4 Phil. 74

[G.R. No. 1616. April 22, 1904]

UAN CAÑIZARES HIVA, PLAINTIFF AND APPELLANT, VS. THE PHILIPPINE TRADING COMPANY, DEFENDANT AND APPELLEE.

D E C I S I O N

MAPA, J.:

October 29, 1900, the parties litigant entered into a contract of affreightment, containing among others the following clauses:

> "1. The Philippine Trading Company, Limited, as owner of the Belgian steamer Pax, undertakes that the said steamer shall touch at the port of Amoy to receive cargo and passengers.
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> "2. Sen or Don Juan Canizares guarantees the Philippine Trading Company, Limited, for the voyage from Manila to Amoy and return of the steamer Pax a minimum number of six hundred Chinese emigrant passengers, at the rate of 9 Mexican pesos for each passenger, or a net sum of 5,400 pesos for the said six hundred passengers. This sum shall be paid to the Philippine Trading Company, Limited, whether or not said number of passengers embark.
>
> "3. The said passengers shall be accommodated on the upper or lower deck of the said steamer Paw."
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> "8. Senor Don Juan Canizares will pay the Philippine Trading Company, Limited, at the time of signing this contract, the sum of 2,000 Mexican pesos as an advance upon the 5,400 pesos, which is the minimum sum guaranteed as the net
> passage money of Chinese emigrants in the voyage from Manila to Amoy and return

by the said Cañizares.

"9. Senor Don Juan Canizares shall be entitled to put on board the steamer Paw two cooks and an overseer, whose services shall be exclusively reserved for the benefit of the Chinese emigrant passengers embarked in Amoy or Manila by Sefior Don Juan Canizares or his agents.

"10. This contract shall not be binding for more than one voyage from Manila to Amoy and return * * *."

In accordance with the agreement in clause 8, Canizares paid to the Philippine Trading Company, Limited, the sum of 2,000 pesos when the contract was signed.

November 3, 1900, the steamer Pax was dispatched for the port of Hongkong, and on the 5th of that month, apparently, the owners heard that the embarkation of Chinamen in Amoy to be brought to these Islands was prohibited. The company so informed the charterer, who, after the information was confirmed, ordered the suspension of the voyage of the Pax to the port of Amoy (letter of November 5, bill of exceptions, p. 15). By virtue of that order the Pax did not continue the voyage to Amoy, and returned directly to Manila from Hongkong.

The plaintiff sues for the return of the 2,000 pesos paid on account of the contract, upon the ground that the contract was not executed by reason of an unforeseen cause not chargeable to him, and by virtue of the mutual withdrawal of the contracting parties. "Until the very moment," he says, "of the arrival of the vessel at the port of Amoy, there was no performance by the defendant of the obligation contracted by it, or any commencement of the execution of the contract of affreightment."

As proof that, this was the real intention of the contracting parties, the plaintiff points to the fact that the Philippine Trading Company fixed a day which it deemed convenient for the departure of the vessel from the port of Manila, against his will, he having asked that the departure of the vessel be delayed for another day; and furthermore the fact that although Hongkong is not a necessary stopping place on the voyage to Amoy, the vessel went to sea bound for Hongkong carrying freight and passengers for the defendant company without

he, the plaintiff, having had anything to do with these matters, or having made any use of the vessel in the voyage from Manila to Hongkong.

The terms of the contract do not admit of the construction which the plaintiff seeks to place upon it. The port of departure on the voyage contracted for must necessarily have been the port of Manila, according to the contract, and this gave the charterer the right to embark the six hundred Chinese passengers, the passage money of whom he became responsible for, either from Manila to Amoy or from Amoy to Manila, or part in Amoy and part in Manila, as he might have seen fit. The second clause of the contract expressly speaks of the voyage from Manila to Amoy and return, and this same expression is found in clauses 8 to 10. It is impossible to give any other construction to this phrase which no doubt has been considered by the parties as of great importance—the most important part of the contract—inasmuch as it is repeated three times in as many different clauses, and as though this were not in itself enough, in clause 9 express reference is made to Chinamen whom the charterer might embark in Amoy or Manila.

It is evident that the charterer might have embarked the contract number of passengers or part of them in Manila for Anioy, and that the defendant company could not have made any opposition thereto. This would not be true if, as the plaintiff contends, the contract was not to take effect, as to its execution, until the very moment in which the vessel might arrive in the port of Amoy. The first clause in which the phrase “that the steamer Paso shall touch at the port of Amoy” is used should be construed in connection with the other clauses of the contract in which it clearly appears that the intention of the parties was that above expressed.

It appears, therefore, that the defendant commenced the execution of the contract, and it is only just that the plaintiff should indemnify the company for the expenses occasioned up to the time in which he for his own convenience ordered the suspension of the voyage to the port of Amoy.

Neither the fact that the defendant did not embark passengers under the contract in the port of Manila, nor the fact that the defendant took cargo and passengers for its own account to the port of Hongkong, nor the fact that the, defendant fixed a date for the departure of the Pace from Manila at a date other

than that indicated by the plaintiff, are of significance in support of the plaintiff's contention. The first fact is not because it was the plaintiff's option to embark passengers in Manila or in Amoy, and the fact that he did not avail himself of this privilege in Manila was doubtless because it was to his own convenience to reserve it for the port of Amoy in its totality. The second fact is not because the undertaking of the defendant was to accommodate the passengers the plaintiff might embark on the deck or lower deck of the steamer Pax (clause 3), and consequently the defendant was at liberty to dispose of all the hold and other places on the vessel not reserved to the plaintiff's passengers by the terms of the contract in question.

Finally, the third fact does not support the contention because there was no stipulation in the contract that the date of the departure of the vessel from Manila might be fixed by the plaintiff. He did not charter the entire steamer, but only hired such part of the upper and lower decks as might be necessary for the accommodation of the passengers to be embarked by him. The affreightment was partial—it was a partial affreightment, not the charter of the entire vessel. In contracts of affreightment of this kind the charterer does not acquire the right to fix a date for the departure of the vessel unless so expressly stipulated in the contract.

The expense account of the steamer Pax presented by the defendant has not been impugned or contradicted in anyway by the plaintiff. In view of that we consider the sum of 2,000 pesos a reasonable indemnity for the expenses incurred by the defendant in the execution of the contract, and consequently declare that the plaintiff is not entitled to recover the said sum.

We therefore reverse the judgment appealed and dismiss the complaint with the costs of both instances against the plaintiff. So ordered.

Arellano, C.J., McDonough and *Johnson, JJ.,* concur.

Torres, J., disqualified.

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