

[G.R. No. 2464. January 08, 1907]

ANTONIO DE LA RIVA, PLAINTIFF AND APPELLEE, VS. LIZARRAGA HERMANOS ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

TRACEY, J.:

Teodoro Carranza built at Atimonan in Tayabas two boats on the oral order of the plaintiff, to be paid for through the house of Gutierrez Hermanos at Manila, with which at that time both parties had standing accounts, the exact price being left to be determined by their cost. From time to time moneys were advanced Carranza by Gutierrez Hermanos, but without any charge on the books against the plaintiff or any adjustment of the accounts as between the parties, which was deferred until the business should be closed. After some months, the boats being finished, Behn, Meyer & Co., who at that time were also the plaintiff's correspondents at Manila, chartered of Gutierrez Hermanos the steamer *Magallanes*, which carried them to Manila under a bill of lading signed by the captain, in which Teodoro Carranza was named shipper and Behn, Meyer & Co. consignees, delivery being directed to them, but not on their order. On some date not shown, after the arrival of the boats at Manila, this order was indorsed by the consignees with a direction for their delivery to the plaintiff. Upon seeking them under this order, the plaintiff found them in the possession of the sheriff under an attachment in favor of the defendants.

Teodoro Carranza built these boats, not as a mandatory of the plaintiff but on his own account, retaining the ownership of them until their legal transfer. This was not affected by reason of the payments advanced by Gutierrez Hermanos through the unadjusted accounts of the parties, nor by the shipment of the boats or the remittance of the bill of lading to Behn, Meyer & Co., who were merely the consignees of the builder and represented him, nor yet by the indorsement of the consignees. Had the bill of lading run to their order, then title would have passed by the indorsement of it, or had it been payable to bearer, then in that case by the mere delivery of it. (Code of Commerce, art. 708.) By its terms, however,

the freight was deliverable to the consignees by name and their interest could be transferred only by document purporting to convey the property. Therefore the plaintiff failed to establish his title as against the sheriff under the attachment and must fail in this action.

The judgment of the Court of First Instance is reversed with the costs of that court, but not of this instance. After expiration of twenty days let judgment be entered in accordance herewith and ten days thereafter the record remanded to the court from whence it came for proper action. So ordered.

Arellano, C. J., Torres, Mapa, Carson, and Willard, JJ., concur.
