

[ G.R. No. 855. November 21, 1902 ]

**HIJOS DE I. DE LA RAMA, PLAINTIFFS AND APPELLEES, VS. VICENTE BENEDICTO, DEFENDANT AND APPELLANT.**

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

**WILLARD, J.:**

The judgment in this case must be affirmed. It is clearly proved by the testimony of Felix Labayan, Casiana Capilar, and Timoteo Unson that part of the crop of 1899 was not delivered by the defendant to the plaintiff in accordance with the terms of the agreement between them. The provisions of article 1575 of the Civil Code can not be so applied as to excuse this failure. That article does not refer to a contract in which the stipulated rent is an aliquot part of the crop, for example, one-fourth, as it was in this case. This failure to deliver a part, of the crop was a failure to pay the rent, and therefore gave to the plaintiff the right to eject the defendant under the terms of article 1569, section 2. This action was brought for that purpose and for that alone. It was in no sense a personal action to recover the value of that part of the crop which had not been delivered.

The fact that this suit was brought before the termination of the crop of 1899-1900 is not important. It was not brought until after a failure by the defendant to deliver part of the crop at the time specified in the contract. The defendant's alleged counterclaim was properly rejected for the reasons stated in the opinion of the trial court.

As to the suggestion made in the argument that the defendant had already abandoned the land, it is enough to say that such fact does not appear in any way from the record. On the contrary it appears that the appeal to the Superior Court of Negros was allowed in both effects.

The judgment is affirmed with costs against the appellant.

*Arellano, C. J., Torres, Cooper, Smith, Mapa, and Ladd, JJ., concur.*

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