

**YUENG SHENG EXCHANGE AND TRADING COMPANY, PLAINTIFF
AND APPELLANT, VS. G. URRUTIA & CO., DEFENDANTS AND
APPELLEES.**

G.R. No. 4566. February 09, 1909

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

Y. B. Sontua loaded rice on the Minas de Batan, which sailed from Saigon, and arrived in the port of Manila with the said cargo of rice safe and in good condition. While; the said Minas de Batan lay in the inner harbor of Manila, on July 21, 1906, the steamer Cebu approached her, carrying her port anchor hanging over the load line; the fluke of the said anchor penetrated the starboard side of the Minas de Batan, and as a result the water entered the said steamer, and wet a portion of her cargo of rice; 5,008 sacks, valued at P27,193.93, were completely ruined; for this the Yueng Sheng Exchange and Trading Company, as insurance company, paid Y. B. Sontua the sum of P15,995.85, and the Hip On Insurance Company, Limited, paid the said Sontua the sum of P11,198.08. The first-named company, by virtue of its own contract and rights, and by virtue of the contract and rights transferred by the latter, commenced the present suit against G. Urrutia & Co. for the above-named sum of P27,193.93, as damages, with legal interest and the costs of the suit, considering the said company as the charterers responsible for the steamer Cebu and consequently responsible for the acts of the officers and the crew of the same, who, on account of their recklessness and negligence, were the cause of the damages occasioned to the steamer Minas de Batan, to one of the shippers, and to the company which insured the damaged cargo.

The facts above related appear from an agreement reached by the lawyers of both parties. The two following facts also appear as accepted:

That G. Urrutia & Co. are not the owners of the Cebu, but they had chartered her. A copy of the contract was made an integral part of this agreement.

That the captain and engineer of the Cebu were engaged, on the date of the execution of the contract, by Smith, Bell & Co., a partnership organized in accordance with the laws in force in the Philippine Islands, and from this company G. Urrutia & Co. chartered the steamer under the above-mentioned contract. The said captain and engineer in turn hired the crew, and were in the exercise of their duties at the time of the occurrence in question.

On the date in question-that is, on July 21, 1906-the second typhoon signal had been hoisted at the semaphore station; this signal announced a distant typhoon, and gave warning that certain precautions should be taken in case the typhoon should approach, but did not prevent the crews from continuing their ordinary tasks while the said typhoon continued at a distance. It was at this time that the Cebu approached the Minas de Batan for the purpose of taking on cargo from the latter. It is also agreed that, while the Cebu was approaching, the Buen Viaje approached the other side of the Minas de Batan, for the same purpose, causing no damage to the latter or to her cargo, in spite of the condition of the sea and of the weather.

The above-mentioned contract is of the following tenor:

"Messrs. Smith, Bell & Co., as agents of the Cebu, on the one part, and Messrs. G. Urrutia & Co., as charterers, on the other, have agreed on this date to the following-charter ;

"First. Messrs. Smith, Bell & Co. charter the Cebu to Messrs. G. Urrutia & Co. for the sum of P2,500, plus P650 in consideration of the fact that Messrs. Smith, Bell & Co. will pay for ships' stores required by the said steamer for her deck and engineering departments, amounting to the total sum of P3,150 monthly, payable at the end of each month in Philippine currency.

* * * * *

"Third. Messrs. G. Urrutia & Co. will pay for the coal, salaries of the, officers and of the crew, water, pilotage, subsistence of the crew, and any other expenses occasioned by loading and unloading. Fines that may be imposed for defects of the steamer, such as lack of life preservers, boats, machinery, etc., shall be paid by the agents of the Cebu, and all those fines resulting from orders given by charterers shall be paid by the latter.

"Fourth. Expenses for maintenance of the vessel, such as repairs, sails, calking, painting, etc., shall be paid by the agents of the ship.

* * * * *

"Seventh. Both the captain and the crew of the ship shall be under the orders of the charterers, who will instruct them as to the trips to be made, the stopping places, provided these are those mentioned in the previous article, the freight to be received on board, and they shall work at night in loading and unloading, should it be required by the charterers, provided such work be not excessive, and, shall perform such other duties as relate to the better administration of the ship.

"Eighth. Messrs. Urrutia & Co. shall not discharge the captain nor dismiss the engineer, but should these officers commit any punishable fault, the said Messrs. Urrutia shall inform the agents of the vessel, in order that the latter may take such steps as they may deem necessary in the case."

The question was presented whether the plaintiff company has, by virtue of such facts, a right of action against the defendant company, for damages amounting to P27,193.93, caused through the fault, carelessness, or negligence of the officers of the Cebu, resulting in damage to the Minas de Batan on account of which a portion of the cargo of rice was spoiled. The Court of First Instance of the city of Manila, considering that G. Urrutia & Co. were not the owners but mere charterers of the Cebu, decided the said question in the negative, saying "that the shipowner or the agent are responsible for the acts of the captain, although the ship be chartered or rented, when the charterers have not, as in the present case, the power to appoint the captain nor to discharge him," and therefore absolved the defendants G. Urrutia & Co., with the costs against the plaintiffs.

The latter excepted to the judgment and filed a bill of exceptions in this court, and the appeal having been heard, it appears that the appellant files the following assignment of errors:

"1. The court below erred in finding that the defendants were not responsible for damages caused the plaintiffs, as alleged in the complaint.

"2. The court below erred in deciding the said case in favor of the defendants."

The whole ground of this assignment of errors rests on the proposition advanced by the appellant company that "the charterer of a vessel, under the conditions stipulated in the charter party in question, is the owner pro hac vice of the ship and takes upon himself the responsibilities of the owner."

Granted that the cause of the damages was the fault, negligence, or incompetence of the captain or the crew of the Cebu and that the damage was caused by the collision of the latter with the Minas de Batan, the law applicable to the case, since it occurred in inner waters of Manila Bay, is the Code of Commerce of the Philippines.

Article 826 of this code provides:

"If a vessel should collide with another through the fault, negligence, or lack of skill of the captain, sailing master, or any other member of the complement, the owner of the vessel at fault shall indemnify the loss and damage suffered, after an expert appraisal."

If G. Urrutia & Co., by virtue of the above-mentioned contract, became the agents of the Cebu, then they must respond for the damages claimed, because the owner and the agent are civilly responsible for the acts of the captain. (Art. 586.)

But G. Urrutia & Co. could not in any way exercise the powers or rights of an agent. They could not represent the ownership of the vessel, nor could they, in their own name and in such capacity, take judicial or extrajudicial steps in all that relates to commerce (art. 595, par. 2); thus if the Cebu were attached, they would have no legal capacity to proceed to secure its release; speaking generally, not even the fines could or ought to be paid by them, unless such fines were occasioned by their orders. Article 603 authorizes the agent to discharge at will, before the vessel goes out to sea, the captain and members of the crew in whose contracts a definite period or a definite voyage is not stipulated. And, according to article 597, the agent can choose, and make arrangements with the captain, and make contracts in the name of the owners; the latter will be responsible in the matter of repairs, details of equipment, armament, provisions, fuel, and freight of the vessel, and, in general, in all that relates to the requirements of navigation. And it may have been seen that G. Urrutia & Co. could not do the first-i. e., that which relates to the present question, either appoint the captain or discharge him at any time.

The contract executed by Smith, Bell & Co., as agents for the Cebu and G. Urrutia & Co., as charterers of the vessel, did not put the latter in the place of the former, nor make them agents of the owner or owners of the vessel. With relation to those agents, they retained opposing rights derived from the charter party of the vessel, and at no time could they be regarded by the third parties, or by the authorities, or by the courts, as being in the place of the owners or the agents in matters relating to the responsibility pertaining to the ownership and possession of the vessel; neither had they the powers of such owners or agents with respect to the management and navigation of the ship, and still less with regard to the ownership and true possession of the vessel. In proof of this, the ultimate right of an agent, in the matter of his civil liability for indemnities in favor of third persons, arising from the conduct of the captain in the care of freight carried by the vessel, viz: to abandon the vessel with all her equipments together with the proceeds derived from the carriage of freight on the trip, in no manner pertains to G. Urrutia & Co. by virtue of their contract with Smith, Bell & Co. (Art. 587.)

The contract simply granted G. Urrutia & Co. the lease of the Cebu for the voyages expressed in the sixth clause, namely, from Manila to certain ports, "and they could not arrange for the vessel to make voyages to other ports not mentioned, without the express authority of Messrs. Smith, Bell & Co." Their possession was, therefore, the uncertain title of lease, not a possession representing the true and real possession of the owner, such as is that of the agent, who is fully subrogated to the place of the owner in regard to the dominion, possession, free administration, and navigation of the vessel.

G. Urrutia & Co. had only the use of the Cebu for the voyages stipulated in the contract, the right to transport their own cargo, and to profits accruing from carriage of extra freight belonging to other persons.

The material possession or the possession in fact was held by the captain, and he held it in the name of Messrs. Smith, Bell & Co.; he was their subordinate and represented them in regard to the rights of possession and ownership and to the substance of the vessel, the preservation and management of which were entrusted to his care and vigilance without contemplation of any right in favor of other persons to whom the use and enjoyment of the ship might have been granted. Only in regard to this use and enjoyment was he placed under the orders of the

lessees within the terms and limits of the contract.

The responsibility involved in the present action is that derived from the management of the vessel, which was defective on account of lack of skill, negligence, or fault, either of the captain or of the crew, for which the captain is responsible to the agent, who in his turn is responsible to the third party prejudiced or damaged. (Art. 618, Code of Commerce.)

The rule of law laid down by the lower court is the same international rule adopted by the Congress of Antwerp, and it is a logical corollary of the precise provisions of the Code of Commerce now in force.

Therefore, we affirm the judgment appealed from, with the costs of this instance against the appellant company.

Torres, Mapa, Carson, and Willard, JJ., concur.

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