45 Phil. 296

[G.R. No. 20435. October 23, 1923]

LUIS ASIAIN, PLAINTIFF AND APPELLANT, VS. BENJAMIN JALANDONI, DEFENDANT AND APPELLEE.

D E C I S I O N

MALCOLM, J.:

Luis Asiain, the plaintiff-appellant in this case, is the owner of the *hacienda* known as "Maria" situated in the municipality of La Carlota, Province of Occidental Negros, containing about 106 hectares. Benjamin Jalandoni, the defendant-appellee, is the owner of another *hacienda* adjoining that of Asiain.

Asiain and Jalandoni happening to meet on one of the days of May, 1920, Asiain said to Jalandoni that he was willing to sell a portion of his *hacienda* for the sum of P55,000. With a wave of his hand, Asiain indicated the tract of land in question, affirming that it contained between 25 and 30 hectares, and that the crop of sugar cane then planted would produce not less than 2,000 piculs of sugar. But Jalandoni, remaining doubtful as to the extent of the land and as to the amount of the crop on it, Asiain wrote Jalandoni the letter which follows:

"HDA. MARIA, *May 26, 1920.*

"Mr. BENJAMIN JALANDONI.

"DEAR BENJAMIN: I am in receipt of your letter and with regard to your statement that that parcel does not contain 21 hectares I do not believe. I bet anything that that part only which is planted with cane contains more than 20 hectares, I bet 2 against 1.

"If you agree, I would bet that you pay only one-half. I am not a surveyor, but these days I had the pleasure to survey the land and I know more or less its area.

"Here we are not to deceive each other. If you like that parcel and if you want to buy it I will give you good propositions. I don't know where and how they learned that I was selling the *hacienda* and they made me a good offer, but as we do not want to part but with that parcel, hence my propositions are the following, in view of the time that has elapsed and the progress of the cane.

"I assure (*aseguro*) that there are 2,000 piculs and sell on that basis, provided that the cane is milled in due time. In case the sugar does not amount to 2,000 piculs, I will pay in sugar all such amount as will be necessary to complete the 2,000, but if after milling the cane, as I say, there is an excess over 2,000 piculs, all the excess shall be mine. So that if you like, I make the sale for the same price that we talked about and the same conditions, not a dime more or less.

"Since you left it did not rain, so the 'alociman' (Philippine herb) of Guimib must die on the field, whether of the *hacienda* or of the 'lagatio.' You have a contract for a lump sum. Now they have begun to plow the old plantations within the boundary some days ago and you may rest and throw one
(unintelligible), answer yes or no, so that I may decide.

"Your friend LUIS ASIAIN"

Sometime later, in July of the same year, Asiain and Jalandoni having met at Iloilo, they prepared and signed the memorandum-agreement which follows:

"Purchase of land of Mr. Luis Asiain and his wife Maria Cadenas, by B. Jalandoni, containing 25 hectares more or less of land bounded by property of the purchaser, with its corresponding crop, estimated at 2,000 piculs, the total value of which is 55 thousand. The price is to be paid by paying 30 thousand at the signing of the document, and 25 thousand within one year, with interest at

the rate of 10 per cent.

"Mr. Asiain is under obligation to take care of all the plantation until the planting is finished and in case the crop exceeds 2,000 piculs, all the excess will belong to Mr. Asiain.

"The adjacent landowner on the north and the west is the vendor himself, on the east, B. Jalandoni, and on the south, B. Jalandoni and the widow of Abdon Ferrer.

"The purchaser is under obligation to answer for all the rights and obligations of the land with the Central of Inchausti.

"After the planting of the cane is completely finished, Mr. Asiain shall vacate the parcel sold to the purchaser.

"The expenses for taking care of said plantation until the planting is completely finished will be for the account of the vendor Mr. Asiain.

(Sgd.) "LUIS ASIAIN
"BENJAMIN JALANDONI"

During all of the period of negotiations, Jalandoni remained a doubting Thomas and was continually suggesting that, in his opinion, the amount of the land and of the crop was overestimated. Asiain on his part always gave assurances in conformity with the letter which he had written intended to convince Jalandoni that the latter was in error in his opinion. As a result, the parties executed the agreement which follows:

"This document, executed in the city of Iloilo, Province of Iloilo, Philippine Islands, by and between Messrs. Luis Asiain and Benjamin Jalandoni, of age and residents of the municipality of La Carlota, Province of Occidental Negros, Philippine Islands,

"*Witnesseth:*

"(1) That Luis Asiain does hereby promise and bind himself to sell to Benjamin Jalandoni a parcel of land of the *hacienda* 'Maria' of the

aforesaid Luis Asiain, situated in the municipality of La Carlota, Province of Occidental Negros, P. I.

"(2) That Benjamin Jalandoni does hereby promise and bind himself to purchase the aforesaid parcel of land in the sum of P55,000 upon certain conditions specified in a memorandum signed by the parties which is in the hands of Attorneys Padilla & Treñas.

"(3) That upon the signing of this agreement, the vendor shall have the right to collect from the purchaser part of the price giving receipts therefor signed by said vendor.

"(4) That in case the vendor should withdraw from the contract and desist from signing the document of final sale, the purchaser shall have the right to collect from said vendor all such amount as may have been advanced on account of
this sale, with an indemnity of P15,000 as penalty.

"(5) In case it is the purchaser who should withdraw from the contract of sale, then he will lose all such amount as may have been paid in advance on account of this transaction.

"In witness whereof, we have hereunto affixed our signatures, at Iloilo, Iloilo, this 12th day of July, 1920.

(Sgd.) "LUIS ASIAIN
"BENJAMIN JALANDONI

"Signed in the presence of:

(Sgd.) "ENGRACIO PADILLA
"P. T. TREÑAS"

Once in possession of the land, Jalandoni did two things. He had the sugar cane ground in La Carlota Sugar Central with the result that it gave an output of 800 piculs and 23 cates of centrifugal sugar. When opportunity offered, he secured the certificate of title of Asiain and procured a surveyor to survey the

land. According to this survey, the parcel in question contained an area of 18 hectares, 54 ares, and 22 centiares.

Of the purchase price of P55,000, Jalandoni had paid P30,000, leaving a balance unpaid of P25,000. To recover the sum of P25,000 from Jalandoni or to obtain the certificate of title and the rent from him, action was begun by Asiain in the Court of First Instance of Occidental Negros. To the complaint, an answer and a counter-complaint were interposed by the defendant, by which it was asked that he be absolved from the complaint, that the contract be annulled, both parties to return whatever they had received, and that he recover from the plaintiff the sum of P3,600 annually as damages. In a well-reasoned decision, the Honorable Eduardo Gutierrez David, Judge of First Instance, declared null the document of purchase and its related memorandum; absolved the defendant from the payment of P25,000; ordered the plaintiff to return to the defendant the sum of P30,000 with legal interest from July 12, 1920; ordered the defendant to turn over to the plaintiff the tract of land and the certificate of title No. 468, and absolved the plaintiff from the counter-complaint,—all without special finding as to the costs. It is from said judgment that the plaintiff has appealed.

The true facts need not give us pause. They are as found by the trial judge and as practically agreed to by the parties. It is only necessary to keep in mind that apparently there was always a difference of opinion between Asiain and Jalandoni as to the area of the tract and as to the crop of sugar cane; that the agreement between them mentions land containing 25 hectares more or less, giving the boundaries, and a crop estimated and in one sense warranted at 2,000 piculs, and that in reality the land contained only a little more than 18 hectares and produced a crop of only about 800 piculs. The legal consequences arising from these facts are more difficult of determination.

Our Civil Code contains provisions which must be taken into consideration. Codal articles 1265, 1266, and 1269 relate to consent given by reason of error and deceit. They provide the rules which shall avoid contracts for these and other reasons. But the provisions of the Civil Code most directly pertinent are found in articles 1469, 1470, and 1471.

The first two mentioned articles, 1469 and 1470, are not applicable because

of the proviso relating to the sale being made at a certain price for each unit of measure or number—which is not our case. The facts seem to fall within article 1471. Its first paragraph provides that in case of the sale of real estate for a lump sum and not at the rate of a specified price for each unit or measure, there shall be no increase or decrease of the price even if the area be found to be more or less than that stated in the contract. The next paragraph provides that the same rule is applicable when two or more estates are sold for a single price. Then comes the following: "* * * but, if in addition to a statement of the boundaries, which is indispensable in every conveyance of real estate, the area of the estate should be designated in the contract, the vendor shall be obliged to deliver all that is included within such boundaries, even should it exceed the area specified in the contract; and, should he not be able to do so, he shall suffer a reduction of the price in proportion to what is lacking of the area, *unless the contract be annulled by reason of the vendee's refusal to accept anything other than that which was stipulated*."

A study of the Spanish commentators discloses that the meaning of article 1471 is not as clear as it might be, and that they are not unanimous in their views. Manresa gives emphasis to the intention of the parties and the option on the part of the purchaser to rescind the contract. To quote from Manresa:

> "The rule in the latter case is found in the second paragraph of article 1471, with the exception of the first clause which refers to the former hypothesis. This rule may be formulated as follows: Whether the case is one of sale of realty for a lump sum or of two or more for a single price which is also a lump sum and, consequently, not at the rate of a specified price for each unit of measure or number, the vendor shall be bound to deliver all that is within the boundaries stated although it may exceed the area or number expressed in the
> contract; in case he cannot deliver it, the purchaser shall have the right to reduce the price proportionately to what is lacking of the area or number, *or rescind the contract at his option.*
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"The manner in which the matter covered by this article was distributed in its two paragraphs contributes to making it difficult to understand. The rule might have been clearly stated had the first clause of the second paragraph been included in the first paragraph, the latter to end with the words, The same rule shall apply when two or more estates are sold for a single price.' And if by constituting an independent paragraph, with the rest of the second paragraph, it were made to appear more expressly that the rule of the second paragraph thus drawn referred to all the cases of paragraph one, as we have expounded, namely, to the case of a sale of one single estate and that of two or more for one single price, the precept would have been clearer.

"In our opinion, this would have better answered what we deem to be the indubitable intention of the legislator.

"Some eminent commentators construe the last part of article 1471 in a different way. To them the phrase 'and should he not be able to do so' as applied to the vendor, does not mean as apparently it does 'should he not be able to deliver all that is included within the boundaries stated,' but this other thing, namely, that if by reason of the fact that a less area is included within the boundaries than that expressed in the contract, it is not possible for the vendor to comply therewith according to its literal sense, he must suffer either the effects of the nullity of the contract or a reduction of the price proportionately to what may be lacking of the area or number. It is added as a ground for this solution that if the vendor fulfills the obligation, as stated in the article, by delivering what is not included within the boundaries, there can never be any case of proportionate reduction of the price on account of shortage of area, because he does not give less who delivers all that he bound himself to.

"According to this opinion, which we believe erroneous, if within the boundaries of the property sold, there is included more area than that expressed in the title deeds, nothing can be claimed by the vendor who loses the value of that excess, but if there is less area, then he loses also, because either the price is reduced or the contract is annulled. This theory would be anomalous in case of sale of properties in bulk, but, above all, would do gross injustice which the legislator never intended.

> "There is no such thing. So long as the vendor can deliver, and for that reason, delivers all the land included within the boundaries assigned to the property, there can be no claim whatsoever either on his part, although the area may be found to be much greater than what was expressed, nor on the part of the purchaser although what area may be in reality much smaller. But as he sold everythipg within the boundaries and this is all the purchaser has paid, or must pay, for whether much or little, if afterwards, it is found that he cannot deliver all, because, for instance, a part, a building, a valley, various pieces of land, a glen, etc., are not his, there is no sale of a specified thing, there is no longer a sale of the object agreed upon, and the solution given by the article is then just and logical: Either the contract is annulled or the price is reduced proportionately." (10 *Comentarios al Codigo Civil*, p. 157.)

The principle is deduced from the Code, that if land shall be sold within boundaries with an expression of the area and if the area is grossly deficient, the vendee has an option, either to have the price reduced proportionately or to ask for the rescission of the contract. The rule of the civil law is more favorable to the purchaser than is the common law. It gives the excess to the purchaser without compensation to the vendor, where the property is sold by a specific description followed by the mention of the quantity or measure, but allows the purchaser either to secure a deduction from the price in case of a deficiency or to annul the contract.

The decision of this court which gave most direct consideration to article 1471 of the Civil Code, now chiefly relied upon by the appellant, is found in Irureta Goyena *vs*. Tambunting ([1902], 1 Phil., 490). The rule announced in the syllabus is this: "An agreement to purchase a certain specified lot of land at a certain specified price is obligatory and enforceable regardless of the fact that its area is less than that mentioned in the contract." Taken literally, this rule would lead to the result desired by the appellant. But the syllabus naturally must be understood in relation with what is found in the decision itself; and the fact was that the tract of land was mentioned as being located at No. 20 Calle San Jose, Ermita, Manila. The private contract expressed a specific thing as the object of the contract and specified a certain price. There was no statement in the document of the superficial area and no hint in

the record that either or both parties were misled. The facts, therefore, are different than those before us and the doctrine in the Irureta Goyena *vs*. Tambunting case, can well be followed and distinguished.

A comparative study of the American authorities throws considerable light on the situation. In volume 39 Cyc., page 1250, under the subject "Vendor and Purchaser," is found the following:

> "If, in a contract of sale the quantity of the realty to be conveyed is indicated by a unit of area, as by the acre, a marked excess or deficiency in the quantity stipulated for is a ground for avoiding the contract. Since it is very difficult, if not impossible, to ascertain the quantity of a tract with perfect accuracy, a slight excess or deficiency does not affect the validity of the contract.
>
> "Where, however, the contract is not for the sale of a specific quantity of land, but for the sale of a particular tract, or designated lot or parcel, by name or description, for a sum in gross, and the transaction is *bona fide*, a mutual mistake as to quantity, but not as to boundaries, will not generally entitle the purchaser to compensation, and is not ground for rescission. But it is well settled that a purchaser of land, when it is sold in gross, or with the description, 'more or less,' or 'about,' does not thereby *ipso facto* take all risk of quantity in the tract. If the difference between the real and the represented quantity is very great, both parties act obviously under a mistake which it is the duty of a court of equity to correct. And relief will be granted when the mistake is so material that if. the truth had been known to the parties the sale would not have been made."

Volume 27 of the Ruling Case Law, pages 354, 434, 436, states what follows:

> "A mutual mistake as to the quantity of the land sold may afford ground for equitable relief. As has been said, if, through gross and palpable mistake, more or less land should be conveyed than was in the contemplation of the seller to

part with or the purchaser to receive, the injured party would be entitled to relief in like manner as he would be for an injury produced by a similar cause in a contract of any other species. And when it is evident that there has been a gross mistake as to quantity, and the complaining party has not been guilty of any fraud or culpable negligence, nor has he otherwise impaired the equity resulting from the mistake, he may be entitled to relief from the technical or legal effect of his contract, whether it be executed or only executory. It has also been held that where there is a very great difference between the actual and the estimated quantity of acres of land sold in gross, relief may be granted on the ground of gross mistake. Relief, however, will not be granted as a general rule where it appears that the parties intended a contract of hazard, as where the sale is a sale in gross and not by acreage or quantity as a basis for the price; and it has been held that a mistake on the part of the vendor of a town lot sold by description as to number on the plat, as to its area or dimensions, inducing a sale thereof at a smaller price than he would have asked had he been cognizant of its size, not in any way occasioned or concealed by conduct of the purchaser, constitutes no ground for the rescission of the contract. The apparent conflict and discrepancies in the adjudicated cases involving mistakes as to quantity arise not from a denial of or a failure to recognize the general principle, but from the difficulty of its practical application in particular cases in determining the questions whether the contract was one of hazard as to quantity or not and whether the variance is unreasonable. The relative extent of the surplus or deficit cannot furnish, *per se*, an infallible criterion in each case for its determination, but each case must be considered with reference not only to that but its other peculiar circumstances. The conduct of the parties, the value, extent, and locality of the land, the date of the contract, the price, and other nameless circumstances, are always important, and generally decisive. In other words, each case must depend on its own peculiar circumstances and surroundings."

"The rule denying relief in case of a deficit or an excess is frequently applied in equity as well as at law, but a court of equity will not interfere on account of either a surplus or a deficiency where it is clear that the parties intend a contract of hazard, and it is said that although this general rule may not carry into effect the real intention of the parties it is calculated to prevent litigation. From an early date courts of equity under their general

jurisdiction to grant relief on the ground of mistake have in case of a mistake in the estimation of the acreage in the tract sold and conveyed interposed their aid to grant relief to the vendor where there was a large surplus over the estimated acreage, and to the purchaser where there was a large deficit. For the purpose of determining whether relief shall be granted the courts have divided the cases into two general classes: (1) Where the sale is of a specific quantity which is usually denominated a sale by the acre; (2) where the sale is of a specific tract by name or description, which is usually called a sale in gross. * * *"

"Sales in gross for the purpose of equitable relief may be divided into various subordinate classifications: (1) Sales strictly and essentially by the tract, without reference in the negotiation or in the consideration to any designated or estimated quantity of acres; (2) sales of the like kind, in which, though a supposed quantity by estimation is mentioned or referred to in the contract, the reference was made only for the purpose of description, and under such circumstances or in such a manner as to show that the parties intended to risk the contingency of quantity, whatever it might be, or how much soever it might exceed or fall short of that which was mentioned in the contract; (3) *sales in which it is evident, from extraneous circumstances* of locality, value, price, time, *and the conduct and conversations of the parties, that they did not contemplate or intend to risk more than the usual rates of excess or deficit in similar cases, or than such as might reasonably be calculated on as within the range of ordinary contingency;* (4) sales which, though technically deemed and denominated sales in gross, are in fact sales by the acre, and so understood by the parties. Contracts belonging to either of the two first mentioned classes, whether executed or executory, should not be modified by the chancellor when there has been no fraud. But *in sales of either the third or fourth kind, an unreasonable surplus or deficit may entitle the injured party to equitable relief, unless he has, by his conduct, waived or forfeited his equity.* * * *"

The memorandum-agreement between Asiain and Jalandoni contains the phrase "more or less." It is the general view that this phrase or others of like import, added to a statement of quantity, can only be considered as covering inconsiderable or small differences one way or the other, and do not in

themselves determine the character of the sale as one in gross or by the acre. The use of this phrase in designating quantity covers only a reasonable excess or deficiency. Such words may indeed relieve from exactness but not from gross deficiency.

The apparent conflict and discrepancies in the adjudicated cases arise not from a denial of or a failure to recognize the general principles. These principles, as commonly agreed to, may be summarized as follows: A vendee of land when it is sold in gross or with the description "more or less" does not thereby *ipso facto* take all risk of quantity in the land. The use of "more or less" or similar words in designating quantity covers only a reasonable excess or deficiency. Mutual mistake of the contracting parties to a sale in regard to the subject-matter of the sale which is so material as to go to the essence of the contract, is a ground for relief and rescission. It has even been held that when the parties saw the premises and knew the boundaries it cannot prevent relief when there was mutual gross mistake as to quantity. Innocent and mutual mistake alone are sufficient grounds for rescission. (Bigham *vs*. Madison [1899], 47 L. R. A., 267.) The difficulty comes from the application of the principles in particular cases.

A practical demonstration of what has just been said is disclosed by the notes in volume 27 of Ruling Case Law, page 439. In the following cases, relief was denied: Lawson *vs*. Floyd, 124 U. S., 108; 8 S. Ct., 409; 31 U. S. (L. ed.), 347 (estimated acreage about 1,000 acres; shortage 368 acres); Frederick *vs*. Youngblood, 19 Ala., 680; 54 Am. Dec., 209 (estimated acreage 500 acres more or less; shortage 39 acres); Jones *vs*. Plater, 2 Gill (Md.), 125; 41 Am. Dec., 408 (stated acreage 998 acres; shortage 55 acres); Frenche *vs*. State, 51 N. J. Eq., 624; 27 Atl., 140; 40 A. S. R., 548 (stated acreage 195-98/100 be the same more or less; shortage 1-37/100); Faure *vs*. Martin, 7 N. Y., 210; 57 Am. Dec., 515 (stated acreage 96 acres more or less; deficit 10 acres); Smith *vs*. Evans, 6 Bin. (Pa.), 102; 6 Am. Dec., 436 (shortage of 88 acres in tract conveyed as containing 991¼ acres more or less); Jollife *vs*. Hite, 1 Call (Va.), 301; 1 Am. Dec., 519 (stated acreage 578 acres more or less; shortage 66 acres); Pendleton *vs*. Stewart, 5 Call (Va.), 1; 2 Am. Dec., 583 (stated acreage 1,100 acres more or less; shortage 160 acres); Nelson *vs*. Matthews, 2 Hen. & M. (Va.), 164; 3 Am. Dec., 620 (stated acreage 852 acres more or less; shortage of 8

acres). In the following cases relief was granted: Harrell *vs*. Hill, 19 Ark., 102; 68 Am. Dec., 202 (stated acreage 180 acres more or less; deficit 84 acres); Solinger *vs*. Jewett, 25 Ind., 479; 87 Am. Dec., 372 (stated acreage 121 acres more or less; deficit 36 acres); Hays *vs*. Hays, 126 Ind., 92; 25 N. E., 600; 11 L. R. A., 376 (stated acreage 23.4 acres more or less; deficit 5 acres); Baltimore, etc., Land Soc. *vs*. Smith, 54 Md., 187; 39 Am. Rep., 374 (stated acreage about 65 acres; deficit 30 to 35 acres); Newton *vs*. Tolles, 66 N. H., 136; 19 Atl., 1092; 49 A. S. R., 593; 9 L. R. A., 50 (stated acreage about 200 acres; deficit 65 acres); Couse *vs*. Boyles, 4 N. J. Eq., 212; 38 Am. Dec., 212 (stated acreage 135 acres more or less; deficit 30 acres); Belknap *vs*. Sealey, 14 N. Y., 143; 67 Am. Dec., 120 (stated acreage 8 acres more or less; deficit 4 acres); Paine *vs*. Upton, 87 N. Y., 327; 41 Am. Rep., 371 (stated acreage "about 222 acres be the same more or less;" shortage 18 acres); Bigham *vs*. Madison, 103 Tenn., 358; 52 S. W., 1074; 47 L. R. A., 267 (stated acreage 25 acres more or less; deficit 12 acres); Smith *vs*. Fly, 24 Tex., 345; 76 Am. Dec., 109 (stated acreage 500 acres more or less; deficit 115 acres); Triplett *vs*. Allen, 26 Grat. (Va.), 721; 21 Am. Rep., 320 (stated acreage 166 acres more or less; deficit 10 acres); Epes *vs*. Saunders, 109 Va., 99; 63 S. E., 428; 132 A. S. R., 904 (stated acreage 75 acres more or less; deficit 22 acres); McComb *vs*. Gilkeson, 110 Va., 406; 66 S. E., 77; 135 A. S. R., 944 (stated acreage 245 acres more or less; deficit 10 acres).

A case often cited and which on examination is found to contain a most exhaustive review of the decisions, is that of Belknap *vs*. Sealey ([1856], 14 N. Y., 143; 67 Am. Dec., 120). The facts were: "Upon the merits of the controversy the case is quite simple in its facts. The land in question is situated in the city of Brooklyn; and being valuable only for division and sale as city lots, its value is precisely in proportion to the quantity. In consideration of the gross sum of fourteen thousand dollars, of which one thousand dollars was paid down, the defendant agreed to convey the land to the plaintiff, describing it as 'the premises conveyed to him by Samuel T. Roberts,' by deed dated about nine months previous. The deed of Roberts contained a definite description by metes and bounds, and stated the quantity to be '*about nine acres, more or less,*' excepting a certain parcel of one acre and six perches. The quantity in fact is only about half as much as the deed

asserted. The plaintiff, in agreeing to purchase the tract at the sum named, acted under a mistake which affected the price nearly one half, and the judge has found that the seller was mistaken also. * * * The judge has found that the actual quantity was substantially and essentially less than the plaintiff supposed he was purchasing; and although the finding does not so state in terms, there can be no difficulty, I think, in affirming that if the true quantity had been known, the contract would not have been made. The agreement has never been consummated by a conveyance. These are the only essential facts in the case." The learned Judge remarked: "The counsel for the defendant is obliged to contend, and he does contend, that mere mistake as to the quantity of land affords no ground of relief against a contract in the terms of the present one, however serious such mistake may be, and although we can readily see the contract would never have been made if the quantity had been made known. The convenience of such a rule has been insisted on, and in the denial of justice it certainly has the merit of simplicity. If the doctrine is true as broadly as stated, then there is one class of contracts to which the settled maxim that equity will relieve against mistake can have no application. Upon a careful examination of the cases cited, as well as upon principle, my conclusion is, that agreements of this description are not necessarily proof against the maxims which apply to all others." Then follows a review of the cases not alone of the state of New York and other states in the American Union but of England as well. The rule was announced that equity will rescind a contract for the sale of land for mutual mistake as to the quantity of land which the boundaries given in the contract contained, where the deficiency is material. "More or less," used in the contract in connection with the statement of the quantity, will not prevent the granting of such relief.

Coordinating more closely the law and the facts in the instant case, we reach the following conclusions: This was not a contract of hazard. It was a sale in gross in which there was a mutual mistake as to the quantity of land sold and as to the amount of the standing crop. The mistake of fact as disclosed not alone by the terms of the contract but by the attendant circumstances, which it is proper to consider in order to throw light upon the intention of the parties, is, as it is sometimes expressed, the efficient cause of the concoction. The mistake with reference to the subject-matter of the contract is such that, at the option of the purchaser, it is rescindable. Without such mistake the

agreement would not have been made and since this is true, the agreement is inoperative and void. It is not exactly a case of over reaching on the plaintiff's part, or of misrepresentation and deception, or of fraud, but is more nearly akin to a bilateral mistake for which relief should be granted. Specific performance of the contract can therefore not be allowed at the instance of the vendor.

The ultimate result is to put the parties back in exactly their respective positions before they became involved in the negotiations and before accomplishment of the agreement. This was the decision of the trial judge and we think that decision conforms to the facts, the law, and the principles of equity.

Judgment is affirmed, without prejudice to the right of the plaintiff to establish in this action in the lower court the amount of the rent of the land pursuant to the terms of the complaint during the time the land was in the possession of the defendant, and to obtain judgment against the defendant for that amount, with costs against the appellant. So ordered.

Johnson,
Avanceña, Villamor, and *Romualdez, JJ.,* concur.
Johns, J.,
concurs in the result only.
Street, J., dissents.

Date created: June 09, 2014