

THE UNITED STATES OF AMERICA AND THE INSULAR COLLECTOR OF CUSTOMS, PLAINTIFFS AND APPELLEES, VS. THE STEAMSHIP **“ISLAS FILIPINAS”** REPRESENTED BY HER OWNERS FERNANDEZ HERMANOS, DE...

G.R. No. 8746. October 30, 1914

Ponente: CARSON, J.

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CARSON, J.:

This is an appeal by the owners of the steamship *Islas Filipinas* from a judgment of the Court of First Instance of Manila, confirming the decision of the Insular Collector of Customs, imposing a fine of P1,000 on the steamship *Islas Filipinas* under the provisions of section 77, and section 313, as amended, of Act No. 355, for failure to have on board a complete manifest in the prescribed form of all her cargo.

The facts in this case are not in dispute. It appears that the steamship *Islas Filipinas* arrived at the port of Manila from the foreign port of Hongkong on or about April 15, 1912, and that she had on board 918 tins of prepared opium, weighing 210.87 kilos, which did not appear on the ship's manifests. The estimated value of this opium in Manila was between P35,000 and P40,000. The steamer had on board other cargo than the above-mentioned opium, all of which was duly manifested as required by law, but that portion of her cargo consisting of 918 tins of opium was not manifested and did not appear upon any written or typewritten manifest of the cargo aboard said vessel. The steamship *Islas Filipinas* was seized by the customs authorities for having on board unmanifested contraband cargo in violation of the Customs Administrative Act; and at a hearing held at the custom house in Manila, at which one of her owners, together with his counsel, was present, the Insular Collector of Customs, after hearing the evidence, imposed a fine of P1,000 upon the vessel under the provisions of section 77 of Act No. 355. The facts touching the discovery and seizure of this unmanifested opium are set forth as follows in the brief of the appellant:

"The authorities having received information that there was opium on board the boat, the customs officials and the owner of the steamer made a thorough search of the ship. The search resulted in finding 918 tins of prepared opium under some cement in the bottom of a water tank at the bottom of the boat, and one tin was found concealed under a table top in the dining room directly over the manhole leading into the tank in which the 918 tins were found.

"An investigation was made by the owners and they discharged the captain and all other members of the crew whom they believed implicated.

"Mr. Fernandez' testimony on that point is as follows (bottom of p. 14, bill of exceptions) :

" 'Q. What, if anything, have you done in reference to the officers or crew?—A. We discharged the captain, after I was morally convinced that he had a part in it; I discharged one of the engineers and the supercargo, and I was going to discharge another officer, but he had already quit himself.'

"A criminal charge was also filed against Jose Artiaga, the captain of the ship, and Cecilio Jimenez, another

officer of the ship, charging them with the crime of illegal importation of the opium mentioned. Said persons were duly tried, convicted and punished for said offense. (See case No. 8691, Court of First Instance, Manila.)

"There is no contention that the owners had any knowledge or were in any wise implicated in this offense, and the testimony shows that the owners afforded every help possible to search the ship, and gave the customs officials what little information they were able to gather from Mr. Fernandez' chauffeur, who was on the ship on that trip. (See p. 16, bill of exceptions.) Not only had the owners no knowledge of the offense, but the officers, on putting this opium on board, did so in violation of the instructions of the owners. (See testimony of Ramon Fernandez, p. 14, bill of exceptions.)

"The captain was a trusted employee of the firm and it was a surprise to the company that this man should do such a thing. (See testimony of Ramon Fernandez, p. 15, bill of exceptions.)

"The guilty parties were duly arrested, convicted, and punished. The owners themselves did all they could to punish them by discharging them."

In the decision of this case the lower court said:

"This is an appeal from an order of the Insular Collector of Customs imposing a fine upon the appellant for violation of Act No. 355, section 77, as amended, which provides as follows:

" 'Every vessel from a foreign port or place must, under a penalty of not exceeding one thousand pesos for failure, have on board complete written or typewritten manifests of all her cargo.'

"It is admitted that appellant's vessel did have on board 918 tins of opium which were not manifested, but it is contended that these did not constitute cargo because they were placed on board and concealed there without the knowledge of the owners. We find no definition of the term 'cargo/ however, which limits it to goods known to the owner. On the contrary, their knowledge is immaterial, and whatever the vessel is loaded with constitutes the cargo. In order to enforce the law, it becomes necessary to hold the owners, regardless of their knowledge; any other rule would lead to all sorts of evasion and subterfuge, but the general rule, in marine law is to make the vessel itself liable.

"Neither do we think it was incumbent upon the Collector to proceed against the master of the vessel. It is true that he and another official have been prosecuted criminally, but that in no way bars the present proceeding. The section above quoted imposes the liability 'on every vessel' and not upon the master of the vessel. This provision was strictly followed by the Acting Collector of Customs in his decision, for not only was the fine imposed upon the vessel, but its enforcement by seizure of the same was provided for.

"Finding no error in the decision of the Collector, we have no alternative but to enforce the same."

In discussing the contentions of counsel for the appellant we adopt as our own the reasoning of the Solicitor General which is set forth in his brief on appeal substantially as follows:

The appellant claims that the court erred (1) in holding that there was no error in the decision of the Collector of Customs; (2) in not reversing the decision of the Collector; (3) in holding that the steamer Islas Filipinas and the owners are liable to a fine under section 303 of Act No. 355 for having on board unmanifested cargo; (4) in holding that the facts set forth in the complaint are violations of section 77 of Act No. 355. In his brief, the counsel for appellant says:

"We contend it is very unjust and morally wrong to punish or hold Fernandez Hermanos liable or responsible for this criminal act of another, and that unless there is a statute making the owner legally liable, this case should be reversed."

The question of the propriety of subjecting the owners of a vessel to an administrative fine for the violation of the

customs-revenue laws is a matter for legislative determination. The Philippine Legislature has adopted this method of punishment for the infraction of certain provisions of the Customs Administrative Act. Far more stringent laws and regulations have been adopted elsewhere. (See 36 Cyc, 20-22.) By the general maritime law, vessels are made responsible for the unlawful acts of their masters-and crews; and this extends even to forfeiture by positive law. (Dobbin's Distillery vs. United States, 96 U. S., 395, 400.)

In his work on Marine Insurance (7th ed., vol. 1, sec.250), Sir Joseph Arnould says: "A shipowner may become liable to pay large sums in consequence of loss of life, injury to person, or damage to property caused by the improper navigation of his vessel."

Whether this responsibility of the owners of vessels is based on the law of agency or on the theory that the vessel (res) is the guilty thing, is of no special importance. Experience has demonstrated that the application of such penalties is necessary for the purpose of protecting the revenues, and the lives and property intrusted to such common carriers. An able argument Which completely disposes of the alleged injustice and immorality of imposing this fine upon the appellant in this case is that delivered by Messrs. Ingersoll and Bradford in *Phile vs. The Anna* (1 Dallas, U. S., 202), under a statute providing for the forfeiture of the vessel, wherein it is said:

"That the determination of this cause would certainly produce consequences of an important nature, and either render the act of assembly upon which it is founded, a dead letter, or a productive instrument of public revenue. In governments differently constituted, where regal pageantry, or military force, can invite or compel respect and obedience to the law, little danger is to be apprehended from the occasional indulgence of learned men in their ingenious and novel comments upon the sense and expressions of the legislature; but under a democratical constitution such as ours, should the people acquire a habit of yielding to logical subtleties and specious declamation, there is no power to control the evil that must ensue; the principles of jurisprudence would become weak and fluctuating, and the virtue and dignity of the commonwealth would be contaminated and eventually destroyed. Instead, therefore, of considering how to escape from the strong expression of the Act before us, it is our duty to give it the fullest operation that is necessary for suppressing the mischief to which the legislative attention was originally directed; and here we cordially embrace the position of our antagonists, that the meaning of those who framed the law is the best guide to direct us in carrying it into execution. What then was the evil complained of, at the time that this act was made? The atrocious frauds committed upon the revenue. What was the remedy provided? It could not be merely the forfeiture of the smuggled goods, as the claimants insinuate, for that was imposed by an antecedent law; but the truth is, that every other penalty having proved ineffectual, this statute was enacted expressly to superadd the forfeiture of the vessel or boat from which the goods should be clandestinely unladed."

In that case the court held that under the law the vessel in question was liable to forfeiture in case the goods were unladen from her before due entry, whether the owners were privy to the transaction or otherwise. In his charge to the jury the president of the court said: "This has been repeatedly called a hard law; but the truth is, that revenue laws are. of a harsher nature than any others, and necessarily so; for, the devices of ingenious men render it indispensable for the legislature to meet their illicit practices with severer penalties."

The appellant's contention that the provisions of section 77 of Act No. 355 apply only to cases where a vessel does not have a manifest on board, and, that section 303 of said Act is applicable in cases in which a vessel has on board cargo not included in her manifests, is not well founded. Section 303 imposes certain duties upon the master of a vessel in connection with the administration of the customs regulations; and provides penalties in case of failure to perform them; and the vessel or its owners are not made responsible except as provided in section 343 of the Act. Section 77 imposes the absolute obligation, under penalty for failure, upon every vessel from a foreign port to have "on board complete written or typewritten manifests of all her cargo, signed by the master." Where the law requires a manifest to be kept or delivered, it is not complied with unless the manifest is true and accurate.

(See *Phile vs. The Anna*, supra.)

Another contention of the appellant is that the opium in question is not "cargo" within the meaning of the custom laws. The term "cargo" is not specifically defined in the Customs Administrative Act, but from the language used in several of its provisions it is clear that the word "cargo" as used in the section under consideration includes all goods, wares, and merchandise aboard ship which do not form part of the ship's stores.

Black's Law Dictionary defines the term "cargo" as follows : "The load or lading of a vessel; goods and merchandise put on board a ship to be carried to a certain port.

"The lading or freight of a ship; the goods, merchandise, or whatever is conveyed in a ship or other merchant vessel. (See 1 Mason, 142; 4 Pick., 429; 9 Mete. (Mass.), 366; 103 Mass., 406.)

"A cargo is the loading of a ship or other vessel, the bulk of which is to be ascertained from the capacity of the ship or vessel. The word embraces all that the vessel is capable of carrying. (3 Rob. (N. Y.), 173.) The term may be applied in such a sense as to include passengers, as well as freight, but in a technical sense it designates goods only."

The following definitions of the word "cargo" are found in the cases:

"The word 'cargo' ex vi termini, means the goods on board of the vessel." (*Seamans vs. Loring* (U. S.), 21 Fed. Cas., 920, 924.)

"A cargo is the lading of a ship or other vessel, the bulk or dimension of which is to be ascertained from the capacity of the ship or vessel; and, where the name of the ship or vessel is in the contract, her capacity for carrying or the bulk of her cargo need not be stated for the word 'cargo' embraces all that the vessel is capable of carrying." (*Flanagan vs. Demarest*, 26 N. Y. Sup. Ct. (3 Rob.), 173, 181.)

"The cargo is the lading of the vessel, and, though by bribery or craft, some articles might be introduced in the hold, without the knowledge of the owners or the captain, yet everything which is put on board the vessel is, in general, comprehended in that description." (*Phile vs. The Anna*, 1 Dallas (U.S.), 202.)

The present case raises a question of great importance to the practical and successful working of the Customs Administrative Act, and its decision will determine whether section 77 of said Act is to be given force and effect and is to have any real value as a provision designed to prevent frauds upon the public revenues. If the owners of vessels were allowed to escape the penalty provided for this fraud or attempt to defraud the revenues by setting up pleas of innocence and ignorance, it is clear that the legislative intention would be defeated. As was said in the case of *Phile vs. The Anna* (supra):

"Then, there remains only the great point upon which the counsel for the claimants seem chiefly to rely, to wit, their innocence and ignorance with respect to the fraud that has been committed,. There is no evidence, indeed, that tends to show that the owners of the ship meant to do anything unfairly; but, on the contrary, that the mate brought the goods hither with the avowed intention to defraud them as well as the State. The question then recurs, what difference does it make, whether they knew of it or not? Here is a positive law that directs a due entry of all goods, wares, and merchandise imported into this State, under certain penalties, and one of them is the forfeiture of the vessel or boat from which they are unladed. It does not speak of the knowledge of any person, but seems to be studiously worded to avoid that construction. It is not a novel law, though perhaps it is stricter now than formerly; for, in England, it has long existed, and before the Revolution it was known in Pennsylvania. The legislature has thought that nothing else would answer, and the judges and the jurors are equally bound to obedience. If, indeed, the law was doubtful or latitudinal, admitting one interpretation, which would be just, and another which would be unjust, it would become us to prefer the former. But if the policy of the legislature seems to bear hard on the subject, we are not to judge and determine upon its propriety (that is a matter for the deliberation of those who made the law), and however unjust it seems, we must acquiesce, or

there must be a dissolution of society. It must certainly affect every humane man to see the innocent suffer; but in society this is not strange or uncommon; and the distinction may properly be taken between criminal and civil cases. The law never punishes any man criminally but for his own act, yet it frequently punishes him in his pocket for the act of another."

The judgment entered in the lower court should be and is hereby affirmed, with the costs of this instance against the appellant.

Arellano, C. J., and Trent, J., concur.

Johnson, J., concurs in the result.

Moreland and Araullo, JJ., dissent.

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