

**SHIRO NGIRCHELUI and NAORU NAPOLEON, Appellants**

**v.**

**ANDRES REBECHONG, Appellee**

**Civil Action No. 371**

**Trial Division of the High Court**

**Palau District**

**October 12, 1967**

Appeal from judgment finding defendants liable for injury to plaintiff's boat. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that although defendants admitted taking plaintiff's boat without permission, plaintiff could not recover damages unless he established that the damage complained of was the direct result of the wrong done by the defendants.

Reversed and remanded.

**1. Appeal and Error—Scope of Review—Facts**

On appeal, sufficiency of the evidence when it relates to the weight or probative values of conflicting evidence may not be considered.

**2. Appeal and Error—Scope of Review—Facts**

When the record on appeal shows a complete absence of proof on an essential element the challenge to the sufficiency of the evidence may be considered by the appellate court.

**3. Torts—Negligence—Proximate Cause**

The proximate cause of an injury is that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.

**4. Torts—Damages—Generally**

In order to recover damages the mere occurrence of a wrongful act is not enough, it must be shown the wrong caused the damage.

**5. Torts—Damages—Generally**

Liability for damages done to another must be based upon the causal connection between the alleged wrong and the injury of which complaint is made and only when the damage is the direct result of the wrong done is recovery for the damage permitted.

**6. Evidence—Opinion—Generally**

Question asked of plaintiff at trial as to who had damaged his property should not have called for his opinion or conclusion but should have brought forth the facts upon which plaintiff based his opinion; it would then become the obligation of the trial judge to form his own opinion and conclusion.

**7. Evidence—Generally**

Where answer was not sufficiently clear to permit any conclusion as to the existence of the relationship, if any, between the wrongful use of the property by the defendants and the subsequently discovered damage to the property, court would refer the case back to the trial judge for the purpose of re-opening the matter in clarification of that point.

**8. Evidence—Generally**

Uncontradicted and unimpeached evidence must be taken as true in the sense that it cannot be arbitrarily disregarded.

**9. Evidence—Burden of Proof**

Reasonable probability is all that is required of evidence in a civil case to support a factual conclusion.

**10. Civil Procedure—Damages**

In the absence of contradiction court must accept on appeal trial court's findings as to the amount of damage unless there is obvious error.

**11. Judgments—Damages**

Plaintiff, if entitled to recover at all, may not have judgment for a greater amount than is shown by his proof; the judgment amount must conform to the evidence.

*Assessor:*

JUDGE PABLO RINGANG

*Interpreter:*

HARUO I. REMELIHK

*Counsel for Appellants:*

WILLIAM O. WALLY

*Counsel for Appellee:*

H. ULENGCHONG

TURNER, *Associate Justice*

**RECORD OF HEARING**

Hearing on appeal from judgment in District Court Civil Case No. 1174 in favor of the Plaintiff, held before Associate Justice D. Kelly Turner at Koror, Palau Islands, September 30, 1967.

No witness appeared for either the appellants or appellee at the hearing on appeal.

**OPINION**

The issue at the trial and on appeal was whether or not the Defendants damaged the Plaintiff's motor and boat, and if they did, the amount of the damage incurred. By

their answer, Defendants admit the wrongful taking of the Plaintiff's boat. They denied the injury claimed.

The notice of appeal challenged the sufficiency of proof of damage. Appellants' appeal argument refined the point, in support of the general proposition Plaintiff failed to prove damages, by urging there was no showing the wrongful acts of the Defendants, that is, the unauthorized use of Plaintiff's boat, caused the damage for which Plaintiff sought recovery. In other words, there was no proof of proximate cause, an essential element to recovery of any amount.

[1] On appeal, sufficiency of the evidence when it relates to the weight or probative values of conflicting evidence may not be considered. Here there is no problem of weighing conflicting evidence because the only testimony in the record is from the Plaintiff.

[2] However, when the record on appeal shows a complete absence of proof on an essential element, then the challenge to the sufficiency of the evidence may be considered by the appellate court. Here the appellants raise the question of sufficiency of proof of the relationship between Defendants' acts and the damage which Plaintiff proved, without contradiction, occurred to his motor.

[3] Proximate cause is defined in 38 Am. Jur., Negligence, § 50, as:—

“The proximate cause of an injury is that cause, which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.”

The question of this case then is: Did the use of the Plaintiff's boat by the Defendants cause the damage which Plaintiff seeks to recover?

[4, 5] The mere occurrence of a wrongful act is not enough. It must be shown the wrong caused the damage.

The admitted fact the Defendants wrongfully used Plaintiff's boat is not sufficient. To permit recovery it must be shown that the improper use caused or was the proximate cause of the damage. Liability for damages done to another must, of course, be based upon the causal connection between the alleged wrong and the injury of which complaint is made. Only when the damage is the direct result of the wrong done is recovery for the damage permitted.

The only testimony shown in the record amounts to a conclusion of the Plaintiff, which, had it been objected to by Defendants' counsel was inadmissible. The record shows the following question and answer:—

"Q. All of these parts that you have just mentioned, were they really broken by these two boys?

"A. Yes."

[6] For the guidance of the District Court and counsel, since the case must be reconsidered, the question asked of the Plaintiff should not have called for his opinion or conclusion but should have brought forth the facts upon which Plaintiff based his opinion. It would then become the obligation of the trial judge to form his own opinion and conclusion.

The record subsequently indicates, without sufficient certainty to permit the reviewing court to reach any conclusion as to proximate cause, that evidence may be available on the points. Even though it is not explicit and the ambiguity should be resolved on reconsideration, the crucial testimony is found in the following question and answer:—

"Q. When did you fix your outboard engine, was it the night after it was broken?

"A. The day after it was discovered and also left for about one month when I finally purchased one other part so then I fixed it."

[7] Even though the leading question was objectionable, since no objection apparently was made we accept it

and the answer. However, the answer is not sufficiently clear to permit any conclusion as to the existence of proximate cause, meaning the relationship, if any, between the wrongful use of the boat by the Defendants and the subsequently discovered damage to the motor.

We believe it necessary to refer the case back to the trial judge for the purpose of re-opening the matter in clarification of this point.

Since it was raised as an issue on appeal we will consider the matter of proof of the amount of damage sustained by the Plaintiff for which the Defendants may or may not be liable. Plaintiff testified as to the cost of purchasing new parts for his motor. It was urged on appeal there should have been corroborative evidence, specifically, the purchase invoices showing the cost of the replacement parts.

[8, 9] It is true the Plaintiff furnished no supporting evidence to his testimony, but none was needed because the Defendants failed to offer any contradictory evidence. It is often said uncontradicted and unimpeached evidence must be taken as true in the sense that it cannot be arbitrarily disregarded. Reasonable probability is all that is required of evidence in a civil case to support a factual conclusion. 30 Am. Jur. 2d, Evidence, § 1083.

[10] In the absence of contradiction we must accept on appeal the trial court's findings as to the amount of damage unless there is obvious error. Rule 52(a), Federal Rules of Civil Procedure, with respect to findings of fact expressly provides that such findings shall not be set aside "unless clearly erroneous."

[11] We do observe in the record what appears to be a mathematical error which should be corrected on rehearing in the District Court. The cost of the replacement parts purchased was One Hundred Thirty-Four Dollars and

Forty Cents (\$134.40) plus one gallon of paint, for which no cost was given. This amount does not support the judgment amount. The Plaintiff, if entitled to recover at all, may not have judgment for a greater amount than is shown by his proof. The judgment amount must conform to the evidence.

#### JUDGMENT

The judgment in the District Court for the Palau District Civil Action No. 1174, is set aside and the case referred back to that court for a new trial, subject to the following directions:—

(a) The judge who originally heard the case is to reopen it and take any additional proper testimony either side wishes to offer, but he is also to consider the testimony already in the record without its being reintroduced.

(b) After taking such additional testimony, he shall finish the trial as if no previous judgment had been entered; shall allow the usual opportunity for argument; and shall enter a new judgment consistent with the opinion herein.

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**VIKTOR KELLER, Plaintiff**

v.

**TOMISIANO MARTIN, Defendant**

Civil Action No. 232

(Formerly Ponape District Civil Action No. 328)

Trial Division of the High Court

Mariana Islands District

November 24, 1967

Hearing on application for writ of habeas corpus. The Trial Division of the High Court, E. P. Furber, Chief Justice, dismissed application as counsel for plaintiff had presented his notice of appeal and had secured stay of sentence pending appeal.