

TEODORO R. YANGCO, ETC., PETITIONER, VS. MANUEL LASERNA ET AL., RESPONDENTS.*G.R. Nos. 47447-49. October 29, 1941*

Ponente: MORAN, J.

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At about one o'clock in the afternoon of May 26, 1927, the steamer S. S. Negros, belonging to petitioner here, Teodoro R. Yangco, left the port of Romblon on its return trip to Manila. Typhoon signal No. 2 was then up, of which fact the captain was duly advised and his attention thereto called by the passengers themselves before the vessel set sail. The boat was overloaded as indicated by the loadine which was 6 to 7 inches below the surface of the water. Baggage, trunks and other equipments were heaped on the upper deck, the hold being packed to capacity. In addition, the vessel carried thirty sacks of crushed marble and about one hundred sacks of copra and some lumber. The passengers, numbering about 180, were overcrowded, the vessel's capacity being limited to only 123 passengers. After two hours of sailing, the boat encountered strong winds and rough seas between the islands of Banton and Simara, and as the waves splashed the ladies' dresses, the awnings were ordered lowered. As the sea became increasingly violent, the captain ordered the vessel to turn left, evidently to return to port, but in the maneuver, the vessel was caught sidewise by a big wave which caused it to capsize and sink. Many of the passengers died in the mishap, among them being Antolin Aldana and his son Victorioso, husband and son, respectively, of Emilia Bienvenida who, together with her other children and a brother-in-law, are respondents in G.R. No. 47447; Casiana Laserna, the daughter of respondents Manuel Laserna and P. A. de Laserna in G. B. No. 47448; and Genaro Basaña, son of Filomeno Basana, respondent in G.R. No. 47449. These respondents instituted in the Court of First Instance of Capiz separate civil actions against petitioner here to recover damages for the death of the passengers aforementioned. The court awarded the heirs of Antolin and Victorioso Aldana the sum of P2,000; the heirs of Casiana Laserna, P590; and those of Genaro Basana, also P590. After the rendition of the judgment to this effect, petitioner, by a verified pleading, sought to abandon the vessel to the plaintiffs in the three cases, together with all its equipments, without prejudice to his right to appeal. The abandonment having been denied, an appeal was taken to the Court of Appeals, wherein all the judgments were affirmed except that which awarded to the Aldanas the sum of P2,000, which sum was increased to P4,000. Petitioner, now deceased, appealed and is here represented by his legal representative.

Brushing aside the incidental issues, the fundamental question here raised is: May the shipowner or agent, notwithstanding the total loss of the vessel as a result of the negligence of its captain, be properly held liable in damages for the consequent death of its passengers? We are of the opinion and so hold that this question is controlled by the provision of article 587 of the Code of Commerce. Said article reads:

"The agent shall also be civilly liable for the indemnities in favor of third persons which arise from the conduct of the captain in the care of the goods which the vessel carried; but he may exempt himself therefrom by abandoning the vessel with all her equipments and the freight he may have earned during the voyage."

The provision accords a shipowner or agent the right of abandonment; and by necessary implication, his liability

is confined to that which he is entitled as of right to abandon—"the vessel with all her equipments and the freight it may have earned during the voyage." It is true that the article appears to deal only with the limited liability of shipowners or agents for damages arising from the misconduct of the captain in the care of the goods which the vessel carries, but this is a mere deficiency of language and in no way indicates the true extent of such liability. The consensus of authorities is to the effect that notwithstanding the language of the aforequoted provision, the benefit of limited liability therein provided for, applies in all cases wherein the shipowner or agent may properly be held liable for the negligent or illicit acts of the captain. Dr. Jose Ma. Gonzalez de Echavarri y Vivanco, commenting on said article, said:

"La letra delCodigo, en el articulo 587, presenta una gravisima cuestion. El derecho de abandono, si se atiende a lo escrito, solo se refiere a las indemnizaciones a que diere lugar la conducta del Capitan en la custodia de los efectos que cargo en el buque.

"¿Es ese el espiritu del legislador? No; ¿habra derecho de abandono en las responsabilidades nacidas de obligaciones contraidas por el Capitan y de otros actos de este? Lo reputamos evidente y, para fortalecer nuestra opinion, basta copiar el siguiente parrafo de la Exposición de motivos:

" 'El proyecto, al aplicar estos principios, se inspira tambien en los intereses del comercio maritimo, que quedaran mas asegurados ofreciendo a todo el que contrata con el naviero o Capitan del buque, la garantia real del mismo, cualesquiera que sean las facultades o atribuciones de que se hallen investidos.'" (Echavarri, Codigo de Comercio, Tamo 4, 2." ed., pags. 483-484.)

A cursory examination will disclose that the principle of limited liability of a shipowner or agent is provided for in but three articles of the Code of Commerce—article 587 aforequoted and articles 590 and 837. Article 590 merely reiterates the principle embodied in article 587, where the vessel is owned by several persons. Article 837 applies the same principle in cases of collision, and it has been observed that said article is but "a necessary consequence of the right to abandon the vessel given to the shipowner in article 587 of the Code, and it is one of the many superfluities contained in the Code." (Lorenzo Benito, Lecciones 352, quoted in *Philippine Shipping Co. vs. Garcia*, 6 Phil., 281, 282.) In effect, therefore, only articles 587 and 590 are the provisions contained in our Code of Commerce on the matter, and the framers of said code had intended those provisions to embody the universal principle of limited liability in all cases. Thus, in the "Exposición de Motivos" of the Code of Commerce, we read:

"The present code (1829) does not determine the juridical status of the agent where such agent is not himself the owner of the vessel. This omission is supplied by the proposed code, which provides in accordance with the principles of maritime law that by agent it is to be understood the person intrusted with the provisioning of the vessel, or the one who represents her in the port in which she happens to be. This person is the only one who represents the vessel—that is to say, the only one who represents the interests of the owner of the vessel. This provision has therefore cleared the doubt which existed as to the extent of the liability, both of the agent and of the owner of the vessel. Such liability is limited by the proposed code to the value of the vessel and other things appertaining thereto."

In *Philippine Shipping Co. vs. Garcia* (6 Phil., 281, 284-286), we have expressed ourselves in such a comprehensive manner as to leave no room for doubt on the applicability of our ratio decidendi not only to cases of collision but also to those of shipwrecks, etc. We said:

"This is the difference which exists between the lawful acts and lawful obligations of the captain and the liability which he incurs on account of any unlawful act committed by him. In the first case, the lawful acts and obligations of the captain beneficial to the vessel may be enforced as against the agent for the reason that such obligations arise from the the contract of agency (provided, however, that the captain does not exceed his authority), while as to any liability incurred by the captain through his unlawful acts, the ship agent is simply

subsidiarily civilly liable. This liability of the agent is limited to the vessel and it does not extend further. For this reason the Code of Commerce makes the agent liable to the extent of the value of the vessel, as the codes of the principal maritime nations provide, with the vessel, and not individually. Such is also the spirit of our Code.

"The spirit of our code is accurately set forth in a treatise on maritime law, from which we deem proper to quote the following as the basis of this decision:

" 'That which distinguishes the maritime from the civil law and even from the mercantile law in general is the real and hypothecary nature of the former, and the many securities of a real nature that maritime customs from time immemorial, the laws, the codes, and the later jurisprudence, have provided for the protection of the various and conflicting interests which are ventured and risked in maritime expeditions, such as the interests of the vessel and of the agent, those of the owners of the cargo and consignees, those who salvage the ship, those who make loans upon the cargo, those of the sailors and members of the crew as to their wages, and those of a constructor as to repairs made to the vessel.

" 'As evidence of this real nature of the maritime law we have (1) the limitation of the liability of the agents to the actual value of the vessel and the freight money, and (2) the right to retain the cargo and the embargo and detention of the vessel even in cases where the ordinary civil law would not allow more than a personal action against the debtor or person liable. It will be observed that these rights are correlative, and naturally so, because if the agent can exempt himself from liability by abandoning the vessel and freight money, thus avoiding the possibility of risking his whole fortune in the business, it is also just that his maritime creditor may for any reason attach the vessel itself to secure his claim without waiting for a settlement of his rights by a final judgment, even to the prejudice of a third person.

" 'This repeals the civil law to such an extent that, in certain cases, where the mortgaged property is lost no personal action lies against the owner or agent of the vessel. For instance, where the vessel is lost the sailors and members of the crew cannot recover their wages; in case of collision, the liability of the agent is limited as aforesaid, and in case of shipwreck, those who loan their money on the vessel and cargo lose all their rights and cannot claim reimbursement under the law.

" There are two reasons why it is impossible to do away with these privileges, to wit: (1) The risk to which the thing is exposed, and (2) the real nature of the maritime law, exclusively real, according to which the liability of the parties is limited to a thing which is at the mercy of the waves. If the agent is only liable with the vessel and freight money and both may be lost through the accidents of navigation it is only just that the maritime creditor have some means to obviate this precarious nature of his rights by detaining the ship, his only security, before it is lost.

" 'The liens, tacit or legal, which may exist upon the vessel and which a purchaser of the same would be obliged to respect and recognize are—in addition to those existing in favor of the State by virtue of the privileges which are granted to it by all the laws—pilot, tonnage, and port dues and other similar charges, the wages of the crew earned during the last voyage as provided in article 646 of the Code of Commerce, salvage dues under article 842, the indemnification due to the captain of the vessel in case his contract is terminated on account of the voluntary sale of the ship and the insolvency of the owner as provided in article 60S, and all other liabilities arising from collisions under articles 837 and 838.' " We are shared in this conclusion by the eminent commentators on the subject. Agustin Vicente y Gella, asserting, in his "Introduction al Derecho Mercantil Comparado" 1929 (pages 374-375), the like principle of limited liability of shipowners or agent in cases of accidents, collisions, shipwrecks, etc., said:

"De las responsabilidades que pueden resultar como consecuencia del comercio marítimo, y no sólo por hechos propios sino también por las que se ocasionen por los del capitán y la tripulación, responde frente a tercero el naviero que representa el buque; pero el derecho marítimo es sobre todo tradicional y siguiendo un viejo principio de la Edad Media la responsabilidad del naviero se organiza de un modo específico y

particularísimo que no encuentra similar en el derecho general de las obligaciones.

"Una forma corrientísima de verificarse el comercio marítimo durante la época medieval, era prestar un propietario su navío para que cargase en él mercancías determinadas persona, y se hiciese a la mar, yendo al frente de la expedición un patrón del buque, que llegado al puerto de destino se encargaba de venderlas y retornaba al de salida después de adquirir en aquel otros efectos que igualmente revendía a su regreso, verificado lo cual los beneficios de la expedición se repartían entre el dueño del buque, el cargador y el capitán y tripulantes en la proporción estipulada. El derecho marítimo empezó a considerar la asociación así formada como una verdadera sociedad mercantil, de responsabilidad limitada, y de acuerdo con los principios que gobiernan aquella en los casos de accidentes, abordajes, naufragios, etc., se resolvía que el dueño del buque perdía la nave, el cargador las mercancías embarcadas y el capitán y la tripulación su trabajo, sin que en ningún caso el tercer acreedor pudiese reclamar mayor cantidad de ninguno de ellos, porque su responsabilidad quedaba limitada a lo que cada uno aportó a la sociedad. Recogidas estas ideas en el derecho comercial de tiempos posteriores, la responsabilidad del naviero se edificó sobre aquellos principios, y derogando la norma general civil de que del cumplimiento de sus obligaciones responde el deudor con todos sus bienes presentes y futuros, la responsabilidad marítima se consideró siempre limitada ipso jure al patrimonio de mar. Y este es el origen de la regla trascendental de derecho marítimo según la cual el naviero se libera de toda responsabilidad abandonando el buque y el flete a favor de los acreedores."

From the *Enciclopedia Jitridiea Española*, Vol. 23, p. 347, we read:

"Ahora bien: ¿hasta donde se extiende esta responsabilidad del naviero? ¿sobre que bienes pueden los acreedores resarcirse? fíjase es otra especialidad del Derecho marítimo; en el Derecho común la responsabilidad es limitada; también lo era en el antiguo Derecho marítimo romano; se daba la *actio exercitoria* contra el *exercitor navis* sin ninguna restricción, pero en la Edad Media una idea nueva se introdujo en los usos marítimos. Las cargas resultantes de las expediciones marítimas se consideraron limitadas por los propietarios de las naves a los valores comprometidos por ellos en cada expedición; se separó ficticiamente el patrimonio de los navieros en dos partes que todavía se designan de una manera bastante exacta; fortuna de tierra y fortuna de mar o flotante; y se admitió la teoría de que esta era la que respondía sólo de las deudas provenientes de los actos del capitán o de la tripulación, es decir, que el conjunto del patrimonio del naviero escaparía a estas cargas desde el momento en que abandonara la nave y los fletes a los acreedores. * * *"

Escriche in his *Diccionario de la Legislación y Jurisprudencia*, Vol. 1, p. 38, observes:

"La responsabilidad del naviero, en el caso expuesto, se funda en el principio de derecho común de ser responsable todo el que pone al frente de un establecimiento a una persona, de los daños o perjuicios que ocasionare esta desempeñando su cometido, y en que estando facultado el naviero para la elección de capitán de la nave, viene a tener indirectamente culpa en la negligencia o actos de este que ocasionaron daños o perjuicios, puesto que no se asegura de su pericia o buena fe. Limitase, sin embargo, la responsabilidad del naviero a la pérdida de la nave, sus aparejos, y fletes devengados durante el viaje; porque no pudiendo vigilar de un modo directo e inmediato la conducta del capitán, hubiera sido duro hacerla extensiva a todos sus bienes que podría comprometer el capitán con sus faltas o delitos."

The views of these learned commentators, including those of Estases (*Derecho Mercantil*, Vol. 4, p. 259) and Supino (*Derecho Mercantil*, pp. 463-464), leave nothing to be desired and nothing to be doubted on the principle. It only remains to be noted that the rule of limited liability provided for in our Code of Commerce reflects merely, or is but a restatement, imperfect though it is, of the almost universal principle on the subject. While previously under the civil or common law, the owner of a vessel was liable to the full amount for damages caused by the misconduct of the master, by the general maritime law of modern Europe, the liability of the shipowner was subsequently limited to his interest in the vessel. (*Norwich & N. Y. Trans. Co. v. Wright*, 80 U. S. 104, 20 Law. ed. 585.) A similar limitation was placed by the British Parliament upon the liability of English shipowners

through a series of statutes beginning in 1734 with the Act of 7 George II, chapter 15. The legislatures of Massachusetts and Maine followed suit in 1818 and 1821, and finally, Congress enacted the Limited Liability Act of March 3, 1851, embodying most of the provisions contained in the British Statutes (see 24 R. C. L. pp. 1387-1389). Section 4283 of the Revised Statutes (sec. 183, Tit. 46, Code of Laws of U. S. A.) reads:

"LIABILITY OF OWNER NOT TO EXCEED INTEREST.—The liability of the owner of any vessel, for any embezzlement, loss, or destruction, by any person, of any property, goods, or merchandise, shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter or thing, loss, damage, or forfeiture, done, occasioned, or incurred without the privity, or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel, and her freight then pending"

The policy which the rule is designed to promote is the encouragement of shipbuilding and investment in maritime commerce. (Vide: *Norwich & N. Y. Trans. Co. v. Wright*, supra; *The Main v. Williams*, 152 U. S. 122; 58 C. J. 634.) And it is in that spirit that the American courts construed the Limited Liability Act of Congress whereby the immunities of the Act were applied to claims not only for lost goods but also for injuries and "loss of life of passengers, whether arising under the general law of admiralty, or under Federal or State statutes." (*The City of Columbus*, 22 Fed. 460; *The Longfellow*, 104 Fed. 360; *Butler v. Boston & Savannah Steamship Co.*, 32 Law. ed. 1017; *Craig v. Continental Insurance Co.*, 35 Law. ed. 836.) The Supreme Court of the United States in *Norwich & N. Y. Trans. Co. v. Wright*, 80 U. S. 104, 20 Law. ed. 585, 589-590, accounting for the history of the principle, clinches our exposition of the supporting authorities:

"The history of the limitation of liability of shipowners is matter of common knowledge. The learned opinion of Judge Ware in the case of *The Rebecca*, 1 Ware, 187-194, leaves little to be desired on the subject. He shows that it originated in the maritime law of modern Europe; that whilst the civil, as well as the common law, made the owner responsible to the whole extent of damage caused by the wrongful act or negligence of the master or crew, the maritime law only made them liable (if personally free from blame) to the amount of their interest in the ship. So that, if they surrendered the ship, they were discharged.

"Grotius, in his law of War and Peace, says that men would be deterred from investing in ships if they thereby incurred the apprehension of being rendered liable to an indefinite amount by the acts of the master and, therefore, in Holland, they had never observed the Roman Law on that subject, but had a regulation that the ship owners should be bound no farther than the value of their ship and freight. His words are: 'Navis et eorum quae in navi sunt,' 'the ship and goods therein.' But he is speaking of the owner's interest; and this, as to the cargo, is the freight thereon, and in that sense he is understood by the commentators. Boulay Paty, *Droit Maritime*, tit. 3, sec. 1, p. 276; Book II, c. XI, sec. XIII. The maritime law, as codified in the celebrated French *Ordonance de la Marine*, in 1681, expressed the rule thus: 'The proprietors of vessels shall be responsible for the acts of the master, but they shall be discharged by abandoning the ship and freight/ Valin, in his commentary on this passage, lib. 2, tit. 8, art. 2, after specifying certain engagements of the master which are binding on the owners, without any limit of responsibility, such as contracts for the benefit of the vessel, made during the voyage (except contracts of bottomry) says: 'With these exceptions it is just that the owner should not be bound for the acts of the master, except to the amount of the ship and freight. Otherwise he would run the risk of being ruined by the bad faith or negligence of his captain, and the apprehension of this would be fatal to the interests of navigation. It is quite sufficient that he be exposed to the loss of his ship and of the freight, to make it his interest, independently of any goods he may have on board to select a reliable captain.' Pardessus says: The owner is bound civilly for all delinquencies committed by the captain within the scope of his authority, but he may discharge himself therefrom by abandoning the ship and freight; and, if they are lost, it suffices for his discharge, to surrender all claims in respect of the ship and its freight/ such as insurance, etc. *Droit Commercial*, part 3, tit. 2, c. 3, sec. 2.

"The same general doctrine is laid down by many other writers on maritime law. So that it is evident that, by

this law, the owner's liability was coextensive with his interest in the vessel and its freight, and ceased by his abandonment and surrender of these to the parties sustaining loss."

In the light of all the foregoing, we therefore hold that if the shipowner or agent may in any way be held civilly liable at all for injury to or death of passengers arising from the negligence of the captain in cases of collisions or shipwrecks, his liability is merely co-extensive with his interest in the vessel such that a total loss thereof results in its extinction. In arriving at this conclusion, we have not been unmindful of the fact that the illfated steamship *Negros*, as a vessel engaged in interisland trade, is a common carrier (*De Villata v. Stanely*, 32 Phil., 541), and that the as a vessel engaged in interisland trade, is a common carrier (*De Villata v. Stanely*, 32 Phil., 541), and that the relationship between the petitioner and the passengers who died in the mishap rests on a contract of carriage. But assuming that petitioner is liable for a breach of contract of carriage, the exclusively "real and hypothecary nature" of maritime law operates to limit such liability to the value of the vessel, or to the insurance thereon, if any. In the instant case it does not appear that the vessel was insured.

Whether the abandonment of the vessel sought by the petitioner in the instant case was in accordance with law or not, is immaterial. The vessel having totally perished, any act of abandonment would be an idle ceremony.

Judgment is reversed and petitioner is hereby absolved of all the complaints, without costs.

Avanceña, C.J., Abad Santos, Diaz, Laurel, Horrilleno, and Ozaeta, JJ., concur.

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