

MANUEL NOVO & CO., PLAINTIFF AND APPELLANT, VS. J. E. AINSWORTH, DEFENDANT AND APPELLEE.*G.R. No. 8376. December 27, 1913*

Ponente: TORRES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-8376/>**TORRES, J.:**

This appeal, through a bill of exceptions, was brought by the plaintiff firm from the judgment of October 10, 1911, by the Honorable Adolph Wislizenus, judge, holding that the said plaintiff had no right of action against the defendant, who should be absolved from the complaint and payment of the costs, and who was entitled to collect from the plaintiff the sum of P130, with interest thereon at the rate of 6 per cent from the date of the filing of the complaint.

On December 16, 1909, Manuel Novo & Co. brought suit in the Court of First Instance of Cebu against J. E. Ainsworth. A demurrer filed by the defendant was overruled on January 17, 1910, and in the same order the plaintiff was directed to attach to its complaint a copy of the contract upon which it based its action. The plaintiff excepted to this ruling, but nevertheless amended its complaint, on May 21, 1910, and therein set forth among other things that on November 4, 1909, the defendant leased, received and accepted from the plaintiff, a barge called Varadero and a large iron dredging scoop, both belonging to the latter; that the terms of the lease stipulated between the plaintiff and the defendant appeared in an instrument, which reads literally :

"The undersigned has assumed the engagement toward Messrs. 'M. Novo y Co., S. en Cta.,' that he will, commencing with this date, lease from them the barge Varadero for P175 per month; likewise and from the same date, a dredging scoop, at the rental price of P100 per month. Mr. J. E. Ainsworth shall be liable for any loss or damage to the said barge and dredging scoop during the existence of this contract.

"Cebu, November 4, 1909.

"J. E. AINSWORTH."

That, after the defendant had used the said barge and dredging scoop five days they were totally lost at sea and were absolutely abandoned, without intention or possibility whatever of recovering them; that, up to the date of the complaint, the defendant had not returned to the plaintiff the said lost barge and dredging scoop which he had not recovered, had not paid the rental thereof, nor had he paid or would he pay their value, notwithstanding the repeated demands made upon him so to do; that, on the contrary, the defendant persisted in not returning the said barge and dredging scoop and in not paying the rental therefor, which amounted, for five days' use of the barge, to P29.16, and for the use of the dredging scoop, during an equal period, to P16.66; that the true value of the barge was P3,000 and that of the dredging scoop, P1,200; that on the same date, November 4, the defendant obtained the plaintiff's consent to have its steam launch, named Amalia, tow the said barge from the port of Cebu to the Island of Bohol, for a stipulated sum of P60, which service was rendered by the said launch; but that, up to the date of the complaint and notwithstanding the demands made, the defendant without good reason whatever had not paid the towage and still persisted in his refusal so to do, so that the sum of P60 was still unpaid and demandable; that

such unwarranted refusal of the defendant had caused the plaintiff losses and damages in the sum of P500, inasmuch as, from the preceding month of November up to the date of the complaint, the plaintiff had been unable to construct or acquire another barge and dredging scoop with the price of those that had been lost; that the barge and dredging scoop referred to were absolutely indispensable for the work and business in which the plaintiff was chiefly engaged and which was disturbed and delayed by the absence of said implements; that, since the said month of November, the plaintiff had received various advantageous proposals for the lease of the said barge and dredging scoop and had been unable to accept such proposals, due exclusively to the fault of the defendant, wherefore the amount of the losses and damages thereby caused the plaintiff was owing and demandable, but that the defendant had failed to make payment therefor when requested so to do. Said counsel therefore prayed the court to render judgment in his client's behalf by sentencing the defendant to the payment of P4,805.82, the amount of all the plaintiff's claims, and the costs.

The demurrer filed against the amended complaint having been overruled, the defendant in his answer denied the allegations of subdivision (a) and all those of subdivisions (c), (d), and (e) of paragraph 1 of the complaint and admitted the allegations of subdivision (b) of the same paragraph.

With respect to the allegations of subdivision (a) of the second paragraph of the complaint, the defendant admitted that the plaintiff had made an agreement with him that the barge would be towed from the port of Cebu to the Island of Bohol, for the stipulated sum of P60, but the defendant denied that the plaintiff had performed such towage service and also denied all the other allegations contained in the said subdivision (a). As regards the allegations of subdivision (b) of paragraph 2 of the complaint, the defendant admitted that he had not paid the towage, but denied that he owed the plaintiff the sum of P60 therefor, or on any other account; he also denied the allegations of paragraph 3 of the complaint, as well as all the other allegations not specifically admitted in his answer.

In a countercomplaint, the defendant set forth that, on or about the 4th of November, the plaintiff company made an agreement with the defendant to tow the said barge, with its cargo, from the port of Cebu to the mouth of the Abatan River, in the Island of Bohol; that, on the said date, the plaintiff through its agents and employees took charge of the barge with its cargo for the purpose of towing the boat to the place of its destination, but that, before arriving there, the barge foundered with its entire cargo, disappeared in the sea and was totally lost, which loss was due to the carelessness and negligence of the towmen, employees, and representatives of the plaintiff firm, as well as to the carelessness and negligence of the latter party itself for having intrusted the towage to persons without experience or sufficient capacity to perform the work; that, when the barge was lost, it had on board 10 tons of coal belonging to the defendant; and that this coal, which was also lost, was worth P130, an amount which the plaintiff owed the defendant and had not paid him, although its payment had been demanded. The defendant therefore asked that judgment be rendered by absolving him from the complaint and sentencing the plaintiff party to pay P130, as an indemnity for the lost coal, and the costs of the suit. After trial of the case, the judgment set forth was rendered.

It devolves upon us in the present case to decide whether, in accordance with the contract and engagement contained in the document dated November 4, 1909, and subscribed by the defendant, J. E. Ainsworth, the plaintiff is entitled to collect from the defendant the sum of P4,805.82, the total amount of the value of the barge Varadero and the large iron dredging scoop, of the rentals therefor, and of that of the launch Amalia and of the losses and damages occasioned by the foundering of the barge and the dredging scoop, also whether the defendant is entitled to recover P130, the value of the coal belonging to him which was in the said barge and lost when it foundered.

When the defendant leased the said barge and dredging scoop at their respective rental prices, he agreed,

according to the aforementioned document, to assume all liability for any loss or damage to the leased property during the existence of the contract.

It is admitted to have been proved that when the launch Amalia left the port of Cebu, on the night which must have been the 8th of November, the fifth day after the date of the contract, bound for the mouth of the Abatan River, Island of Bohol, good weather prevailed, the sea was tranquil and calm, there was no wind, and it was not noticed that any water had entered the hull of the barge. Nothing out of the ordinary happened until 4 o'clock the next morning, when the two laborers on board the barge observed that a considerable amount of water was coming into the bottom of the boat. They therefore requested assistance from the captain of the launch, but the barge sank before a relief boat could get alongside and the latter was unable to do more than rescue the two laborers from the water.

The record does not disclose how or why the water came into the hull of the barge while it was being towed by the launch, which also belonged to the plaintiff firm.

The barge had an approximate capacity of 27 tons and the total weight of the cargo it carried was about 19 tons. The trial judge, in estimating the value of the evidence adduced in this case, held that the cargo loaded on the barge was not excessive for the capacity of the boat; that the ways and means employed by the defendant in loading the barge did not tend in any manner to show cause for the accident that occurred; that the towage was effected under the exclusive direction of the captain of the launch, an employee of the plaintiff firm, which owned the said launch; and that there was no proof that the two laborers, placed by the defendant on board the barge, performed any acts which might have contributed to the foundering of the vessel, or failed to perform their duties.

The judgment appealed from shows that there is a decided dearth of evidence relative to the actual cause of the sinking of the barge; nor is there any proof of how and in what manner the towage was effected, for the plaintiff neglected to present any testimony by the captain and crew of the launch; but the court held that the small amount of coal placed in the hold of the barge, though thrown in there from above, as the plaintiff affirmed, could not have done any damage to the bottom of the barge, unless it be supposed that its hull was in bad condition and unsuitable for navigation, and the evidence does not show that either the plaintiff or the defendant had knowledge of any defect in the barge, or knew that it was in an unseaworthy condition.

Article 840 of the Code of Commerce prescribes as follows: "The losses and damages suffered by a vessel and her cargo by reason of shipwreck or stranding shall be individually for the account of the owners, the part of the wreck which may be saved belonging to them in the same proportion"

Article 1902 of the Civil Code also provides: "A person who by an act or omission causes damage to another when there is fault or negligence shall be obliged to repair the damage so done."

This liability is contracted without agreement or consent of the person found liable, on the principle that in all cases where harm, loss, or damage has been caused to a person or to his rights by an act or omission, the aggrieved party is entitled to be indemnified, for the fault can harm only the person committing it and the results of his negligence can not affect any third person, he who acted imprudently being obligated to respond to the injured party.

An action to obtain reparation for loss occasioned by culpable or negligent acts or omissions necessarily requires proof of one or the other of these causes, which constitute the basis of the action, and such proof in the present case is incumbent upon the plaintiff, according to the general principles laid down in article 1214 of the Civil Code.

The record does not disclose duly substantiated evidence that the barge Varadero foundered, with its cargo and the

iron dredging scoop, through the defendant's fault or negligence, as held by the trial court in the judgment appealed from, and so there is no legal ground for plaintiff's complaint, or for holding the defendant liable for payment of the amounts specified in the complaint. It is, then, indispensable for the proper application of article 1902 of the Civil Code, that the loss or damage should have been caused by the fault or negligence of a person other than the one injured or aggrieved, and that such loss or damage should not have been the result of his own acts or omissions.

In reference to the interpretation and application of that article, the supreme court of Spain, in its decision of June 16, 1906, laid down the rule that the obligation to repair the loss caused can be enforced only when such loss is the necessary consequence of an act or omission into which fault or negligence entered.

This rule virtually affirms another set out in a previous decision, on April 6, 1896, that "the liability sanctioned by the said article requires proof of an act or of an omission on the part of the person held liable and must have originated from such act or omission."

Considering the facts that the weather was good, the sea calm, and that there was no high wind during the night and up to an early hour in the morning while the said barge was on its way, and in the absence of proof that in the operation of the towage some injurious or harmful act was performed which may have caused the foundering of the craft, it may be positively affirmed, upon the evidence and pleadings in this case, that the sinking of the barge was due to an accidental and unforeseen event, in which no fault or negligence attached on the part of the defendant, and therefore the provisions of the article before mentioned are not applicable to the case at bar, nor would it be proper to sentence the defendant to make good and indemnify the losses and damages suffered by the sinking of the barge and the dredging scoop, both of which belonged to the plaintiff.

According to the rule laid down by the supreme court of Spain, in its decisions of the 2d and 10th of March, 1897, the provisions of the said article 1902 of the Code do not apply in cases where the court holds that the event was accidental and fortuitous and not due to any fault or negligence on the part of a third person distinct from the one injured.

The same rule is applicable with respect to the loss of the coal by the foundering of the barge. The plaintiff cannot be held liable therefor.

With respect to the other features of the case, we accept the finding of the trial court to the effect that the manner in which the coal was put into the hold of the barge, to wit, by dumping it out of baskets carried by porters, could not have caused any material harm or damage to the hull of the barge, unless the hull was in bad condition, a fact neither proved nor admitted by either of the parties, and had it been so the defendant would not have leased the boat, wherefore it is to be resumed, in the absence of proof to the contrary, that the vessel was in good condition when plaintiff delivered it to the defendant. Had the hull been damaged by the falling of the coal on the bottom of the boat during the process of loading, water would have entered immediately after the first few loads had been dumped in and while the barge was still lying in the port of Cebu, and it could not have been towed for more than six hours before a lot of water had poured into the hull, causing it to sink.

By virtue of the contract, the barge and dredging scoop were, during five days, at the defendant's disposal and it is just that he pay as rental, for the former, P29.16, and for the latter, P16.66, which amounts the plaintiff firm is entitled to collect.

For the foregoing reasons, whereby five of the six errors assigned to the judgment appealed from are deemed to have been refuted, the said judgment is hereby affirmed, with the exception of the third item thereof, which directs the plaintiff to pay to the defendant P130 with interest at 6 per cent per annum, which is reversed and the

plaintiff is absolved from the claim for such amount; and the defendant is sentenced to pay to the plaintiff the sum of P45.82, the amount of the said rentals; without special finding as to costs in both instances.

Arellano, C. J., Johnson, Carson, and Trent, JJ., concur.

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.