1 Phil. 284

[G.R. No. 924. May 01, 1902]

PIO IVANCICH, PETITIONER, VS. ARTHUR F. ODLIN, JUDGE OF THE COURT OF FIRST INSTANCE OF THE CITY OF MANILA, AND THE PACIFIC EXPORT LUMBER COMPANY, A CORPORATION, RESPONDENTS.

D E C I S I O N

ARELLANO, C.J.:

On the 18th of the current month, the judge of Part II of the Court of First Instance of the city of Manila directed the attachment of the Austrian steamer *Marguerite,* with her tackle, furniture, and other appurtenances, and ordered that all persons claiming any interest in the said vessel, or who could show cause why she should not be sold as prayed for in the libel filed in the said court, be notified to appear before the said court within the term assigned.

This order was made by the judge on a libel filed by the Pacific Export Lumber Company, a corporation, in which the court was prated to "issue process against the master and against the said vessel, and that all persons claiming any interest therein may be cited to appear and answer the complaint above set forth, and that this honorable court fix and decree the damages and general average due, as aforesaid, to the libellant, with the costs and attorney's fees, and that the said vessel may be condemned and sold to pay the same, and for such further relief as in law and justice may be proper."

The facts stated are: (1) That the captain of the said steamer, contrary to the conditions of a charter party between the owners of the vessel and the Pacific Export Lumber Company, caused the vessel to deviate from her proper course, on account of her not being in a seaworthy condition or able to perform the service for which she was delivered by the said owners to the libellant; that the steamer was without a sufficient stock of coal, and consequently was obliged to touch at Honolulu, where fuel was taken aboard, and that the libellant was obliged to pay the harbor dues of the port of Honolulu and to pay for the coal

purchased, and in addition the cost of stowing the same, the amount of these expenditures and advances being $4,327.90, United States currency,
(2) That the loss of time occasioned by this deviation was five days and a half, and that the said advances, payments, and loss of time constitute a general average loss for their respective shares which the owners of the said steamer and the consignees of the cargo are liable, and that the owners of the steamer refuse to contribute their share.

(3) That upon reaching Manila the owners of the steamer obtained, through the medium of the Austrian consul, the retention, by the Quartermaster Department of the United States Army, of the freights due the plaintiff corporation, thereby causing the latter damages in the sum of $26,000, United States currency.

(4) That after the said steamer was discharged there were 4,000 tons of coal remaining in the bunkers, of the value of 13 pesos a ton, for which the owners refused to pay the plaintiff corporation, to its damage in the sum of 4,200 pesos, Mexican currency.

(5) That upon the arrival at this port of the said steamer, the owners and the master thereof refused to call for a general average contribution, and refused to call upon the consignees of the cargo to sign a general-average bond, as requested by the plaintiff corporation, thereby damaging the latter in the sum of $500, United States currency. The captain, being cited as above, appeared by his attorneys, and moved the court to dissolve the attachment and to dismiss the libel on the ground that the latter was a nullity. On the 24th of this month the motion was argued, and was overruled by the court.

These are the antecedents of the action brought by the said captain against the judge and the corporation above mentioned. He seeks to obtain from this court the issue of a writ of prohibition against the Hon. Arthur P. Odlin and against Attorney Oscar Sutro, as representative of the libellants, prohibiting the judge from continuing to take cognizance of the case, the trial of which had been commenced, as he has commenced to do, and from detaining the steamer upon an ex parte libel, and to prohibit Attorney Sutro from continuing to prosecute the suit and seeking the detention of the steamer without actual parties to the proceeding, as required by the provisions of chapter 6 of the Code of Civil Procedure, and asks that both of them be prohibited from detaining the eaid steamer unless this be done in accordance with the provisions of chapter 18 of the Code.

The prayer for relief seems to indicate that this court is asked to lay two prohibitions upon the judge of the inferior court, one prohibiting him from taking cognizance of the case,

unless he acts in accordance with the provisions of chapter 18 of the Code of Civil Procedure, and the other restraining him from taking cognizance of the case with reference to the detention of the steamer upon an *ex parte* complaint.

The petition for the first prohibition is based on the allegation that the judge, in overruling petitioner's motion on the 23d instant, takes the ground that the word "admiralty" used in section 4 of article 56 of the Organic Act passed by the United States Philippine Commission *ex priore vigore* brought to the court all the procedure in use in the maritime courts of the United States; that he sustains his jurisdiction to entertain a libel *in rem* against a vessel without personality to be sued, and insists upon his jurisdiction to attach the steamer without any of the formalities prescribed by law, and declares his intention to continue to exercise it unless prohibited by this court; and that the petitioner is deprived of the command of the yessel, and the owners thereof of the profits which they might otherwise earn were the vessel free, and that they are. furthermore caused damages by reason of the cost of maintaining the vessel, which alone amounts to $200 per diem.

The ground upon which the second prohibition is sought is that the attachment ordered by the court is not such an attachment as is authorized by articles 424 *et seq*. of the Code of Civil Procedure of the Philippine Islands, but on the contrary is an attachment under a procedure not in force here, although it is in force in the United States of America in maritime cases, and that the attachment, moreover, was levied without affidavit, bond, or any of the securities established by law whereby the owners of the steamer can obtain reparation for any damages which may be occasioned them by the unlawful detention of the said steamer; and that the procedure of the court below is devoid of all the formal requisites established by law for the levying of such attachments.

Had a case such as this occurred in the time of the Spanish sovereignty, there would have been no difficulty in finding laws applicable to it, for it is certain that in the Philippines we had a complete legislation, both substantive and adjective, under which to bring an action *in rem* against a vessel for the purpose of enforcing certain liens. The substantive law is found in article 580 of the Code of Commerce. This enumerates in the order of preference ten classes of liens, and a case such as the present would fall under the eighth class, which refers to furnishing a vessel with provisions and fuel on her last voyage—one of the iens alleged by the plaintiff corporation in the case which gave rise to this petition for a writ. The procedural law is to be found in article 584 of the same Code, which provides: "Vessels subject to the liens mentioned in article 580 may be attached and sold judicially in the manner provided in article 579, in any port in which they may be found, at the instance of

any creditor, subject to the exceptions enumerated in the same article."

The reason why provisions of adjective law are to be found in a code which purports to be substantive law is that the old Law of Civil Procedure of the Philippines was promulgated prior to the Code of Commerce now in force in the Philippines, and in this Code of Commerce certain changes were made which were not to be found in the old Code of 1829. At all events, the judge would then have proceeded in accordance with the provisions of article 580 for the purpose of determining the existence of the right, and for procedure would have turned to articles 584 and 579, not overlooking the provisions of articles 1526 and 1527 of the Law of Civil Procedure. These articles refer to attachment proceedings in mercantile matters, the words "and fuel" for the provisioning of the vessel, found in section 8 of article 580 of the Code of Commerce, being regarded an extension of section 4 of article 1526, which designates the charterers or masters of vessels as debtors liable for victuals supplied for their equipment; and the same remark applies to section 4 of article 1527. Hence the judicial procedure for the attachment and sale of a vessel is defined in the articles above cited of the Code of Commerce and the old Code of Civil Procedure of the Philippines in force under the former Government. By proclamation of the commanding general of the American Army in these Islands, dated August 14, 1898, all these laws were kept in force, and although the old Law of Civil Procedure has been repealed by the new Code of Civil Procedure enacted by the new Government, the Code of Commerce is still operative. The result is, therefore, that in the Philippines any vessel—even though it be a foreign vessel—found in any port of this Archipelago may be attached and sold under the substantive law which defines the right, and the procedural law contained in the same Code by which this right is to be enforced. There is no necessity for applying any other procedure while that described above is in force, as we understand it to be. The judge did not, therefore, act without jurisdiction when directing the attachment of the vessel in question, and has not exceeded his jurisdiction. If the excess of jurisdiction upon which the argument was based consists in his having levied the attachment without the fulfillment of the necessary conditions and without following the form prescribed by some law of procedure applicable to the case, it is our opinion that this error is not such an excess of jurisdiction as can be cured by prohibition, and the petitioner has other means whereby this error of procedure may be corrected or remedied. Upon these grounds we decide that the petition for a, writ of prohibition must be denied, with the costs to petitioner, and it is so ordered.

Torres, Cooper, Willard, Ladd, and *Mapa, JJ.,* concur.

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