

**E. M. MASTERSON, PLAINTIFF AND APPELLEE, VS. SMITH
NAVIGATION COMPANY, DEFENDANT AND APPELLANT.***G. R. No. 41503. August 17, 1934*

Ponente: IMPERIAL, J.

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The plaintiff brought this action to recover from the defendant, a domestic corporation, three distinct sums of money which were the subject matter of another three separate causes of action. At the trial, the plaintiff asked for the dismissal of his third cause of action, the debt involved therein having been paid, and the defendant, in turn, made a confession of judgment with respect to the first and second causes of action and consented to have judgment entered against it for the sums of money claimed thereunder. The trial proceeded for the purpose of passing upon the defendant's counterclaim seeking judgment against the plaintiff for the sum of P15,549.82.

The court rendered judgment ordering the defendant to pay the sum of P1,000 with interest thereon at 12 per cent per annum from November 3, 1931, until fully paid, with costs, and dismissing the counterclaim. The defendant appealed from the last part, of the judgment.

Upon instituting his action the plaintiff secured an order of attachment on the defendant's vessel Ethel Conklin, alleging as his ground that said defendant had sold and was about to sell its property with intent to defraud him and the other creditors. It appeared, however, that the defendant could not dispose of either one of the two vessels it was operating because they were mortgaged to the Philippine Trust Company, which acted as trustee by virtue of a public instrument signed with others, by the plaintiff himself. It is true that the defendant had sold a car to Fernandez Hermanos, but the sale could not have been fraudulent on the ground that it had been made by the board of directors of the defendant of which the plaintiff was a member. The plaintiff approved the sale and the same was consummated with his consent.

It is clear, therefore, that the order of attachment was issued without any justifiable motive and that the plaintiff is liable for the damages caused by him. The question that now arises relates to the extent of said damages. The defendant claims the sum of P16,334.05 in the following concept:

For loss of revenue on outward freightage.....

P1,075.00

For loss on account of the delay of 6 days attachment with

guard on board the S. S. Ethel Conklin at P200 a day....

1,200.00

Losses for two (2) days delay in unloading with standby

stevedores

84.23

Losses to shippers caused by delay and charged to Smith

Navigation Company.....

374.82

Eighteen days delay for ordering shaft for Ethel Edwards

because of lack of financial assistance due to illegal at-

tachment at P200 a day.....

3,600.00'

Damages to good name.....

10,000.00

Total.....

16,334.05

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The second and fourth items represent damages properly imputable to the plaintiff. The vessel was attached and tied up for six days and loading and unloading was delayed by reason thereof. The vouchers presented by the defendant justify everything that it was compelled to pay to the owners of the cargoes and lighters which remained by the vessel's side. This court believes that the other items have not been satisfactorily proven and that the last two, particularly, are based on alleged damages which are very remote and problematical. We are of the opinion that the defendant is entitled to recover from the plaintiff only the sum of P1,574.82.

The appealed judgment is hereby modified and it is ordered that the plaintiff pay to the defendant, on its counterclaim, the sum of 71,574.82, without costs of this instance. So ordered.

Malcolm, Villa-Real, Butte, and Goddard, JJ., concur.

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