Behn, Meyer & Co. were sentenced to pay the sum of P9,000 to Jose Guzman, the owner of the said lorch, for the loss thereof; in this new litigation they claim to limit the liability fixed by, the executory judgment, and to be authorized to comply therewith by delivering the said amount and to be thereby exempted from the remainder of the liability.

As foundation for this new pretension the second part of article 587 of the Code of Commerce is invoked, and the following question is submitted: Does the exemption provided in article 587 constitute a defense against the liability, or a means of exoneration therefrom? After a disquisition on the laws of the United States and of some countries in Europe on the liability of the naviero or owner of the vessel, counsel for the plaintiffs expresses his opinion that the exemption provided for by the said article of the Code of Commerce does not constitute a defense against an action based on the first clause of said article, but a means of exoneration from liability determined by a judicial decision.

If this question had been set up in the said litigation No. 2485, it would have been duly resolved, as it should, in the judgment; but the firm of Behn, Meyer & Co. did not allege any such exemption, nor the right or means granted by the second part of article 587 of the Commercial Code above alluded to; but in answering the complaint, they simply denied all and every one of the allegations contained in the complaint of the owner of the lost lorch, and after a final and executory judgment was rendered in said case, the action of the court was limited to the execution and enforcement of the final judgment in all of its parts and in accordance with its express orders.

The provisions of the Civil Code and those of the Code of Commerce agree in fixing the liability of the person who, being at the head of an enterprise or business establishment, places or selects another to manage it, for the losses or damages that the said manager may cause in the discharge of his office.

It should be borne in mind that the vessel herself is liable as a mortgaged thing for the credits of the shippers or owners of the goods transported by her; and that the naviero (agent), even though he is not the owner of the vessel, is in every way liable to the creditor for such losses and damages, without prejudice to his rights against the owner on the value of the same, its equipment and freight.

Case No. 2485 being remanded to the Court of First Instance with the decision of this court affirming the judgment appealed from, it is the duty of the judge below who is charged with the enforcement of the final, decision to resolve all matters that may hinder or obstruct the complete execution thereof; among such impediments, the allegation of the right or means prescribed in the second part of the aforesaid article 587 of the Commercial Code. Otherwise no legal provision whatever has been alleged that may exempt him from fully complying with the said judgment in all its parts.

For the foregoing reasons, and considering that the orders excepted to, of the court below dated the 16th and 24th of December, 1907, are in accordance with the law, it is our opinion that the same should be and are hereby affirmed, with the costs against the appellants; it being of course understood that the writ of preliminary injunction issued on the 3d of the said month shall be at once dissolved and set aside. So ordered.

Carson, Willard, and Tracey, JJ., concur.

Arellano, C. J., and Mapa, J., concur in the result.

[1] Guzman vs. X. and Behn, Meyer & Co., 9 Phil. Rep., 112.

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