

[G.R. No. 1876. September 30, 1905]

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. SMITH, BELL & COMPANY, DEFENDANT AND APPELLEE.

D E C I S I O N

JOHNSON, J.:

This was an action by the plaintiff against the defendant, brought in the Court of First Instance of the city of Manila, to, recover the sum of \$1,600, United States currency, for damages occasioned to the Navy boat *Barcelo* on the 6th day of November, 1902, at about 11 o'clock, p.m., on the said day, near the mouth of the Pasig River, by a collision with a casco that was then and there being towed by the launch *Alexandra*. The launch *Alexandra* is the property of the defendant.

The inferior court found that the defendant had not complied with the rules of navigation in Manila Bay, in that it failed to display lights in accordance with such regulations, and that, by reason of such failure, the collision and consequent damages occurred. This finding of fact by the court below, there being no motion for a new trial, is conclusive.

The defendant, in the court below, claimed that the plaintiff could not recover in the action, for the reason that it had not complied with the provisions of the Code of Commerce, relying particularly upon article 835 of the same. Article 835 provides: "The action for the recovery of loss and damages arising from collisions can not be admitted if a sworn statement or declaration is not presented within twenty-four hours to competent authority of the point where the collision took place, or that of the first port of arrival of the

vessel.”

The plaintiff claimed that this provision of the Commercial Code did not apply to it. We are all of the opinion that the quoted provision of the Commercial Code applies to all persons engaged in traffic upon the waters of the Philippine Archipelago; that the defendant has as much right to insist upon compliance with this provision of the code where the damages were done to a boat operated by the Government as if such boat had been operated by a private individual or company. This provision of the Commercial Code, requiring protest to be made and presented to the proper authority within twenty-four hours after the collision, or after the arrival of the injured boat in port, is a prerequisite to the bringing of an action for damages. By having failed to comply with this provision of the Commercial Code it can not maintain this action for damages.

It is therefore adjudged and ordered that the decision of the inferior court be affirmed, and that the defendant recover of the plaintiff his costs in this action, and at the expiration of twenty days judgment should be entered in accordance herewith, and the cause remanded to the court below for execution of said judgment. So ordered.

Arellano, C.J., Torres, Mapa, and Carson, JJ., concur,
Willard, J., did not sit in this case.