

[ G.R. No. 2966. December 29, 1906 ]

**NICOLAS CONCEPCION TAN TACO, PLAINTIFF AND APPELLANT, VS. VICENTE GAY, DEFENDANT AND APPELLEE.**

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

**JOHNSON, J.:**

This was an action by the plaintiff to recover of the defendant damages for the unlawful appropriation of certain crops cultivated by the plaintiff during the year 1904.

At the conclusion of the trial the lower court found that the plaintiff was not entitled to recover and dismissal the cause of action with costs to the plaintiff.

An examination of the evidence shows that the defendant for some years had charge of the *hacienda* "Fortuna," in the pueblo of Han Carlos in the Province of Occidental Negros. In the year 1900 the plaintiff became a tenant upon the said *hacienda* under a verbal contract with the defendant, by which the former was to put a quantity of land in cultivation and was to plant thereon sugar cane, and was to receive one-half of the products. No time was expressly stated for the duration of this contract; however, it was understood that the plaintiff might continue as such tenant upon such *hacienda* as long as he lived, if he so desired.

The plaintiff continued upon said *hacienda*, cultivating a portion of the same until the month of May, 1904, when, by reason of being wounded by an attack of bandits or highwaymen, he was obliged to leave said *hacienda* and go to the city of Iloilo. At the time the plaintiff left the said *hacienda* there was growing thereon a crop of cane which he had planted and cultivated; the extent and value of said cane is not dearly estimated by the proof adduced in said cause.

During the time between the year 1900 and .May, 1904, the plaintiff had raised corn and

sugar cane and sold his share of the same to the defendant. During the same period the plaintiff had received advancements in cash as well as in goods and merchandise from the defendant, amounting to several hundred dollars above the value of the share of tin; crops which the plaintiff had sold to the defendant. At the time the plaintiff left the *hacienda* there was a liquidation of the accounts between him and the defendant, which, liquidation showed that there was due from the plaintiff' to the defendant the sum of 1,021.29 pesos.

The defendant claims and undertook to prove that this indebtedness of the plaintiff to him was canceled by virtue of the plaintiff turning over to the defendant his share of the then growing crop on the said *hacienda*, which had been planted and cultivated by the plaintiff. Later in the year 1904 the defendant took possession of said crops and harvested the same and appropriated the results to his own use.

The plaintiff claims and undertakes to prove that when he left the said *hacienda* in the month of May it was agreed between him and the defendant that his son-in-law, one Gestorio Oaballero, was to take charge of said crops and harvest the same for the benefit of the said plaintiff.

At the time the plaintiff left the *hacienda* in the month of May a new account was opened between the defendant and the said Oaballero, and the balance due from the plaintiff to the defendant was charged to the said Caballero. Just what the contract was between the plaintiff and the said Caballero does not distinctly appear by the evidence.

From the evidence adduced during the trial of the cause in the lower court it seems clear that whatever right in the said crops for the year 1904 which the plaintiff had was turned over to the said Caballero at the time the former left the said *hacienda*, by reason of the agreement between them, and by reason of the cancellation of the account which the defendant had against the plaintiff at that time. It would seem from the record that if the defendant had violated the rights of any person with reference to the crops of the year 1904, he had violated the rights which the said Caballero had in said crops.

The lower court found that by the arrangement which was made between the plaintiff and the said Caballero, the debt which the plaintiff owed to the defendant on the balance of their accounts was extinguished by its being charged to Caballero, the latter assuming it, and that the plaintiff thereby lost any right which he had in said crops.

The lower court stated in its judgment that the judgment in no way determined the right of Caballero to demand and recover compensation of the defendant for the value of the crop as

it stood at the time the said defendant took possession of the same.

The judgment of the lower court is therefore affirmed with costs. After the expiration of twenty days let judgment be entered in accordance herewith and ten days thereafter the cause be remanded to. the lower court for proper action. So ordered.

*Arellano, C. J., Torres, Mapa, Carson, Willard, and Tracey, JJ., concur.*

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