

44 Phil. 597

[ G.R. No. 19541. March 08, 1923 ]

**DEMETRIO MAXION, PLAINTIFF AND APPELLEE, VS. THE MANILA RAILROAD COMPANY, DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**STREET, J.:**

This action was instituted in the Court of First Instance of the Province of Pangasinan, on August 30, 1915, by the plaintiff, Demetrio Maxion, to recover a sum of money of the defendant, the Manila Railroad Company, for damage alleged to have been incurred by the plaintiff in the years 1911-1912, from the destruction of an intake dam on the Bued River and the consequent diversion of water from an irrigation system supplying the plaintiff's lands. The defendant having answered and the cause having been duly heard, his Honor, Judge Vicente Nepomuceno, found the issues of the controversy favorably to the plaintiff, and awarded to him the sum of P1,250, as damages to be recovered of the Manila Railroad Company, with interest from December 23, 1921, until paid. From this judgment the defendant appealed.

It appears in evidence that from a date long prior to September 18, 1911, an irrigation system has been in existence in the municipality of San Fabian, Pangasinan, known as the Bindow System, and used for supplying water to the lands of the inhabitants of the barrio of Bindow, in said municipality. This system is supplied from the Bued River, through a canal leading off diagonally on the north side of the river as it flows in the direction of the sea from the mountains of Benguet; and in order to divert the necessary amount of water from the river into the canal at the point of intake, the inhabitants of Bindow have immemorially maintained a crude but effective wing dam in the river. This has the effect of turning a sufficient quantity of Water from the main stream of the river into the irrigation canal during those seasons when irrigation is needed

for agricultural purposes. In times of heavy rains and floods it not infrequently happens that damage is done to the dam, but the inhabitants who are dependent on this system keep a vigilant watch over the situation, and when breaches are made in the dam they are repaired as soon as the flood abates and conditions permit. In making these repairs, when of any magnitude, it is customary for the workmen to manufacture huge crates of splits or pieces of wood, which are sunk in the breach and then filled with rock; and wooden stakes of varying size, but averaging perhaps the size of a man's thigh, are driven at intervals along the edge of the dam to hold the loose material that collects against them. In course of time sand filters into the interstices of the wood and rock; and cogon, and even small trees, spring up and make a buttress strong enough to control the force of the stream. When the river is full the water spreads out and in part runs around the open point of the dam on the opposite side and in part spills over along the entire length of the dam; but owing to the fact that the main current runs on the side of the intake and that the dam converges to that point, most of the water passes in this direction.

It further appears that in the year 1907 the Manila Railroad Company constructed a line of railroad from San Fabian to Camp One, the course of which skirts along the north side of the Bued River in the barrio of Binday; and of course it became necessary for the railroad company to construct a bridge over the canal, which it did at the place where the canal receives its water from the river. In the course of the construction of this bridge it was found desirable—in order to protect the canal—to make a concrete intake for it under the bridge; and this improvement was made by the railroad company at its own expense according to plans supplied by the Bureau of Public Works.

During the afternoon and night of September 17, 1911, an unusually heavy rainfall occurred in the watershed of the Bued River; and during that night and next morning the river rose, overflowed the dam, and began to undermine the buttresses of the bridge, threatening disaster to the structure and serious damage to the railroad line. Information of this occurrence soon reached the officials in charge of the maintenance of this branch of the railroad, with headquarters at San Fabian, and on the morning of September, 1911, the inspector, Jose D. Ramirez, repaired to the place with a gang of about fifty workmen to look after the bridge and take the necessary measures to avoid further injury to the structure and to the railroad. Arriving on the spot,

Ramirez found himself confronted with a situation calculated to create alarm. The waters of the river were coming down in great force, and owing to the angle at which the dam lay with reference to the stream, the main impact of the water fell against the foundations of the bridge and against the bulkhead across the mouth of the canal, which itself in some degree prevented the exit of water through the canal. Moreover the debris, coming down stream, was lodging against the foundation piles and bulkhead in a way which tended to augment danger. Already the supporting piles of the bridge were effectually undermined and damage to a still greater extent seemed imminent. In this emergency it occurred to Ramirez that if a breach were made in the center of the dam so that a greater quantity of water might find a vent in that direction, the pressure against the bridge and embankment would be relieved. He therefore sent three men into the river with directions to make an opening in the dam near its center. This order was obeyed, and three stakes were removed which, as it proved, constituted the key to the support of the dam, for the water poured through the opening, and the aperture widened until practically the whole dam was swept away. As a consequence of this, the pressure against the bridge was relieved, as had been foreseen as probable, and the structure was thus saved from further injury. The damage already done to the bridge and embankment, however, was sufficient to keep a large gang of workmen at work for a period of about three weeks.

As soon as the inhabitants of the barrio became aware of the destruction of the dam, measures were at once taken to replace it, as soon as the flood should abate, in conformity with the custom of making repairs after floods. To this end material was collected and brought to the spot, ready to be placed in position for the reconstruction of the dam; but when the time came for the work to begin, Jose D. Ramirez effectually opposed it, in the belief no doubt that to replace the dam would again create a danger to the bridge, in case of the occurrence of another flood. The position thus taken by him—in which he was supported by Castelvi, the engineer in charge—was apparently based in part on the belief that, inasmuch as the right of way of the railroad company extended out some meters into the river, the inhabitants of the barrio had absolutely no right to utilize any part of the right of way for their dam without the consent of the company. As it was necessary to rest the dam at one end on the railroad embankment, it resulted that the dam could not be replaced without utilizing some of the space claimed exclusively by the railroad company. As a result of

this opposition on the part of the railroad authorities, the inhabitants of Binday were compelled to desist from the reconstruction of the dam.

The act of Jose D. Ramirez in making an opening in the dam in the manner above stated was witnessed by a number of persons who had been drawn to the spot by their interest in the dam or their natural curiosity to see the unusual; and although Ramirez himself denies the act, in which position he is supported by a few of his employees, the great and even overwhelming preponderance of the evidence shows that the dam was destroyed in the manner stated. There is an equally great preponderance of proof showing that the efforts of the inhabitants of Binday to reconstruct the dam were opposed and thwarted by Jose D. Ramirez, with the approval of higher officials of the company.

In this connection, it will be worth while to refer to certain dispatches and letters which passed between important personages relative to the affair at the time it occurred and which shed important light upon the facts relative thereto. As his Honor, the trial judge, well observed, documents of this kind are not so easy to invent as oral testimony, and they clearly show that the facts really occurred in the manner described by the witnesses for the plaintiff and substantially as outlined above.

The pertinent documents are these: (1) At 2 p. m. on September 18, 1911, a telegram was sent by the engineer Castelvi to President Higgins of the railroad company in Manila informing him that a dam recently constructed by the municipality in Binday had caused a row of piles of the railroad bridge at that place to be undermined, upon occasion of a rise in the river the night before. (2) On the same day (September 18), the municipal president of San Fabian writes a letter to the provincial governor of the Province of Pangasinan, informing him that the dam which supplied water for irrigation purposes to all the agricultural land in the barrio of Binday had been destroyed by the railroad engineer that morning upon the pretext that the buttresses of the bridge were being undermined, and stating that if the dam should not be reconstructed the crops in the entire barrio would inevitably be destroyed. For this reason it was earnestly represented that immediate steps should be taken looking towards the reconstruction of the dam under the supervision of a Government engineer and at the expense of the railroad company. (3) The contents of the foregoing message was evidently communicated promptly to the Executive Secretary, F.W. Carpenter,

who in turn conferred with the president of the company and was informed by the latter that the order for the destruction of the Bunday dam had been countermanded. A telegram so informing was sent on September 20, 1911, by Mr. Carpenter to the provincial governor and by the latter was communicated to the municipal president of San Fabian. (4) Confirmatory of the foregoing is a telegram from President Higgins to Castelvi, sent at 11.52 a. m. on September 19, 1911, telling him not to give any order for the destruction of the dam in Bunday without the approval of the provincial authorities. (5) As we have seen, however, the dam had then been destroyed, and it only remained for Castelvi to make a written report with reference to existing conditions to President Higgins, which he did on September 20. In this report, nevertheless, the fact of the previous destruction of the dam by the workmen under Ramirez is suppressed, either through ignorance or design. In this document Castelvi says:

“On the 18th instant I sent you a telegram notifying you that damage had been done to our bridge over this canal by the building of a dam at the instance of the municipality of San Fabian. Pursuant to your telegram of yesterday, I did not order the destruction of the dam, limiting myself to repairing the damage done.

“Now, in case the workmen of the municipality should return to reconstruct the work, it should be done under my authorization, not only in order to avoid erosion—especially as the land where they work has been paid for by the company—but in order to make the damage to us as light as possible, without prejudice to them; since the present dam, which is decidedly prejudicial to the company, was built without due notification to me.”

It will be noted that in his telegram of September 18, 1911, and the more extended report of September 20, Castelvi speaks of the dam as a new dam recently constructed by the municipality. As a matter of fact the dam was an old one and had existed at that place, for aught we know, from a time contemporaneous with the origin of the irrigation canal itself; but it appears that the dam had been seriously impaired by the heavy floods of the preceding July; and at the time this inundation occurred in September, the inhabitants of Bunday had lately completed certain repairs on the dam after several weeks of

work. Castelvi, therefore, referred to the dam as a new dam, but this was not strictly accurate.

Upon examination of the documents above referred to it will be seen that they support the contentions of the plaintiff at material points; and in particular the letter of Castelvi of September 20 reveals his attitude upon the proposition of rebuilding the dam, which was, in effect, that the reconstruction of the dam would constitute a menace to the railroad bridge and embankment, that the inhabitants of Bunday had no absolute right to use any part of the railroad right of way in the reconstruction of the dam, and that if the dam was to be replaced, it must be with his approval.

Under these circumstances the testimony of the various witnesses for the plaintiff—who testified with notable unanimity and every appearance of truthfulness—that Ramirez would not permit the reconstruction of the dam, becomes entirely reasonable and credible.

The proof shows that the dam referred to remained unrepaired during the entire cropping season of 1911-1912; and as no water from the river during that period entered the irrigating canal, though the supply in the river was abundant, the crops dependent on the system in the entire barrio were totally lost. This was something entirely unprecedented for that locality, for it is in evidence that there had never before been a failure of crops in the limits of the Bunday system, and they have at no time failed in that barrio for lack of water except during said season. Moreover, it is shown that during the same year good crops were harvested in the adjacent barrios of Paule and Sapang which are irrigated from two independent irrigation systems fed from the same stream.

Among the lands dependent upon the Bunday system for water were three parcels, described in the complaint, belonging to the plaintiff, and upon which the plaintiff had planted a crop of palay during the months of July and August, and from which he would in all reasonable probability have received a return of 250 *betecs* of palay. At the prices then prevailing this quantity of palay would have given a return of approximately P1,250. As this crop was completely destroyed for lack of water, the trial judge awarded to the plaintiff the sum of P1,250, as damages, to be recovered of the defendant company, with interest from the date of the judgment.

In his complaint the plaintiff also claimed damages for the similar loss of the crops of maize and tobacco which should have been planted on the same parcels after the harvest of the palay and which in ordinary course would have matured in the months of June and July of the year 1912. His Honor, the trial judge, disallowed this claim on the ground that the damages sought to be recovered under this head were speculative; and from this decision the plaintiff has not appealed.

Without pausing to discuss details, we will say at this point that the estimate placed by the trial judge on the amount of damages resulting to the plaintiff from the destruction of the dam was fair, and we are of the opinion that the award should not be disturbed by us on the ground of being excessive. It is true that something might have been deducted by the trial judge from the gross value of the anticipated crop, in view of the expenses incident to harvesting it, but no proof was submitted with respect to this, and no specific exception is here taken by the appellant to the award on this ground.

The defenses chiefly relied on by the appellant both in the Court of First Instance and in this court relate to matters of fact, and these have necessarily been met by the findings of fact made by this court, as above set forth, which in the main embody the same conclusions as were reached by the trial judge. Without further discussion, therefore, of the controverted questions of fact, we pass to the consideration of certain questions of law involved in the appeal.

In the first place, it is pointed out that the supposed liability of the defendant company is derived from acts done by Jose D. Ramirez, an employee of the company of proven experience and long service; and it is insisted that the defendant company had used due precaution in placing him in the responsible position occupied by him at the time those acts were done. From this it is insisted that the company is entitled to the benefit of the last paragraph of article 1903 of the Civil Code, which provides that the responsibility of the master for the negligent acts and omissions of his servant shall cease when the master has exercised all the diligence of a good father of a family to prevent the damage. In this connection reference is made to certain cases in which the exercise of due care in the selection of the servant has been held to exempt employers from liability for acts done by the employee. (*Bahia vs.*

Litonjua and Leynes, 30 Phil., 624; Cerf vs. Medel, 33 Phil., 37.) We are of the opinion, however, that the point is not well taken; for it affirmatively appears in this case that the acts done by Ramirez, which caused the damage, were in effect approved by his superiors, in representation of the company itself, and that so far from exercising the diligence of a good father of a family to avert the threatened damage to the plaintiff's crops after the dam was destroyed, no steps were taken by the company to avert that damage, and the persons most interested were not themselves permitted to repair the dam. The responsibility of the company must therefore be considered not to be affected by the circumstance that due care had been used in the original choice of the agent.

Again, it is supposed that the right of the present plaintiff to maintain this action is adversely affected by the result of the litigation in the cause of Turner vs. Manila Railroad Company, G. R. No. 10165, decided by this court on March 31, 1915,<sup>[1]</sup> having originated in the Court of First Instance of Pangasinan. It appears from the record in that case—as also in the case now before us—that numerous other farmers living in the barrio of Bindow and dependent, like the present plaintiff, upon the Bindow system for the irrigation of their crops, had similarly suffered damage by reason of the diversion of the water from said system; and in order that all their claims might be litigated in a single action, the device was adopted of assigning all of said claims to their attorney who instituted an action in his own name, purporting to be assignee of all of said claims, about two hundred in number. To the action in that case a demurrer was interposed for the railroad company, on this, among other grounds, that it was not permissible for an attorney thus to accumulate distinct causes of action in himself and to sue in his own name for the benefit of the clients directly interested. This demurrer was sustained, both in the lower court and in this court; and the cause remained dismissed.

Upon considering that record, it is evident that it has no bearing on the case now before us, which is an independent action instituted by Demetrio Maxion in his own right. It is true that he was named as one of the assignors of various claims involved in the first action, but that case went off on demurrer; and the judgment therein entered does not constitute *res judicata* upon any question of fact. It results that the allegation made in that complaint to



the effect that Demetrio Maxion had assigned his claim to another person does not show as a matter of fact that this plaintiff has at any time parted with his interest in the subject-matter of the present litigation.

In the foregoing discussion we have disposed of the decisive features of the case, and We consider it unnecessary to discuss other points raised in the appellant's brief which are clearly of minor importance. We may point out, however, that the lapse of the period of nearly twelve years between the date of the wrongful act which gave origin to this action and the date of this judgment, has its explanation partly in the fact that the present action, and others of a similar action depending upon its outcome, were not instituted until some time after the date of the final decision of this court in *Turner vs. Manila Railroad Company, supra*.

From what has been said it results that the judgment appealed from must be affirmed; and it is so ordered, with costs against the appellant.

*Araullo,*  
*C.J., Malcolm, Avanceña, Johns, and Romualdez, JJ.,*  
concur.  
*Ostrand, J.,* took no part in this decision.

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<sup>[1]</sup> Not reported.

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