

CLARO RIVERA, PLAINTIFF AND ATROELLANT. VS. AMADEO MATUTE DEFENDANT AND APPELLANT.

G.R. No. L-6998. February 29, 1956

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

Both plaintiff Claro Rivera and defendant Amadeo Matute are appealing from a decision of the Court of First Instance of Manila presided over by Judge Fidel Ibañez,. sentencing the defendant to pay to the plaintiff the sum of P54,271.30 as damages for breach of contract for sale of copra, with legal interest at 6 per cent per annum from the date of the decision, with costs. Because of the amount of the award, the appeal was taken directly to us.

The trial court rendered a well-prepared and exhaustive decision with factual details and we are reproducing the entire decision with approval, but making some observations on some slight errors or inaccuracies into which the trial court had apparently unwittingly fallen.

"This is an action instituted by Claro Rivera against Amadeo Matute for the recovery of damages in the sum of P221,000 according to the amended complaint, resulting from the failure of the latter to comply with his contractual obligations to sell to the former 1,300 tons of copra and for the refund by the defendant to the plaintiff of the sum of P30,000, which the said plaintiff advanced to the said defendant as part of the purchase price and of the amount of P10,000 which the plaintiff paid for 10,000 empty sacks he delivered to the defendant for the sacking of the copra.

"The defendant answered the plaintiff's complaint, as amended, denying the allegations contained therein with respect to the claim for damages and the reimbursement to P10,000 for empty sacks. The defendant admits having received from the plaintiff the sum of P30,000 but, as a counterclaim, he alleges that the plaintiff took delivery of 420,678 tons of copra at the price of P172.50 per ton, or a total of P72,566.96, and that the plaintiff only paid to the defendant the amount of P38,000, including the initial payment of P30,000, mentioned in plaintiff's complaint, leaving an unpaid balance of P34,566.96, which the defendant seeks to recover from the plaintiff.

"The plaintiff, in his answer to defendant's counterclaim, alleges that he was able to haul a net total of 287,362 kilos (287.352 tons), after deducting the allowance of 12½ per cent, as provided for in the contract at P172.50 per ton, or a total of P49,568.22, and not P72,566.96, as alleged in defendant's counterclaim, and that the defendant received, aside from the P30,000,000, an additional sum of P8,498.10 as proceeds of part of the copra sold to Yek Hua Trading.

"The negotiations between the plaintiff and the defendant for the sale by the latter of his copra to the former commenced on August 10, 1946, which resulted in the execution by the parties of an option given, by the defendant to the plaintiff for the sale of from 800 to 1,000 tons of copra at P18.50 per 100 kilos under the terms and conditions specified therein. This document, marked Exhibit A, signed by Claro, Rivera and Amadeo Matute, executed in August, 1946, reads as follows:

'Que yo, Amadeo Matute, mayor de edad, soltero y residente en la Ciudad de Manila, por la presente doy

opcion al Sr. Claro Rivera, mayor do edad, easado y residente en el Municipio de Malabon, Rizal, para comprar de ochocientos (800) a mil (1,000) toneladas de coprax ressecado cosechado parte antes de la Guerra y parte dura«te a la ocupacion de Japones de diecioclio pesos con cincuenta centavos (P18.50) por eada cien (100) kilos, bajo las condiciones siguientes:

'1. Que esta opcion durara hasta el .31 de agosto dentrd. de cuyo periodo me infonnara el Sr. Claro Rivera el dia en-jjue debo de comenzar la entrega del coprax aqni eontratado o cualift&era parte del mismo;

'2. Quo la entrega sera abordo del barco que indicara el Sr. Rivera, debiendo hacerse la entrega por medio de la Luzon Stevedoring; si esta conforms en cargar, y no estando conforme este eontrato sera nulo;

'3. Que el pago del coprax eontratado sera en la Ciudad do Manila inmodiatamente despues de la presentacion de la f actura de embarque, debiendo el banco donde esta depositado el dinero que cubrc el precio del coprax entregado, garantizar el pag'o de dicho coprax;

"4, Que los sacos que se han dc usar perteneceran al dueilo del coprax;

'5. Que este contrato tendra efecto, solamentc despues de la aceptacion por la Luzon Stevedoring que embarcara el coprax contratado desde mis bodegas de La Union, Sigaboy, Monserat, Magu, Tiblawan y Calauhan en la provincia de Davao al barco donde se embarcara dicho coprax;

'Yo, Claro Rivera, informado de las condiciones do este contrato acepto cl mismo bajo los terminos aqui consignados.

'En testimonio de toda lo cual, firmamos la presente en la Ciudad de Manila, Republica de Filipinas, hoy 30, de agosto 1946.'

"After the plaintiff had inspected defendant's copra, the parties, on August 30, 1946, entered into a contract of sale Exhibit B, which reads as follows:

"That I, Amadeo Matute, of legal age and resident of the City of Manila, Philippines, have sold, conveyed and transferred and by these presents do .hereby sell, convey and transfer unto Mr. Claro Rivera, of legal age, and resident of Malabon, Rizal," Philippines, one thousand three hundred tons (1,300) (1,000 kilos a ton) of copra resicada now available in the sitios Monserrat, Magdug, Tigalawan and Pundaguitan in the province of Davao under ,the following; conditions:

'1. That the selling price per ton (1,000 kilos) of copra herein sold is one hundred seventy two pesos and fifty centavos (P172.50) including sacking, weighing and packing {camada) in the bodega "where the copra is deposited. Putting into the landing barges and hauling to the ships will be for the expenses of Mr. Claro Rivera.

'2, The weighing of copra herein sold will be made before hauling to the ship or any time that Mr. Rivera decided to do so. From the total weight of the copra twelve and one-half per cent (12%%) "will he deducted for shrinkage, except the one hundred tons (100) that are deposited under my house, in La Union.

'3. That I shall receive thirty thousand pesos (P30,000) as advance payment from the time Mr. Rivera will commence delivering or hauling' the copra to the ship and the balance to be paid upon presentation of the bill of lading of the copra loaded to the ship, and the Bank where the money is deposited will certify to me that a sufficient cash is deposited for payment of the copra here sold;

'4. That Mr. Rivera, his heir or assign, has full right, supervision and control as to the method of sacking and hauling of copra to the ship;

'5. That I will furnish all the sacks and other necessary materials to be used in sacking the copra;

'6. That.the time of loading, is one hundred and twenty days (120) from the date of the execution of this contract,

'I, Claro Rivera, do hereby accept the sale of 1,300 tons of copra herein sold to me under the conditions set forth in this document.

"In witness whereof, the parties have hereunto set their hands in the City of Manila, Philippines, this SOth day of August 1946.

(Sgd.) AMADEO MATUTE

(Sgd.) CLARO RIVERA

In the presence of:

(Sgd.) (Illegible)

(Sgd.) B. BASCOMPTE

REPUBLIC OF THE PHILIPPINES

S.S.

CITY OF MANILA

'Before me, on this 30th day of August, 1946; personally appeared Amadeo Matute with Residence Certificate No. A-22520S2 issued at Manila on 4 March 1946 and Claro Rivera with Residence Certificate No. A-707233 issued at Manila on January 31, 1946, known to me and to me known to be the- same persons who executed the foregoing document, and they acknowledged to me that" the same is an act of their own free and voluntary will and deed.,

(Sgd.) CAMILO FORMOSO

Notary Public

Until December 31, 1946

[DRY SEAL]

Doc. No. 431

Page No. 12

Book No. I .

Series of 1946.'

"The defendant presented as Exhibit 1 the following document;

SUPPLEMENT "A"

In addition to the contract that we have entered into it is hereby agreed and stipulated that the coprax referred to, includes all the coprax that were made during and before the Japanese occupation, and the coprax in this contract is placed at between eight hundred to one thousand three hundred tons (800 to 1,300 tons)

(Sgd.) AMADEO MATUTE

(Sgd.) CLARO RIVERA

'P. S. (in handwriting)

"The coprax above mentioned is the same that I saw in the bodega.

C. R.

"The first controversy between the plaintiff and the defendant is "with respect to the above last-quoted

document, Supplement A (Exhibit 1). While the defendant claims that the said document (Exhibit 1) is a supplement to the contract of sale Exhibit B, the plaintiff contends that it is a supplement to the option Exhibit A. "It is not disputed that when the option Exhibit A was executed the plaintiff had not yet inspected defendant's copra in the latter's haciendas in the Province of Dayao, and that when the contract of sale Exhibit B was executed on August 30, 1946, it was after the plaintiff had inspected defendant's copra in his haciendas. Supplement A (Exhibit 1) bears the following post-script; "The copra above mentioned is the same that I saw in the bodega". It is evident that when Supplement "A" was executed, it was after the plaintiff had inspected defendant's copra in his haciendas in the Province of Davao. It may be concluded, therefore, that said document was intended as a supplement to the contract of sale Exhibit B, and not to the option Exhibit A. Hence, the contract of sale between the parties is Exhibit B supplemented by Supplement 'A' (Exhibit 1). However, "when there is ambiguity in any of the terms and conditions of the contract of sale or doubt as to its interpretation, the Court may resort to previous dealings or preliminary transactions between the parties regarding the subject-matter of said contract of sale, such as the conditions and terms of the option Exhibit A, as an aid to interpretation with a view to ascertaining the true intention, and agreement of the contracting parties. "Premised upon the assumption that the contract of sale Exhibit B was supplemented by the agreement Exhibit 1, the copra sold by the defendant to the plaintiff consisted of the copra made during and before the Japanese occupation, estimated to be from 800 to 1,300 tons then in stock and deposited in defendant's haciendas at La Union, Sigaboy, Monserrat, Mag-dug, Tigalawan and Pundaguitan in the Province of Davao with a deduction of 12% per cent from the total weight for shrinkage, except the 100 tons of new copra deposited under defendant's in La Union. At the time the contract of sale was entered into between the plaintiff and the defendant, the latter's copra in stock and deposited in his aforementioned haciendas in the Province of Davao was estimated by his "encargados" and employees in said haciendas to be from 1,380 tons. (See testimonies of Antonio Perez, trial of August 6, 1948, page 34-1, t.s.n., Vicente Alonso, September 3, 1948, page 396, t.s.n., Nicolas Gloushenko, November 19, 1948, page 476, t.g.n., Valeriano Medel, July 27, 1949, page 447, t.s.n., and Celestino Alonso, August 31, 1949, page 20, t.s.n.).

"From the foregoing testimonies of defendant's witnesses, it is clear that the defendant sold to the plaintiff 1,300 tons of copra according to the contract of sale Exhibit B, as supplemented by the agreement Exhibit 1, because the said defendant had more than 1,300 tons of copra in stock in his haciendas named in the deed at the time, of the sale on August 30, 1946, and the evidence shows, without any indication to the contrary, that the parties had in mind said copra in stock as the subject matter of the sale.

"A more direct and evident proof that the defendant sold to the plaintiff 1,300 tons of copra, is the receipt in Spanish, dated November 11, 1940, signed and delivered by the former to the latter, marked Exhibit E-2, which reads as follows:

"Recibi de Don Claro Rivera, por conducto de su senora, Dona Kizalina Santos, la suma de siete mil pesos (P7,000) como pago adicional de los 1,300 toneladas de copra vendida por mi a el por contrato por escrito entre el y yo.

'Manila, Noviembre 11, 1946.

(Fdo.) A MATUTE
AMADEO MATUTE

"Sample of the said copra was analyzed and, in accordance with the certification of Dr. George Lucas Adamson of the Adamson University Testing Laboratories, the Southern Cotton Oil Co., New Orleans, La., gave the following results: Moisture 5.66 per cent; Oil 62.52 per cent; Free Fatty Acids (Oleic) 5.56 per cent (Exhibit A-1).

"According to the contract of sale executed on August 30, 1946, the vendor Amadeo Matute would furnish all the sacks and oiler necessary materials to be used in sacking the copra.

"There is conflict in the evidence as to the quantity and sizes of the empty sacks in the various haciendas of the

defendant Amadeo Matute at the time the aforementioned contract of sale was entered into between him and the plaintiff Claro Rivera. While the plaintiff contends and presented evidence in support of his contention that the delay in sacking the copra sold to him by the defendant was due to the insufficiency of empty sacks, the defendant claims and presented oral evidence that he had empty sacks in his haciendas enough to contain the 1,300 tons of copra sold by him to the plaintiff, and that the delay in sacking the copra was due to plaintiff's fault.

After the defendant Amadeo Matute had extended to the plaintiff Claro Rivera an option to buy the former's copra in his haciendas (Exhibit A), the said defendant wrote to the plaintiff a letter dated August 16, 1946 (Exhibit A-4), which reads as follows:

'Apreciable, amigo, La g'emaná pasada me dijo Ud. que deseaba salir para Davao, en aeroplano para el lunes o martes de esta semana, para ver la copra en mis haciendas y me extraña, que hasta la fecha' no haya pasado Ud. a recoger las cartas de presentación para los encargados, de mis plantaciones, debe Ud. tener presente que si le conviene comandar los sacos vacíos, y embasar la copra, rogándole sirvase decirme cuando espera realgar dicho. viaje.'

"On October 30, 1946, the defendant Amadeo Matute wrote a letter to his encargados in Davao and Monserrat (Exhibit F-2), the pertinent portion of which reads as follows:

'Claro Eivero, me dico saldrá en aeroplano para esa mañana para ir activando la preparación de la copra, Sacos vacíos, por el vapor de la casa Everett, que saldrá el sábado mandará otros 12,000 sacos para tener apalabrada la lancha de Rocamora, u otra para cargar los sacos y evitar gastos de transporte, del pantalán a la bodega y de la bodega al pantalán, * * *'.

"In spite of defendant's promise to send 12,000 empty sacks to his haciendas, he only sent first 4,000 small sacks that would contain approximately 120 tons of copra, and later on 6,000 empty sacks that would probably contain 180 tons of copra. Inasmuch as the said 10,000 sacks together with the empty sacks already in defendant's haciendas were not sufficient for sacking the 1,300 tons of copra which the defendant sold to the plaintiff, the latter, on "November 20, 1946, bought 10,000 empty sacks worth P10,000 (Exhibit H) which he sent to Antonio Perez, defendant's encargado in Davao, on November 22, 1946, in 400 bundles (Exhibit H-1). 'The plaintiff paid to the De la Rama Steamship Co., Inc., the corresponding freight charges for said sacks in the amount of P227.50' (Exhibit H-2). The defendant was advised by the plaintiff of the fact that the latter had sent 10,000 empty sacks to Davao on November 22, 1946 (Exhibit H-1).

"After a thorough study of this case, the Court has arrived at the conclusion that the evidence of the plaintiff clearly outweighs the evidence of the defendant on the following facts:

"After the contract of sale Exhibit B was signed by the parties on August 30, 1946, the purchaser Claro Rivera, plaintiff herein told the vendor Mateo Matute, defendant herein, to prepare empty sacks for the sacking and packing of the copra which the former would load in mid-November, 1946 (session of February 25, 1948, pp. 87 and 90, t.s.n.).

"On October 17, 1946, Claro Rivera sold 2,000 long tons of copra to the South Cotton Oil Co., New Orleans, represented by John J. Gallagher of the Gallagher-Toftman Corporation, as broker, to be shipped from Davao City in the second half of November of said year on the Lykes Steamship (Exhibit C). At that time the prevailing market price of copra (cscada) in the Philippines was P14.00 per 100 kilos (session of March 10, 1948, p. 127, t.s.n.). The plaintiff presented a list of buyer's price of copra (cscada) on various dates in September, October, November and December, 1946, and in January, February and March 1947, in Manila, Iloilo, and Cebu, certified to by the Director of Commerce on September 30, 1947 (Exhibit K-1), together with 'Daily advices from New

York regarding fats and oils, certified to by the Chief, Markets Division of the Bureau of Commerce (Exhibit K).

"On October 24, 1946, Claro Rivera received from the Philippine National Bank advice of a letter of credit in his favor in the amount of \$260,288 (Exhibit D). On the same date, Cl'aro Rivera informed Amadco Matute of the receipt of said letter of credit and, after an inquiry made at the Bank, Matute told Rivera that, he was satisfied with the said letter of credit, {session of June 2, 1948;, p. 212, t.s.n.).

"On October 26, 1946, Claro Rivera delivered to Amadeo Matute the sum of P10,000 as part of" the agreed advance partial payment of P30,000 of the purchase price of the copra (Exhibit 2), although it was not yet due at the time according to the contract Exhibit B. This advance payment of P10,000 was made upon supplication of Matute, alleging that he would use the amount in the purchase of empty sacks but he failed to do bo. (session of February 25, 1948,. p. 93 t.s.n.; June 23, 1948, p. 249, t.s.n.).

"On October 30, 1946, Claro Sivera paid another sum of P10,000 to Amadeo Matute (Exhibit E-I, and on the same date, the latter delivered to the former a letter for delivery to Matute's encargado in Davao, after Rivera had informed Matute that he (the former)' would load copra on November 15, 1946 (session of February 25,. 1948, p. 97, t.s.n.; June 2, 1948, p. 22, t.s.n.). .

"On November 1, 1946, Claro ,Rivera went to Davao City and, upon his arrival thereat, he found out that the empty sacks sent by Amadeo Matute were only 4,000 small ones which would hold 120 tons in all (session of February 25, 1948, p. 95 t.s.n.). As the copra was not yet placed in sacks, Claro Rivera, who was then in Davao, wrote to Gallagher-Toftman Corporation on November 2, 1946, asking for permission to. suspend loading of eopra until some other time (sessions of June, 1948, pp. 216 and 217, t.s.n.; June 23, 1948, p. 261, t.s.n.). In reply to his letter, Rivera received.in Davao City on November 10, 1946, the letter Exhibit F of Gallagher-Toftman Corporation, signed by J. J. Gallagher and dated November 8, 1946 (session of February 25, 1948, p. 96, t.s.n.).

"On November 11, 1946, Rivera left Davao and arrived in Manila on November 12, 1946 (Exhibits F-I and F-I-a). On the same date, November 11, 1946, Rivera's wife, RizaMna Santos, % delivered to Amadeo Matute the sum of P7.000 as additional part1 payment for the 1,300 tons of copra sold by Matute to Rivera (Exhibit E-2). Upon his arrival in Manila, Rivera told MatutG that the sacks he (Matute) promised to send to Davao bad not arrived there when he (Rivera) left Davao for Manila; Matute assured Rivera, in reply, that 6,000 empty sacks with a total capacity of 180 tons of copra had already been sent to Davao; Rivera then; informed Matute that the alleged 6,000 sacks would not be enough to contain 1,300 tons of copra; Rivera, after receiving Gallagher's, letter, Exhibit F, interviewed Gallagher and the latter suggested to the former to make arrangements with the steamship company of "Lykes Brothers", regarding the date of loading of copra; the said steamship company informed Rivera that its boat scheduled to sail for tho east coast of the United States would touch the Port of Davao on December 4, 1946; and .Rivera, on November 16, 1946, informed Matute that he (Rivera) would load copra on December 4, 1946, to which Matute did' not object (session of February 25, 1948, pp. 90-101, t.s.n.).

"On November 14, 1946, two days before Matute consented to postpone to December 4, 1946, the loading' of copra by Rivera, the latter paid the former P3,000 (Exhibit E-3), which completed the advance partial payment of P30,000, stipulated in their contract Exhibit B. The loading of copra was previously scheduled for November 15, 1946, but it was postponed to December 4, 1946, because of the delay in sacking the copra (sessions of June 2, 1948, pp. 207 and 216-217, t.s.n.; June 23, 1948, p. 258, t.s.n.).

"On November 19, 1946, Claro Rivera, while in Manila, received information from Jose Araullo, his assistant in Davao City, that Matute's sacks had not arrived at the latter place. Rivera informed Matuto of the information he received, and the latter replied that he had already sent sacks to Davao City. On November 20, 1940, Rivera bought 10,000 sacks that would hold 60 kilos of copra. each and he loaded the same in a boat on November 22,

1946, to be taken to Davao City. (Sessions of February 11, 1948, pp. 4-5, t.s.n. March 10, 1948, pp. 113-114, t.s.n.).

"On November 24, 1946, Claro Rivera, his son and his employee by the name of Nicomedes Aguilar left for Davao, City in an aeroplane and arrived there on the same date (sessions of February 11, 1948, p. 7, t.s.n.; March 10, 1948, pp. 116-117, t.s.n.).

"On November 26, 1946, the 6,000 small sacks shipped by Matute arrived in Davao City (session of March 10, 1948, pp. 117 and 123, t.s.n.). On the same date, November 26, 1946, Rivera and his companions left Davao City for La Union; when they arrived in La Union, Rivera discovered that only 100 tons of copra were in sacks, because there were only ten laborers sacking copra, and so Rivera asked Perez the encargado of Matute, to hire more laborers; on November 27, 1946, they started weighing the copra which were already in sacks in La Union, and the next day, November 28, 1946, two lighters or landing barges arrived in La Union; on November 30, 1946, the customs examiners who witnessed the weighing of the copra in La Union, issued the certificate Exhibit J, stating that Lighter No. 13 contains 3,425 sacks of 140,599 kilos (rtoos) of copra (sessions of February 11, 1948, pp. 9, 10, 80, 35 and 363 t.s.n.; March 10, 1948, pp. 118-120, t.s.n. June 2, 1948, p. 203, t.s.n. The small sacks sent by Matute to Davao City were loaded in a lighter on November 28, 1948, to be taken to Sigaboy and La Union (session of July 14, 1948, pp. 285-286, t.s.n.).

"On December 1, 1946, while Claro Rivera was in Hacienda Sigaboy, he received a letter of V, Alonso, the encargado of Matute in Hacienda La Union (Exhibit L-2); the next morning, December 2, 1946, a boat of the Luzon Stevedoring Co. arrived in Sigaboy; Rivera boarded this boat for La Union; upon his arrival in La Union, Rivera conferred with Alonso, who showed him Matute's letter and informed him that Matute wanted to see him (Rivera) in Manila immediately and that Matute had instructed his encargados in his haciendas to stop sacking and weighing copra; Rivera then proceeded to Davao City where he met Antonio Perez, the representative of Matute; Perez handed to Rivera a document of assignment in favor of Matute of P200,000 (Exhibit D-1), out of the amount of P260,288, the value of the letter of credit issued by the National City Bank of New York in favor of Rivera, and Perez told Rivera that he (Rivera) should sign the said assignment (Exhibit D-1) upon request of Matute; Rivera, in reply, told Perez that he would prefer to sign the said document of assignment in Manila after conferring with Matute (session of March 10, 1948, pp. 131-138, t.s.n.).

"The landing barges which arrived in La Union on November 28, 1946, had to wait there until December 3, 1946, because the copra then was not yet ready for hauling; on December 3, 1946, only 240 tons of copra were transported from La Union to Davao City, and the delay was due to the late arrival of the empty sacks and because there were only ten laborers sacking and weighing copra in La Union (sessions of March 10, 1948, pp. 118-119, t.s.n.; June 2, 1949, pp. 204-205, t.s.n.).

"When the S/S Frederick Lykes called at Davao on December 4, 1946, there were only 240 tons of copra ready for shipment because the rest of the copra in the various haciendas were not yet ready to be hauled to Davao City due to the lack of laborers placing the copra in sacks and weighing the same; in that situation, it would take ten days of load 1,300 tons of copra, and the Captain of the boat could not wait for that length of time and he refused to load the 240 tons which were already in Davao City; according to Rivera's contract with the steamship company, the boat would only remain in Davao for loading within four days. (Sessions of March 10, 1948, pp. 120-122, 125, t.s.n.; July 14, 1948, pp. 280-287, t.s.n.).

"On the same date, December 4, 1946, Claro Rivera returned to Manila because of the insistence of Amadeo Matute to have a conference with him. (Sessions of March 10, 1948, p. 126, t.s.n.; June 2, 1948, p. 206, 213/t.s.n.). The S/S Frederick Isykes left Davao without loading any copra on December 5, 1946) (Sessions of

March 10, 1948, pp. 120-121, 126, ta.it.-, June 2, 1948, pp. 206, t.s.n.; July 14, 1948, pp. 286-287, t.s.n.).

"Araullo, the representative of Rivera in Davao, sent a telegram to Rivera, dated December 5, 1946 (Exhibit M), advising him (Rivera) of the departures from Davao of the S/S Frederick Lykes without loading any copra. (Sessions of March 10, 1948, pp. 143- 144, t.s.n.; July 14, 1948, pp. 288-289, t.s.n.).

"On the same date, December 5, 1946, Claro Rivera signed the assignment of P200,000 (Exhibit D-1) out of the letter of credit (Exhibit D). (Sessions of February 25, 1948, pp. 84-85, t.s.n.; March 10, 1948, 127, t.s.n., June 2, 1948, 213, t.s.n.).

"A letter dated December 12, 1946 (Exhibit M-1) was, sent to Claro Rivera by Lykes- Bros. Steamship Co., Inc., of New Orleans, informing him of the departure of S/S Frederick Lykes No. 12 from Davao on December 5, 1946, without loading copra. Rivera showed to Matute the telegram Exhibit M and the letter Exhibit M-1, together with the envelop Exhibit M~2, because, according to Rivera, it was the fault of Matute that the copra was not placed in sacks on time to have it loaded into the S/S Frederick Lykes (session of March 10, 1948, 127, t.s.n., June 2, 1948, 213, t.s.n.).

"On December 13, 1946, Claro Rivera delivered to Matute copy of the letter of credit which was in his possession, for which Matute issued the receipt Exhibit D-2. (Sessions of February 25, 1948, p. 86, t.s.n.; June 2, 1948, p. 213, t.s.n.).

"In a letter dated December 11, 1946, Claro Rivera authorized Escudero & Company, Inc., to sell 1,500 short tons of copra at not less than \$180.00 per ton (C. I. F. Pacific Coast) for immediate shipment from the Port of Davao, which authorization was accepted by a representative of the company (Exhibit N). (Session of February 25, 1948, pp. 55, 56, t.s.n.). On December 15, 1946, a formal contract was entered into between Claro Rivera and tescudero and Company, Inc. In this contract, Rivera offered to Escudero & Company Inc., to sell 1,300 long tons of copra resecada which were in the bodegas of the six haciendas of Araadeo Matute in the Province of Davao, situated in La Union, Sigaboy, Tidlawan, Monserrat, Magdug and Pundaguitan, and the latter agreed to buy the said copra at P360 per short'ton c. i. f. Pacific Coast. Among other things, it was stipulated in said contract that the buyer would pay in advance the amount of 70 per cent of the total purchase price of the , copra as soon. as the said copra is loaded on the landing- barges of the Luzon Stevedoring Company in Davao and receipted for by the buyer's manager, another 25 per cent upon presentation of the bill of lading, and the balance of 5 per cent would be paid on the basis of landing weights and that the shipment of eopra would be made during the month of January, 1947, in the Polrt of Davao (Exhibit 0),

"Rivera's contract with Escudero & Company, Inc., was made known by Rivera to Matute who agreed to the proposal of Rivera that he would load the copra about the end of December, 1946. (Session of March 10, 1948, pp. 147-149, t.s.n.). On December 23, 1946, while Rivera was in Davao, he received a telegram from Escudero, dated December 21, 1946, informing him (Rivera) that the Steamer Benares would arrive in Davao on January 5, 1947, for loading copra (Exhibit 0-1).

"Rivera informed Antonio Perez, the representative, of Matute in Davao, that he (Rivera) would be loading copra oir January 5, 1947, in the Port of Davao, to which Perez replied that he would ask Matuto for permission to continue the delivery of copra to him (Rivera). (Session of March 10, 1948, p. t.s.n.). When Rivera returned to Manila, ho received a telegram from Araullo, his representative in Davao, dated December 25, 1946 (Exhibit 0). Rivera went to see Matute and inform him (Matute) that he (Rivera) would haul and load all the copra on January 5, 1947, Matute .then told Rivera that he could make arrangement with Perez, his eneargado in Davao. On the same date, December 25, 1946, Rivera returned to Davao and informed Perez that Matute told him (Rivera) to arrange with Perez further delivery of. copra to him (Rivera). Perez allowed Rivera to haul only about 90 tons of

copra, and then he (Perez) received another telegram from Matute, instructing him (Perez) to suspend the delivery of copra, so that after December 28, 1946, Matute did not allow Rivera to take further delivery of copra. Rivera then returned to Manila and informed Matute that Perez did not want to make further delivery of copra, stating that Rivera's contract with him had already expired. Rivera shipped 45 tons of copra from Davao to Manila negotiated with the NACOCO to allow him (Rivera) to deposit in the NACOCO's bodega the rest of the copra, but the NACOCO refused to accept due to advice from Matute, (Exhibit R). (Sessions of March 10, 1948, pp. 156-159, t.s.n.; June 2, 1948, p. 216, t.s.n.; June 23, 1948, p. 264; t.s.n.; July 14, 1948, pp 288-293-294, t.s.n.).

"In Hacienda La Union, more than 556 tons of 100 kilos each of copra were weighed up to December 20, 1946, and more than 13 tons remained unweighed; when the weighers arrived in Hacienda La Union, the copra was not placed in sacks; the weighing of copra in Hacienda Sigaboy was finished in one day, December 26, 1946; after leaving Hacienda Sigaboy on December 27, 1946, the weighers proceeded to Hacienda Magdug where they weighed a little more than 90 tons of copra until December 30, 1946, leaving about 40 tons of copra unweighed because Matute's encargado received telegraphic instruction from Matute to stop weighing copra; both in Sigaboy and Magdug copra was being placed in sacks while weighing of the copra already sacked was in progress; Rivera was not in Magdug at the time weighing of copra in said hacienda was stopped, and so Nicomedes Aguilar, Rivera's representative, immediately returned to Davao City in a landing barge which was unloaded with copra; Nicomedes Aguilar worked for Claro Rivera as his representative in Davao from November 15, 1940, to March 5, 1947, when he returned to Manila. (Session of February 11, 1948, pp. 13-14, 17-18, 22, 23, 31 and 32, t.s.n.).

"Jose Araullo, the agent of Claro Rivera in Davao, hired two landing barges on December 20, 1946, which were sent to haciendas Sigaboy and La Union to be loaded with copra, but they returned to Davao City unloaded because of the refusal of the encargados of Matute in those haciendas to deliver copra to the representative of Rivera; Araullo, upon his arrival in Davao City was informed by Perez, the representative of Matute in Davao, that similar incident would not happen again in the future. On December 23, 1946, Araullo hired five landing barges for Rivera (session of July 14, 1948, pp. 302-303, 305, t.s.n.). On December 25, 1946, two landing barges arrived in Davao City from the haciendas unloaded with copra because the encargado of those haciendas refused to deliver copra, and the matter was taken up with Perez who promised that the incident would never happen again (session of July 14, 1948, pp. 289-290, t.s.n.). On December 27, 1946, one landing barge with a capacity of more than 30 tons, fully loaded with copra, was sent from Magdug to Davao City. Two lighters, one with a capacity of 140 tons and another of 100 tons, and a landing barge of 30-ton capacity were able to haul copra from Hacienda La Union to Davao City. (Session of February 11, 1948, pp. 34-35, t.s.n.).

"The letter of credit in favor of Claro Rivera was extended up to December 31, 1946 (session of February 25, 1949, p. 101, t.s.n.).

"Claro Rivera received a cablegram from the South Cotton Oil Co. of New Orleans (Exhibit C-1), cancelling the company's contract with Rivera for the purchase of copra (Exhibit C). (Session of February 25, 1948, pp. 80-81, t.s.n.).

"On March 29, 1947, Amadeo Matute sold to Clark, Jamilla & Company, Inc., 276 tons of copra from Talomo and 244 tons from Moriserrat, both in the province of Davao, which copra, according to, Rivera was part of the copra previously sold to him by Matute (Exhibit S, T, U and TJ-1). (Sessions of March 10, 1948, p. 160, t.s.n.; June 2, 1948, pp. 170-171 and 178-179; t.s.n.). "After narrating some of the facts established by a preponderance of the evidence, the Court will proceed to consider one by one the claims of the plaintiff against the defendant.

"The plaintiff prays that he be reimbursed of the amount of P10,000 as the purchase price paid by him for 10,000

empty sacks which he sent to Davao City to be used for packing the copra sold by the defendant to him, on the ground that according to the contract Exhibit B, the defendants, as vendor, will furnish all the sacks and other necessary materials to be used in sacking the copra. Plaintiff's contention is rendered ineffective by the fact that in a letter dated November 22, 1946, signed by him and addressed to the defendant (Exhibit R-l), he stated that the 10,000 safety sacks which he sent to Davao were on his account, and that he was giving them from of charge to Matute as a help in hastening up the packing and loading of copra. In view of the said letter (Exhibit K-l) of Claro Rivera, he has no right now to claim from Matute the sum of P10,000 which he paid for the sacks.

"The plaintiff also prays that he be reimbursed of the amount of P30,000 which he paid to the defendant (Exhibit E, E-l, E-2- and E-8) as part payment in advance of the purchase price of the 1,300 tons of copra sold by defendant to him, according to the contract Exhibit B. The plaintiff is not entitled to the reimbursement of this amount of F80,000 because he admitted having received copra from the defendant as follows:

On November 3, 1946, 140,599 kilos in 3,425 sacks (Exhibit J);

On December 3, 1946, 100,116 kilos in 2,150 sacks (Exhibit J-l), equivalent to 240,715 tons, and later on 90 tons (Session of March 10, 1948, p. 155, t.s.n.), making a total of 339,715 tons. According to the contract Exhibit B, 'from the total- weight of the copra, 12 1/2percent will be deducted for shrinkage', which deduction is equivalent to 41,339 tons, leaving a balance of 289,376 tons, which, at P172.50 a ton, would cost P49,917.36. The defendant on January 28, 1947, received from Yek Hun Trading Corporation for the account of the plaintiff the sum of F8,498.10 (Exhibit Z, which must be deducted from P49,917.36, leaving a balance of P41,149.26. Deducting from this balance the advance payment of P30,000, the plaintiff Claro Rivera would still be indebted to the defendant Amadeo Matute in the sum of P1,419.26.

"The plaintiff contends that the weight of the sacks should be deducted from the gross weight of 330.715 tons because the copra was weighed with the sacks containing the copra. The Court, however, does not consider sound this contention of the plaintiff. The contract Exhibit B provides that the copra would be placed in sacks before it is weighed, and the buyer is only entitled to a reduction from the total weight of copra of 12½ percent for shrinkage. The contract does not state that th« plaintiff would be also entitled to a seduction in weight, representing the weight of the sacks. Moreover, the evidence does not show the weight of the sacks used in packing the copra. If the intention of the parties were to deduct from the total weight of the copra the weight of the sacks in which the copra was placed, there should have been an express provision to that effect in the contract Exhibit B, and in weighing the copra the weighers should have weighed first the' empty sacks, so as to enable them to compute later the deduction from the gross weight of the copra in sacks.

"According to the amended complaint of the plaintiff, he is claiming from the defendant the payment of P221,000 as damages resulting from the failure of the said defendant to comply with his contractual obligations to sell to the said plaintiff 1,300 tons of copra. The plaintiff, in his memorandum dated July 14, 1950, signed by his attorneys, begs leave to reserve his right to further amend his complaint in order that the same may conform to the evidence by increasing the damages claimed by him from P221,000 to P234,141.48,

"The Court has already shown in this decision that the plaintiff . received from the defendant 289.376 tons of copra. Deducting the 289.376 tons of copra from the 1,300 tons of copra which the defendant solcj to the plaintiff in Exhibit B, there would remain a balance of '1,010,624 tons of copra which the defendant has refused to deliver to the plaintiff.

"In order, however, to determine whether or not the refusal of the defendant to deliver to the plaintiff the. balance of 1,010 tons of copra was legally justified, the Court shall proceed to inquire into the respective obligations of the plaintiff, as purchaser, and of the defendant, as seller.

"According to the contract Exhibit B, the defendant, as vendor was under obligation of sacking, weighing and packing the copra and would furnish all the sacks and other necessary materials for that purpose,' while the plaintiff, as buyer, would defray the expenses of putting the copra into landing barges and hauling said copra to the ship. The contract also, provides that the period for loading the copra shall cover 120 days from the date of the execution of the contract. The contract was executed on August 30, 1946, and the period of 120 days ended on December 28, 1946. The loading of copra was first scheduled on November 15, 1946 which was postponed to December 4, 1946, and further postponed to January 5, 1947. Both postponements were due to the failure of the defendant to provide the necessary sacks and laborers to place the copra in sacks.

"The contention of the defendant that the plaintiff had not complied with his contractual obligations as buyer of the copra is belied by the acts of the defendant himself. The defendant accepted the various payments made by the plaintiff amounting to P30,000 as advance partial payment of the purchase price of the 1,300 tons of copra sold by him to the plaintiff. The defendant was duly informed by the plaintiff of the letter of credit in the amount of P260,000 issued by the National City Bank of New York in favor of the said plaintiff, out of which amount, upon request of the defendant, the sum of P200,000 was assigned to him by the plaintiff. This is a manifest conformity on the part of the defendant to the said letter of credit in compliance with the plaintiff's obligation to have the corresponding Bank certify to the defendant that a sufficient cash was deposited therein for the payment of the balance of the purchase price of the copra. The letter of credit was extended to December 31, 1946, aside from the fact that in plaintiff's contract with Escudero & Company dated December 15, 1946 (Exhibit 9), Escudero promised to pay in advance to Claro Rivera 7 per cent of the total purchase price of the copra. This fact was communicated by Rivera to Matute who agreed to the extension of the period of loading of the copra until January 5, 1947. However, before that date came, or on or about December 28, 1946, Matute ordered his encargados to suspend further delivery of copra to Rivera on the ground that the period of 120 days for loading fixed in the contract Exhibit B expired on December 28, 1946. When delivery of copra was, suspended on December 28, 1946, Matute did not give as a ground for terminating the contract Rivera's failure to deposit cash in the Bank, instead of a letter of credit to answer for the payment of the balance of the purchase price. At that time Matute only alleged that the contract terminated on December 28, 1946, due to Rivera's failure to load the copra within the period of 120 days' stipulated in the contract.

"From the facts proven, it has been sufficiently established to the satisfaction of the Court that the delay in hauling, the copra from the various plantations of the defendant and loading said copra on the S/S Frederick Lykes on December 4, 1946 and the failure to load said copra on the S/S Benares on or about January 5, 1947, were due to defendant's fault of not furnishing on time sufficient number of empty sacks for sacking copra and not employing the necessary number of laborers to perform that work prior to the expiration of the period fixed for loading the copra.

"After the Court has arrived at the conclusion that the refusal of the defendant to deliver to the plaintiff the balance of 1,010,624 tons of copra was not legally justified and that the said defendant is liable to the plaintiff to pay damages for lost profit, the Court shall proceed to determine the bases for computing said damages.

"The plaintiff in arguing that he is entitled to the amount of P234,141.48 as damages, proposes that the computation be based on the difference between the price of P380 per ton fixed in the contract Exhibit S whereby Amadeo Matute sold to Clark, Jamilla & Co., Inc., the copra in his plantations on March 29, 1947, and the price of P72.50 per ton fixed in the contract Exhibit B between the plaintiff and the defendant, entered into on August 30, 1946.

"The Court does not consider sound plaintiff's proposal. The measure of damages should be based on the difference between the market price on the date agreed upon for delivery which, in this case, was on or about

December 28, 1946, and the price of P172.05 agreed upon between the parties to the contract of sale Exhibit 8, dated August 30, 1946.

"The contract between. Claro Kivera and Escudero & Company, Inc., entered into on December 15, 1946 (Exhibit O) fixes the price of copra sold in the six haciendas of the defendant Amadeo Matute at P360 per short ton, c.i.f Pacific Coast, with a provision in said contract that all the expenses for sacking, weighing and hauling and other expenses that may be incurred from the bodegas in the haciendas until the copra is loaded into the vessel of the buyer will be for the account of the seller, and that the seller further agreed to pay for the freight and marine insurance, including war risk.

"The Director of Commerce certified in Exhibit K-1, dated September 13, 1947, that, according to the records of the Bureau, the buyers' prices of copra rescada on the respective dates mentioned in his said certificate in Manila, Cebu and Iloilo were the various amounts stated therein corresponding to said dates and places. On December 19, 1946, the buyers' prices in Manila were from P31.50 to P32 per 100 kilos; in Cebu from P30 to P33; and in Iloilo, P30; from P33 and P37; and on January 2, 1947, in Manila, from P32.50 to P33; in Cebu from P33 to P37; and in Iloilo from P30 to P33.

"Taking into consideration the price agreed upon in the contract between Claro Rivera and Escudero & Company, Inc. (Exhibit C), and the quotations of buyers' prices in Manila, Cebu and Iloilo on December 19, 1946, and January 2, 1947, in connection with the differences in the buyers' prices of copra has arrived at the conclusion that the buyers' prices in Davao City on or about December 28, 1946, were not less than P25 per 100 kilos or P250 per ton; so that the 1,010.624 tons of copra which the defendant should have delivered to the plaintiff on or about December 28, 1946, had a total market value in the City of Davao on or about December 28, 1946, of P252,656. The price of copra per ton, as agreed upon by the plaintiff and the defendant in their contract Exhibit B, was P172.50. It must be taken into account that the purchaser Claro Rivera, according to the contract Exhibit B, had to bear the expenses of hauling the copra from the defendant's various haciendas and of loading said copra into the ship which the plaintiff himself admitted in his memorandum to be P12.50 per ton so that under the contract Exhibit B, each ton of copra placed in Davao City would cost the plaintiff P185; including the expenses of hauling and loading. Accordingly, 1,010.624 tons of copra, at P185 per ton, would have a total value of P186,965.44. The difference between P252,656 and P186,965.44 is P65,690.56, representing the damages suffered by the plaintiff due to defendant's failure to deliver to the plaintiff on December 28, 1946, the balance of 1,010.624 tons of copra.

"The Court has already arrived at the conclusion that the plaintiff still owes the defendant the sum of, P11,419.26, so that the damages to which the plaintiff is entitled to recover from the defendant, after deducting the sum of P11,419.26, would be the amount of P54,271.30. In computing the damages, the Court also took into consideration the fact that the plaintiff in the expectation that he would realize considerable profit out of the transaction, due to the continuous rise in the price of copra, decided to waive his right to claim from the defendant the sum of P10,000, the value of the 10,000 empty sacks which he sent to Davao in order to hasten up the sacking and weighing of the copra before the date scheduled for loading it into the ship.

Wherefore, judgment is hereby rendered in favor of the plaintiff Claro Rivera and against the defendant Amadeo Matute in the amount of P54,271.30, with legal interest thereon at the rate of 6 per cent per annum from the date of this decision until the said amount is fully paid, with, costs in favor of the plaintiff and against the defendant."

On the basis of the record we fully agree to the findings of fact made by the lower court and make them our own. We are also in accord with the trial court's holding that the failure to fully carry out the terms of the contract of sale was due entirely to the fault of the defendant among other things, because of his failure or neglect to employ

the number of laborers necessary to sack, weigh, and pack the copra he sold to the plaintiff and also by reason of his decision to suspend further delivery of the copra from December 28, 1946, on the trivial ground that the period of three months mentioned in the contract for delivery and for loading of the product had expired. In fact, said failure on the part of the defendant to comply with his contract is not entirely free from suspicion that it was deliberate, in view of the then rising price of copra in the market, so that the copra not delivered could be sold to another as in fact it was sold at a greater profit to Clark, Jamilla & Co., Inc. for P380 per ton which is much higher than P172.50 per ton, the price at which he sold it to the plaintiff. We also agree with the trial court on its rejection of the contention of the plaintiff that the weight of the sacks used as containers for the P30.715 tons should be deducted from the gross weight, for the reason that there is nothing in the contract, Exhibit "B", on the contended reduction, to say nothing of the fact that there was no evidence as to the weight of said sacks, which weight should have been determined, beforehand had the parties really contemplated said reduction.

We, however, disagree with the trial court, on its overruling the claim of plaintiff-appellant for the price of the 10,000 empty sacks which he had bought and sent to Davao for sacking the copra sold to him, including the cost of transportation, all in the amount of P10,227.50. It is true as stated by the trial court that these sacks were donated by Rivera to Matute. However, the donation had a purpose and a consideration, namely: that the defendant with the use of said sacks would be enabled to comply with his contract on time. However, the donation was rendered useless and in vain due not only to defendant's failure to employ the necessary laborers to sack, weigh and pack the copra but also because he suspended further delivery of copra on December 28, 1946. Consequently, on moral grounds alone the cost of the sacks and the expense of transporting them to Davao should be reimbursed to the plaintiff. Even from the legal standpoint, the act of the plaintiff in giving the sacks free may be considered, a conditional donation, conditioned on the full delivery of the 1,300 tons of copra on time so as to load it on the boat that called at the port of Davao, and that because of the failure to comply with the condition, the donation may be said to have been automatically revoked.

Now, as regards the measure of damages, we agree with the trial court that it should be the difference between the stipulated price per ton of P172.50 under the contract and the market price on the date agreed upon for delivery, which was around December 28, 1946. Plaintiff himself according to his brief (page 53) agrees to this basis for computing damages. Later on, however, he insists that damages should be computed on the basis of the difference between the P172.50 and the P380.00 which was the price per ton of the copra sold by Matute to Clark, Jamilla & Co., Inc! on March 29, 1947. Said basis would clearly be unreasonable and untenable. The difference in point of time between December 28, 1946 and March 29, 1947, was considerable. There is no assurance that had Matute complied with his contract, Bivera would have waited three months, until March 1947, before selling in order to realize a bigger profit. He could not have waited because he had no warehouse in Davao in which to store said copra. In fact, in December 1946, plaintiff entered into a formal contract with Escudero & Co., Inc. offering to sell the latter 1,200 long tons of copra, apparently the same commodity he had bought from the defendant, at the rate of P860 per short ton, but as correctly stated by the trial court, this P360 was not the net price because it included the cost of sacking, weighing and hauling and other expenses that may be incurred in transportation from the bodegas in the different haciendas of Matute to the vessels engaged by the buyer, as well as the freight and marine insurances, because it was c. i. f. Pacific Coast (U.S.A.).

Had Matute in December 1946, when he breached his contract with Rivera, already found a buyer for a higher price, then said higher price might yet be adopted as the basis for computing damages. But the record shows that Matute found a buyer only three months after, that is, on March 29, 1947.

After considering the different price quotations of copra in Manila, Cebu and Iloilo in the month of December, 1946, the trial court arrived at the amount of P250 as the average price per ton to serve as a basis or measure for

damages. Considering the conditions obtaining at the time, and in the absence of more satisfactory and reliable data or evidence on this point, we believe and find that the price of P250 fixed by the trial court is a fair, reasonable and conservative estimate of the price of copra in Davao on or about December 28, 1946, and that it may be used as a legitimate basis on which to compute the damages suffered by plaintiff.

In finding P54,271.80 as the amount of damages to which the plaintiff is entitled, as stated at the beginning of this decision, the trial court to ascertain the number of tons of copra undelivered, to be used as a basis, subtracted from 1,300 tons stipulated in the contract, only 289.376 the equivalent of the 330.715 tons actually delivered, after deducting from the 330.715 the amount of shrinkage of 12% per cent equivalent to 41.339 tons, to arrive at the balance of 1,010.624. In this, the lower court erred.' What should have been done was to subtract the 330.715 tons gross, without deduction for shrinkage, from the 1,300 thereby leaving a balance of 969.285 tons also gross undelivered. The reason for this is that the 1,300 tons stipulated in the contract was gross, that is, without reduction for shrinkage.

Now, to determine the sum of which Rivera would have realized in the sale of this copra not delivered, we shall multiply the 969.285 tons by the price of P250 per ton fixed by the trial court, which would give the amount of P242,321.25. To ascertain Rivera's net profits, we have to deduct from this gross sum, the amount which the undelivered 969.285 tons would have cost him. But Rivera did not have to pay for all this balance of 969.285 tons because he was entitled to 12% per cent shrinkage which is equivalent to 121.161 tons. Subtracting this amount of shrinkage from 969.285 will give a net balance of 848.124 tons. Multiply this by the price of P172.50 per ton fixed in the contract, will give P146,301.39 the amount which Rivera would have paid to Matute had the latter made delivery. To this we should add the expense which Rivera would have incurred in hauling this copra from the different bodegas in Davao to the boat, which is P12.50 per ton. Multiplying this amount by 969.285 will give P12,116.06 which added to 146,301.39 will give a total of P158,417.45, the amount which Rivera would have paid for the undelivered copra and the expense he would have incurred to place it at the pier for shipment. The difference between P242,321.25 and P158,417.45 which is P83,903.80 is the amount of the profits or damages to which Rivera is entitled. To this should be added the P10,227.50, the cost and expense for transportation of the 10,000 empty sacks already mentioned, giving a total of P94,131.30.

Again, Matute does not have to pay the above entire amount for the reason that Rivera has not yet fully paid him for the 330.715 gross tons delivered. We should first deduct from the 330.715 gross tons the 12 1/4 per cent shrinkage equivalent to 41.339 giving a balance of 289.376 tons net. Multiplying this by P172.50, the price per ton fixed in the contract will give P49,917.36 which is the price of the copra delivered. Deducting from this the sum of P30,000 advanced by Rivera and P8,498.10 paid by Yek Hua Trading & Co. and applied to Rivera's account or a total of P38,498.10 would leave a balance of P11,419.26 still owing by Rivera to Matute. Subtracting this amount from P94,131.30 gives P82,712.04, the amount now payable to plaintiff Rivera by Matute.

Plaintiff claims that interest should be paid on the amount of damages from the date of the filing of the complaint instead of from the date of decision of the trial court. If suit were for the payment of a definite sum of money the contention might be tenable. However, "it is for damages, unliquidated and not known until definitely ascertained, assessed and determined by the courts after proof (*Montilla vs. Corporacion de P. P. Agustinos*, 25 Phil., 447; *Lichauco vs. De Guzman*, 38 Phil., 302). So we agree with the trial court that interest should be from the date of the decision.

Plaintiff-appellant maintains the theory that from the date of the contract, Exhibit "A", he became the owner of the copra sold to him. Consequently, defendant Matute had no right to dispose of the same as he did in selling said copra to Clark, Jamilla & Co., Inc. We disagree. The commodity or article sold to him under the contract, Exhibit "A", was part of the copra stored in the different bodegas of Matute. It was indeterminate and not identified. It had

first to be separated from the whole stock, then placed in sacks, weighed and packed and then delivered to the plaintiff. Only then, could plaintiff consider himself . the owner thereof. Before that time, it was still under the custody and ownership of the defendant. Were We to accept the theory of plaintiff on this part, let us suppose that before delivery of the copra to him the bodega or warehouse had burned down resulting in the destruction or loss of the copra, or supposing said copra had been stolen, would plaintiff have been willing to assume the loss? Again, if plaintiff had really considered himself the owner of said copra from the time of the execution of the contract, Exhibit "A", then having full custody and right of disposal as owner, he should have taken charge of the sacking, weighing and packing; employed the number of laborers required and provided the sacks necessary to be used as containers in order to prepare the said copra for loading into the vessels, and then charged the expenses incurred by him in sacking, weighing and packing, to the defendant. When he did not do all this in, order to be able to load the copra into the waiting vessels in Davao, it was because he must have known and believed that he was not yet the owner of the copra and so could not dispose of it. If he considered himself the owner, why did he in frustration cross his arms and allow Matute to delay the sacking, weighing and packing of the copra, and later abide by Matute's order from Manila suspending further delivery, when as owner, as he claims, he could have disregarded such suspension and ordered his own men and laborers to take charge of the bodega, and sack, weigh and pack the copra for transportation to the pier? We hold that considering the attending circumstances, the mere execution of the contract did not serve to transfer title" over the copra to Rivera.

In view of the foregoing, with the modification that the amount to be awarded to plaintiff-appellant Rivera be increased from P54,271.30 to P82,712.04, with legal interest from the date of this judgment, the decision appealed from, is hereby affirmed with costs.

Parás, C. J., Padilla, Reyes, A., Bautista Angelo, Labrador, Concepcion and Endeneia, JJ., concur.

CONCURRING AND DISSENTING:

REYES, J. B. L., J.,

I concur with the decision except as to the acceptance of the price of P250 per ton found by the lower Court as a basis for the computation of plaintiff's damages, I believe that the basis should be the highest price between the date of delivery and, "the filing of the action; i.e., plaintiff's contract with Escudero and Co., Inc., at the price of P360 a ton, or else the price at which defendant sold his copra to Clark, Jamilla & Co., Inc, P380 per ton, considering that the copra thus sold should have been delivered to plaintiff herein, and had been partly paid for in advance by him (Suiliong & Co. vs. Nanyo Shoji Kaisha, 42 Phil., 722; 46 Am. Jur. 804-805).

As the decision stands now, we are giving Matute a premium for his deliberate breach of the contract with plaintiff-appellant, and allowing him to keep the profit he has made (P380 less P250, per ton) in selling and delivering the copra to Clark, Jamilla & Co., Inc. Where, as in this case, the breach is intentional and deliberate, we are faced by plain malice or fraud (dolo), which is immoral and odious in law; and it should be sternly repressed by wiping out as much-as possible the profit derived by the seller from his acts in bad faith. The prospect of better profits can never be an excuse for violating lawful and binding contracts.

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