

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Crisanto Lichauco v. Riley, Hargreaves and Company, Limited, and others, from the Supreme Court of the Straits Settlements (Settlement of Singapore); delivered the 25th May 1905.*

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Present:

LORD MACNAGHTEN.

SIR FORD NORTH.

SIR ANDREW SCOBLE.

SIR ARTHUR WILSON.

*[Delivered by Lord Macnaghten.]*

THIS is a bold Appeal and a very extravagant demand.

On the 1st December 1897 Mr. Lichauco, who is appealing in person, entered into a contract with Messrs. Riley, Hargreaves & Co. Under that contract Messrs. Riley, Hargreaves & Co. were to supply engines for three launches, of which only one was then in existence. The price was \$15,500, of which one-third was paid by Mr. Lichauco a few days later as a deposit. The firm was afterwards converted into a limited company. It has been held that the limited company ought to have performed this contract, and that they are liable in damages for not performing it.

It is conceded that the contract was broken, and that Mr. Lichauco is entitled to damages in addition to the return of the deposit with 8 per cent. interest. The learned Judge in the Court

of first instance awarded \$36,525 as damages for the period between the 1st March 1898, when the contract ought to have been fulfilled, and the 1st July 1899, treating all three vessels as profit-earning chattels. The principle, no doubt, was right as to the vessel which was in existence, the "Fortuna"; but their Lordships have some difficulty in seeing how that principle can be applied in the case of the two vessels that were not in existence at the date of the contract and never came into Mr. Lichauco's possession.

The only question before their Lordships is as to the amount of damages, and that involves two other questions:—From what date ought damages to be calculated, and at what rate? The learned Judge of first instance said, that in dealing with matters of this sort there comes a period when a reasonable man must say to himself that the other party does not intend to fulfil his part of the contract, and he should then treat the contract as rescinded. The learned Judge thought the time at which Mr. Lichauco had notice that the contract could not be fulfilled was the end of March 1899, because by that time he had received notice from a letter written by the firm or the Company saying that the engines had been sold, and although they said they were proceeding to make new engines, Mr. Lichauco ought to have considered that if the new engines were not delivered within a reasonable time, which he put at three months, the contract was at an end and had been finally broken, and he ought to have supplied himself with other engines.

It seems to their Lordships that a letter of Mr. Levering, who was Mr. Lichauco's legal adviser, to the Agent of the other side affords a clearer date for the termination of the contract. This is a letter dated 8th February 1899. It is in these terms:—

“ D. Jose Galan, Agent, Riley, Hargreaves & Co.,  
 “ Manila.

“ My Dear Sir,

“ I have had placed in my hands, by D. Crisanto Lichauco,  
 “ a claim for damages against Messrs. Riley, Hargreaves & Co.,  
 “ on account of their failure to fulfil the contract entered into  
 “ between you, as their Agent, and himself on the 1st day  
 “ of December 1897, for furnishing to D. Lichauco certain  
 “ engines, boilers, &c. My client has instructed me to com-  
 “ mence legal proceedings forthwith, but I should of course  
 “ prefer an amicable adjustment of the matter, and any  
 “ reasonable proposition looking to that end will receive careful  
 “ consideration.”

It appears that the Agent of the Respondents wrote asking for some consideration under the circumstances, and proposing to go on with the contract. Neither Mr. Levering nor Mr. Lichauco took the slightest notice of those appeals. It must therefore be considered that on the 8th February, 1899, Mr. Lichauco treated the contract as finally at an end. He never receded from that position.

The Court of Appeal saw no reason to differ from the Judge of first instance with regard to the time for which he gave damages, nor do their Lordships. The difference between the 8th February and 31st March is not worth considering. Mr. Lichauco has had three months more than he would have been entitled to on their Lordships' view of the case.

As regards the rate of the damages, the learned Judge gave a very large sum, which both the Judges who heard the case on Appeal thought rather extravagant. The case is perhaps best put in the Judgment of Mr. Justice Law. He says:—“ Deogracias del Castillo, a witness  
 “ for the Plaintiff, seems to show that for a  
 “ launch towing three cascoes in 1896 he paid  
 “ the Plaintiff 240 pesos, which I understand  
 “ are equivalent to dollars per week. Now  
 “ deducting \$300 per month for coal and other  
 “ expenses as has been suggested, though this

“ seems less than the figures given in the  
 “ Plaintiff’s own evidence and that of other  
 “ witnesses, we have left about \$660 per month  
 “ as the gain of the launch, assuming that she  
 “ tows three cascoes each trip. Mr. Knight,  
 “ also a witness for the Plaintiff, would seem on  
 “ the whole, I think, to show that the small  
 “ launch during the period we have under con-  
 “ sideration, might have earned, say \$1,000  
 “ per month, or, deducting expenses at the rate  
 “ above mentioned, about \$700 per month when  
 “ employed.”

On the hearing before their Lordships, Mr. Lichauco has impugned Mr. Knight’s evidence; but Mr. Knight was his own witness, and their Lordships see no reason whatever for disbelieving what he said. Then the learned Judge goes on:—“The Plaintiff’s own brother, also a  
 “ witness for the Plaintiff, seems to confirm  
 “ Mr. Knight to some extent, so far at any rate  
 “ as the average rental value of the small  
 “ launches per day is concerned. In view of  
 “ this evidence given by the Plaintiff’s own  
 “ witnesses, I cannot see how we can possibly  
 “ hold that \$570 per month all round for the  
 “ small launches, allowing nothing for periods  
 “ when the launches would not work, was too  
 “ low a rate of profit to allow, after expenses  
 “ have been deducted. Of course, the evidence  
 “ of Mr. Gilchrist would, I think, tend to show  
 “ that this rate is a high one. As to the large  
 “ launch, the Judge appears to have thought the  
 “ engines were really intended for the ‘Fortuna,’  
 “ as was contended, and he has allowed damages  
 “ at the rate of some \$1,142 per month. In view  
 “ of the evidence, this seems, I think, a very  
 “ generous rate, and I certainly see no reason  
 “ for saying it is inadequate, especially as it  
 “ appears the ‘Fortuna’ was doing some work  
 “ during the period in question.”

Their Lordships entirely agree with the learned Judges on Appeal that the damages which have been awarded to Mr. Lichauco are very generous; they are probably more than would have been allowed if there had been a Cross-Appeal.

Their Lordships are, therefore, of opinion that the Appeal ought to be dismissed, and they will humbly advise His Majesty accordingly. Of course the Appellant will pay the costs of the Appeal.

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