

CULION ICE, FISH & ELECTRIC CO., INC., PLAINTIFF AND APPELLEE, VS. PHILIPPINE MOTORS CORPORATION, DEFENDANT AND APPELLANT.*G.R. No. 32611. November 03, 1930*

Ponente: STREET, J.

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This action was instituted in the Court of First Instance of Manila by the Culion Ice, Fish & Electric Co., Inc., for the purpose of recovering from the Philippine Motors Corporation the sum of P11,350, with interest and costs. Upon hearing the cause the trial court gave judgment in favor of the plaintiff to recover of the defendant the sum of P9,850, with interest at 6 per centum per annum from March 24, 1927, the date of the filing of the complaint, until satisfaction of the judgment, with costs. From this judgment the defendant appealed.

The plaintiff and defendant are domestic corporations; and at the time of the incident with which we are here concerned, H. D. Cranston was the representative of the plaintiff in the City of Manila. At the same time the plaintiff was the registered owner of the motor schooner Gwendoline, which was used in the fishing trade in the Philippine Islands. In January, 1925, Cranston decided, if practicable, to have the engine on the Gwendoline changed from a gasoline consumer to a crude oil burner, expecting thereby to effect economy in the cost of running the boat. He therefore made known his desire to McLeod & Co., a firm dealing in tractors, and was told by McKellar, of said company, that he might make enquiries of the Philippine Motors Corporation, which had its office on Ongpin Street, in the City of Manila. Cranston accordingly repaired to the office of the Philippine Motors Corporation and had a conference with C. E. Quest, its manager, who agreed to do the job, with the understanding that payment should be made upon completion of the work.

The Philippine Motors Corporation was at this time engaged in business as an automobile agency, but, under its charter, it had authority to deal in all sorts of machinery engines and motors, as well as to build, operate, buy and sell the same and the equipment thereof. Quest, as general manager, had full charge of the corporation in all its branches.

As a result of the aforesaid interview, Quest, in company with Cranston, visited the Gwendoline while it lay at anchor in the Pasig River, and the work of effecting the change in the engine was begun and conducted under the supervision of Quest, chiefly by a mechanic whom Quest took with him to the boat. In this work Quest had the assistance of the members of the crew of the Gwendoline, who had been directed by Cranston to place themselves under Quest's directions.

Upon preliminary inspection of the engine, Quest came to the conclusion that the principal thing necessary to accomplish the end in view was to install a new carburetor, and a Zenith carburetor was chosen as the one most adapted to the purpose. After this appliance had been installed, the engine was tried with gasoline as a fuel, supplied from the tank already in use. The result of this experiment was satisfactory. The next problem was to introduce into the carburetor the baser fuel, consisting¹ of a low grade of oil mixed with distillate. For this

purpose a temporary tank to contain the mixture was placed on deck above and at a short distance from the compartment covering the engine. This tank was connected with the carburetor by a piece of tubing, which was apparently not well fitted at the point where it was connected with the tank. Owing to this fact the fuel mixture leaked from the tank and dripped down into the engine compartment. The new fuel line and that already in use between the gasoline tank and the carburetor were so fixed that it was possible to change from the gasoline fuel to the mixed fuel. The purpose of this arrangement was to enable the operator to start the engine on gasoline and then, after the engine had been operating for a few moments, to switch to the new fuel supply.

In the course of the preliminary work upon the carburetor and its connections, it was observed that the carburetor was flooding, and that the gasoline, or other fuel, was trickling freely from the lower part of the carburetor to the floor. This fact was called to Quest's attention, but he appeared to think lightly of the matter and said that, when the engine had gotten to running well, the flooding would disappear.

After preliminary experiments and adjustments had been made, the boat was taken out into the bay for a trial run at about 5 p. m., or a little later, on the evening of January 30, 1925. The first part of the course was covered without any untoward development, other than the fact that the engine stopped a few times, owing no doubt to the use of an improper mixture of fuel. In the course of the trial Quest remained outside of the engine compartment and occupied himself with making experiments in the matter of mixing the crude oil with distillate, with a view to ascertaining what proportion of the two elements would give best results in the engine.

As the boat was coming in from this run, at about 7.30 p. m., and when passing near Cavite, the engine stopped, and connection again had to be made with the gasoline line to get a new start. After this had been done the mechanic, or engineer, switched to the tube connecting with the new mixture. A moment later a back fire occurred in the cylinder chamber. This caused a flame to shoot back into the carburetor, and instantly the carburetor and adjacent parts were covered with a mass of flames, which the members of the crew were unable to subdue. They were therefore compelled, as the lire spread, to take to a boat, and their escape was safely effected, but the Gwendoline was reduced to a mere hulk. The salvage from the wreck, when sold, brought only the sum of P150. The value of the boat, before the accident occurred, as the court found, was P10,000.

A study of the testimony leads us to the conclusion that the loss of this boat was chargeable to the negligence and lack of skill of Quest. The temporary tank in which the mixture was prepared was apparently at too great an elevation from the carburetor, with the result that when the fuel line was opened, the hydrostatic pressure in the carburetor was greater than the delicate parts of the carburetor could sustain. This was no doubt the cause of the flooding of the carburetor; and the result was that, when the back fire occurred, the external parts of the carburetor, already saturated with gasoline, burst into flames, whence the fire was quickly communicated to the highly inflammable material near-by. Ordinarily a back fire from an engine would not be followed by any disaster, but in this case the leak along the pipe line and the flooding of the carburetor had created a dangerous situation, which a prudent mechanic, versed in repairs of this nature, would have taken precautions to avoid. The back fire may have been due either to the fact that the spark was too advanced or the fuel improperly mixed.

In this connection it must be remembered that when a person holds himself out as being competent to do things requiring professional skill, he will be held liable for negligence if he fails to exhibit the care and skill of one ordinarily skilled in the particular work which he-attempts to do. The proof shows that Quest had had ample experience in fixing the engines of automobiles and tractors, but it does not appear that he was experienced in the doing of similar work on boats. For this reason, possibly, the dripping of the mixture from the tank on deck and the flooding of the carburetor did not convey to his mind an adequate impression of the danger of fire. But a person skilled in that particular sort of work would, we think, have been sufficiently warned from those circumstances to cause him to take greater and adequate precautions against the danger. In other words Quest did

not use the skill that would have been exhibited by one ordinarily expert in repairing gasoline engines on boats. There was here, in our opinion, on the part of Quest, a blameworthy antecedent inadvertence to possible harm, and this constitutes negligence. The burning of the Gwendoline may be said to have resulted from accident, but this accident was in no sense an unavoidable accident. It would not have occurred but for Quest's carelessness or lack of skills. The test of liability is not whether the injury was accidental in a sense, but whether Quest was free from blame. We therefore see no escape from the conclusion that this accident is chargeable to lack of skill or negligence in effecting the changes which Quest undertook to accomplish; and even supposing that our theory as to the exact manner in which the accident occurred might appear to be in some respects incorrect, yet the origin of the fire is not so inscrutable as to enable us to say that it was *causa fortuitus*.

The trial judge seems to have proceeded on the idea that, inasmuch as Quest had control of the Gwendoline during the experimental run, the defendant corporation was in the position of a bailee and that, as a consequence, the burden of proof was on the defendant to exculpate itself from responsibility by proving that the accident was not due to the fault of Quest. We are unable to accede to this point of view. Certainly, Quest was not in charge of the navigation of the boat on this trial run. His employment contemplated the installation of new parts in the engine only, and it seems rather strained to hold that the defendant corporation had thereby become bailee of the boat. As a rule workmen who make repairs on a ship in its owner's yard, or a mechanic who repairs a coach without taking it to his shop, are not bailees, and their rights and liabilities are determined by the general rules of law, under their contract. The true bailee acquires possession and what is usually spoken of as special property in the chattel bailed. As a consequence of such possession and special property, the bailee is given a lien for his compensation. These ideas seem to be incompatible with the situation now under consideration. But though defendant cannot be held liable on the supposition that the burden of proof has not been sustained by it in disproving the negligence of its manager, we are nevertheless of the opinion that the proof shows by a clear preponderance that the accident to the Gwendoline and the damages resulting therefrom are chargeable to the negligence or lack of skill of Quest.

This action was instituted about two years after the accident in question had occurred, and after Quest had ceased to be manager of the defendant corporation and had gone back to the United States. Upon these facts, the defendant bases the contention that the action should be considered stale. It is sufficient reply to say that the action was brought within the period limited by the statute of limitations and the situation is not one where the defense of laches can be properly invoked.

It results that the judgment appealed from, awarding damages to the plaintiff in the amount of P9,850, with interest, must be affirmed; and it is so ordered, with costs against the appellant.

Avanceña, C. J., Malcolm, Villamor, Ostrand, Romualdez and Villa-Real, JJ., concur.

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