

**PHILIPPINE AIRLINES, INC., PETITIONER, VS. COURT OF APPEALS,
ADELINA BAGADIONG AND ROSARIO STO. TOMAS, RESPONDENTS.
PHILIPPINE AIRLINES, INC., PETITIONER, VS. COURT OF APPEALS A...**

G.R. Nos. 50504-05. August 13, 1990

Ponente: REGALADO, J.

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REGALADO, J.:

Petitioner seeks the review of the decision of the Court of Appeals,[1] promulgated on April 25, 1979 in CA-G.R. Nos. 58345-46-R, affirming with modifications the decision of the Court of First Instance of Camarines Sur, Branch 1, under the following decretal portion:

"WHEREFORE, the dispositive part of the decision appealed from is modified as follows:

'WHEREFORE, judgment is hereby rendered:

(A) Defendant Philippine Air-lines, Inc. in Civil Case No. 7047, is ordered to pay the plaintiffs, Adelina Bagadiong and Rosario Sto. Tomas, the sum of P30,000.00, Philippine Currency, each, as moral damages and exemplary damages; and the sum of P6,000.00, Philippine Currency, as attorney's fees;

(B) Defendant Philippine Air-lines, Inc. in Civil Case No. 7307 is ordered to pay the plaintiff Ladislao Santos the sum of P30,000.00, Philippine Currency, as moral damages and exemplary damages; and the sum of P6,000.00, Philippine Currency, as attorney's fees;

(C) To pay the plaintiffs the interest at the legal rate of 6% per annum on moral and exemplary damages aforesated, from the date of this amended decision until said damages are fully paid;

(D) Defendants are further ordered to pay the costs of these suits. The counter-claim(s) of defendant in both cases are dismissed.

‘SO ORDERED’”[2]

On December 11, 1970, private respondents Adelina Bagadiong and Rosario Sto. Tomas, filed an action for damages against petitioner in the Court of First Instance of Camarines Sur, docketed therein as Civil Case No. 7047. On May 18, 1972, a similar action, Civil Case No. 7307, was filed in the same court by the other private respondent, Ladislao Santos. On February 9, 1973, considering that these two cases arose from the same incident and involved the same defendant and counsel for plaintiffs in both cases, a joint hearing of these cases was ordered and conducted by the lower court upon motion of both parties.[3]

Considering the significant role of evidentially-supported factual findings of the lower courts in the decisional processes of appellate courts, we find it necessary to reproduce the same, as reported in these cases by respondent court, together with the proceedings in the court a quo:

"The amended complaint in Civil Case No. 7047 alleges, inter alia, that on November 16, 1970, plaintiffs

Adelina Bagadiong and Rosario Sto. Tomas, now appellees, made reservations with, and bought two plane tickets from, defendant (Naga City branch station), now appellant, a common carrier engaged in the business of transporting passengers by air for compensation, for Naga-Manila flight on November 26, 1970; that on November 24, 1970, plaintiffs went back to defendant Naga City branch station and paid the fare for two round trip tickets; that plaintiffs were not only issued their round trips tickets, but also their reservation in defendant's 3:40 o'clock afternoon Naga-Manila flight on November 26, 1970 were expressly confirmed by the Naga City branch station; that at three o'clock in the afternoon of November 26, 1970, or forty-five minutes before the scheduled departure time of the Naga-Manila flight, plaintiffs checked in at the Pili airport counter of defendant and there the latter's agent or employees got the tickets of the plaintiffs allegedly for the purpose of issuing to them a boarding pass; that few minutes before departure time, plaintiffs' luggage was loaded to (sic) the plane, but plaintiffs were not given back their tickets and were not allowed by defendant's agent or employees to board the plane; and that after the plane had taken off from the Pili airport with the luggage of plaintiffs, in spite of their complaint, all that defendant's agent or employees did at the Naga City branch station was to refund plaintiffs' fares.

"Contending that defendant common carrier acted in bad faith in the breach of its contract with them, plaintiffs claimed for moral damages 'in the amount of no less than P10,000.00 each', exemplary damages and actual damages. It is prayed that defendant be ordered to pay plaintiffs, among others, 'the sum of P20,000.00 for moral damages' and P6,000.00 by way of expenses of litigation including attorney's fees'.

"In Civil Case No. 7307, the complaint alleges, among others, that on November 24, 1970, when plaintiff Ladislao Santos, now appellee, bought a plane ticket at the branch station of defendant in Naga City for Flight 296 from Naga to Manila scheduled on the afternoon of November 26, 1970, he was assured by the employees of defendant that his reservation for the flight was confirmed; that at two o'clock in the afternoon of November 26, 1970, one hour and forty minutes before the scheduled departure time of Flight 296, plaintiff checked in at the Pili airport counter and then and there the employees of defendant asked for his ticket, allegedly for the purpose of issuing to him a boarding pass; that about three minutes before departure of Flight 296, the ticket was returned to plaintiff by defendant's employee, informing him that there was no more seat available and he could not ride on that flight to Manila; that the employees of the defendant acted rudely and discourteously to his embarrassment in the presence of so many people who were at the airport at that time; that it was very important and urgent for plaintiff to be in Manila on the afternoon of November 26, 1970, because he had an appointment with an eye specialist for medical treatment of his eye and he and his brother were 'to close a contract they entered into to supply shrimps to some restaurants and market vendors in Manila'; and that he and his brother failed to close the contract to supply shrimps, as it was on December 1, 1970, that he was finally able to reach Manila by train.

"Likewise, claiming that defendant acted in bad faith in the breach of its contract with him, plaintiff Ladislao Santos has claimed for moral damages 'in the amount of no less than P70,000.00', exemplary damages and actual damages in 'the sum of P20,000.00 x x x which include(s) attorney's fees and expenses of litigation'.

"In its answer to the amended complaint, as well as to the complaint of other plaintiff-appellee, defendant-appellant common carrier interposed, among others the following common special and affirmative defenses; that the aircraft used for Flight 296R/26 November 1970 (Virac-Naga-Manila) is a 44-seater; that due to the cancellation of its morning flight from Virac, some of its passengers for said flight took Flight 296R; that on the representations of Governor Alberto of Catanduanes, one of those manifested in the cancelled morning flight, its (defendant's) employees at its Virac station were constrained 'to allow the Governor to take Flight 296R together with several companions' with the assurance of the Governor that two (2) of his companions would deplane in Naga; that on arrival in Naga, the two companions of the Governor refused to deplane despite repeated pleas and entreaties of its employees; that unable to persuade the two Virac passengers to deplane in Naga and 'compelled by a reasonable and well-grounded fear that an untoward incident may ensue should the two (2) be forced to leave the aircraft', its employees 'had to act in a manner

dictated by the circumstances and by reasons of safety both of the passengers and the aircraft and crew'; that its failure to carry plaintiffs on board the plane 'was necessitated by reason of safety and/or compliance with applicable laws, regulations or orders, and the same are valid grounds for refusal to carry plaintiffs in accordance with its Domestic Passenger Tariff No. 2 (Section A, Rule 8[a]) which is incorporated by reference into the conditions of carriage as expressly provided for in plaintiffs' plane tickets'; and that the error of its employees was an honest mistake or constitutes excusable negligence.

"After trial on the merits, specifically on June 25, 1975, the lower court rendered a decision which, in part, is herein reproduced as follows:

'From the foregoing, the Court is of the opinion that:

- (a) There was a contract of carriage to furnish plaintiffs passage from Naga (Pili airport) to Manila on Flight 296R on the afternoon of November 26, 1970.
- (b) The said contract was breached when defendant failed to accommodate plaintiffs in Flight 296R.
- (c) The breach of contract of carriage was in bad faith even granting the mistakes advanced by the defendant the same would still amount to negligence so gross and reckless as to amount to malice and/or bad faith.
- (d) Due to the acts of the employees of the defendant in 'bumping off' the plaintiffs, the latter suffered embarrassment and humiliations, thereby causing them mental anguish, serious anxiety, wounded feeling and social humiliation, resulting in moral damages.

'WHEREFORE, judgment is hereby entered:

- (a) Ordering the defendant in Civil Case No. 7047 to pay plaintiff Adelina Bagadiong the sum P10,000.00, as moral damages; to pay plaintiff Rosario Sto. Tomas the sum of P10,000.00 as moral damages; to pay each plaintiff the sum of P10,000.00 by way of exemplary damages, and the sum of P6,000.00 as attorney's fees;
- (b) Ordering the defendant in Civil Case No. 7307 to pay plaintiff Ladislao Santos the sum of P60,000.00 for moral damages; P20,000.00 by way of actual damages; the sum of P10,000.00 as exemplary damages and P6,000.00 for attorney's fees;
- (c) Interest at the legal rate of 6% per annum on the moral and exemplary damages aforesated, from the date of this decision until said damages are fully paid;
- (d) Ordering the defendant to pay the costs of these suits. Counterclaim of the defendant in both cases are hereby dismissed.

'SO ORDERED.'

"Under date of July 19, 1975, plaintiffs in Civil Case No. 7047 filed a Motion for Reconsideration of the decision, x x x.

x x x

"On July 30, 1975, the lower court granted the motion for reconsideration in its order which, in part states:

'In the case of Ortigas vs. Lufthansa (Case Digest of the Bulletin issue of July 19, 1975), the Supreme Court, speaking thru Mr. Justice Antonio P. Barredo, increased the moral damages awarded to Ortigas by the CFI of Manila from P100,000.00 to P150,000.00 and the exemplary damages from P30,000.00 to P100,000.00. The ground of the Supreme Court in ordering the increase of the exemplary damages from P30,000.00 to P100,000.00, was that, 'the airline should be made to pay an amount that can really serve as a deterrent against a seeming

pattern of indifference and unconcern, and what is worse, of discrimination for racial reasons, discernible in the treatment of air passengers.'

'In the present case, this Court found clear evidence of discrimination by employees of the Philippine Airlines (PAL) when for unexplained and unwarranted reasons - evidently the desire to cater to the good graces of a 'politico' - they unceremoniously 'bumped off' herein plaintiffs from the flight.

x x x

'The dispositive part of the decision of this Court on these Civil Cases Nos. 7047 and 7304 dated July 1, 1975 is hereby amended and to read as follows, to wit:

'Wherefore, judgment is hereby rendered:

(A) Defendant Philippine Airlines, Inc., in Civil Case No. 7047, is ordered to pay the plaintiffs, Adelina Bagadiong and Rosario Sto. Tomas, the sum of P60,000.00, Philippine Currency, each as moral damages; the sum of P60,000.00, Philippine Currency, each, by way of exemplary damages, and the sum of P10,000.00, Philippine Currency, as attorney's fees;

(B) Defendant Philippine Airlines, Inc., in Civil Case No. 7307 is ordered to pay the plaintiff Ladislao Santos the sum of P60,000.00, Philippine Currency, as moral damages; the sum of P20,000.00, Philippine Currency, by way of actual damages; the sum of P60,000.00, Philippine Currency, as exemplary damages, and the sum of P10,000.00, Philippine Currency, as attorney's fees;

(C) To pay the plaintiffs the interest at the legal rate of 6% per annum on moral and exemplary damages aforesaid, from the date of this amended decision until said damages are fully paid.

(D) Defendants are further ordered to pay the costs of these suits. The counter-claims of defendant in both cases are dismissed.

'SO ORDERED' "[4]

As earlier stated, on appeal respondent court affirmed with modifications said decision of the lower court. Hence, this petition raising the following questions:

1. Is a passenger in a contract of air transportation entitled to moral damages when the failure of the carrier to accommodate the passenger resulted from unlawful acts of third parties against the carrier's personnel?
2. Are respondents entitled to exemplary damages when there is no sufficient evidence to show, and neither the appellate court nor the trial court found facts showing reckless, oppressive or malevolent conduct by the carrier?
3. Can a passenger in a contract of air transportation validly claim damages when she could have taken the flight had she not instead opted, of her own volition, to give her confirmed seat to another passenger who was accommodated by the carrier in her place?
4. May a trial court, in a motion for reconsideration, increase damages it awarded in the original decision to an amount drastically over that it initially found to be warranted and significantly more than claimed by plaintiffs themselves?[5]

We have constantly ruled in a number of cases that moral damages are recoverable in a breach of contract of carriage where the air carrier through its agents acted fraudulently or in bad faith.[6] In the case at bar, the trial court and the Court of Appeals are in agreement that petitioner through its agents acted in bad faith in "bumping

off" private respondents. As aptly found by the Court of Appeals, the failure of petitioner to accommodate private respondents was not the result of an honest mistake, because its employees knew and were aware that what they were doing was wrong. Hence, respondent court held that there was a "dishonest purpose" and "conscious doing of wrong" on the part of petitioner's employees in "bumping off" private respondents from the flight; and that the lower court did not err in holding that the failure of petitioner to accommodate private respondents on Flight 296R was attended by bad faith.[7]

The said pronouncement was based on the following findings in the decision of the trial court, which we are not inclined to disturb, the same having evidentiary foundation:

"The employees of the defendant knew that there was a heavy booking of passengers on November 26, 1970 because of the coming of the Pope. Why did the Virac station overbooked (sic) two passengers, Gov. Alberto and Mayor Antonio, on Flight 296R, knowing all the time that these two passengers could not possibly obtain confirmed reservations in Naga? Knowing further the political stature of Gov. Alberto, Mr. Borjal, the branch supervisor of Virac, should had (sic) foreseen that should Gov. Alberto and Mayor Antonio refuse to deplane in Naga, should they fail to obtain confirmed reservations, he (Borjal) would create a situation wherein the defendant would be placed in a position to violate its contract of carriage with passengers with confirmed reservations who would not be accommodated because of Gov. Alberto and Mayor Antonio. This whole incident could have been avoided had Borjal not recklessly took (sic) a chance on the two overbooked passengers in getting confirmed reservation in Naga.

"The situation was, however, aggravated by the employees of the defendant at Pili airport, particularly Mr. Azuela who seemed to be the one who was making decisions at the airport. Knowing already that Flight 296R was overbooked by two passengers and the allocations in Legaspi and Naga were also fully booked of passengers with confirmed reservations and plaintiffs were begging and pleading to be allowed to take Flight 296R as they had confirmed reservations and the luggage of Mrs. Bagadiong and Miss Sto. Tomas were already loaded in the plane, Mr. Azuela and his co-employees still allowed and gave preference to the two passengers (Fr. Laban and Miss Franca) to board and take Flight 296R notwithstanding the fact that Mr. Azuela and his co-employees at the airport knew and was (sic) aware at that time that the Sorsogon branch had no allocation in Flight 296R and that the flight of the Sorsogon passengers was already cancelled earlier. The employees of the defendant knowingly and deliberately disregarded the rights of the plaintiffs to board the plane and took (sic) Flight 296R by virtue of their being holders of tickets duly issued and paid for with confirmed reservations on Flight 296R. The employees of the defendant knew that by not allowing the plaintiffs to take Flight 296R they were violating the contract of carriage the defendant had with the plaintiffs. Even granting all the mistakes advanced by the defendant, still there would at least be negligence so gross and reckless that it amounts to malice or bad faith in its breach of contract with the plaintiffs (Lopez, et al. versus Pan American World Airways, No. L-22415, March 30, 1966, citing *Fores vs. Miranda*, L-12163, March 4, 1959; *Necesito vs. Paras*, L-10605, June 30, 1958, 16 SCRA 431).

"The argument that the Sorsogon passengers arrived first and checked in earlier than the plaintiffs at the airport ticket counter of the defendant is not a valid reason to give them preference over the plaintiffs considering that the latter had confirmed reservations and they arrived on time at the airport and checked in at the defendant's ticket counter. If issuance of tickets duly paid for and with confirmed reservations is no guarantee that the passengers to whom it is (sic) issued would be accommodated, then air passengers would be placed in the hollow of the hands of the airlines and its employees. What security then can a passenger have? x x x"[8]

In the case of *Korean Airlines, Co., Ltd. vs. Hon. Court of Appeals, et al.*, [9] with a similar factual setting, we held:

"We are satisfied from the findings of the respondent court (and of the trial court) that the private respondent

was, in the language of the airline industry, 'bumped off'. She had a confirmed ticket. She arrived at the airport on time. However, she was not allowed to board because her seat had already been given to another passenger. As a result, she suffered damages for which the petitioner should be held liable."

A contract to transport passengers is quite different in kind and degree from any other contractual relation. And this, because of the relation which an air-carrier sustains with the public. Its business is mainly with the travelling public. It invites people to avail of the comforts and advantages it offers. The contract of air carriage, therefore, generates a relation attended with a public duty. Neglect or malfeasance of the carrier's employees naturally could give ground for an action for damages.[10]

The operation of a common carrier is a business affected with public interest and must be directed to serve the comfort and convenience of the passengers. In case of breach in bad faith of a contract of carriage, award of damages is in order. We have ruled that bad faith which would justify an award of moral and exemplary damages for breach of contract of carriage means a breach of a known duty through some motive of interest or ill-will.[11] That pronouncement is applicable to these cases.

The contention of petitioner that its failure to accommodate private respondents was due to the unlawful acts of third persons and, therefore, constitutes *caso fortuito*, is untenable. To constitute a *caso fortuito* that would exempt a person from responsibility, it is essential that (a) the event must be independent of the will of the obligor; (b) it must be either unforeseeable or inevitable; (c) its occurrence renders it impossible for the obligor to fulfill his obligation in a normal manner; and (d) the obligor must be free from any participation in the aggravation of the injury resulting to the obligee or creditor.[12]

One essential characteristic of a fortuitous event is that it was independent of the will of the obligor or of his employees, which fact is lacking in this case. The alleged fortuitous event, supposedly consisting of the unlawful acts of Governor Alberto and Mayor Antonio, is not independent of the will of herein petitioner as the obligor but was caused by the very act of its agents in allowing the governor and the mayor to board Flight 296R in excess of the number of passengers allotted to them and with full knowledge that the said flight for Manila was fully booked. The impossibility of their being accommodated was necessarily foreseeable. The claim of petitioner that there was a prior arrangement between its agent in Virac and the governor and the mayor that the latter would be accommodated only up to Naga is belied by the passengers' manifest wherein it is stated that the place of destination of both the governor and the mayor was Manila.[13]

Again, we quote respondent Court of Appeals:

"The fear spoken of by witness Azuela is speculative, fanciful and remote. The statement attributed to Governor Alberto and/or the mayors, that 'if we cannot board the plane there will be something that will happen', is vague. The threat, if ever it was, was not of such a serious character and imminence as to create in the mind of defendant-appellant's employees fear of greater injury if they would not allow Governor Alberto and the mayors to remain in the plane which was then scheduled to fly to Manila. It is difficult to believe that Governor Alberto and the mayors would make any threat or intimidation to keep their seats in the plane. They were provincial and municipal executives with a common duty to maintain peace and order and to prevent the commission of crimes. The cited cases involving Hukbalahaps and robbers are misplaced, because they are known to ruthless killers whose intimidation or the violence they employed is sufficient to produce in the mind of their victims real, imminent or reasonable fear. As correctly observed by the lower court from the evidence of record, defendant-appellant's employees 'bumped off' plaintiffs from the flight in their desire 'to cater to the good graces of a politico' (Governor Alberto)."[14]

Petitioner's agents, by giving permission to board Flight 296R to persons who were not among those with valid confirmations and who consequently had no right to be given preference in taking said flight, deliberately created

a situation that would place, as it did place, petitioner in arrant violation of its contract with private respondents who were "bumped off" by reason thereof. Petitioner, having unlawfully deprived private respondents of their seats, without any regard at all to their feelings and convenience just so it could accommodate other persons who had no better right thereto, cannot now relieve itself from liability by invoking a fortuitous event, a defense as erroneous as it is contrived.

As we stressed in *Ortigas, Jr. vs. Lufthansa German Airlines*:^[15]

"x x x Nobody, much less a common carrier who is under constant special obligation to give utmost consideration to the convenience of its customers, may be permitted to relieve itself from any difficult situation created by its own lack of diligence in the conduct of its affairs in a manner prejudicial to such customers. It is Our considered view that when it comes to contracts of common carriage, inattention and lack of care on the part of the carrier resulting in the failure of the passenger to be accommodated in the class contracted for amounts to bad faith or fraud which entitles the passengers to the award of moral damages in accordance with Article 2220 of the Civil Code. x x x"

We, therefore, find no error on the part of respondent Court of Appeals in awarding moral and exemplary damages as well as attorney's fees. The findings that petitioner had breached its contract of carriage in bad faith and in wanton disregard of private respondents' rights as passengers lay the basis and justification for such awards. The imposition of exemplary damages is necessary to deter petitioner or other airlines from committing similar breaches of contract in the future, although there are still reported instances thereof.

With respect to the third issue, we also find the same to be without merit for being based on specious and strained reasoning. The fact that respondent Bagadiong relinquished her seat in favor of her son is of no moment, considering that her son was also a confirmed passenger who had a right to demand accommodation from petitioner. As noted by respondent court, the act of respondent Bagadiong was motivated solely by her concern for her son who also risked being denied accommodation but who was then returning to school in Manila. Such sacrifice was not voluntary on her part, and her inability to take the flight was the consequence of the wrongful act of petitioner's employees for which it has to answer.^[16]

On the last issue regarding the propriety of the lower court's increasing the award of damages it awarded in the original decision, petitioner's allegation that respondent court passed upon the matter sub silentio is not correct. Respondent court precisely resolved said issue by modifying the decision of the lower court, awarding each respondent instead an aggregate amount of P30,000.00 as moral and exemplary damages, plus P6,000.00 as attorney's fees. The award of moral and exemplary damages in an aggregate amount may not be the usual way of awarding said damages. However, there can be no question that the entitlement to moral damages having been established, exemplary damages may be awarded; and exemplary damages may be awarded even though not so expressly pleaded in the complaint nor proved.^[17]

Nor can petitioner accurately claim that the award made by respondent court exceeded the amounts prayed for by respondents Bagadiong and Sto. Tomas in their complaint. A reading of said complaint shows that only their claims for moral damages and attorney's fees were limited to P20,000.00 and P6,000.00, respectively; the award of exemplary damages was left to the discretion of the lower court.^[18]

The amount of exemplary damages need not be pleaded in the complaint because the same cannot be pre--determined.^[19] One can merely ask that it be determined by the court as the evidence may warrant and be awarded at its discretion. This is exactly what private respondents did. Awards for moral and exemplary damages, as well as attorney's fees are left to the sound discretion of the court.^[20] Such discretion, if well exercised, will not be disturbed on appeal.^[21]

Parenthetically, in a special appearance "only for the purpose of the filing of this notice of death of party" received by the Court on May 22, 1990,[22] Atty. Romeo M. Gumba submitted a certified true copy of the death certificate of private respondent Rosario Sto. Tomas, attesting to her death on January 20, 1988, with said counsel informing the Court that decedent's surviving heirs are Salvacion Sto. Tomas Gerona and Cecilia Sto. Tomas Pardo, both with addresses at Monterey Subdivision, Naga City. This matter should be taken into account in the executory processes consequent to this decision.

WHEREFORE, the assailed decision of respondent Court of Appeals is hereby AFFIRMED in toto, with costs against petitioner.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, and Padilla, JJ., concur.
Sarmiento, J., on leave.

[1] Justice Luis B. Reyes, ponente, with Justices Nestor B. Alampay and Justiniano P. Cortez, concurring.

[2] Rollo, 68-69.

[3] Ibid., 56-A; Annex A, Amended Record on Appeal, 44-46.

[4] Ibid., 58-63.

[5] Ibid., 12.

[6] Northwest Airlines, Inc. vs. Cuenca, et al., 14 SCRA 1063 (1965); Zulueta, et al. vs. Pan American World Airways, Inc., 43 SCRA 397 (1972).

[7] Rollo, 66.

[8] Ibid., 39-41.

[9] 154 SCRA 211 (1987).

[10] Air France vs. Carrascoso, et al., 18 SCRA 155 (1966); Zulueta, et al. vs. Pan American World Airways, Inc., ante.

[11] Lopez, et al. vs. Pan American World Airways, 16 SCRA 431 (1966).

[12] 5 Encyclopedia Juridica Española, 309, cited in Lasam, et al. vs. Smith, Jr., 45 Phil. 657 (1924).

[13] Exh. 1, Folder of Exhibits, 6.

[14] Rollo, 65.

[15] 64 SCRA 610 (1975).

[16] Rollo, 66.

[17] Kapoe, et al. vs. Masa, et al., 134 SCRA 231 (1985).

[18] Ibid., 56-A, Amended Record on Appeal, 15-16.

[19] Singson, et al. vs. Aragon, et al., 92 Phil. 514 (1953).

[20] Pleno vs. The Hon. Court of Appeals, et al., 161 SCRA 208 (1988).

[21] Air France vs. Carrascoso, et al., supra.

[22] Rollo, 224.

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