

**CHINA NAVIGATION CO., LTD., PLAINTIFF AND APPELLEE, VS.
CIPRIANO VIDAL ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. 7029. February 27, 1912*

Ponente: MORELAND, J.

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This is an action to recover damages suffered by the plaintiff by reason of injuries sustained by the steamship Kaifong while passing through Iloilo Strait under the control and guidance of the defendant Cipriano Vidal, as pilot. The court after trial gave judgment against the defendants for P11,316.13, P3,000 property of the Iloilo Pilots' Association to be applied to the payment thereof, the balance to be paid by the defendant Vidal.

The damages herein mentioned were caused to the steamship Kaifong by striking a rock in Iloilo Strait near the "Siete Pecados," a group of coral islands, by reason of which a portion of the hull was broken in and other injuries caused. At the time the defendant Vidal was a member of the Iloilo Pilots' Association and as such had been named by that association to pilot the Kaifong through the Iloilo Strait on the day in question. The plaintiff had no hand in his selection.

Iloilo Strait is a narrow strip of water lying between Panay and Guimaras. It runs northeast and southwest. The main, or northern, channel is about one-third of a mile wide, with plenty of water in its center for the largest ships.

From the proofs it appears that, on the day of the accident, the captain of the ship turned the management of the same over to the pilot when she was between one and two miles east, or, more properly speaking, northeast, of the "Siete Pecados." At that time the boat was upon the course usually and ordinarily taken by vessels passing through that strait. It was headed directly toward the lighthouse on one of the "Siete Pecados." The usual and ordinary course for a vessel passing through the strait is to take what is known as the north channel. In doing this the course, for a considerable distance after entering the strait, is directly toward the light-house. Arriving at a point about half a mile from the light-house, the course is changed to the northward, from there on describing a moderate curve which turns again to the southward after passing the "Siete Pecados."

It is the undisputed evidence that this is the uniform course for vessels passing through said channel. It is also the undisputed evidence in this case that the defendant Vidal did not take this course. Instead he passed out of the ordinary course and outside the deeper part of the channel and approached closely the "Siete Pecados," something very unusual, if not extraordinary, in vessels passing through the channel. So unusual was this course that the captain spoke to the defendant about it, saying that he was getting in too close to the reefs. The pilot replied that there was plenty of water there and that there was nothing to fear. It was less than five minutes after this conversation that the vessel struck.

The obstruction with which the vessel collided was a pinnacle rock rising alone out of deep water, its summit being at the time about 13 to 14 feet below the surface. This rock, it is conceded, was not charted and did not appear on any hydrographic map of the locality, official or otherwise. The captain of the ship did not know of the existence of such a rock and the pilot asserts that he did not know of it. There is uncontradicted evidence,

however, of the fact that said rock was known to pilots and local navigators in and about Iloilo as early as 1900 or 1901, a quartermaster's boat having been lost upon that same rock in about the year 1900. The name usually given to it was the "Eighth Sin." It is the undisputed testimony of Captain Hamilton that the existence of that rock was known some years before to the president of the Pilots' Association of Iloilo.

We believe upon the whole that the case was properly decided by the court below. It is a fundamental rule of navigators; especially when traveling through straits, and channels, never to go outside of the usual and ordinary course traveled by vessels except for some pressing and substantial reason. The usual and ordinary course is the safe course. Any change from that course is more or less of an experiment. This is particularly true in narrow and uncertain waters. A ship is not something with which to try experiments. Too many lives and too much property are at stake. The usual course of navigators should always be adhered to under such circumstances as this case presents unless deviation therefrom is based upon some substantial reason. Whim or caprice is not enough. Neither is the desire to experiment or explore. The pilot in the case at bar having deviated from the usual and ordinary course followed by navigators in passing through the strait in question, without a substantial reason, was guilty of negligence, and that negligence having been the proximate cause of the damages, he is liable for such damages as usually and naturally flow therefrom. This conclusion is based upon the expert testimony of the case presented by experienced navigators.

There is evidence upon which we might make a finding of negligence upon the ground that the defendant should have known of the existence and location of the rock upon which the vessel struck while under his control and management. We do not, however, find it necessary to do so inasmuch as we may legally and justly base our decision, upon the proposition that a navigator passing through straits and channels is not permitted to pass out of the usual and ordinary course followed by navigators without some compelling reason for such change.

All of the other questions in the case are uncontested. The amount of damages is substantially conceded; the responsibility of the other defendants is unquestioned; and the ownership of the vessel by the plaintiffs is conceded of record. The only question before us is that of the negligence of the defendant Vidal.

The judgment is hereby affirmed, without special finding as to costs.

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

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