

MANUEL GOMEZ, PLAINTIFF AND APPELLANT, VS. NORTH NEGROS SUGAR CO., INC., VICTORIAS MILLING CO., AND MIGUEL J. OSSORIO, DEFENDANTS AND APPELLEES.*G.R. No. 22291. November 04, 1924*

Ponente: OSTRAND, J.

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On August 4, 1920, the plaintiff-appellant entered into a contract with the defendant Miguel J. Ossorio, representing the other defendants, the North Negros Sugar Company, Inc., and the Victorias Milling Co., for the construction and ballasting of forty kilometers of railway track on the defendants' sugar plantation in Victorias, Occidental Negros. By said contract plaintiff bound himself to furnish from fifty to seventy laborers to lay the track and to ballast it with five inches of gravel at the agreed compensation of P250 per kilometer for laying the track and P500 per kilometer for the ballasting. The plaintiff further bound himself to finish the track-laying and ballasting of twenty-six kilometers before the first of November, 1920, and the rest of the forty kilometers before the 31st of January, 1921.

In return, the defendants agreed to furnish the plaintiff a locomotive as well as fuel and lubricants for the same, the plaintiff to furnish the personnel for its operation. The defendants also agreed to supply the plaintiff with cars for the transportation of material and with quarters for himself and his workmen, as well as with the necessary tools for the track-laying and ballasting.

The plaintiff arrived at Victorias with only twenty-two laborers on September 27, 1920, and a few days later went to Manila to obtain additional workmen, returning to Victorias in the beginning of November. The work was continued until the 21st of December of the same year, when the plaintiff again left Victorias and remained absent for some time. It appears that during these periods the plaintiff and his workmen found it necessary to suspend the work on various occasions because of lack of rails and ties, but on these occasions both the plaintiff and his workmen were given the opportunity to do other work on the defendants' plantation. For such work the plaintiff was paid at the rate of P15 per day.

The track-laying and ballasting proceeded slowly and on December 7, 1921, the plaintiff notified the manager of the defendants' plantation that he desired to leave Victorias and seek employment elsewhere. He presented his account in which he credited himself with P41,972.40 for the work done, but admitted having received P37,833.42, leaving a balance in his favor of P4,139.45.

The correctness of this account was disputed by the defendants whose accounts showed a balance of only P2,474.94 in favor of the plaintiff. After some discussion, an adjustment was finally reached under which the plaintiff accepted the sum of P2,600 in settlement of his claim under the contract.

The present action was brought on March 22, 1923, nearly a year and a half after the plaintiff had left Victorias. The complaint sets forth four causes of action. The first cause of action is a claim for P5,000 which the plaintiff alleges to be still due him under the contract aforesaid. The second cause of action is for the sum of P21,488.28

for extra work alleged to have been performed by the plaintiff and not covered by the contract. The third cause of action is a claim for damages in the sum of P38,148.72 for losses sustained by the plaintiff by reason of the delays in the delivery of materials for the track-laying and ballasting; and the fourth cause of action is a claim of P5,000 as damages for the fracture of the plaintiff's right leg while he was riding on one of the defendants' hand cars. The court below found against the plaintiff on all four causes of action and absolved the defendants from the complaint. From this judgment the plaintiff appeals to this court.

The assignments of error present only questions of fact in regard to which the findings of the court below seem amply sustained by the evidence. There is practically no evidence of any value in support of the first two causes of action; in fact, the plaintiff's own proofs tend to show that these claims are covered by the settlement made in December, 1921. The third cause of action may at first sight appear somewhat more meritorious, but we nevertheless agree with the trial court that it has not been sufficiently established. Both the plaintiff and his laborers were offered remunerative employment on the plantation during the periods when the work on the railroad was at a standstill, and while it may be true that the interruptions in the work frequently were only of a few hours duration and that it was unprofitable to shift from one task to another for such a short time, there was apparently nothing to prevent the plaintiff from allowing the material to accumulate on the railroad for a few days while he and his men were working on the plantation and thus avoid working only fractional days on the road.

The fourth cause of action is for damages for the fracture of the plaintiff's leg, alleged to have been caused by the negligence of defendants in allowing the use of a hand car with a defective wheel. There is some conflict in the evidence as to just how the accident occurred, but the court found that the plaintiff knew of the defect, that he was an independent contractor and assumed the risk of riding on the car and therefore was not entitled to damages. The contract between the parties contained no provision, for the furnishing of transportation for the plaintiff and his workmen to and from work. Moreover, it does not appear that the plaintiff was engaged in the performance of his duties under the contract or that he was employed by the defendants when the accident occurred. He voluntarily assumed the risk of riding on a car which he knew to be defective and cannot hold the defendants responsible for the resulting injuries.

The judgment appealed from is affirmed, with the costs against the appellant. So ordered.

Johnson, Street, Malcolm, Avanceña, Villamor, and Romualdez, JJ., concur.

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