

**THE MABALACAT SUGAR COMPANY, PLAINTIFF AND APPELLANT,
VS. JOSE V. RAMIREZ ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. 30112. September 09, 1929*

Ponente: JOHNS, J.

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It must be conceded that any lease, right, title or interest which the plaintiff ever had to the use or possession of the strip of land in question had expired, and that the plaintiff was nothing more than a tenant at will or sufferance. That is to say, at the time of the alleged acts of which plaintiff complains, it had no legal right to the use or possession of the land, and that any right which it ever did have had expired with the contract for the lease of the land by the defendants to Dizon and Tiglao. In this situation, the defendants had the legal right to remove plaintiff's railway from their land, and plaintiff cannot recover damages from the defendants for the doing of that which they had a legal right to do. It is true that after the lease had expired by the terms there were negotiations between the parties for a renewal or extension of the lease. It is also true that such negotiations fell through, and that the lease was never renewed or extended. Hence, it follows that the defendants are not liable for any damages which the plaintiff may have sustained growing out of the failure to renew the lease, and for such reasons plaintiff's first assignment of error is not well taken.

Be that as it may, the railway track in question has lawfully been on the defendants' land and in the use and possession of the plaintiff for about seven years, and while it is true that after the expiration of the lease, the defendant, upon notice to the plaintiff, had the legal right to terminate the lease and remove the track, yet they had no right to do so in the manner in which it was done. In its removal it was the duty of the defendants to remove the track without any unnecessary damage to the plaintiff. That is to say, in such removal the defendants had no legal right to bend or twist the rails or to destroy the railway ties, fishplates, bolts and nuts and spikes, and that such removal should have been made without any serious injury or damage to the materials of which the railway was constructed. For such wrongful acts, the lower court awarded damages to the plaintiff in the sum of P2,083.99.

In the opinion of the writer the amount of such damages is about P4,000. Be that as it may, my associates are all of the opinion that the amount awarded by the lower court is reasonable, and that its judgment in that respect should also be affirmed.

From what has been said, it follows that there is no merit in the defendants' appeal. If the defendants had torn up and removed the track in a peaceful and orderly manner and without any unnecessary destruction to plaintiff's property, they would not then be liable for any damages. But the proof is conclusive that it was done with a large body of men and in a hasty manner, and with force and violence, and that the whole track was torn up and removed in about two days' time and without any regard to plaintiff's rights.

The evidence is conclusive that the track was removed at the instance and request of Tomasa C. Vda. de Pamintuan, the guardian of the minor defendants, and the lower court rendered judgment against her as such

guardian. That was error. The judgment for the amount of damages awarded to plaintiff should be against Tomasa C. Vda. de Pamintuan personally and in person, and not as guardian, for the simple reason that the minors are not legally liable for a tort committed by their guardian. That is to say, the judgment of the lower court for damages against Tomasa C. Vda. de Pamintuan, as guardian of the minors, is reversed, and in lieu thereof a corresponding judgment will be entered against Tomasa C. Vda. de Pamintuan personally and in person, and that in all other things and respects, the judgment of the lower court is affirmed, with costs against the plaintiff. So ordered,

Avanceña, C. J., Johnson, Street, Romualdez, and Villa-Real, JJ., concur.

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