

JOSE SORIANO, PLAINTIFF-APPELLANT, VS. COMPANIA GENERAL DE TABACOS DE FILIPINAS, DEFENDANT-APPELLANT.*G.R. No. L-17392. December 17, 1966*

Ponente: BARRERA, J.

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This is an appeal taken by both parties from the decision of the Court of First Instance of Manila which rendered judgment for the plaintiff-appellant, Jose Soriano, on the principal claim, denying, however, the latter's claim for damages but granting to defendant-appellant, Compania General de Tabacos de Filipinas, its counterclaim.

Plaintiff's complaint alleges, among others, the following: That sometime in September 1937, defendant granted plaintiff a crop loan account to finance the planting, cultivation, harvesting, and milling of sugar cane in plaintiff's various sugar cane plantations in Negros Occidental; that to secure payment of the various amounts which plaintiff would withdraw from said crop loan account, plus the corresponding interest, plaintiff on September 17, 1937, executed a deed of mortgage in favor of defendant, mortgaging to the latter the properties specified and described therein; that, the parties expressly stipulated that subject to its terms and conditions, the deed of mortgage could be renewed upon their mutual agreement at the end of the crop year; that pursuant to the said renewal clause, plaintiff and defendant executed on or about August 5, 1941 another document entitled "CREDITO SOBRE AZUCAR-RENOVACION DE HIPOTECA CON GARANTIA ADICIONAL" for the 1941-42 crop year, by virtue of which the former deed of mortgage was renewed and plaintiff granted an additional crop loan of P253,000.00 for the 1941-42 crop year; that to guarantee the payment of this additional crop loan plus the interest that would be due thereon as well as the payment of the outstanding balance under the previous crop loans, plaintiff mortgaged in favor of defendant the same sugar plantations formerly mortgaged under the previous deed; that as additional security therefor, plaintiff likewise mortgaged the sugar cane crops that would be planted and harvested from the sugar plantations during the 1941-42 crop year, the sugar that would be produced and milled from said sugar cane crops during the said crop year, and all the centrifugal sugar with 96 degrees or more of polarization that would be produced from any sugar cane plantation of plaintiff for the 1941-42 crop year; that plaintiff obligated himself to assign and deliver to defendant the corresponding quedans pertaining to all the sugar mortgaged; that during the crop year 1941-42 plaintiff produced a total of 65,787.53 piculs of export sugar, which, together with the other sugar produced by plaintiff, was, pursuant to the agreement, delivered by plaintiff to defendant for its sale at the most advantageous prices, the proceeds of which sale to be credited to plaintiff's account; that pursuant to the agreement of August 5, 1941, plaintiff had been obtaining various sums from defendant from time to time, which with interest thereon, and after deducting the proceeds of the sale in 1941 of a small part of plaintiff's sugar delivered to defendant, amounted to P648,806.D6 as of December 29, 1941; that in the computation of the balance due from plaintiff, defendant did not include the proceeds of the sale of 51,528.01 piculs of sugar belonging to plaintiff and delivered to defendant, which sale was willfully withheld from plaintiff; that the amount of P648,806.06 was carried in the books of the defendant as the total indebtedness of plaintiff for which defendant continued to charge plaintiff interest at the rate of seven per cent (7% per annum compounded every six months, which was and is the usual rate of interest charged by

defendant on crop loans granted by it to planters; that during the Japanese occupation defendant sent periodic statement of accounts to plaintiff, who, noticing from said statements that his debt was considerably increasing due to the accumulation of the interest charged by the defendant and in view of defendant's demand for payment as expressed or implied in said statements of account, decided to pay and did pay as much of his supposed debt as he could during the Japanese occupation by borrowing money from his business associates and selling some of his valuable real and personal properties; that shortly after the liberation, plaintiff made several inquiries from defendant about the status of his export sugar produced during the 1941-42 crop year amounting to 65,787.53 piculs which plaintiff delivered to defendant; that plaintiff was informed by the defendant that said sugar was destroyed during the war and it advised Plaintiff to file a war damage claim before the War Commission of the United States; that acting on the said advice and by virtue of the certification in writing issued by defendant attesting to the loss of said sugar during the war, plaintiff filed the corresponding war damage claim and was accordingly paid by the War Damage Commission the sum of P130,000.00 which plaintiff is willing to return to the United States Government; that plaintiff received from defendant an itemized statement of account dated May 28, 1949 regarding his pre-war crop loan for the 1940-41 and 1941-42 crop years," which account, after deduction of the payments made by plaintiff during the Japanese occupation, showed a balance of 928,677.35 due the defendant as of March 10, 1945 which amount increased to P37,078.00 as of December 29, 1948 as a result of the addition of compound interest being charged by defendant; that after receipt of the above mentioned statement of account, plaintiff investigated as to what really happened to the export sugar he delivered to defendant and discovered that 51,528.01 piculs of sugar, instead of having been burned and destroyed during the last war as falsely represented by the defendant to plaintiff and to the War Damage Commission, had actually been shipped to and sold by the defendant in the United States on different dates in 1941, months before the outbreak of the war; that the proceeds of such sale were kept and retained by defendant for its own use without crediting the same for the account of plaintiff, to the damage and prejudice of plaintiff; that on June 27, 1956, plaintiff wrote defendant a letter informing it of what he had recently discovered and demanded that it pay to plaintiff the proceeds of the sale of the 51,520.01 piculs of sugar; that as defendant could not deny this startling discovery, it disclosed and admitted on August 2, 1956, in a letter of even date and on other occasions subsequent thereto, that it really had sold plaintiff's export sugar amounting to 51,528.01 piculs before the outbreak of the war, but claimed that according to its existing records it had sold a total of 63,528.01 piculs of sugar (including 12,000 piculs previously credited to plaintiff's account and never disputed) at the rate of P5.508 per picul; that plaintiff questioned the price of P5.508 per picul at which defendant allegedly sold plaintiff's sugar; that plaintiff informed defendant that according to his investigation the price of sugar on February 21, 1941 was P6.44 per picul which on May 27, 1941 went up to P7.55 per picul that after a long negotiation and several exchange of communication between plaintiff and defendant, the latter proposed to fix the price at P6.20 per picul which plaintiff accepted; that notwithstanding repeated demands defendant refused and still refuses to pay plaintiff the value of the 51,528.01 piculs of sugar in the total sum of P319,473.66 plus accrued interest of seven per cent (7%) per annum compounded semi-annually from the dates the sugar shipments were respectively sold; that the total proceeds, with interest thereon as above alleged, amounted to P737,681.00 as of June 30, 1956; that defendant in representing to and inducing plaintiff to believe that the export sugar produced during the 1940-41 crop year was destroyed during the war, when in fact it had sold said sugar, and in retaining the proceeds of said sale while charging plaintiff 7% interest compounded semi-annually on Plaintiff's debt, and compelling plaintiff to sell his valuable property to liquidate practically the whole of said debt, acted in bad faith and with malice and wanton attitude for which it stands liable to pay plaintiff moral and exemplary damages; that as a consequence of the willful refusal of defendant to pay plaintiff the amounts mentioned, plaintiff was forced to engage the services of counsel for the purpose of recovering the said amounts, the reasonable value of which service is submitted to the discretion of the court. The complaint accordingly prays that judgment be rendered in favor of plaintiff ordering

defendant to pay the plaintiff the sum of P319,473.66, the value of plaintiff's sugar sold by defendant plus the accumulated interest thereon at 7% per annum compounded semi-annually, which total amount with said interest, added up to P737,681.00 as of June 30, 1956; to pay the sum of P50,000.00 for moral and exemplary damages; to pay reasonable attorneys fees; and to pay the costs of the suit.

In its answer to this complaint, defendant denies certain allegations while admitting others. As first affirmative and special defense, defendant alleged that the totality of the export sugar produced by plaintiff and delivered to it amounted to only 64,253.26 piculs for the 1940-41 crop year; that in accordance with the agreement of August 5, 1941, plaintiff irrevocably authorized defendant to receive the former's export sugar in the latter's own name and for the latter's sale and disposition under the obligation to sell the same for the account of the plaintiff, whenever ordered to do so; that it was and has been the long established practice known to plaintiff for defendant to ship abroad in its own name as much sugar as ship-space allowed, and when any of defendant's clients, such as plaintiff, sent instructions to defendant to sell at a certain price, defendant merely credits client's crop loan account with the value of the sugar so ordered sold at the price prevailing on the date of the instructions received by defendant; that plaintiff pursuant to such established method ordered the sale of only 16,000 piculs of sugar out of the 64,253.26 piculs assigned to defendant but never expressed to defendant his desire to sell the rest of his sugar; that the sugar claimed by plaintiff as shipped to the United States in 1941 was so shipped in the name and for the account of defendant and not for the account of plaintiff; that the rest of plaintiff's sugar, aside from the aforesaid 16,000 piculs, was included in the 500,000 piculs stored in defendant's warehouse in Iloilo which were burned by the Philippine Army on April 15, 1942, for the loss of which he was duly compensated by the War Damage Commission. As second affirmative and special defense, defendant alleged that granting, without conceding, that plaintiff is legally entitled to be credited with the 51,528.01 piculs of sugar he claims to have been shipped for his account, (1) automatic compensation should take place by operation of law to the concurrent amounts between the two debts because the plaintiff is a debtor of the defendant on his crop loan account and at the same time a creditor of the defendant for the proceeds of the sale of plaintiff's sugar; (2) if plaintiff wants to be credited for the sale of the sugar received by the defendant for the 1940-41 crop year, plaintiff must be contented with receiving the price of sugar in the world market at those times when plaintiff's sugar was delivered to defendant, which was approximately P4.00 per picul, and consequently the value of the 51,528.01 piculs of sugar at the said price would be P206,112.04; (3) that plaintiff's total debt to defendant at the beginning of the Japanese Occupation would be P648,306.06 less the credit of P206,112.04 and the interest charged for this amount; (4) that plaintiff made undue excess payment during the Japanese Occupation in Japanese currency which excess payments were accepted in good faith by defendant; (5) that such undue excess payments by plaintiff to defendant in Japanese currency became valueless after liberation, (6) that defendant cannot be held liable for said excess payments made by plaintiff in Japanese currency. By way of first counterclaim, defendant alleges that plaintiff borrowed from defendant after liberation various sums for the purchase of fertilizer to be used in his sugar plantations, which sums with interest is agreed upon in writing amounted to P55,513.36 as of June 30, 1956; that plaintiff notwithstanding repeated demands for the payment of such account, refused and still refuses to pay defendant such amount. By way of second counterclaim, defendant alleges that the complaint is unfounded, capricious, and malicious; consequently, defendant is entitled to be reimbursed for such attorney's fees as the court might find just and equitable. The said answer accordingly prays that judgment be rendered in favor of defendant— (1) dismissing the complaint of plaintiff, with costs against him; (2) on the first counterclaim, ordering plaintiff to pay defendant the sum of P55,518.86 on his post-war account, plus interest thereon at 7% per annum compounded semi-annually from June 30, 1956, and (3) on the second counterclaim, ordering plaintiff to pay the defendant such amounts for attorney's fees and damages as this Court might find just and equitable. Plaintiff's reply to defendant's answer alleges among others, that while under the crop loan agreement, plaintiff's sugar could be sold by defendant only with the prior consent of plaintiff, yet said crop loan agreement also specifically granted defendant the full

authority, in its exclusive discretion and without plaintiff's further consent, to sell at the best obtainable price in the market, any of plaintiff's sugar remaining unsold after the month of June following the end of each milling season (October to March), the proceeds of such sale to be applied to the account of plaintiff; that sometime in 1940, because of worsening international situation there developed an acute shortage of shipping space and the probability arose that the tremendous amount of sugar the defendant had then in its possession belonging to its several customers, might not be shipped and sold to the United States, the plaintiff, upon request of defendant, had ordered and authorized the latter to dispose of and ship to the United States, at the first available space, all of his export sugar that he would be producing from time to time, with the understanding that the proceeds would be credited to the account of plaintiff; that it was in pursuance of this arrangement that defendant had always been shipping and selling, for plaintiff's account, all the latter's export sugar that were mortgaged to defendant; that after defendant had been informed by plaintiff of his discovery about the sale of his pre-war export sugar by defendant, the latter expressly confirmed to plaintiff that long before the outbreak of the war it actually shipped to the United States on different dates, for the account of plaintiff, on board S/S Pan Royal, Yaka, Raphael Semmes and Sagoland, said plaintiff's 51,520.01 piculs of sugar which were all covered by several quedans assigned and delivered to it under the terms of the crop loan agreement; that plaintiff therefore denies that the said 51,528.01 piculs of sugar was part of the 500,000 piculs allegedly burned by the Philippine Army on April 15, 1942; that the proceeds derived by defendant from the sale of said 51,528.01 piculs were never credited to the account of plaintiff but were instead wrongfully and maliciously retained by defendant for its own use to the prejudice of plaintiff; that plaintiff never requested defendant to furnish him a statement of his account during the Japanese Occupation; that the statement of account sent to him by defendant during the Japanese Occupation had been received in the ordinary course of business and were to all intents and purposes demands for payment, particularly that defendant continued to charge interest on his indebtedness as shown in said statement, at the rate of seven percent (7%) per annum, compounded every six months; that the statement of account dated May 28, 1950 which was received by plaintiff on or about December 27, 1950, moved plaintiff to investigate what really happened to his pre-war export sugar and led to the discovery of the facts alleged in the complaint; that the sale by defendant of said 51,528.01 piculs of sugar belonging to plaintiff, was never the subject of any proposed compromise, but said sale was freely, voluntarily and spontaneously admitted by defendant; that the only points of difference between plaintiff and defendant that they discussed with a view of reaching a compromise referred to the price at which the said 51,528.01 piculs of sugar were to be liquidated and to the basis of computing the amount that should be refunded to plaintiff; in the course of said discussion, defendant offered plaintiff to credit the latter with the value of his 51,528.01 piculs at the rate of P6.20 per picul as to the date they were shipped to the United States and that whatever amount he paid during the occupation in Japanese war notes in excess of his indebtedness would be refunded to plaintiff upon the basis of the Ballantyne Scale; that although plaintiff was agreeable to the price of P6.20 per picul, he rejected defendant's proposal not only because of their refusal of defendant to pay him the interest of 7% per annum to be compounded semi-annually, but also because said proposition was obviously unfair and unjust; that this is so because had defendant credited plaintiff with the proceeds it had derived from the sale of said sugar at the time they were sold to the United States, plaintiff would not have lost some of his valuable properties and he would not have been forced to borrow money from his business associates during the Japanese Occupation. By way of reply to defendant's first and second affirmative defenses, plaintiff among others, alleges that as defendant did not credit him with the proceeds it derived from the sale of the 51,528.01 piculs of sugar, and inasmuch as plaintiff's debt to defendant before the war was almost liquidated and paid during the Japanese Occupation when required to do so by defendant, the latter is now estopped to claim automatic compensation allegedly by operation of law, and that since defendant had admittedly sold plaintiff's sugar as the latter's agent, said defendant is now bound to turn over to plaintiff (as its principal), the said proceeds that it had derived from the sale of the sugar in question which, together with the corresponding interest thereon,

amounted to P787,681.00 as of June 30, 1956. By way of answer to defendant's first counterclaim, plaintiff alleges that after he discovered that defendant was indebted to him in the sum of 9787,681.00 as of June 30, 1956 for the sale of the sugar in question and which sum was not credited to his account, plaintiff made several demands upon defendant for the payment thereof with specific instructions that the sum of P55,518.60 (not P55,518.86) which he owes defendant under the fertilizer account as of June 30, 1956, be deducted therefrom, which defendant, however, up to the present, had not complied. And by way of answer to defendant's second counterclaim, plaintiff alleges, among others, that he has a good and valid cause of action against defendant. Said reply accordingly prays that judgment be rendered against defendant in accordance with the prayer embodied in plaintiff's complaint, with the modification that defendant be credited with the sum of P55,518.60 which plaintiff owes defendant under the fertilizer account. Upon these pleadings and the oral and documentary evidence adduced by both parties, the case was submitted for decision. On May 3, 1960, the lower court found for the plaintiff, stating in part as follows:

"RESPONSIVE TO ALL THE FOREGOING, judgment is hereby rendered ordering defendant to pay to plaintiff the total amount of 9220,273.66, being the proceeds from the sale of the 35,528.01 piculs of sugar in question with interest thereon at the rate of six (6%) per cent per annum from June 27, 1956 until fully paid, plus six (6%) per cent interest per annum on the amount of P99,220.00 from August 18, 1941 to December 31, 1942, and on defendant's counterclaim, ordering plaintiff, in turn to pay to defendant the amount of P55,518.60, with costs against the defendant."

From this decision both parties appealed raising several questions.

It is defendant's first contention in this appeal that the question regarding the exportation of plaintiff's 16,000 piculs of sugar could not be raised anymore because plaintiff was already credited on December 31, 1942, with the sum of P64,016.08, the value of the sugar in question. Plaintiff, however, maintains that the issue involved here is not whether plaintiff should be credited or not but whether plaintiff should have been credited with the proceeds of the sugar on August 18, 1941, the date when the sugar was exported instead of on December 31, 1942; and whether the plaintiff should be credited with the sum of P99,2000.00 (at the rate of P6.20 per picul) with interest thereon.

It is clear from the record and admitted by the defendant that in August, 1941, 16,000 piculs of sugar were in fact exported for the account of plaintiff; that defendant "first obtained the special permission" of the plaintiff for authority to export the latter's sugar in the defendant's bodega in Iloilo; and "armed with that authority" did in fact export 16,000 piculs of sugar. However, the issue begins where defendant maintains that because plaintiff did not give instructions to sell the 16,000 piculs of sugar exported for his account, this remained unliquidated and placed in a suspense account when the war broke out.

Defendant's position is untenable. If it had indeed exported plaintiff's sugar in question on the strength of and "armed with" the authority granted to it by plaintiff, the defendant would no longer need additional authority to sell said 16,000 piculs of sugar for plaintiff's account. The authority given by plaintiff to defendant to export the former's sugar, is understood to include, and does include the authority to sell said sugar for plaintiff's account. Having admitted the authority to export the sugar, defendant need not wait for further instructions from plaintiff to sell. As the lower court correctly stated:

"it appearing from plaintiff's arguments and defendant's counter arguments just quoted, that they are at one as to the fact that 'TABACALERA EXPORTED 15,000 PICULS OF SUGAR FOR THE ACCOUNT OF JOSE SORIANO SOMETIME IN AUGUST OF 1941', it was defendant's obligation to credit plaintiff's account with the proceeds thereof as of the date last mentioned, without a need for any instructions or confirmation by or from plaintiff. Having credited plaintiff with the said proceeds only as of December 31, 1942, instead of

August 13, 1941, defendant is deemed to have incurred in delay in the performance of its obligation, resulting in the payment of stipulated interest on the proceeds in question by plaintiff from August 18, 1941 to December 31, 1942 X X X."

Plaintiff therefore is entitled to be credited with the proceeds of the sugar from the date of shipment, on August 18, 1941, at the price per picul and with the rate of interest to be determined elsewhere in this opinion.

The next question raised in this appeal refers to the remaining 35,528.01 piculs of sugar left in defendant's possession after the sale of the 16,000 piculs of sugar for plaintiff's account. The lower court in this connection found that "defendant even admits having sold the said sugar for its own account and accordingly for its own profit." The defendant now contends that this finding by the lower court is "without basis whatsoever"; the defendant arguing that if this admission had in fact been made, there would be no case at all because the very issue is whether the defendant did in fact export plaintiff's sugar, defendant denying that it did, and maintaining that the same remained in Iloilo and was never exported because what was exported—granting that plaintiff's quedans were used—was defendant's own sugar and finally because the use of plaintiff's quedans did not mean the use of plaintiff's sugar.

The record bears out defendant's admission in this connection. In answer to paragraph IX of plaintiff's complaint, which in effect states that the sugar in question, instead of having been burned and destroyed during the war as falsely represented by defendant, had actually been shipped and sold in the United States on different occasions in 1941, the defendant alleged in part as follows: that the sugar referred to in said paragraph was shipped to the United States for defendant's own account and not for the account of the plaintiff. As first affirmative and special defense, defendant likewise alleged that it was and had been the long established practice known to plaintiff, for defendant to ship abroad in its own name as much sugar as ship space allowed, and when any of defendant's clients, such as the plaintiff, sent instructions to sell at a certain price, defendant merely credits the client's crop loan account with the value of the sugar sold at the price prevailing on the date of the instructions received by defendant. And lastly defendant averred that the sugar claimed by plaintiff as shipped to the United States in 1941, was so shipped, in the name and for the account of defendant and not for the account of plaintiff.

In addition to this, some documents—Exhibit K, a letter of defendant addressed to plaintiff; Exhibit K-2, a statement of plaintiff's sugar production for the 1940-41 crop year; Exhibit M-1, a memorandum prepared for the General Manager of defendant corporation—invariably and evidently point to the fact that at several instances, defendant had made export of plaintiff's various amounts of sugar.

In view of defendant's pleading, as well as the abovementioned documentary evidence, it is undeniable that defendant had admitted having actually shipped to the United States the sugar in question many months before the war broke out, although the defendant claims to have made said shipments for its own account and not for plaintiff's account.

The issue then boils down to whether plaintiff is entitled to be credited with the proceeds of the sale of the said 35,528.01 piculs of sugar.

Defendant avers that plaintiff should not be credited with the proceeds of the said sugar because the same was exported and sold in the United States without plaintiff's authority and for defendant's own account; that it is the company practice to credit plaintiff with the proceeds of such sugar as ordered sold by the latter for his account; and since plaintiff allegedly did not instruct the defendant to either export or sell the 35,528.01 piculs of sugar, it follows plaintiff can not be credited with the proceeds thereof.

This contention cannot be sustained. In line with what we had stated in the previous assignment of error, there was no need for an authorization from plaintiff to export his sugar because the defendant was expressly authorized

to sell plaintiff's sugar delivered to it, in pursuance to the loan agreement. And this is conclusively shown by the clause contained in the agreement. The authority to sell reads as follows:

"VENTAS. Los azucares quedan desde el dia de la expedicion de los quedanes, en el caso de entregarse por medio de estos o desde el momento de recibirse en los almacenes de la compania en el caso de entregarse en sacos, a ia libre disposicion de la Acreedora Hipotecaria, que podra, a su discrecion, almacenarlos en espera de mejora de precios, venderlos en plaza o embarcarlos para al exterior por cuenta y riesgo del Deudor Hipotecario, todos ellos o parte de ellos, en el momento que lo estimare conveniente u oportuno, con la conformidad el Deudor Hipotecario, al precio corriente en la plaza de Hollo en la fecha o fechas en que la venta o ventas se verificaren, pero despues de pasar los 90 dias desde la fecha de expedicion de los quedanes o de la entrega en el almacen de los azucares, la Accreadora Hipotecaria queda expresamente autorizada y facultada para venderlos inmediatamente sin la conformidad del Deudor Hipotecario al precio corriente en plaza en la fecha or fechas de la venta o ventas." (Italics supplied)

"Pero el caso, sin embargo, de que el Deudor Hipotecario-tuviere un saldo deudor en su cuenta con la Acreedora Hipotecaria que provenga de otros creditos aparte del concedido para la presente cosecha, la Acreedora Hipotecaria queda tambien expresamente autorizada y facultada para vender los azucares del Deudor Hipotecario- a su entera discrecion en qualquier tiempo, al precio corriente en plaza en la fecha o fechas en que se vereficaren dicha venta or ventas, sin la conformidad del Deudor Hipotecario."

This authority to sell was likewise stated in another printed document which the plaintiff signed:

"Por cuanto, he convenido con la citada Compania General de Tabacos de Filipinas, en todo ello y en que dicha Compania General de Tabacos de Filipinas pueda vender con mi (nuestro) consentimiento los azucares correspondientes a dicho quedanes aplicando su importe al y pago a mi (nuestra) deuda con intereses y demas gastos, entendiendose que si el dia 30 de Junio de 19 (41) lo susodichos azucares o parte alguna de ellos estuvieren aun sin vender, entonces dicha Compania General de Tabacos de Filipinas podra venderlos al precio en plaza en la fecha o fechas que a su exclusive discrecion creyere mas conveniente, para lo cual le autorizo desde ahora renunciando a todo derecho en contrario que pudiera tener."

By virtue of the above geoted provisions of the loan agreement between the parties, the defendant was authorized to sell plaintiff's sugar produced during the crop year 1940-41 even without the consent or instruction of the plaintiff when (X) the plaintiff's crop loan account for 1940-41 crop year was not fully liquidated within the period of 90 days from the date the quddans were issued or from the date the sugar was stored; and (2) when the plaintiff had outstanding obligations due to the defendant arising from credit accomodations other than the ones covered by the crop loan contract for the year 1940-41.

Since it is borne by the records that at the start of the crop year 1940-41, plaintiff still had an outstanding debt to the defendant in the amount of P428,829.29, pertaining to the crop year 1939-40, the defendant upon receipt of the quedans and the sugar covered by them from plaintiff's crop in 1940-41, could have sold the said sugar at its entire discretion at any time and at the current price obtaining on the date of sale even without the permission of the plaintiff. Now, as it is a proven fact as admitted by defendant that it had shipped 35,528.01 piculs of sugar belonging to plaintiff, it stands to reason - in view of defendants authority as embodied in the crop loan agreement - that it shipped said sugar for the account of plaintiff. Defendant cannot avail of its defense that it had so shipped the sugar for its own account on the ground that plaintiff did not instruct it to export the sugar for plaintiff's account. The trial court therefore correctly ruled that "defendant was expressly authorized to sell plaintiff's sugar delivered by the latter to the former at prices best obtainable in the market, and to credit plaintiff's account with the proceeds of the sale."

However, as a corollary to this particular assignment of error, defendant argues that although the crop loan agreement expressly authorized it to sell plaintiff's sugar without the latter's consent, it had, nevertheless, not

availed of such authority because of its policy to first secure the prior authority or instruction of the planters before it could sell the sugar.

This contention is untenable. Although defendant presented evidence to show its alleged practice of first securing its client's permission to sell sugar, the evidence is inadmissible. The agreement between the parties had been reduced to writing, and under its terms defendant could sell and was so authorized to sell plaintiff's sugar in any manner it deemed convenient, provided that the proceeds thereof be credited to plaintiff's account. Defendant now cannot be permitted to adduce evidence to prove its alleged practice, which to all purposes, would alter the terms of the written agreement. Section 22, Rule 123 of the Rules of Court provides: "When the terms of an agreement have been reduced to writing, it is to be considered as containing all those terms, and therefore, there can be, between the parties and their successors in interest, no evidence of the terms of the agreement other than the contents of the writing, except in the following cases: x x x." Whatever therefore is not found in the writing must be understood to have been waived and abandoned (3 MDRAN 189). Inasmuch as the case at bar does not fall under any of the exceptions mentioned in the Rule cited, defendant may not adduce evidence to show a practice other than that permitted by the terms of the agreement. The lower court therefore correctly ruled against the admissibility of such evidence.

Defendant also contends that it was its practice to indiscriminately use its client's quedans delivered to it under the terms of the crop loan agreement and whenever it thus used said quedans, it is argued, it did not necessarily mean it used the sugar covered by the said quedans. This contention is erroneous. Quedans represent the sugar covered by it (Siy Cong Bieng vs. Hongkong and Shanghai Banking Corporation, 55 Phil. 598, 604, 605). It is evidence to show that the person in whose name it was issued is the owner of the quantity of sugar mentioned therein. Consequently, when defendant used plaintiff's quedans, it used the sugar covered by the said quedans.

Contrary therefore to defendant's contention, plaintiff's 35,528.01 piculs of sugar was not left in its bodegas and burned during the Japanese Occupation. Evidence clearly proves that defendant had exported plaintiff's sugar and did not credit the latter with the proceeds thereof. In view of the foregoing, plaintiff is entitled to be credited with the proceeds of the sale of the remaining 35,528.01 piculs of sugar.

The trial court having held that the sugar exported by defendant belonged to the plaintiff and that the latter is entitled to credit for its value, defendant now contends on appeal that the lower court erred in not reducing the value by the war damage compensation admittedly received by the plaintiff and in not ordering the plaintiff to pay the defendant the P130,000.00 admittedly received by plaintiff from the War Damage Commission.

The records reveal that because of defendant's certification that plaintiff had lost 35,528.01 piculs of sugar stored in defendant's bodega during the war, plaintiff was able to receive from the War Damage Commission the sum of P130,000.00 as war damage compensation. It is defendant's argument now that in view of the lower court's finding that defendant exported the 35,528.01 piculs of sugar in question, plaintiff did not lose said sugar but instead, it was defendant who lost the sugar burned in its bodegas, and who should be entitled to the War Damage compensation.

On the other hand, plaintiff, citing the provisions of the Philippine Rehabilitation Act of 1946 (Title 50 U.S.C.A.), maintains that in view of the false representations made by defendant in its certification to the War Damage Commission in favor of plaintiff, the War Damage Commission, under section 1757 of said law, "could take such actions as may be necessary to recover" from the plaintiff whatever amount paid to him on the strength of the false certification issued by the defendant; that since the payment made to the plaintiff was erroneous, the money he received retains its character as public funds of the U.S. Government and could not be disposed of except by the said Government through its authorized agency, and consequently defendant should direct its petition to the

War Damage Commission; that defendant has not presented evidence showing loss or damage it had suffered during the last war for which it should be Compensated with the sum which plaintiff received as damage compensation.

We believe and so hold in this connection, that the defendant is the lone entitled to the payment of the P130,000.00 war damage compensation because, as the lower court found, the sugar lost in the bodega for which the war damage compensation was paid, belonged to the defendant and not to the plaintiff. But since the one who filed the claim and who received the war damage compensation is the plaintiff, and it now results that the claim as presented was false because the representation made therein that the sugar lost was his when in fact, as now established, belongs to the defendant, plaintiff has incurred certain liability with the War Damage Commission in respect to the amount received by him. He is not now at liberty to dispose of the amount without the knowledge and consent of the War Damage Commission. In other words, said amount does not legally belong to him and consequently, he can not turn it over to the defendant. If this is so, the amount can not be deducted from whatever may be found to be due from the defendant to the plaintiff, because the War Damage Commission, not being a party to this action, can not be bound by the judgment to be rendered by this Court. But neither is the plaintiff entitled to retain the war damage compensation. We note plaintiff's recognition of this fact and its undertaking the refund thereof to the War Damage Commission. However, in fairness to the defendant, we believe the proper remedy is to make a judicial consignment of the sum of P130,000.00 by the plaintiff to permit the defendant and the War Damage Commission to interplead and have their respective rights or claims thereto judicially determined.

Defendant, after making several analyses of the various effects of the payments that plaintiff made during the Japanese Occupation, contends that the lower court erred in not applying the law on automatic set off, so that payments by the plaintiff during the occupation in occupation currency were overpayments which lost their value.

Defendant's analyses are of no consequence because its first analysis is premised on the theory that plaintiff's sugar was destroyed by the Japanese Forces—which theory we have disregarded earlier in this opinion - while the second analysis is premised on the theory that plaintiff's payments made during the occupation were in the nature of deposits on plaintiff's current account maintained with defendant and consequently valueless by virtue of Executive Order No. 49 issued by President Garcia—which theory, again, we cannot sustain because the payments made by plaintiff, as the records will bear, were not deposits but actual payments of the crop loan extended to plaintiff by defendant. Furthermore, plaintiff is not praying for any reimbursement of any alleged overpayments but on the contrary, he is praying for the value of the 35,528.01 piculs of sugar which defendant exported without crediting to his account.

Defendant cannot also avail of the defense of automatic compensation because under the provisions of Article 1195 of the Old Civil Code, as well as Article 1278 of the New Civil Code, compensation takes place when two persons in their own right are creditors and debtors of each other. Now, if, as defendant theorizes, the sugar was "shipped to the United States for the defendant's own account", it cannot then reverse its fact and consider plaintiff as its creditor. And even if, for the sake of argument, we consider plaintiff to be defendant's creditor to the extent of the value of the 35,528.01 piculs of sugar which defendant exported without crediting to plaintiff's account, then plaintiff would be defendant's creditor only because of defendant's fault and breach of the crop loan agreement by not crediting plaintiff with the sale of the sugar.

Neither could defendant invoke the provisions of Article 1895 of the Old Civil Code on *solutio indebiti* because the doctrine is clearly not applicable to the case at bar. What plaintiff is demanding in this action is not a return of any erroneous payments—as is maintained by the defendant—but the payment of the proceeds realized by defendant from the sale of plaintiff's 35,528.01 piculs of sugar.

Defendant's next contention is that the trial court erred in requiring defendant to pay the plaintiff for the sugar in question at the rate of P6.20 per picul after it had found the said price to "have been reckoned with as reasonable and fair by both parties", because plaintiff has not presented any evidence to prove the prices of sugar on the dates his sugar in question were shipped by defendant and because the price of P6.20 per picul was only the price at which defendant was willing to liquidate plaintiff's sugar and offered solely for purposes of a compromise agreement which failed.

Defendant's contention cannot be sustained. Plaintiff's Exhibit L, a letter written by plaintiff to the General Manager of the defendant company, quotes the price of sugar ranging from P7.30 to P7.55 per picul in 1941, which prices were obtained from the Lopez Sugar Central Milling Co. and the Elizalde & Company. In fact, defendant's own official, Mr. Alfonso Dampiere, testified that the price of sugar in 1941 was between P6.00 and P7.00 per picul. It therefore appears that plaintiff in order to avoid litigation was agreeable to liquidate the sugar in question at P6.20 per picul as offered in compromise but the compromise failed due to some other reason explained in plaintiff's brief.

With respect to defendant's contention as to the admissibility of said price in evidence, he brings to light our decision in the case of *El Varadero de Manila vs. Insular Lumber Company* (46 Phil. 176, 178) that as a general rule, an offer of compromise is inadmissible in evidence, but where the amount named in the offer to accept a certain sum in settlement appears to have been arrived at as a fair estimate of value, it is relevant. In this case we held that the rule of exclusion of compromise negotiations does not apply where there is no denial expressed or implied of liability for the 35,528.01 piculs of sugar. The records bear that defendant admitted having shipped the sugar and consequently admitted liability therefor. From all that appears on the record, the only question that seemed to have been the subject of the compromise negotiations was the price at which the said sugar would be credited to plaintiff's account. And inasmuch as the price of P6.20 per picul appears to be a fair estimate of the value based on the prices quoted by the other sugar centrals during the 1941 period and the declaration of defendant's own witness to that effect, said price is relevant evidence and not falling with the exclusion rule.

Defendant's last assignment of error is that the lower court erred in ordering it to pay 6% interest on the P99,200.00 representing the value of the 16,000 piculs of sugar it had exported from August 18, 1941 to December 31, 1942.

The evidence establishes that defendant exported plaintiff's 16,000 piculs of sugar on August 18, 1941 but did not credit plaintiff with the proceeds thereof on the said date but credited plaintiff only on December 31, 1942 with the sum of P64,016.80. Pursuant to the crop loan agreement, it was defendant's obligation to credit plaintiff's account with the proceeds of the sale as of August 18, 1941. The lower court therefore correctly found that the defendant incurred in delay in the performance of its obligation in this respect and correctly ordered the defendant to pay the stipulated interest on the proceeds in question from August 18, 1941 to December 31, 1942. In determining the value of said sugar, the lower court correctly considered from the evidence the price of P6.20 per picul, the price then prevailing in the market in 1941, so that the value of the 16,000 piculs of sugar should be P99,200.00 instead of 964,016.80. Having incurred in delay, in crediting plaintiff with the said amount, defendant should pay plaintiff 6% interest on the the sum of P99,200.00 from August 18, 1941 to December 31, 1942.

Plaintiff as appellant, however, first contends that the trial court erred in holding that "it finds no legal, contractual or factual basis for awarding plaintiff's claim for interest at seven (7%) per cent per annum compounded semi-annually on the proceeds of the sale of the sugar, to be computed from the dates when the sugar were respectively shipped and sold in the United States to the date of payment".

In this connection the lower court stated:

"In other words, defendant justifies its acts complained of in reliance upon the alleged practices which, although not found in the parties' written agreements, were followed by it and its clients. In thus relying upon the said practices, it can hardly be said that the defendant, acted from a desire to defraud plaintiff so as to bring said defendant's acts within the contemplation of the word 'fraud' used in said Article 1101 of the old Civil Code. This is so for the reason that said acts, being in accordance with practices previously followed by defendant and known to its clients, may be inconsistent with any deliberate willful or malicious intention on its part to take advantage of plaintiff's property at the latter's expense, while on the other hand, they may be perfectly consistent with good faith and the honest belief that the said practices were regular and above board. That this Court has now found that the said practices could not be made to prevail over the written covenants between the parties, and that the defendant is accordingly liable to the plaintiff for the proceeds of the 35,528.01 piculs of sugar in question, does not detract from the sincerity of the defendant's acts and much less taint them with any fraudulent purpose."

After finding no fraud in defendant's failure to credit plaintiff with the value of the 35,528.01 piculs of sugar, the lower court went further to consider the extent of the damage suffered by plaintiff but did not, however, award any interest. Said the lower court:

"Nevertheless, it is undoubted that because of the defendant's failure to credit plaintiff's account with the proceeds of said 35,528.01 piculs of sugar, plaintiff was unjustifiably compelled to pay the stipulated interest thereon, he was damaged and prejudiced to the extent of this undue payment, as to the exact or approximate amount of which neither plaintiff nor defendant has seen fit to enlighten this court."

The question therefore, to be determined in this particular assignment of error is whether defendant was guilty of fraud in failing to credit plaintiff with the proceeds of the sale of the sugar in question and whether plaintiff is entitled to interest by way of damages and at what rate.

The records show that pursuant to the crop loan agreement, the defendant usually sold plaintiff's sugar and thereafter credited him with the proceeds thereof. But in the earlier portion of this opinion, we found that defendant did in fact export 35,528.01 piculs of plaintiff's sugar on certain dates for which the plaintiff was not credited. Consequently, plaintiff's debt to the defendant remained outstanding, a great part of which, however, was liquidated by plaintiff during the Japanese Occupation leaving a balance as of January 1, 1945. After the liberation, plaintiff inquired from defendant as to what happened to the sugar he produced during the crop year 1940-41, to which defendant replied that plaintiff's sugar had been burned by the Philippine Army on April 15, 1942. Armed with defendant's certification attesting to said loss, plaintiff filed a war damage claim with the War Damage Commission and was consequently paid therefor. However, sometime in 1951, plaintiff learned from the General Manager of the offices of the La Carlota Sugar Central that the sugar he produced and delivered to the defendant during the abovementioned crop year, and which defendant claims to have been lost during the war, was in reality shipped and sold by defendant in the United States many months before the outbreak of the war, without crediting plaintiff with the proceeds thereof. Thereupon, plaintiff notified defendant of what he found out and there began a series of negotiations between the parties which later proved to be failures.

It is plaintiff's contention that these facts clearly and convincingly prove the evident dishonest intention of defendant to defraud plaintiff and to keep for itself the proceeds derived from the sale of the sugar, and that defendant's act of hiding from plaintiff the fact that it had shipped his sugar is sufficient proof to show deceitful and fraudulent intent of defendant to enrich itself at the expense of the plaintiff. Plaintiff further states that had defendant acted in good faith and credited plaintiff with the proceeds of the sale, his debt would have been greatly reduced and plaintiff would not have had to incur difficulties in paying the same.

Under the circumstances, we believe, and so hold, that defendant is guilty of fraud in the transaction. The trial court in declaring defendant free from fraud relied upon the alleged practice of defendant to first obtain the

permission of its clients before selling the latter's sugar, the court reasoning that defendant's act in accordance with the alleged practice "may be inconsistent with any deliberate, willful or malicious intention on its part to take advantage of plaintiff's property."

The difficulty with this reasoning is that it makes use of the alleged practice of defendant as a basis to presume good faith on the part of the defendant when the said practice was not proved during the trial, and furthermore, evidence of said practice was not even accepted by the lower court. It is inconsistent for the lower court to first rule out said alleged practice for being unmeritorious and as nothing but a "concoction and an afterthought defense" to later take the same into account in determining whether defendant is guilty of fraud, bad faith and wanton malice.

The main reason, however, which makes us believe that defendant acted in bad faith is the fact that it completely concealed the shipment of plaintiff's sugar. If it is true as defendant contends in its brief—that defendant shipped plaintiff's sugar for its own account and therefore, under that theory, not obligated to credit plaintiff with the same, then why did defendant not inform plaintiff of this fact? What makes defendant's conduct more doubtful in this regard is that it even led plaintiff to believe that plaintiff's sugar was burned. Borrowing the lower court's language, "to add insult to injury", defendant even helped plaintiff to secure a war damage compensation from the War Damage Commission. Furthermore, if defendant had really shipped the sugar for its own account, why had defendant gone through a series of negotiations with plaintiff regarding the price per picul for which plaintiff would be credited? The inevitable conclusion is that defendant fraudulently led plaintiff to believe that the latter's sugar had been burned, concealing the fact that the said sugar had actually been shipped for which plaintiff had not been credited.

Whether plaintiff is entitled to damages for defendant's fraudulent act is a point which plaintiff discusses at length in his brief.

It is plaintiff's main contention that defendant should be made to pay the same rate of interest it had been charging and collecting from plaintiff (7% compounded semi-annually) and which plaintiff should not have paid had defendant duly credited him with the proceeds of the sale of the sugar. However, as an alternative argument, plaintiff also maintains that in the event that this Court finds no legal, contractual, or factual basis to grant his demand for the payment of the 7% interest as above stated, the defendant is nevertheless, liable, as an agent of plaintiff, to pay interest at the rate of 6% per annum on the same amount in question. Lastly, plaintiff argues that in the event the last contention be not sustained by this Court, defendant is still liable to pay plaintiff the interest at the rate of 6% per annum on the amount of P220,273.66 from the date of plaintiff's first extrajudicial demand till the date of payment.

Suffice it to state that the records do not sufficiently prove the existence of an agency between the plaintiff and the defendant, for although defendant was authorized to sell plaintiff's sugar at the best price obtainable and to credit plaintiff with the sale thereof, these facts alone do not establish the existence of an agency. The authorities relied upon by plaintiff to support his contention that an agent is liable to pay interest to the principal is therefore not applicable. Neither can plaintiff now successfully argue that defendant was not authorized under the crop loan agreement to charge 7% interest compounded semi-annually and thus be obliged to return the amount collected as interest at that rate because plaintiff did not raise this issue before the lower court and cannot now raise the same for the first time on appeal. In any case, the defendant is liable to make good the loss or injury that it had occasioned the plaintiff from its wrongful concealment of the shipment and disposition of plaintiff's sugar. Legally looked at, defendant had incurred in delay in its obligation to credit plaintiff with the proceeds of the sale of the 35,528.01 piculs of sugar. Hence, under the provisions of Article 1108[1] of the old Civil Code as well as Article 2209[2] of the New Civil Code, plaintiff is entitled to the payment of legal interest from the date the

shipments were made—which were the same dates that plaintiff was entitled to be credited therefore—to the date of payment.

As previously stated elsewhere in this opinion, the plaintiff is entitled to be credited and in fact was credited with the sum of P64,916.80 for the sale of the 16,000 piculs of sugar shipped on August 18, 1941. We also sustained the findings of the lower court fixing the value of the 16,000 piculs of sugar at P99,200.00 at the rate of P6.20 per picul. However, in this connection, plaintiff points out that the lower court did not order the defendant to pay the sum of 935,183.20 which is the difference between the sum of P99,200.00 the value of the sugar as fixed heretofore, and the sum of 964,016.80 which is the amount with which defendant credited plaintiff for his sugar on December 31, 1942. It is beyond question therefore that plaintiff is, in consonance with our findings in the preceding paragraphs, entitled to recover from defendant the sum of P35,183.20 plus six per cent interest per annum from the date when the sugar was exported to the time of payment. In addition to this, defendant should likewise pay plaintiff six per cent interest per annum on the sum of P64,016.80 from the date of shipment of the 16,000 piculs of sugar on August 18, 1941 to December 31, 1942, the time when defendant only credited plaintiff with the said amount.

Plaintiff next alleges that the lower court erred in not ordering defendant to pay him interest at the rate of 6% per annum on the accrued interest on the various amount due from defendant, from the filing of the complaint to the date of payment. Plaintiff cites Article 2212 of the New Civil Code providing that "interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point."

We have held in several instances that accrued interest draws legal interest from the time that the suit is filed for its recovery. (*Bachrach v. Golingo*, 39 Phil 012; *Hodges v. Regalado*, 69 Phil 588; *Salvador v. Palencia*, 25 Phil 661; *Philippine Engineering Co. v. Green*, 48 Phil 466). However, in *Zobel v. City of Manila* (47 Phil 169, 187), we held that Article 1109 of the Old Civil Code (from which Article 2212 of the New Civil Code was taken) providing for interest upon interest is applicable only to obligations containing a stipulation for interest. In the case at bar, while it is true that plaintiff is entitled to the payment of interest on the various amounts due from the defendant, nevertheless these interests have been granted by way of damages. The interest granted to the plaintiff did not arise from an obligation of the defendant to pay the same on a contractual basis. The event which gave rise to plaintiff's right to recover interest was not a conventional obligation, but defendant's failure to credit plaintiff with the proceeds of the sugar for which he incurred in delay. Plaintiff's contention therefore cannot be sustained.

Plaintiff also maintains that the lower court erred in not holding that plaintiff is liable to pay defendant only the sum of P29,256.00 on the fertilizer account which he incurred after the liberation, because the original account for the fertilizer amounted only to P29,256.00 and this increased to P55,518.86 as of June 30, 1956 because of the interest of 7% per annum compounded semi-annually which defendant had charged. It is argued that since at the time this account was incurred defendant has already indebted to plaintiff for the value of the sugar the latter exported, said fertilizer account should ipso facto be compensated by plaintiff's credit against the defendant.

This contention is untenable. Plaintiff does not deny the existence of the fertilizer account. In fact in his answer to defendant's counterclaim, he prays that "defendant be credited with the sum of P55,518.60 which plaintiff owed the defendant as of June 30, 1956, under the fertilizer account." Having admitted the debt and not having questioned the same during the proceedings in the lower court, the plaintiff cannot now raise the issue on appeal. The trial court's finding in this connection is therefore affirmed.

Plaintiff lastly prays that the defendant be ordered to pay a reasonable amount for moral and exemplary damages and attorneys fees.

As to the payment of moral and exemplary damages, while it may be stated that this Court finds the defendant

guilty of fraud and bad faith in leading plaintiff to believe that his sugar was lost, nevertheless, it is a fact that the fraud was perpetrated prior to the effectivity of the New Civil Code. Plaintiff's complaint states that shortly after the liberation, he had inquired from defendant about the status of the sugar he produced during the crop year 1940-41 and it was then when defendant informed him that his sugar was burned and eventually aided him in filing the war damage claim. Now, under the old Civil Code, practically the only damages allowed therein are compensatory and those agreed upon in a penal clause. Moral damage was not expressly recognized in the said Code. In fact, this Court prior to the New Civil Code, had awarded moral damages only in a few cases (Report of the Code Commission, p. 72). In view of the foregoing, it is doubtful if plaintiff is entitled to the payment of either moral or exemplary damages.

As to the payment of attorney's fees, however, we believe that inasmuch as defendant had acted in evident bad faith in refusing to satisfy plaintiff's plainly valid, just and demandable claim, the plaintiff is entitled to the payment of reasonable attorney's fees. Under the circumstances obtaining in this case, this Court finds it just and equitable that attorney's fees and expenses of litigation be recovered by plaintiff. Accordingly, and taking into account the extent and nature of the legal work employed and the amount involved, this Court holds that defendant should pay plaintiff the amount of P15,000.00 as attorneys fees.

WHEREFORE, modified as above indicated, the decision of the lower court is hereby affirmed, with costs in both instances against the defendant appellant. Plaintiff, upon obtaining full satisfaction of this judgment, shall consign with the proper court, the sum of P130,000.00 for the purpose indicated in this decision.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Regala, Makalintal, Bengzon, J.P., Zaldivar, Sanchez and Ruiz Castro, JJ., concur.

[1] Should the obligation consist in the payment, of a sum of money, if the debtor should become in default, the indemnity for losses and damages, in the absence of a stipulation to the contrary, shall consist in the payment of the interest agreed upon or should there be no agreement, in the payment of interest at the legal rate. Until another rate is fixed by the Government, the legal rate of interest shall be six per cent per annum.

[2] If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation the legal interest, which is fix per cent per annum.

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