

**JOSE MCMICKING, SHERIFF OF THE CITY OF MANILA, PLAINTIFF
AND APPELLEE, VS. EL BANCO ESPAÑOL-FILIPINO ET AL.,
DEFENDANTS.-MANUEL AYALA, APPELLANT.**

G.R. No. 5029. April 01, 1909

Ponente: JOHNSON, J.

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JOHNSON, J.:

From the record the following facts appear.

First. That prior to the 21st day of February, 1907, one Sanchez and one Cue Suan as a sociedad en comandita were the owners of a certain steamship, known as the Hock-Tay.

Second. That on the 21st day of February, 1907, the said sociedad borrowed from El Banco Español-Filipino the sum of P30,000 at 8 per cent per annum from the 21st day of September, 1907, until paid, and gave as security for the payment of said sum a chattel mortgage executed and delivered in accordance with Act No. 1508 of the Philippine Commission.

Third. That said mortgage was duly recorded in the office of the collector of customs of the port of Manila on the 27th day of February, 1907, in the record of conveyances of titles, mortgages and hypothecations of vessels documented at said port.

Fourth. That said mortgage was duly recorded in the office of the register of property of the city of Manila on the 13th day of September, 1907, in accordance with the provisions of section 4 of said Act (No. 1508).

Fifth. That, upon the 10th day of October, 1907, El Banco Español-Filipino caused to be delivered to the sheriff of the city of Manila the said chattel mortgage on the said steamer, Hock-Tay, together with notice that the terms of said mortgage had been broken by the mortgagors, and requested that the sheriff sell said mortgaged property in accordance with the provisions of section 14Jof said Act (No. 1508).

Sixth. The sheriff gave notice to said mortgagors of said request on the part of the said mortgagee (El Banco Español-Filipino) and that said ship would be sold in accordance with the law.

Seventh. That due notice was given of the sale of said mortgaged property (the Hock-Tay) in accordance with the provisions of said Act.

Eighth. That the date fixed for the sale of said property was the 27th day of October, 1907.

Ninth. That, upon the 27th day of October, 1907, Manuel Ayala served upon the said sheriff the following notice:

"MANILA, October 26,1907.

"To the SHERIFF OF THE CITY OF MANILA.

"Sir: As captain of the steamer Hock-Tay, the judicial sale of which has been advertised by you for the 28th

instant, at 9 o'clock, a. m., I make demand upon you not to deliver to the Banco Espanol-Filipino the sum of P4,441.92, which is the amount of the wages of the crew and expenses of supplies now owing, and which, in accordance with the Code of Commerce, constitute preferred claims; I make this claim in writing and under oath, as shown by the attached affidavit.

"Very respectfully,

"(Signed) MANUEL AYALA."

The attached affidavit is as follows:

"CITY OF MANILA, PHILIPPINE ISLANDS, ss.:

"Manuel Ayala, being first duly sworn, says that he is the holder of a captain's license authorizing him to command vessels of any tonnage in Philippine waters; that he is at the present time captain of the steamer Hock-Tay, registered in the port of Manila, P. I. That the said steamer Hock-Tay has been attached by the sheriff of Manila, who has announced the judicial sale thereof for the 28th instant to satisfy a credit in favor of the Banco Español-Filipino; that in accordance with article 580 of the Code of Commerce, the money due to the captain and other members of the crew for salaries is entitled to preference over the claim of the bank; that the amounts owing by the ship for her equipment and provisions are also entitled to preference; that the wages due the captain and crew as shown by the shipping articles and account books of the vessel amount to the sum of P2,840.19; that the sum of P1,601.73 is now owing to the affiant for provisions, equipment and supplies furnished the vessel and expended during her last voyage upon proper authority.

"(Signed) MANUEL AYALA.

"Subscribed and sworn to before me, etc."

Tenth. On the 27th day of October, 1907, the steamer was sold to the highest bidder for cash for the sum of P30,000.

On the 30th day of October, 1907, the sheriff of the city of Manila filed a complaint in the Court of First Instance of the city of Manila in which the foregoing facts were, in substance, alleged, which complaint concluded with the following prayer:

"The plaintiff asks the court:

"1. That the defendants be requested to interplead their respective rights to said funds.

"2. That, upon the delivery of the said funds to such person or persons ordered by the court, the plaintiff be relieved of any responsibility as to all the defendants in connection with said funds; and

"3. That the plaintiff be granted any other remedy which the court may deem just and equitable."

To this complaint the defendant Manuel Ayala answered and alleged his claim or lien which he held against the said ship Hock-Tay. On the 9th day of November, 1907, the defendant El Banco Español-Filipino presented its answer in which it attempted to show that neither the said Sanchez et al., nor the said Manuel Ayala had any right whatever to participate in the proceeds of the sale of said ship by said sheriff, and claimed that all of the money except the legal expenses should be paid to said bank. The record does not disclose whether or not the said sociedad en comandita filed an answer in said cause.

Upon the 4th day of August, 1908, the attorneys for El Banco Español-Filipino and for the said Manuel Ayala entered into an agreement in the, words and figures following:

"For the purposes of this suit it is hereby stipulated between the representatives of the Banco Español-Filipino

and of Captain Don Manuel Ayala, as follows:

"First. That the facts alleged in the paragraphs 1, 2, 4, 5, 6, 7, 8, and 9 of the complaint of interpleader filed in these proceedings by J. McMicking, as sheriff of the city of Manila, are true.

"Second. That it is true that the mortgage deed of the steamer Hock-Tay which appears literally copied in paragraph 5 of the said complaint, was duly recorded by the Banco Espanol-Filipino in the office of the collector of customs of Manila, on the 27th day of February, 1907, and in the registry of chattel mortgages of the city of Manila on the 13th day of September, 1907.

"Third. That the limited partnership named "Sanchez y Cue Sang," sociedad en comandita, was the owner of the aforesaid steamer Hock-Tay at the date on which the representative of that partnership executed the mortgage deed of said steamer in favor of the Banco Español-Filipino.

"Fourth. That there is no credit, arising from the maintenance of the steamer Hock-Tay, recorded in the mercantile registry in favor of Captain Ayala.

"Fifth. That the last voyage of the steamer Hock-Tay prior to her sale by virtue of the mortgage executed by the partnership owner of the same in favor of the Banco Español-Filipino, began on the 12th of September, 1907, and ended on the 29th of September of the same year.

"Sixth. That the allegations contained in paragraphs 1, 2, 5, 6, and 7 of the answer of Manuel Ayala are true.

"Seventh. That Captain Manuel Ayala was the one who collected from the agents "Sanchez y Cue Sang," sociedad en comandita, the wages of the crew hired by him and who distributed the same among them, the said crew having nothing to do with the ship's agents whom they did not know and with whom they made no contract except through Captain Ayala.

"Eighth. That the officers and crew of the steamer Hock-Tay, the same as all those belonging to the coastwise trade of these Islands, were hired upon a monthly salary with food and drink.

"Ninth. That Inchausti & Co., as charterers of the steamer Hock-Tay paid to Manuel Ayala, during the month of September, 1907, all the expenses for subsistence, with the exception of those corresponding to the maintenance of the officers and crew, and that the balances appearing in Exhibits C and D, attached to the answer of Manuel Ayala, only refer to the food and drink of the officers and crew.

"Tenth. That the firm of H. J. Andrews & Co. was the authorized agent of the partnership "Sanchez y Cue Sang," sociedad en comandita, the owner of the steamer Hock-Tay, and that G. Andrews was authorized to represent the firm of H. J. Andrews & Co.

"Eleventh. That the days of service of the crew and officers referred to in the statement contained in Exhibit B, attached to the answer of Captain Manuel Ayala, are intended to correspond to a number of successive days from the 1st day of October, 1907.

"Twelfth. That the port of Manila was, during all the dates referred to in this suit, the port of entry of the steamer Hock-Tay.

"Thirteenth. That on the date of the sale of the steamer Hock-Tay, under the mortgage executed by the partnership owner of said vessel in favor of the Banco Español-Filipino, the amount of the lien created on said vessel in favor of the mortgage creditor was the sum of thirty thousand (P30,000) pesos, Philippine currency, with the interest thereon at the rate of 8 per cent per year, from the 21st of September, 1907, the date of the last payment of interest.

"The respective parties signing this stipulation pray the court to render a decision in the case in accordance with the facts contained herein, respectively waiving the submission of other evidence.

"Manila, August 4, 1908.

(Signed) "ORTIGAS & FISHER,

"Attorneys for the Banco Español-Filipino.

(Signed) "ROSADO, SANZ & OPISSO,

"Attorneys for Don Manuel Ayala."

Upon this agreed statement of facts the cause was submitted to the lower court and after due consideration of the facts that court rendered a judgment upon the 29th day of September, 1908, the dispositive part of which was in the words following:

"The court therefore finds that there is due the defendant Ayala from the proceeds of the sale of the vessel and in preference to the claim of the mortgagee the said sum of P756.66. It is therefore considered and adjudged that the judgment herein of January 20, 1908, be and the same is hereby vacated and that the sheriff of Manila, out of the proceeds of the sale of said vessel as reported by him, pay to the defendant Manuel Ayala the said sum of P756.66, and that the balance of said proceeds less the costs of this proceeding be paid to the mortgagee, the Banco Español- Filipino."

From this decision of the lower court the defendant Manuel Ayala duly appealed and made the following assignments of error:

"The Court of First Instance of Manila, in rendering judgment in the above entitled case, committed error:

"I. In considering the credit of the Banco Espanol-Filipino as unquestionably a mortgage credit, in a suit in which the adverse party in interest is not the debtor, but a third party.

"II. In not acknowledging the lien existing in favor of all the credits claimed by the appellant.

"III. In making, for the purposes of compliance with a mercantile contract, computations of time which violate the provisions of articles 57 and 60 of the Code of Commerce, giving to article 646 of the same code a restrictive construction which leads to an absurdity.

"IV. In giving to the food and drink of the crew, who give their services for salary and maintenance, a distinct character of salary or rent like an industrial contract of lease.

"V. In not granting the appellant Ayala the wages corresponding to the subordinate crew employed by him on the ship, and who are unable to claim, by themselves, their salaries, on account of the small amount of the same and the wandering character of the life imposed upon them by their occupation.

"VI. In granting the credit of the Banco Español-Filipino a preference over a great part of those claimed by the appellant Ayala, which were expenses incurred for the maintenance and benefit of the vessel during the existence of the mortgage in favor of the bank."

El Banco Español-Filipino did not appeal from the judgment of the lower court and therefore whatever error may have been committed by the lower court to the prejudice of the said bank can not now be considered.

The claim of the defendant Manuel Ayala is based upon the theory that the wages of the crew and expenses incurred for the ship and furnishing supplies for the same have a preference over the claim of the other defendant, El Banco Español-Filipino. The defendant, the said Ayala, evidently bases his claim upon the provisions of articles 580 and 646 of the Code of Commerce. Article 580 is as follows:

"In all judicial sales of vessels for the payment of creditors, the following shall have preference in the order stated:

"1. The credits in favor of the public treasury which are accounted for by means of a judicial certificate of the competent authority.

"2. The judicial costs of the proceedings, according to an appraisal approved by the judge or court.

"3. The pilotage charges, tonnage dues, and the other sea or port charges, proven by means of proper certificates of the officers intrusted with the collection.

"4. The salaries of the caretakers and watchmen of the vessel and any other expense connected with the preservation of said vessel, from the time of arrival until her sale, which appear to have been paid or are due by virtue of a true account approved by the judge or court,

"5. The rent of the warehouse where the rigging and stores of the vessel have been taken care of, according to contract.

"6. The salaries due the captain and crew during their last voyage, which shall be vouched for by virtue of the liquidation made from the shipping articles and account books of the vessel, approved by the chief of the bureau of merchant marine where there is one, and in his absence by the consul, or judge, or court.

"7. The reimbursement for the goods of the freight the captain may have sold in order to repair the vessel, provided the sale has been ordered by a judicial instrument executed with the formalities required in such cases, and recorded in the certificate of the registry of the vessel.

"8. The part of the price which has not been paid the last vendor, the credits pending for the payment of material and work in the construction of the vessel, when it has not navigated, and those arising from the repair and equipment of the vessel and its provisioning with victuals, and fuel during its last voyage.

"In order that said credits may enjoy the preference contained in this number, they must appear by contracts recorded in the commercial registry, or if they were contracted for the vessel while on a voyage and said vessel has not returned to the port where she is registered, they must be proven with the authority required for such cases and entered in the certificate of the record of said vessel.

"9. The amounts borrowed on bottomry bonds before the departure of the vessel, proven by means of the contracts executed according to law and recorded in the commercial registry, the amounts borrowed during the voyage with, the authority mentioned in the foregoing number, filling the same requisites, and the insurance premium, proven by the policy of the contract or certificate taken from the books of the broker.

"10. The indemnity due the shippers for the value of the goods shipped, which were not delivered to the consignees, or for averages suffered for which the vessel is liable, provided either appear in a judicial or arbitration decision."

By reference to paragraph 6 of said article 580, as above quoted, it is seen that in all judicial sales of vessels the salaries due the captain and the crew during the last voyage shall be paid in accordance with the preferences mentioned in said article out of the proceeds of said ship. Article 646 of said Code of Commerce provides:

"The vessel with her engines, rigging, equipment, and freights shall be liable for the pay earned by the crew engaged per month or for the trip, the liquidation and payment to take place between one voyage and the other.

"After a new voyage has been undertaken, credits such as the former shall lose their right of preference."

This article creates a lien upon a ship in favor of the crew engaged in the operation of the same and this lien in favor of the crew takes certain preference in accordance with the provisions of said article 580. The wages due the crew and expenses incurred in maintaining the ship during the last voyage constitute a lien under the law and take preference over a lien created by giving the ship as security for money borrowed. The crew, therefore, under article 580 of the Commercial Code, for their wages, etc., for the last voyage, have a prior lien upon a ship, to the

lien created in the present case by the chattel mortgage. Liens in favor of the crew under these circumstances are known as legal liens and whoever buys a ship or loans money and takes a chattel mortgage as security, takes the ship subject to such prior liens. In the present case the said mortgage was executed and delivered in accordance with the provisions of Act No. 1508 of the Philippine Commission. The ship was sold by the sheriff of the city of Manila in accordance with the provisions of section 14 of that Act. Section 14 provides the method of disposing of the funds received under such a sale. The method is as follows:

"The proceeds of such sale shall be applied to the payment, (1) of the cost and expenses of keeping and sale; (2) to the payment of the demand or obligation secured by such mortgage; (3) the residue shall be paid to persons holding subsequent mortgages in their order; and (4) the balance shall be paid to the mortgagor or person holding under him on demand."

It will be seen that there is no provision in the law for using the funds received in the sale of mortgaged property for the payment of amounts due on prior liens. The reason is plain why no such provision was made. It is that in no case can such a sale or a sale based upon the second mortgage or lien upon property affect in any way prior liens. To illustrate: Suppose that "A" held a mortgage against the ship in question, executed, delivered and recorded prior to the date of the mortgage executed, delivered, and recorded to and by El Banco Español-Filipino. Certainly the sale of the ship under the mortgage in favor of the second mortgagee could in no way affect the rights which "A" held against the ship and the purchaser under the sale of the mortgage in favor of El Banco Español-Filipino would take the ship subject to the claim which "A" held against the same. The lien which Manuel Ayala and the other members of his crew held against the said ship were exactly analogous to the claims of "A" in the above illustration. Therefore the sale of the ship under the mortgage in question in no way divested the lien which the law created in favor of the said Manuel Ayala and his crew against the ship in question. His remedy is, therefore, not against the money which was received under said sale, but against the ship by foreclosing his lien against the same. It is true that under a sale of personal property in accordance with section 14 of said Act, the sheriff has a right to pay the costs and expenses of keeping and sale, but we are not of the opinion that this relates to the cost of keeping and maintaining the ship prior to the time when the sheriff takes possession of it for the purpose of selling the same.

The Code of Commerce refers to two methods of sale: one a judicial and the other a voluntary sale. Article 580 provides how the funds received from a judicial sale shall be distributed and for the cancellation of liens held against the ship. But it can not be contended, even under the provisions of article 582, that by the mere fact that a ship has been sold under a judicial sale, the rights of prior lien holders, who were not parties to the procedure under which such sale took place, were foreclosed. The rights of persons not parties to a proceeding can not be affected thereby. Article 582 gives a certain time within which the creditors shall present and enforce their liens when the sale is a voluntary one. Articles 579 and 584 provide a method of collecting or enforcing not only the liens created under section 580 but also for the collection of any other kind of lien whatsoever.

The appellant alleges that the lower court committed an error in not allowing Manuel Ayala to collect the amount due the other members of the crew. The lower court denied the right of Ayala to collect the amount due the other members of the crew upon the theory that he was not the real person in interest and was not, therefore, permitted to collect the amount under section 114 of the Code of Procedure in Civil Actions. The lower court allowed Ayala to collect the amount that was due him, as well as the amount which was due other members of the crew and which had been assigned to him. With reference to the amounts which had been assigned to him he was the real party in interest and, if he was entitled to recover at all he was entitled to recover not only what was due him but what had been assigned to him. But under no theory could he recover the amount due to the other-members of the crew whose claims had not been assigned to him. Said section 114 of the Code of Procedure in Civil Actions

expressly provides that every action must be prosecuted in the name of the real party in interest. This section of the code recognizes the assignments of rights of action and also recognizes that when one has a right of action assigned to him he is then the real party in interest and may maintain an action upon such claim or right. The purpose of section 114 is to require the plaintiff to be the real party in interest, or, in other words, he must be the person to whom the proceeds of the action shall belong, and to prevent actions by persons who have no interest in the result of the same. Of course the said section can not be construed to prohibit the maintenance of an action by one who is legally authorized to represent the real parties in interest.

In view of the fact that the defendant El Banco Español-Filipino did not appeal from the judgment of the lower court in which the defendant Manuel Ayala was allowed the sum of P756.66 out of the proceeds of the sale, we, make no change in the result of the decision in the lower court.

For all of the foregoing reasons, the judgment of the lower court is hereby affirmed, without any special finding as to costs.

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

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