

JULIA MILLAN, AS ADMINISTRATRIX OF THE ESTATE OF JOSE CARPI Y SANZ, PLAINTIFF AND APPELLEE, VS. RIO Y OLABARRIETA, LEONCIO JARAIZ, AND FRANCISCO MISUT, DEFENDANTS AND APPELLANTS.

G.R. No. 21087. February 23, 1924

Ponente: STREET, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-21087/>

STREET, J.:

This action was instituted in the Court of First Instance of the City of Manila by Julia Millan, viuda de Carpi, as administratrix of the estate of Jose Carpi y Sanz, against the partnership Rio y Olabarrieta and the individual defendants Leoncio Jaraiz and Francisco Misut, for the purpose of recovering an alleged balance due upon the purchase price of an undivided half interest in the auxiliary schooner Turia, and to recover a further sum as damages incurred by reason of the wrecking of said vessel and the consequent loss of the plaintiff's undivided half interest therein. The defendants Jaraiz and Misut interposed an answer admitting that a document of sale had been entered into by the plaintiff and defendants by which the defendants were to become purchasers of the Turia but asserting that the sale was never consummated and that liability had at no time attached to the defendants by reason of said contract. By way of counterclaim the same defendants sought to recover the sum of P10,000, alleged to have been paid by them upon said ineffectual contract. The firm of Rio y Olabarrieta interposed an amended answer on November 8, 1921, alleging that the contract of sale upon which the plaintiff relied had never become effective and was a nullity for lack of judicial approval of the sale, and alleging further that the Turia was lost in a typhoon in the port of Sumagui, in the coast of Mindoro, where it had been dispatched to bring a cargo of lumber. By way of counterclaim the same firm asked that they be given judgment for the sum of P2,488.78, which they had expended as agents of the coowners in preparing the Turia for the voyage upon which it was lost and a further sum of P7,717.19, as expenses incurred in the fruitless efforts to salvage said boat.

At the hearing of the cause the trial judge caused judgment to be entered in favor of the plaintiff against the defendants Jaraiz and Misut, jointly and severally, for the sum of P10,000, as the balance due from them on the purchase price of the undivided half interest in the Turia, and against Rio y Olabarrieta for the sum of P16,000, the balance due from said firm on the same account, as well as for the further sum of P30,000, the value of the plaintiff's half interest in the lost vessel, with the legal interest upon all of said items from April 20, 1921, until paid; with costs. From this judgment the different defendants appealed as to the parts of the decision unfavorable to each.

It appears that, prior to the incident which gave rise to this litigation, one Jose Carpi y Sanz was the owner of the Turia, formerly known as the Henry S. This vessel was constructed as a schooner at Venecia, California, in the year 1887, and had been equipped with an auxiliary engine using oil. It was registered in Manila on January 4, 1911, since which time it had been engaged in commerce under its Philippine certificate. The vessel, in the hands of Carpi, was subject to a mortgage to secure the sum of P24,000 in favor of Froehlich & Kuttner, of Manila, who transferred their rights to the Compañia Mercantil de Filipinas, likewise of Manila. After the death of Jose Carpi y

Sanz, his widow, Julia Millan, qualified as administratrix, and in the course of the administration of the estate it was found that the Turia had become of little practical value, owing to the fact that the engine with which it was equipped had ceased to function and was apparently worthless. As the estate was without funds to equip the boat with a new engine, the idea occurred to the administratrix, or to her attorney and representative, Eduardo Gutierrez, to sell a part interest in the vessel to some person, or persons, who would agree to install the necessary motor. To this end the defendant firm of Rio y Olabarrieta and the two individual defendants, Leoncio Jaraiz and Francisco Misut, were spoken to and the suggestion was favorably received by them.

An agreement, dated October 19, 1920, was accordingly drawn up and executed by all the parties (with the subsequent approval of the court with respect to the obligation assumed by the administratrix), whereby the defendants became joint purchasers of an undivided half interest in the vessel for the sum of P36,000. After the appropriate preliminary recitals, this document proceeds as follows:

"By the present document we declare, stipulate, and agree to the following:

"First. That I, Julia Millan, Vda. de Carpi, in the capacity in which I participate herein, do hereby state that the intestate estate of my deceased husband, Jose Carpi, is the absolute owner of a motorboat known as Turia, registered in Manila, and described as follows: * * *

"Second. That said boat is at present subject to a mortgage lien of P24,000 in favor of Froehlich & Kuttner, who have transferred their rights as mortgagees to the 'Compania Mercantil de Filipinas of this city.

"Third. That the actual value of said boat is P60,000, which, after deducting therefrom the mortgage debt of P24,000, is reduced to the net sum of P36,000, which is the amount that corresponds, and is acknowledged to belong, to the intestate estate under this contract.

"Fourth. That in consideration of the sum of P36,000 which the other parties hereto shall pay to me in my capacity as judicial administratrix of the estate of my deceased husband, Don Jose Carpi, in the manner hereinafter to be stated, I do hereby sell, convey, and transfer to the said other parties one-half of the boat described in the first clause hereof.

"Fifth. That said sum of thirty-six thousand pesos (P36,000) shall be paid by the said other parties, Messrs. Rio & Olabarrieta, Jaraiz, and Misut in the manner and proportion, and upon the terms, as follows:

"Messrs. Jaraiz and Misut shall pay the sum of twenty thousand pesos (P20,000), in the amount of P10,000 each, and Messrs. Rio and Olabarrieta the sum of sixteen thousand pesos (P16,000).

"Sixth. That of this sum of P36,000 to be paid by the other parties hereto in the manner and upon the terms aforementioned, ten thousand pesos (P10,000), which is to be paid upon the execution hereof, shall be used in the partial amortization of the mortgage actually existing on the aforesaid boat, and the remaining P26,000 shall be employed in the placing of a new 100 horse-power motor in the said boat. With said P26,000 shall be paid the price of said motor and defrayed the expense of its installation on board. Should the price of the motor exceed this sum of P26,000, the difference shall be paid by the intestate estate of Don Jose Carpi.

"Seventh. That Messrs. Rio and Olabarrieta shall be the managers and administrators of said boat.

"Eighth. That after the installation of the new motor on the boat, the expenses and profits of said boat shall be divided between the parties hereto as participants in proportion to the capital hereby acknowledged in their favor.

"Ninth. That the intestate estate of Jose Carpi may not withdraw its share of the profits until the outstanding balance of the mortgage debt, to wit, fourteen thousand pesos (P14,000), is paid."

At the time this sale was effected the Turia was off on a trip, under tow of another boat, to Catabangan where it

had gone to load lumber. Upon its return to Manila, on or about October 21, 1920, Gutierrez, who had been agent for the vessel in behalf of the administratrix, informed the captain of the Turia that the management of the vessel had passed to Rio y Olabarrieta. The captain thereupon reported to this firm, who assumed control as agents of the boat for the owners.

It will be noted that by the terms of the contract above quoted, the purchasers were obligated to pay the sum of P36,000, of which P10,000 was paid over to the mortgage creditor at the time of the sale. In the sixth clause it is stipulated that the remaining P26,000 should be applied to the cost of installing in the boat a new engine, or motor, of one hundred horse-power. Pursuant to this stipulation Rio y Olabarrieta entered into communication with an importing house in Manila for the purchase of the desired motor, and one was ordered for delivery in Manila in the month of December.

Meanwhile in order to make something out of the Turia, instead of keeping it idle, Rio y Olabarrieta decided to dispatch it, under tow of one of the firm's own boats (the Pilar) to the port of Sumagui, on the east coast of Mindoro, to get some lumber which was there awaiting shipment. A few necessary repairs were accordingly made and the boat was provisioned and supplied with an adequate crew for this trip. The two boats left Manila on October 30, 1920, and arrived on November 1, at Sumagui without accident. The Turia anchored at the sitio of Tiguisan and during the succeeding two days took aboard a quantity of lumber. The Pilar proceeded to Sucok, another place a few miles away, likewise to take on a cargo of lumber. The sea, however, was now becoming rough, and the Pilar was unable to get its cargo of lumber at Sucok. It accordingly returned to Sumagui, which was a little better sheltered, and anchored near the Turia.

By the afternoon of November 3 a typhoon of considerable intensity had developed. All available anchors were therefore put down, in order to prevent the vessels from being blown ashore; and the Pilar kept her engine going. Before 3 o'clock on the morning of November 4, however, the anchors dragged, and both vessels were driven upon the beach. The Pilar, which was less heavily laden than the Turia, was, carried upon the beach well beyond the reach of the waves under ordinary conditions. The Turia, being somewhat lengthy in proportion to her size, and rather heavy, struck the beach stern first; and while that end of the boat became firmly imbedded in the sand, her bow was left to some extent exposed to the pounding of the waves. The storm seems to have been of unusual intensity, as it appears that four other vessels, the Borongan, the San Vicente, the Siguenza, and the Uretano, suffered a similar disaster in the same neighborhood upon this occasion.

Several days elapsed before telegraphic communication could be made with Manila, but in the end Del Rio and Olabarrieta were informed of what had occurred, and steps were taken by them to salvage the boats. To this end a salvaging outfit, consisting of a scow, a tug, and what was considered to be other adequate equipment, was brought from Manila; and operations to get the Turia afloat were continued for several days. In the end the enterprise failed and the boat was abandoned and sold as a wreck for the petty sum of P200. The rescue of the Pilar presented little difficulty, and after the efforts to save the Turia had been abandoned the Pilar was safely floated.

The trial judge was of the opinion that, in dispatching the Turia on the trip to Sumagui before the new engine had been installed, the firm of Rio y Olabarrieta displayed a lack of prudence and foresight which made them liable to the owners for the value of the ship, lost on that trip; and in this connection emphasis is placed upon the fact that the voyage was undertaken at the end of October, a season of the year when typhoons may still occur in this region. It was by reason of this supposed negligent act on the part of Rio y Olabarrieta that the trial judge held the firm of Rio y Olabarrieta liable to the plaintiff for the value of an undivided one-half interest in the Turia, which the court estimated at P30,000.

In this conclusion we are unable to concur and are of the opinion that the sending of the Turia under the conditions stated was not an act of negligence which would make the agent liable for the loss. The proof shows that the hull of the vessel was sound, and Mr. Gutierrez Repide himself stated more than once, when testifying, that the vessel was in perfect condition with the sole exception that it lacked a new engine. The boat was not unsuited for the use to which it was put by Rio y Olabarrieta and in fact it was being used for that very purpose, and upon a longer voyage, at the time the sale was consummated. In addition to this we note that weather conditions in Manila appeared to be normal when the two boats started on the voyage to Sumagui, and there was nothing to warn the firm that a storm was then impending. It is a matter of common knowledge that typhoons of considerable intensity do sometimes occur in October and November; but each week that passes at this time of the year makes the danger of encountering storms more remote. It is also a matter of common knowledge that shipping activities do not cease in these Islands at any time; and seamen take their chances in discharging their duties at all seasons. All that can be required is that when emergencies supervene proper skill and caution should be used in the management of vessels. In our opinion the loss of the Turia in the storm that occurred on the morning of November 4, 1920, is as clear a case of loss by *casus fortuitus*, or superior force, as is likely to be presented. We may add that it can scarcely be affirmed that the lack of a motor was in any sense a proximate cause of the loss of the Turia, for the same fate that befell it overtook other vessels in the same region that were equipped with engines.

At the time the sale of one-half interest in the Turia was effected, and thereafter, until the Turia was dispatched upon the voyage mentioned, Tomas del Rio, of the firm of Rio y Olabarrieta, was in constant touch with Mr. Gutierrez Repide, and he states that the latter expressed an urgent desire that the boat might be used in some productive way in the period which was to elapse until the motor should arrive. Mr. Gutierrez Repide denies that he gave his consent to the sending of the Turia on this voyage, and intimates that there was an understanding that the boat should not be used at all until the motor should be installed. But it will be noted that there is nothing in the contract of sale that expressly prohibits the use of the boat for gainful purposes before the installation of the motor, though the contract does suggest that the parties expected that there would be no profits until that should occur. But whether Mr. Gutierrez Repide, on behalf of the plaintiff, gave his consent to this use of the Turia, is not absolutely vital to the controversy, as we are of the opinion that the agents of the boat acted within their legitimate powers in sending the vessel upon the voyage. We may say in passing that Leoncio Jaraiz testifies that he knew nothing about the boat being so used until he heard that it had been wrecked at Sumagui. A great deal of the proof that has been presented in this case is concerned with the questions whether the two captains in charge of the Pilar and Turia acted with competent skill after the storm came on and whether the salvaging operations were conducted with satisfactory skill and diligence. We have carefully read the proof directed to these matters and are of the opinion that the criticism directed, on behalf of the plaintiff, to both of these points is not well founded. But as the trial judge did not convict the defendants, or their captains, of negligence upon either of these points, we consider it unnecessary to enlarge upon the subject.

From what has been said it follows that so much of the appealed decision as holds Rio y Olabarrieta liable to the plaintiff for the sum of P30,000, the estimated value of plaintiff's undivided half-interest in the Turia, must be eliminated.

By reference to the contract which has already been set out it will be seen that the defendants obligated themselves to pay the sum of P36,000 in the portions stated in the second paragraph of article 5 for the one-half interest in the Turia acquired by them; and although the contract for the payment of this sum of money was made with the plaintiff, nevertheless it will be seen, from paragraph 6, that every peso which the defendants obligated themselves to pay was to be a contribution to the community of owners, from which each participant in the ownership of the boat would necessarily derive a benefit. Thus, the sum of P10,000, paid down, was applied in

part satisfaction of the mortgage with which the boat was burdened,— an act which inured proportionately to the benefit of all. Again, it was agreed that the unpaid part of the purchase price, i. e., the sum of P26,000, should be applied to the purchase and installation of the new motor, an act which, if it had been accomplished, would likewise have inured proportionately to the benefit of all the owners. Not one peso of the P36,000 which the defendants had agreed to pay was intended to be for the exclusive benefit of the plaintiff. But as a result of the total destruction of the Turia, it has become impossible to apply the unpaid balance of the purchase money to the installation of the motor, and that money, when paid, should be dealt with as if it were the common property of all the owners. It is suggested in one of the briefs for the defendants that, inasmuch as the installation of a motor has become impossible, the defendants are absolved from the obligation to pay, in conformity with article 1184 of the Civil Code. There might, we think, be something in this suggestion if the obligation of the defendants had been limited to the duty to install a motor on the boat. But when the contract is attentively examined, it will be found that the true intention of the contracting parties was that the unpaid balance should be applied to the installation of a motor after it had been paid by the defendants to the person, or persons, entitled. In other words, there was an obligation on the part of the defendants to pay this balance independently of the purpose for which it was intended to be used; and this obligation to pay in our opinion continues to subsist notwithstanding the fact that it has become impossible for the community of owners, to use it in the particular way that was intended.

But it must still be borne in mind that the plaintiff is the owner only of an undivided half and her recovery in this action must be limited to the sum of P13,000, which must be paid by the defendants jointly in the proportion in which they have severally obligated themselves. This means that of this sum the defendant Leoncio Jaraiz is liable for the sum of P3,611.11; Francisco Misut for the equal sum of P3,611.11; while Rio y Olabarrieta are liable for P5,777.78. It was therefore erroneous for the trial court to hold the defendants liable for the entire sum of the unpaid balance of P26,000; and the appealed decision must be modified so as to hold them liable only to the extent above stated. We note in passing that under the contract the defendants are liable for the purchase price only in the amounts and proportions respectively assumed by them. The defendants Jaraiz and Misut are not jointly and severally liable as the trial judge supposed.

Before passing to another phase of the case we must make a few words of comment upon the point as to who paid the sum of P10,000 which was paid at the time of the contract and applied to part satisfaction of the mortgage on the boat. In the complaint it is alleged that said sum was paid by the defendants without specifying exactly by whom. In the answer of Jaraiz and Misut the claim is put forth that this money had been paid by them, while in the answer of Rio y Olabarrieta it is insisted that the same money was paid by that firm. In the taking of the proof the point in question apparently did not receive attentive consideration but we infer from the statement of Mr. Gutierrez Repide that the check for the P10,000 was delivered to him by Tomas del Rio. Francisco Misut, however, testifies that of this he and Leoncio Jaraiz paid P5,000. We infer from this that Rio y Olabarrieta may have advanced to Misut and Jaraiz whatever amount was to be paid by them, and the same should have been taken up in accounts between them. For the purposes of the disposition of this case it is unnecessary to determine how the defendants managed the matter of that advancement between themselves, and the adjustment of whatever equity may exist in favor of either against the other must be left to the future. We may add that while Rio y Olabarrieta filed a counterclaim against the plaintiff, and Jaraiz and Misut also jointly filed a counterclaim against the plaintiff, neither of the defendants asked any affirmative relief against any of his codefendants, with the result that the pleadings are not in a form to permit of the settlement of any crossrights of action existing among them. As already stated, they must be left to settle the matter hereafter, and this decision will be without prejudice to any future action that may be necessary to this end. We observe in passing that both the complaint and cross-complaint present the anomaly of an action in which one of several coowners seeks relief against another coowner upon obligations incurred with respect to the common property without asking for a general liquidation

and division; but as neither party has made objection to the form of the proceeding of the other, we consider it proper to administer justice so far as practicable along the lines laid down by the litigants themselves.

We now come to consider the claim of Rio y Olabarrieta to reimbursement for expenses incurred by them as administrators of the Turia and for the cost of the futile attempt at salvaging the boat after it was wrecked. The Exhibit 10 consists of twenty-five items representing expenditures which were made by Rio y Olabarrieta in connection with the dispatching of the Turia on the trip to Sumagui. These different items cover such features as wages of the crew during eight days of October, repairs upon boiler, wages of calkers, acetylene welding, carburated gas, and expenses of getting the boat to sea, with other small items of varied nature. All of these items are supported by vouchers representing amounts paid out by Rio y Olabarrieta; and we see no reason why, as administrators or agents, they should not be reimbursed proportionately by the plaintiff for such expenditures. The total of the expenses included in this exhibit is P1,473.58.

In the brief of Rio y Olabarrieta upon appeal, we are asked to allow two items from Exhibit 3, consisting of the cost of forty-seven cubic meters of lauan wood and a quantity of coconut hulls which were used to make a raft to assist in raising the Turia. These items are, however, repeated in Exhibit 11 and will be ignored by us except as contained in the last named list, which represents expenditures made by Rio y Olabarrieta in the effort to salvage the Turia and the Pilar. We have examined these items and the vouchers by which they are sustained, and while we concede that the expenditures therein stated were incurred, a question arises as to the proper distribution of these expenses as between the Turia, which was a total loss, and the Pilar, which was salvaged without much difficulty. Upon this point the testimony sheds little light, and we are left to the guidance of certain general considerations to which attention will be directed.

The Pilar at the time it was stranded was worth perhaps P220,000, while the Turia could not possibly have been worth more than P 60,000. In the process of being beached, the Pilar was driven high upon the sandy shore and was left in a position where it was not menaced by immediate destruction. The Turia, on the other hand, was left exposed to danger; for while one end was imbedded in the sand of the beach, the other was beaten by waves at high tide and subject to the pounding of the sea when the weather was stormy. As soon as practicable after the disaster occurred Rio y Olabarrieta, as we have already seen, sent salvaging equipment from Manila; and as was proper the salvors directed their attention primarily to the Turia, as being the boat which required the more prompt assistance. It was upon this boat that the efforts of the party were principally expended, and little or nothing appears in evidence concerning what had to be done to save the Pilar. It is clear, however, that the salvaging efforts had both vessels in view and indeed Rio y Olabarrieta seem at first to have displayed more concern over the Pilar than the Turia. It is of course fair that the Pilar should bear its portion of the expense of the cost of the salvaging expedition, and in this connection it is well to remember that success in salvaging is commonly compensated better than failure. It results in our opinion that at least one-half of the expense indicated in Exhibit 11 should be charged to the Pilar, and that the owners of the Turia were likewise liable only for one-half of said account. The balance shown in Exhibit 11 is P10,283.29, and one-half of this is the sum of P5,141.65, the latter being the amount chargeable to the owners of the Turia. Adding this amount to the total of the expenses indicated in Exhibit 10, already mentioned, we have a total of P6,615.22, which represents the amount of reimbursement to which Rio y Olabarrieta are entitled as against the owners of the Turia. But bearing in mind that the plaintiff in this case was the owner of an undivided half interest only, the amount last above stated must be divided by two, in order to ascertain the exact amount chargeable against this plaintiff by reason of the counterclaim. From this it results that the firm of Rio y Olabarrieta is entitled to recover upon the counterclaim against the plaintiff the sum of P3,306.11. The residue of said expense must be either borne by the firm itself or recovered in an appropriate action against the other two defendants.

It results that the judgment appealed from will be affirmed in the part consistent with our own conclusions, and reversed in so far as it is incompatible herewith; and judgment will be entered for the plaintiff to recover of Leoncio Jaraiz the sum of P3,611.11, and of Francisco Misut the like sum of P3,611.11, and from Rio y Olabarrieta the sum of P5,777.78, less the sum of ^3,306.11, or a net balance of P2,471.67,—all of which items shall bear interest at the legal rate from April 18, 1921—without express pronouncement as to costs of either instance. So ordered.

Araullo, C. J., Johnson, Malcolm, Avancena, Ostrand, Johns, and Romualdez, JJ., concur.

Judgment affirmed in part, and reversed in part.

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.