

E. C. MCCULLOUGH & CO., INC., PLAINTIFF AND APPELLEE, VS. LUCENA ELECTRIC LIGHT, ICE AND WATER COMPANY, DEFENDANT AND APPELLANT.

G.R. No. 10157. November 04, 1915

Ponente: JOHNSON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-10157/>

JOHNSON, J.:

This action was commenced in the Court of First Instance of the city of Manila on the 16th of December, 1913. Its purpose was to recover of the defendant two sums of money, the first for P13,692.50, together with interest thereon at 8 per cent from the 15th of February, 1913, until paid, and the second for P8,947.15, together with interest at the rate of 8 per cent from the 19th of August, 1913, and costs, and for such further relief as the court might deem just and equitable.

The plaintiff, in its first cause of action, alleged that the defendant was indebted to it in the sum of P13,692.50 as the balance due and unpaid on account of an electric light plant sold and delivered to the defendant.

In the second cause of action, the plaintiff claimed that the defendant was indebted to it in the sum of P8,947.15, as the balance due and unpaid for merchandise sold and delivered to the defendant.

The defendant appeared and answered the complaint. With reference to the first cause of action, the defendant denied generally all of the facts alleged and contended that the said electric light plant, etc. had never been properly installed, as a result of which the defendant had been damaged to the extent of P7,000, and prayed that a judgment be entered against the plaintiff for that amount; and for the further sum of P200 per month until the said plant was properly installed in accordance with the terms of the contract between the said parties.

The defendant also denied generally all of the facts alleged in the second cause of action, and contended that the plaintiff had agreed to furnish said merchandise and supplies at a 10 per cent discount from the retail price, but that instead of furnishing said merchandise at said discount, it had charged the defendant more than the regular retail price.

Upon the issue thus presented, the cause was brought to trial, after which the Honorable A. S. Crossfield, judge, rendered a judgment in favor of the plaintiff and against the defendant for the full amount stated in the complaint, in accordance with the prayer thereof. The defendant presented a motion for a new trial which was denied, and the case is now here upon appeal by it.

The lower court found from the evidence adduced during the trial of the cause that a contract was duly entered into between the parties to this action for the installation of an electric light, etc. plant for the defendant in the municipality of Lucena; that the payments were to be made at stated intervals; that the plaintiff guaranteed the machinery for ten years against defect in manufacture; that after the contract was made there was some delay in the fulfillment thereof because of a question with regard to the franchise of the defendant, so that the term of payment or payments was changed to eight months from February 15, 1913, instead of from October 1, 1912, as

originally agreed upon; that the machinery was delivered and the plant put in operation, and upon a preliminary test the same was found to be satisfactory, and in fact it produced more power than was called for in the contract; that a man was selected by the defendant to be taught how to run said plant; that said man was taught by a representative of the plaintiff to operate and manage said plant; that later the defendant, for purely economic reasons, changed this first man for another to run the plant; that soon after the second man began to operate and manage the machinery a number of minor difficulties arose which were corrected by a representative of the plaintiff; that said minor difficulties were not due to defects in the machinery, but to the carelessness of the management of the operator; that on the 14th of February, 1914, and after a recurrence of several minor difficulties, and after the plant had been in operation for a number of months, three electrical experts were called for the purpose of examining the machinery, who reported that the machine was not producing the power which was produced upon its installation, and was below the requirements of the contract; that the machinery was not producing the power which it had originally produced upon its installation by reason of the fact that it had not been properly cared for.

The lower court, upon the foregoing facts, held that the plaintiff could not be held responsible for the defective condition of the machinery arising from improper care or from a lack of knowledge in the operating of the same.

The lower court found that the defects in running the machinery and the failure to produce the necessary power was due to the fact that the defendant had employed a person without sufficient knowledge to operate it. The lower court decided that the plaintiff was entitled to recover the balance due under the contract, for the sale of the machinery in question.

With reference to the second cause of action, the lower court found that the plaintiff had sold to the defendant merchandise, an itemized account of which had been furnished to the defendant, between the 5th of August, 1912, and the month of October, 1913, amounting to P12,299.75, and that there was still due and unpaid on said account the sum of P8,947.15. The defendant insisted that the sum of P1,868.95 of said amount represented the value of certain merchandise or certain wire which had been furnished by the plaintiff in order that the defendant might comply with its franchise. This merchandise or wire was not in accordance with the terms of the contract, but the lower court found that the plaintiff was not given sufficient time in which to furnish the required wire. The wire was furnished at the request of the defendant. It was used by the defendant. The defendant is still retaining it. It has made no offer to return it. It was furnished to the defendant at its request, and the lower court held that, therefore, it was liable to pay for it.

The defendant-appellant assigns as its first error, the fact that the lower court erred in not deciding that the defendant had no obligation to pay the unsatisfied one-half of the purchase price of the machinery (P13,692.50) until the machinery had been adjusted to produce the power guaranteed in the contract. This assignment of error raises the question of fact whether the machines, after installation, complied with the contract. The plaintiff claims that both the machines were tested by their engineers, and that they showed a capacity above the capacity which had been guaranteed. That fact is denied, however, by the defendant, especially as to the machine known as No. 2. The record shows that the machines were set up and started, the first in the month of March, 1913, and the second in the month of May, 1913. They were set up by competent engineers. A man selected by the defendant was trained to operate the machines by an expert furnished by the plaintiff. So long as this trained man continued to operate the machinery, there was no complaint. The defendant, however, found it advisable for economical reasons to discharge the first man, who had been trained by the expert furnished by the plaintiff, and employed a new man who had not been especially trained to operate electrical machinery. Immediately after the new man took charge of the operation of the machinery difficulties began to arise. They were adjusted from time to time by a representative of the plaintiff.

On October 18, 1913, the plaintiff presented its account against the defendant and asked for a settlement. On December 11, 1913, the parties to this action came to an agreement as to all the disputed amounts, except the wire referred to above, which was used at the time of the first installation of the machinery.

On the 23d of September, 1913, the defendant corporation, through its board of directors, by resolution accepted the machinery and agreed to the terms of payment.

The defendant made some objection to the high cost of maintaining the machinery and in the running of the same with gasoline. The record shows that the machinery was not intended to be run by gasoline, but by a grade of crude petroleum.

This action was brought on the 16th of December, 1913. It was not until after the present action was brought that the defendant asked or requested that a special test of the machinery be made. The defendant called in certain electrical experts for the purpose of testing the machinery again. The test, which was made on or about the 14th of February, 1914, showed that the machines would not generate the capacity guaranteed. The experts, including Duffy of the Insular ice plant, and two others, attributed the fact that the machines were not producing the power which they ought to produce to the dirty condition of the machines—to the fact that they had not been properly cared for.

The defendant had been running the machinery for a period of eight months. It made no effort to show that its engineer in charge of the machinery was a competent man, in fact the record shows that he was an incompetent man. The record also shows that the defendant had not used proper fuel for the running of the machinery. The plaintiff had not guaranteed that the machines would run with a certain capacity or would develop certain power under all conditions, and at all times unless the defendant should manage the machines by competent engineers and use proper fuel. The plaintiff simply guaranteed that the machines were free from defects; that they would produce certain power, if properly managed by competent men, when they were properly supplied with the right kind of fuel.

The defendant-appellant contends that the lower court committed an error in not allowing it credit for the sum of P1,000, the value of certain shares of stock sold by it to the plaintiff. While there is no reference in the pleadings, to this item, yet, without objection on the part of the plaintiff the defendant was permitted to prove that the plaintiff was indebted to it in the sum of P1,000 for a number of shares of stock purchased. By reference to Exhibit 7, we find a letter written by the plaintiff to the defendant recognizing said indebtedness and promising to pay said sum upon a final settlement of their accounts. The appellee makes no reply in its brief to that contention of the appellant. Considering said letter of the plaintiff, we are of the opinion that the total indebtedness due the plaintiff from the defendant should be reduced by said sum (P1,000).

We believe that what has been said above sufficiently answers the fourth and fifth assignments of error, and without any further discussion of the facts, we are of the opinion, and so hold, that a preponderance of the evidence shows that the defendant is indebted to the plaintiff in the sum of P12,692.50, as the balance due on the contract for the purchase of machinery, together with interest thereon at 8 per cent from the 15th of February, 1913, until paid, and in the further sum of P8,947.15 for merchandise sold by the plaintiff to the defendant, together with interest at 8 per cent thereon from the 19th of August, 1913, until paid, and costs. So ordered.

Arellano, C. J., Torres, Carson, Trent, and Araullo, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.