44 Phil. 359

[G.R. No. 18957. January 16, 1923]

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. PHILIPPINE STEAMSHIP CO., INC., AND FERNANDEZ HERMANOS, DEFENDANTS. PHILIPPINE STEAMSHIP CO., INC., APPELLANT.

D E C I S I O N

STREET, J.:

In this action the Government of the Philippine Islands seeks to recover the sum of P14,648.25, the alleged value of 911 sacks of rice which were lost at sea on February 11, 1920, as a result of a collision between the steamer *Antipolo*, owned by the defendant company, and the vessel *Isabel*, upon which said rice was embarked. In the Court of First Instance judgment was entered for the recovery by the plaintiff from the Philippine Steamship Company, Inc., of the full amount claimed, with interest from the date of the filing of the complaint. From this judgment said company appealed.

It appears in evidence that at about 10 o'clock at night on February 10, 1920, the coastwise vessel *Isabel*, equipped with motor and sails, left the port of Manila with primary destination to Balayan, Batangas, carrying, among its cargo, 911 sacks of rice belonging to the plaintiff and consigned to points in the south. After the boat had been under weigh for about four hours, and had passed the San Nicolas Light near the entrance into Manila Bay, the watch and the mate on the bridge of the *Isabel* discerned the light of another vessel, which proved to be the *Antipolo*, also a coastwise vessel, on its way to Manila and coming towards the *Isabel*. At about the same time both the watch and mate on the bridge of the *Antipolo* also saw the *Isabel*, the two vessels being then about one mile and a half or two miles apart. Each vessel was going approximately at the speed of 6

miles an hour, and in about ten minutes they had together traversed the intervening space and were in close proximity to each other.

When the mate of the *Antipolo*, who was then at the wheel, awoke to the danger of the situation and saw the *Isabel* "almost on top of him," to use the words of the committee on marine accidents reporting the incident, he put his helm hard to the starboard.

This maneuver was correct, and if the helmsman of the *Isabel* had done likewise, all would apparently have been well, as in that event the two vessels should have passed near to each other on the port side without colliding. As chance would have it, however, the mate on the *Isabel* at this critical juncture lost his wits and, in disregard of the regulations and of common prudence, at once placed his own helm hard to port, with the result that his boat veered around directly in the path of the other vessel and a collision became inevitable. Upon this the mate on the *Antipolo* fortunately stopped his engines, but the *Isabel* continued with full speed ahead, and the two vessels came together near the bows. The *Isabel* immediately sank, with total loss of vessel and cargo, though the members of her crew were picked up from the water and saved.

The trial judge was in our opinion entirely right in finding that negligence was imputable to both vessels, though differing somewhat in character and degree with respect to each. The mate of the *Antipolo* was clearly negligent in having permitted that vessel to approach directly towards the *Isabel* until the two were in dangerous proximity. For this there was no excuse whatever, since the navigable sea at this point is wide and the incoming steamer could easily have given the outgoing vessel a wide berth. On the other hand it is not clear that the *Isabel* was chargeable with negligence in keeping on its course; for this boat had its jib sail hoisted, and may for that reason be considered to have had the right of way. (G. Urrutia & Co. *vs*. Baco River Plantation Co., 26 Phil., 632.)

Negligence shortly preceding the moment of collision is, however, undoubtedly chargeable to the *Isabel*, for the incorrect and incompetent way in which this vessel was then handled. The explanation of this may perhaps be found in the fact that the mate on the *Isabel* had been on continuous duty

during the whole preceding day and night; and being almost absolutely exhausted, he probably was either dozing or inattentive to duty at the time the other vessel approached.

It results, as already stated, that both vessels were at fault; and although the negligence on the part of the mate of the incoming vessel preceded the negligence on the part of the mate of the outgoing vessel by an appreciable interval of time, the first vessel cannot on that account be absolved from responsibility. Indeed, in G. Urrutia & Co. *vs*. Baco River Plantation Co., *supra*, this court found reason for holding that the responsibility rested exclusively on a steamer which had allowed dangerous proximity to a sailing vessel to be brought about under somewhat similar conditions.

We are of the opinion therefore that his Honor, the trial judge, committed no error in holding that both vessels were to blame and in applying article 827 of the Code of Commerce to the situation before him. It is there declared that where both vessels are to blame, both shall be solidarily responsible for the damage occasioned to their cargoes. As the *Isabel* was a total loss and cannot sustain any part of this liability, the burden of responding to the Government of the Philippine Islands, as owner of the rice embarked on the *Isabel*, must fall wholly upon the owner of the other ship, that is, upon the defendant, the Philippine Steamship Company, Inc.

Only one observation will be added, in response to one of the contentions of the appellant's attorneys, which is, that the application of article 827 of the Code of Commerce is not limited by article 828 to the case where it cannot be determined which of the two vessels was the cause of the collision. On the contrary article 828 must be considered as an extension of article 827 to an additional case. In other words, under the two articles combined the rule of liability announced in article 827 is applicable not only to the case where both vessels may be shown to be actually blameworthy but also to the case where it is obvious that only one was at fault but the proof does not show which.

The judgment appealed from must be affirmed; and it is so ordered with costs against the appellant.

Araullo, C.J., Johnson, Malcolm, Avanceña, Villamor, Ostrand, Johns, and *Romualdez, JJ.,* concur.

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