

KER & CO., PLAINTIFFS AND APPELLEES, VS. ANASTASIA DE LA RAMA, ADMINISTRATRIX OF THE ESTATE OF ZACARIAS ROBLES, DECEASED, DEFENDANT AND APPELLANT.*G.R. No. 4480. October 10, 1908*

Ponente: TRACEY, J.

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This is an appeal from a judgment of the Court of First Instance of Iloilo, in which not only has the appellant failed to except to the order denying a new trial but appears to have neglected to procure the entry of any such order. Therefore, the judgment must be affirmed, if supported by the facts recited by the trial judge in his opinion. His recital, which is long and detailed, shows in brief that early in the year 1895 Zacarias Robles, accompanied by Patrick Miller, who was a dealer in machinery, waited upon the plaintiffs and requested them to order from Aitken & McNeil, of Glasgow, Scotland, a wheel with shafting corresponding with a cut in a catalogue which he produced, delivery to be made in the month of September. The wheel and shafting were duly ordered, but, owing to the vessel carrying them being obliged to put into a way port for repairs, they reached Manila only in the last week of November, and Iloilo early in December. Delivery was made at the special request of Sr. Robles and completed only after it had been suspended for a time awaiting payment by him of the price. He did not, in fact, pay, but promised to pay within a month. On the 9th of December, and after the delivery, he executed before a notary public a formal protest, claiming 22,000 pesos damages for the failure of his harvest owing to the delay of the wheel, which was necessary to run his sugar mill. It also appeared that an additional delay of three weeks after delivery was caused by certain changes in the shafting which Sr. Robles found it necessary to make because the axle was not long enough for the frame which had been prepared for it.

Before accepting the wheel and shafting, Sr. Robles had them examined by an expert machinist, Mr. Cleland, who certified that they corresponded in all their parts with the cut in the catalogue on which the order had been given.

The judge found that the last delay of three weeks was due, not to any defect in the axle, but to the unsuitability of the framework prepared for it; furthermore, that the dismantling of the wheel which had previously been in use, in anticipation of the arrival of the new, had directly caused much of the delay and the consequent loss of the harvest. He also found that, although it is shown that a great quantity of sugar was damaged for lack of a mill, yet there is no proof of either the quantity of sugar or its value sufficient as a foundation for any damages that might be awarded on defendant's claim.

His conclusions were that the acceptance of the wheel and shafting, and a concurrent promise to pay therefor, were a waiver of any claim for damages growing out of the delay in delivery; that, the injury suffered was the result, in large part, of the improvident dismantling of the old wheel; that any damages shown were too remote for recovery thereof under article 1107 of the [Civil] Code, and that for the nonarrival of the steamer on which the machinery was shipped the plaintiffs were not responsible.

It also appears that, instead of paying for the machinery, as agreed, Sr. Robles brought suit against the plaintiffs

for P22,000 damages, whereupon the plaintiffs, in their turn, interposed a claim de menor cuantia, for the purchase price. The principal action was never finished, but in the course of incidental proceedings costs on appeal were awarded the plaintiffs, which have been taxed as amounting to P548.99 and have been included in the judgment herein.

While that action was pending Zacarias Robles died and the claim of the plaintiffs for P1,000 as the price of the wheel and shafting, and for the aforesaid costs, was presented to the commissioners of claims against his estate, under the provisions of the present Code of Civil Procedure, whereupon the administratrix interposed her counterclaim for P22,160, damages to sugar, and P292.92 expenses in refitting shafting and axle.

The trial judge disallowed the counterclaim and awarded to the plaintiffs the judgment prayed for, in which we find that he was fully justified by the facts recited.

The judgment of the Court of First instance is affirmed, with costs of this instance. So ordered.

Arellano, C. J., Torres, Carson, and Willard, JJ., concur.

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