

FAUSTO RUBISO, PLAINTIFF AND APPELLANT, VS. FLORENTINO RIVERA ET AL., DEFENDANTS AND APPELLEES.*G. R. No. 15260. August 18, 1920*

Ponente: VILLAMOR, J.

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About April, 1915, Fausto Rubiso and Florentino Rivera had a litigation concerning the ownership of the pilot boat *Valentina*. Rivera acquired it on January 4, 1915, from its original owner the Chinaman Sy Qui, but did not inscribe his title in the mercantile registry according to article 573 of the Code of Commerce in relation to article 2 of Act No. 1900. Subsequently Rubiso bought said pilot boat in a sale at public auction for the sum of P55.45 on January 23, 1915, and inscribed his title in the mercantile registry on March 4th of the same year. The suit was decided by the Court of First Instance of Manila in favor of the plaintiff Rubiso on September 6, 1915. On the 11th day of said month the court issued a writ of execution, upon the petition of the plaintiff, in order to proceed, as said plaintiff alleged, to the salvage of the pilot boat which at that time was stranded in the sitio of Tingloy, Batangas. The order of execution was stayed upon the filing of a bond for P1,800 by the defendant Rivera who alleged in support of his objection, that the pilot boat was already salvaged and had been taken to Maricaban, Batangas. The judgment having been brought to this court by appeal it was affirmed in a judgment rendered on October 30, 1917 (R. G. No. 11407).[1] The cause having been sent to the Court of First Instance for the execution of judgment the sheriff of Batangas who undertook to enforce the writ of execution was able to deliver to the plaintiff Rubiso nothing but the pilot boat itself in a seriously damaged condition and two useless sails.

Such are the facts which gave rise to the present action for the recovery of the damages in the sum of P1,200 which the plaintiff and appellant Fausto Rubiso alleges he has suffered by the destruction and loss of the pilot boat *Valentina* and its equipment which were caused, according to the complaint, by the fault and negligence of the defendants Florentino Rivera and others.

The answer having been filed and the trial having taken place, the court rendered judgment in favor of the defendants without any special pronouncement as to costs. From this judgment the plaintiff appealed. The motion for new trial having been overruled, the appellant presented the corresponding bill of exceptions assigning in his brief the following errors: (a) The finding that there was not sufficient evidence to establish the amount of the expenses sought to be recovered; (b) the finding that the pilot boat *Valentina*, had no legal value in August, 1915; (c) in rendering judgment absolving the defendants in this case; and (d) in overruling the motion for new trial presented by the plaintiff on the ground that the judgment is against the weight of the evidence.

In a series of uninterrupted decision before and after the promulgation of the Civil Code, the doctrine has been established that all judgment for damages whether arising from a breach of contract or resulting from some provision of law, must be based upon satisfactory evidence of the real existence of the damages alleged to have been suffered. (*Sanz vs. Lavin and Bros.*, 6 Phil., 299.)

Has the existence of the damages sought to be recovered in this case been satisfactorily established? The court

below decided this question of fact adversely to the plaintiff and we are of the opinion that this finding is sustained by the evidence. Plaintiff declares that in February, 1915, he visited and examined the pilot boat Valentina, in the barrio of Tingloy and that on said day he found it in good condition, and that he saw all of its tackle and rigging; but on cross-examination by the attorney for the defendants he admitted that on said date he was unable to take possession of the vessel because the person in charge of it would not permit him even to approach. Estanislao Jili who accompanied Fausto Rubiso in order to see the pilot boat Valentina in February, 1915, affirms that they did not go on board the vessel because the person in charge of it would not permit them to do so. This same witness and Jose Soriano as a witness of the plaintiff state that at that time the boat was not in a seaworthy condition, because its bottom was damaged and it had no equipments.

If what has been said is not yet sufficient to find that the pretense of the appellant as to his first assignment of error is unsustainable, we still have the uncontradicted testimony of Juan Velino, Irineo Martinez and Mariano Villas, witnesses for the defendants, who declared on the seriously damaged condition of the pilot boat long before its acquisition by the appellant.

Juan Velino declared that in August, 1914, the boat was aground in Dayhagan, Mindoro; it was somewhat repaired and about November of the same year it sailed from that place and suffered on the way such damages and troubles that if had to be taken to Tingloy for new repair, some vessels' tools and equipments having been borrowed from another boat because those of the Valentina had been destroyed; and the storm destroyed the vessel so much that it could not be taken to the Island of Maricaban except by means of rafts. To the same effect is the testimony of Irineo Martinez. Mariano Villas testified that in December, 1914, the Valentina anchored in Tingloy alongside his vessel and as he was interested in the purchase of this pilot boat, the sale of which was advertised in Manila, he examined it and then saw that he would not buy it even for P400, because it was completely destroyed. There can be no doubt as to the competency of this witness to testify on the question of the price of the pilot boat Valentina because according to him he had ordered the construction of boats of the same size and condition during that period. The lower court declares in its judgment that this witness appears to it as sufficiently trustworthy, and we find no basis whatever on the record to doubt the correctness of the finding of the trial judge who saw and observed him while he was testifying.

We, therefore, are of the opinion that the finding of the court that there was not sufficient proof to establish the amount of the defendants' claim is in accordance with the merits of the case.

As to the second error assigned by the appellant it should be noted that, as appears in the record the pilot boat Valentina, was stranded in Tingloy since the month of November, 1914, that is, two months before it had been acquired by the plaintiff at public auction and ten months before the judgment declaring him to be the owner thereof, was rendered. The appellant, in his first complaint of April 10, 1915, for the recovery of the pilot boat Valentina, affirms that the boat was then in the same worthless condition in which it was in 1914, and the evidence we have examined in this case show that in fact in August or September, 1915, it was in the worse of conditions and was utterly worthless. Without attempting to determine the durability of a boat made of wood stranded for a period of ten months, as is the case with the boat in question, we are of the opinion, and so declare, that according to the proofs adduced in this case, the court did not err in declaring in its judgment that the pilot boat Valentina, did not have any legal value in August, 1915.

The defendant in his brief interposes the defense of res judicata based upon the judgment of this court in the action between Fausto Rubiso et al. and Florentino Rivera who are the parties in the present case.

In that case it was held:

"With respect to the indemnification for damages claimed by the plaintiff, besides the fact [that according to

the proceedings taken subsequently to the date on which the judgment appealed from was rendered, it appears that the pilot boat has already left in good condition the place where it had been stranded and is at present found anchored in the port of Maricaban,] the truth is that the record does not offer positive proof of the amount of the damages caused, and on the other hand it cannot be declared that the defendant had acted in bad faith for he acquired the vessel previous to its acquisition at public auction by the plaintiff Rubiso who, for the reasons already given, is the true and sole owner of said pilot boat." (Decision of October 30, 1917, R. G. No. 11407 [Rubiso and Gelito vs. Rivera, 37 Phil., 72].)

It having been declared in a previous action that the defendant Rivera did not act in bad faith and that therefore he was not liable for damages, it would be necessary to show in the present case that the destruction of the boat and the loss of its equipments took place after the final judgment was rendered in that case and by reason of the fault and negligence of the defendants, which is not the case here. What appears from the evidence presented by the defendant and uncontradicted by that presented by the adverse parties, is that from September, 1915, to March 7, 1918, which was the date of the execution of the judgment of this court affirming that of the lower court, the boat continued aground in the Island of Maricaban awaiting the final judgment in the action with respect to ownership and naturally exposed to the action of sea water and the inclemencies of the weather, things which were beyond the control of the defendant Rivera.

It thus now appears that the damages claimed by the plaintiff are the same damages that he claimed in the first action. To speak more accurately, the appellant first sued for the recovery of the vessel and damages in the sum of P1,750. Judgment was rendered as to the first in his favor but against him as to the second. And now he comes back again claiming damages.

The case now under consideration is analogous to that of *Palanca Tanguinlay vs. Quirbs* (10 Phil., 360). In that case the question was extensively discussed whether a previous judgment constitutes an adjudication of the subject-matter of a new suit between the same parties to such extent that it can not again be tried anew. It was held that according to articles 306 and 307 of the Code of Civil Procedure, a judgment rendered in an action for the recovery of damages for property lost is a bar to any other action between the same parties for the recovery of the same property or its value. In the course of the decision the court held:

"The American books are full of similar cases, an instance being *Hatch vs. Coddington* (32 Minn., 92), in which it was held that a former action between the same parties to recover damages for a wrongful conversion of personal property was a bar to a subsequent suit to recover possession of the specific property itself, notwithstanding the difference of form and that the relief sought and the subject-matter of the cause of action were regarded as the same. Nor is it altogether clear that the law of Spain was different. *Seior Manresa*, in his commentary on article 1252 of the Civil Code, cites a decision of the supreme court of 25th of April, 1900 (vol. 8, p. 555), holding that in a real action a judgment in a former personal suit between the same parties for indemnity for the use of the same property operated as *cosa juzgada*."

From what has been said the judgment appealed from should be, and is hereby, affirmed, with costs against the appellant. So ordered.

Mapa, C. J., Johnson, Carson, Araullo, Malcolm, Avancena and Moir, JJ., concur.

[1] See *Rubiso and Gelito vs. Rivera*, 37 Phil., 72.

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