

TEODORA DE LA CRUZ, ASSISTED BY HER HUSBAND, DEMETRIO LUCAS ET AL., PETITIONERS, VS. ASOCIACION ZANJERA CASILIAN; ET AL., RESPONDENTS.

G.R. No. L-1614. March 30, 1949

Ponente: PERFECTO, J.

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PERFECTO, J.:

The petitions in these two cases seek, on different grounds, the reversal of a decision rendered by the Court of Appeals. The facts and the legal issues between the parties cannot better be stated as in the decision which we, therefore, reproduce in toto as follows:

"LIM, J.:

"Plaintiffs and defendants appealed against a decision of the Court of First Instance of Ilocos Norte, in which the defendants were sentenced to pay the plaintiffs, with the exception of Alejo Guzman, Juan Santiago, Francisco Santiago, Felipe de la Cruz, Francisco Ignacio, and Elpidio Domingo, the sum of P4,116.80, for damages suffered by the former during the agricultural year 1933-1934, as well as the sum of P1,372.26, for every agricultural year thereafter, and until the defendants allow the group of persons headed by Jacobo Capalungan, and mentioned in the contracts known in the records as O, P, and Q (Exhibits 2, 3, and 4, here), to work in the land of the defendants, under the terms and conditions stipulated in said contract, plus legal interests from the filing of the complaint, and costs.

"The defendants were the owners of a parcel of land containing an area of a little more than 90 hectares, located in Barrio de Casilian, in between the towns of Laoag and Bacarra, Ilocos Norte. As this property was barren, the plaintiffs and their predecessors-in-interest laid the foundations and constructed in the year 1908 an irrigation system, fed by the Bacarra river, to make this land productive and fertile. The plaintiffs opened irrigation canals inside the property of the defendants and their predecessors-in-interest, and in compensation for their labor and agreement that they would maintain said irrigation system in running condition, the defendants and their predecessors-in-interest, following the customary practice of the locality, ceded 2/3 of their property to the plaintiffs, retaining 1/3 thereof for themselves.

"On 18 May 1926, a new agreement was signed by the parties, which changed the former conditions. Under this new contract, the plaintiffs and their predecessors-in-interest returned to the defendants the land that they had previously received, subject to the condition that thereafter they would receive 5/6 of the palay harvested and 2/3 of any other crop, the laborers to pay 2/3 of the land taxes. Any violation of its terms would be penalized by a fine of P10 the first time, to be doubled on the second infraction and so on for subsequent infringements (Exhibits 2 and 2-a).

"On 18 March 1930, another tenancy agreement was signed between the defendants herein and some of the plaintiffs herein, as tenants, the latter binding themselves to take care and fence the property of the defendants, and try to cultivate the uncultivated portions, subjecting the culprits and recalcitrants to punishment by 'our association'. Aside from retaining the former clause that 2/3 of the land taxes shall be defrayed by the tenants, it was also agreed that the crop harvested shall be divided in the following manner:

"(a)

On portions already cultivated, $\frac{4}{5}$ of the palay to the tenants to be shared among themselves, and $\frac{1}{5}$ to the landowners;

"(b)

On portions newly cultivated, $\frac{5}{6}$ of the palay to the tenants and $\frac{1}{6}$ to the landowners;

"(c)

On riceland requiring no irrigation, $\frac{1}{2}$ of the palay for the tenants and $\frac{1}{2}$ for the landowners;

"(d)

On all other crops, either on cover crops or on lands unirrigated, $\frac{2}{3}$ for the tenants and $\frac{1}{3}$ for the landowners (Exhibits 4 and 4-a).

"On 31 October 1932, the defendants herein filed an application for the registration in their name of the property involved in the litigation (Special Proceedings No. 241, Court of First Instance of Ilocos Norte).

"On 6 March 1933, Andres Aceret, Jacobo Capalungan and Nicasio Macadangdang filed before the Bureau of Public Works an application for water rights to irrigate the lands of Bonifacio Barut, Andres Lazo, Norberta Albano, Norberta Lagasca Albano, and Domingo Albano, all of Bacarra, Ilocos Norte, covering an area of 30.2042 hectares, approximately (Exhibit 16).

"On 22 April 1933, another tenancy agreement, superseding that of 18 March 1930, was signed by 47 tenants, including some of the plaintiffs herein. This was a reproduction of that of 18 March 1930, with some modifications, including the following in connection with the division of the crop:

"On palay from newly opened portions, $\frac{5}{6}$ would be retained by the tenants and $\frac{1}{6}$ delivered to the

landowners, during the first year, and 4/5 to the tenants and 1/5 to the landowners, thereafter;

"The tenants also bound themselves to work free for two days every year in the reparation of the house and fences of the landowners (Exhibit 3 and 3-a).

"On 19 December 1933, the plaintiffs, their predecessors-in-interest and co-owners filed an opposition against the registration of land applied for on behalf of the defendants herein (R. on A., p. 64).

"On 22 August 1934, the Association Zanjera de Casilian was incorporated and it became known thereafter as the 'Asociacion Zanjera Casilian de Bacarra, Ilocos Norte, Inc.' The object of this corporation was to maintain, improve, manage and extend, if necessary, the irrigation system in Casilian site, barrio 37, Bacarra, Ilocos Norte, fed by the Bacarra river, which system had been in existence since 1908 (Exhibit A).

"On 1 November 1934, a general meeting of the members of this corporation approved a resolution whereby said members transferred, conveyed and ceded to the corporation above named all the rights, privileges and obligations that they had in this irrigation system, in such a manner that thereafter the corporation shall represent them in all matters pertaining thereto (Exhibits C and C-1).

"On 8 November 1934, Atty. Vicente Llanes, as lawyer for Teodora de la Cruz and the other defendants, addressed a letter to the District Engineer of Ilocos Norte, asking that an action be taken against Andres Aceret, Jacobo Capalungan and others, of Bacarra, for closing and destroying for the ninth time the irrigation ditches of the property of his clients, and causing the destruction of their rice plantation (Exhibit 5).

"On 29 December 1934, the defendants herein filed a complaint against the plaintiffs herein, asking for an injunction against the latter (plaintiffs herein), who were about to enter by force into the land in question and to collect the crop that was then ready for harvesting from 40 hectares of riceland, approximately (Exhibits L, Teodora de la Cruz, et al., vs. Andres Aceret (sic) et al., civil case No. 3807, Court of First Instance of Ilocos Norte). This petition for an injunction was supported and strengthened by an affidavit of Casiano de la Cruz, one of the defendants herein and one of the plaintiffs in that case, in which he alleged that the palay involved amounted to 400 'uyones' (Exhibit M, dated 2 January 1935).

"Some time during the months of January and February, 1935, Domingo de la Cruz, another defendant, had an incident around his property during which he shot Andres Aceret with a shotgun, resulting in a criminal charge for frustrated homicide against said Domingo de la Cruz, known as Criminal Case No. 6355 of the Court of First Instance of Ilocos Norte.

"On 21 October 1938, this Court of Appeals, in G. R. No. 44597, in deciding an appeal from the oppositors thereto (Plaintiffs herein) against the aforesaid application for registration of the defendants herein on the property indicated, promulgated a decision in which the following was held, in part:

"Pasemos ahora a considerar las pruebas de los opositores y las cuestiones por ellos planteadas. Comenzaremos por las oposiciones de los llamados zanjeros o encargados de la construccion y mantenimiento del sistema de riegos en los terrenos en litigio. Es indudable que estos poseian en concepto de duenos, varias porciones de los terrenos cuestionados, pues es les llaman colindantes al Norte de la tercera parcela comprada por Bernardino de la Cruz de Eduardo Bagcal 2.0 de Anselmo Acob, de Anastacia, de Simeon Saguyut; de la segunda parcela adquirida de Toribio Rivera; pero tam-bien lo es el que ellos renunearon a su dere-cho a otorgar los exhibitos 0, P, y Q, en los que dichos opositores admitieron ser aparceros de los solicitantes bajo ciertas condiciones, apartemente favorables a los mismos, pues que, segun dichos exhibitos, las 5/6 partes de la cosecha de palay les pertenecerian, y solaraente 1/6 parte a los duenos. Y no puedan alegar que han suscrito dichos documentos bajo falsas manifestaciones, pues el exhibitio 0, lleve la fecha de 1926, el exhibit Q, de 1930 y el exhibit P, de 1933. Ademas de estos exhibitos, Andres Aeeret traspaso en el amillaramiento el

terreno que estaba a su nombre a favor de Demetrio Lucas y sus hijos, poniendose a nombre de Ambrosio Ventura, madre de estos, segun los Exhibitog: U, U-1, U-2, Vy V-3. Esta oposicion, por consiguientes, debe deses-timarse. Y huelga resolver o sobreseer su apelacion. En justicia, sin embargo, a estos opositores que renunciaron a su propiedad a cambio de las condiciohes estipulados en los contratos exhlbitbs O, P, y Q, estos deben anotarse en el titulo de propiedad que se va a expedir.' (Exhibit D)

"On 16 November 1939, the plaintiffs filed the complaint in this case, to enforce the contracts; above indicated, to collect damages for fraudulent violations thereof, and to establish and confirm the ownership and possession of the irrigation system mentioned in favor of said plaintiffs.

"On 30 January 1940, the defendants filed their answer but after the plaintiffs had submitted their evidence on the main, and over and above the objections of the latter, said defendants filed on 14 March 1941 an amended answer, interposing a counterclaim for the first time. On 30 January 1943, after a protracted trial that was closed on 16 April 1941, the Court of First Instance of Ilocos Norte rendered the judgment stated in the first paragraph of this decision, basing the contractual rights of the plaintiffs herein on the former decision of this Court in G. R. No. 44597, which made the contracts of tenancy known as Exhibits 2, 3, and 4 of this case (O, P, and Q of the former case) a part of the title issued to the herein defendants, through annotation of the conditions of said contracts. Defendants' counterclaim was dismissed.

"Both parties appealed after their respective motions for reconsideration were denied, but concurred in a joint Record on Appeal. Their main briefs as appellants were submitted in July, 1943, while their respective briefs as appellees were filed in September of the same year. As no decision had been rendered up to the time most of the records of this Court of Appeals were destroyed during the Battle of Manila, the parties reconstituted the case before the Supreme Court. New memoranda were submitted before the latter, in lieu of oral arguments, for which this had been previously set for hearing before our highest tribunal. This circumstance induced us to return the case to the Supreme Court, for we deemed that the case had been submitted for the decision of that higher court prior to the recreation and re-establishment of this Court, but it was certified to us for the second time for our determination.

"Extensive arguments have been advanced on the contractual rights of the plaintiffs, but as the rights confirmed by this Court, through our former decision in G. R. No. 44597, are based on the waiver that the oppositors had ibade previously in favor of the applicants over their dominical rights on some portions of the land, and the oppositors, herein plaintiffs, thereby obtained vested rights on said land, no amount of discussion can alter or disturb the existence and nature of such acquired rights which created a real encumbrance and charge on the property itself, nor efface the antecedent finding that the irrigation system in question was constructed way back in 1908 by the plaintiffs and their privies. This decision, promulgated nearly seven years ago, is now final and it is incontestable and indefeasible. Moreover, the testimony of Andres Aceret on this last point, which could have been traversed by Casiano de la Cruz, the principal defendant, stands uncontradicted, and for that reason conclusive (Lewis vs. New York City R. Co., 50 Misc. [N. Y.] 535; 99 N. Y. Supp., 462).

"The sagacity of the defendants is indeed remarkable. The voluntary application for registration filed some time after they had consolidated the whole property into one big parcel, by baiting the plaintiffs and their privies with a crop-share bigger than the one that they had been receiving under the original arrangement, too tempting to be rejected by simple-minded zanjeros, points conclusively to a predetermined plan of freezing out the old zanjeros from the rights acquired from Bernardino de la Cruz, original owner of this land.

"The right of the plaintiff corporation and of the individual plaintiff to demand and obtain the compliance of the tenancy contracts or at least of a great portion of these plaintiffs is questioned by the defendants, who argue that not all of the plaintiffs had originally cut or excavated the ditches in 1908 nor are all of them signatories to the

tenancy contract annotated in the defendants' Torrens title. The contracts of 1930 and 1933 (Exhibits 4-A and 3-a) manifestly recognize the existence of an association (nuestra asociacion—first condition in both contracts) of the tenants, that enjoyed the power of punishment over recalcitrants or erring members, for violations of its terms.

"This was the 'Association Zanjera Casilian'. For the avowed and undeniable purpose of conferring a juridical personality to this association, it was incorporated in 1934, with a membership of 75 zanjeros or ditch-diggers; the rights and obligations of the tenants were subsequently assigned to this corporation, the 'Association Zanjera Casilian (de Bacarra, Ilocos Norte) Inc.,' (Exhibit C) plaintiff at bar, a 'use plaintiff' to be more correct (More, Inc., et al. vs. Schwartz, [D. C. Pa.] 26 Fed. Supp., 188).

"But, it is then contended that this cession of rights to the corporation constituted a violation of the tenancy contracts, wherein the change of personnel by their leaders or bosses, without the consent of the landowners, was banned. Such violation, if any, was provoked and caused by the defendants themselves, because at the time the relationship between the parties was not only under strain but actually severed, through the dismissal of the plaintiffs on the flimsy excuse that they had opposed the registration of the property under the exclusive names of the defendants.

"This dismissal of the plaintiffs, unjustified and unlawful, constitutes the first breach of contract that aggravated the explosive situation produced by the defendants' application for registration, to the exclusion of the plaintiffs, who had renounced not long ago to their proprietary interests in the land, in exchange for certain contractual rights they considered advantageous, and provoked all the violent disputes among the parties.

" 'The parties who commits the first breach is also deprived of the right of complaint to a subsequent breach of the other party' (17 C. J. S., 944).

"The defendants assert, however, that the first breach of contract was committed by the plaintiffs and their privies, when Jacobo Capalungan, Andres Aceret and Nicasio Macadangdang filed on 6 March 1933 an application for Water Rights (Exhibit 16), for this indicated an intention of abandoning the defendants' property since then. This argument is tamed by the tenancy contract of 22 April 1933 (Exhibits 3 and 3-a), which neither Aceret nor Capalungan would have signed if they had the intention of withdrawing from the land. This would have involved them merely in a useless, obligation and possible legal entanglement. Moreover, defendants argue that the investigation conducted by the Bureau of Public Works on 3 August 1933, must have referred to canals and ditches that might have been dug in one Barut's homestead, beneficiary, between 3 March 1933 and 3 August 1933, as otherwise the investigation would have had no purpose. These are mere imaginary surmises that are not supported by the evidence. It is an inference busted by the express and clear provisions of Act No. 2152, as amended, otherwise known as the Irrigation Law, which prohibits the performance of any work until the plan and application had been approved (secs. 14 and 17). Presumptions of knowledge of the law (Rule 123, sec. 68 (e), Rules of Court), innocence from a wrong (Rule 123, sec. 69 [a], Rules of Court) and that the ordinary course of business has been followed (id., subsection [9]) are elemental but unavoidable. The investigation referred to the appropriation of water and possible oppositors, and nothing else (Act No. 2152, sec. 15). This investigation must necessarily have taken place before the approval of the plan and application. The District Engineer recommended the approval of this application (Exhibit 8), which he would have withheld and probably instructed the prosecution of the culprits under the Irrigation Law, if it were true that actual work had been performed before such approval, for it is also to be presumed that official duty has been performed (Rule 123, sec. 69 [m], Rules of Court).

"We concur with the finding of the trial court that the plaintiffs have cultivated the land for 1933-1934. Their opposition to the registration was filed on 19 December 1933, and as the planting season in that part of the country takes place in the months of June and July, it is apparent that the planting was over before the opposition

was filed. The fact that Andres Aceret, Jacobo Capalungan and others had signed a new tenancy agreement on 22 April 1933 (Exhibit 3), long before the opposition had been filed, supports the view that the plaintiffs must have clearly taken part in the preparation and cultivation of the land for the 1933-1934 season. It is indeed credible that the defendants were so incensed by the opposition filed by the plaintiffs that to make the latter feel the weight of their power as over-all masters and mighty landowners, they ousted and drove away the plaintiffs while they were still harvesting that 1933-1934 crop, in open violation of the terms of the agreement of 22 April 1933. They not only grabbed 33 uyonas of palay that had been gathered up to that time, but prevented also the plaintiffs from gathering the rest of that crop.

"The defendants, in the furtherance of their scheme to defeat the vested rights of the plaintiffs, entered into another tenancy contract on 13 May 1934 (Exhibit 1), in which some of the original tenants (zanjeros) appeared as signatories.

"They protested to Domingo de la Cruz, but the latter answered by threatening to shoot them. The defendants' determination to prevent the plaintiffs from entering the premises for the subsequent planting season, and the desire of the plaintiffs of complying with their obligations are indicated by the petition for injunction of 29 October 1934 (Exhibit L), and the shooting affray during which said Domingo de la Cruz shot at Andres Aceret. His subsequent acquittal from the charge of frustrated homicide does not change the fact that the defendants exerted all efforts possible to prevent the plaintiffs from complying with the terms of their tenancy contracts.

"We agree with the trial court that there can be no justification to believe that the plaintiffs voluntarily abandoned their work, because it would be against the normal course of business for them to have given up their advantage and waive their rights, after so much labor and energy exerted and so much time spent in the property.

"In spite of the attitude of the defendants, which was not only negative but violent as well, the plaintiffs, in compliance with their part of their agreements, did their best to continue maintaining and repairing the irrigation system that they have established and kept since 1908. But the defendants even tried to grab this right of the plaintiffs, by attempting to acquire for themselves the right to divert and use for irrigation purposes the water from the Bacarra river. The opposition filed by the plaintiffs on 18 June 1936 (Exhibit E-1), which evidently must have been supported by convincing proofs on 20 January 1939 (Exhibits E-3 and E-4), convinced the corresponding authorities of the existence of their vested rights on this irrigation system, for they recommended the dismissal of the application for the same water rights filed by Casiano de la Cruz and others, defendants (Exhibits 6 and 7).

"The defendants also pretend that Felix Mariano and his companions started working in this land since 1933, but for one reason or another no written contract was signed until 13 May 1934 (Exhibit 1). To corroborate further that said Felix Mariano and his gang of laborers worked in this property, the defendants presented the rolls of said laborers, consisting of Exhibits 12 and 15. It is however too much of coincidence that the earliest date appearing in these lists (Exhibit 12-a) is that of 23 May 1934. If Felix Mariano and his group worked since 1933, where is the pay-roll corresponding to that period? The excuse that it was lost is too flimsy to merit any credit. The production of this contract of 13 May 1934 (Exhibit 1) and this pay-roll, starting 23 May 1934, merely adds to substantiate the claim of the plaintiffs that they had really cultivated the land for the agricultural season 1933-1934. We repeat that the months of July and June correspond to the planting season, the harvest having been collected in January preceding.

"As far as the rights of the plaintiffs are concerned, it is entirely immaterial as to who maintained the irrigation system in usable condition after the year 1934. Even assuming that Felix Mariano and his co-tenants were the ones who maintained the system since May 1934, this will not in any way minimize the damages suffered by the plaintiffs, who were unable to perform their part of their tenancy agreements with the defendants through violence

and culpable fraud on the part of the latter.

"Although the defendants have tried to prove that the cultivated area was approximately 30 hectares for riceland and the production was an average of 160 'uyunes' of palay each year, we are more inclined to believe that the real area was 40 hectares (Exhibit L) and that the true production was 400 'uyunes' a year (Exhibit M). At the rate of P15 an 'uyon,' the value of the annual production of palay would be P6,000. More, the annual production of corn was 45,000 ears, and, at P6 per thousand, amounts to P270, of mongo, 100 cavan, and at P5 per cavan, P500, and of tobacco, 40 bales, and at P20 per bale P800, totaling P1,570. Under the terms of the last tenancy agreement (Exhibit 3), however, assuming that none of the production came from newly opened areas, 4/5 of the palay belonged to the plaintiffs, as well as 2/3 of the corn, mongo and tobacco. This would have given them a net of P5,846.66. Unquestionable, Felix Mariano, Honorio Bugaoisan, Bernabe Bacsá, Fausto Bugaoisan, Agustin Domingo, Tomas Domingo, Vicente Sebastian, Salvador Vicente, Roman Bagkal, Juan Santiago, Felipe de la Cruz, Francisco Ignacio, Antonio Agamata, Francisco Santiago and Agaton Bugaoisan are not entitled to any share, because they joined the new group of *zanjeros* under Exhibit 1, and they have received already their respective shares; for stronger reasons, Felipe de la Cruz, Francisco Santiago and Francisco Ignacio, having stated that they disclaim any interest in this case.

"As there were 47 tenants under the contract of 22 April 1933 (Exhibit 3), these damages must be distributed among them with the exception of the 15 persons above excluded. The 32 remaining tenants would be entitled to a total of P3,980.48, or P124.40 each. And, as the rights of the tenants, under the contract of 22 April 1933 (Exhibit 3), have been assigned to the corporation and new parties were included in the complaint who were not tenants in 1933, the adjudication of the portions corresponding to the remaining tenants and plaintiffs, excepting Alejo Guzman, Elpidio Domingo, Francisco Santiago, Francisco Ignacio, Blas Topino and Felipe de la Cruz, will not in any way prejudice the rights of the defendants.

"This yearly damages must be paid up to the time the plaintiffs are reinstated in the land, as the court has no discretion in changing the amount once it has been determined, the damages having been caused by fraud (*dolo*) and not through negligence of the defendants.

"The plaintiffs stopped working in 1934 due to the fraudulent and violent acts of the defendants, who succeeded in preventing the plaintiffs from working as tenants despite their willingness and eagerness to work. The liability of the defendants for the damages suffered by the plaintiffs is an unavoidable consequence.

"Article 1101 of the Civil Code provides:

" 'Any person who is guilty of fraud, negligence, or delay in the fulfillment of his obligations, or who in any manner whatsoever shall fail to comply with the terms thereof, shall be liable for any damage caused thereby.

"Speaking of fraud (*dolo*), Manresa comments on Article 1102 of the Civil Code:

" 'Al exponer sumariamente esas bases de la clasificacion relativas a la causa de incumplimiento de las obligaciones, implicitamente hemos expuesto tambien el concepto del *dolo*, en el sentido en que de el se ocupa este articulo, viendose que aquel consiste en el proposito consciente, Intencionado, de eludir el cumplimiento normal de las obligaciones, concepto en que se revela el caracter comun entre tal causa y la culpa, que es el de voluntario, y a la vez el diferencial en su uno y otro origen de responsabilidad, que esta en la intencion. que en el uno existe y en la otra falta.' (8 Manresa, 4.a edicion, pag. 68.)

"Evidently, these concepts cover the intentional and violent acts of the defendants, in preventing the performance of the obligations by the plaintiffs. The damages recoverable are possible in article 1107, which provides:

" 'In case of fraud or intentional wrong (*dolo*) the debtor shall be liable for all damages which clearly originate

from the failure to fulfill the obligation.'

"Quoting again from Manresa:

" * * * Con efecto, por lo que toca al origen de la indemnizacion, no se exige, caso de dolo, que los perjuicios seas consecuencia necesaria del incumplimiento, bastando con que de este se deriven; termino o concepto muy distinto, que comprende mayor extension, y aserto, corroborado por el empleo de la palabra todos, antepuesta a los perjuicios. En cambio, con relacion a la prueba, el empleo del adverbio conocidamente supone la exigencia de que aquella sea suficiente, puesto que el legislador excluye el enlace dudoso entre el dano y la causa que se le atribuye. Tambien es indudable en este aspecto de prueba, que corresponde al reclamante justificar que se esta en el segundo de los supuesto de este articulo, y no en el primero, puesto que la buena fe se presume y el dolo no. 8 Manresa, Ma edicion, p. 96.

"Our Supreme Court, in applying these legal provisions have laid down rules that must serve as guide in determining such damages.

"In the case of Lemoine vs. Alkan, 33 Phil. 163, it was held:

" 'An action by an employee against his employer to recover damages for wrongful discharge is an action for breach of contract and the damages are prima facie the amount of wages for the full term. He is entitled however to such other damages as he has actually suffered which spring directly from the breach and which he can prove.'

"In De la Cruz vs. Seminary of Manila, (18 Phil. 330), it was held:

" 'The defendants failed in the performance of their contract, and, as we have seen by article 1101 of the Civil Code, the person who fails in the performance of his obligations shall be subject to indemnify for the losses and damages caused thereby. 'The true measure of damages for the breach of such contract is what the plaintiff has lost by the breach.' (Lock vs. Fulze, L. R. I. C. P., 441; Dexter vs. Manley, 4 Cush, [Mass.], 14.)

"And, finally in Cerrano vs. Tan Chuco, (38 Phil. 392), it was also held:

" 'Article 1106 of the Civil Code established the rule that prospective profits may be recovered as damages, while article 1107 of the same Code provides that the damages recoverable for the breach of obligations not originating in fraud (dolo) are those which were or might have been foreseen at the time the contract was entered into. Applying these principles to the facts in this case, we think that it is unquestionable that the defendant must be deemed to have foreseen as the time he made the contract that in the event of his failure to perform it, the plaintiff would be damaged by the loss of the profit he might reasonably have expected to derive from its use.

" 'When the existence of a loss is established, absolute certainty as to its amount is not required. The benefit to be derived from a contract which one of the parties has absolutely failed to perform is of necessity to some extent, a matter of speculation, but the injured party is not to be denied all remedy for that reason alone. We must produce the best evidence of which his case is susceptible and if that evidence warrants the inference that he has been damaged by the loss of profits which he might with reasonable certainty have anticipated but for the defendant's wrongful act he is entitled to recover. As stated in Sedgewich on Damages (Ninth Ed., par. 177):'

" 'The general rule is, then, that a plaintiff may recover compensation for any gain which he can make it appear with reasonable certainty the defendant's wrongful act prevented him from acquiring. * * *'

"The trial court erred in applying article 1103 of the Civil Code in justifying the diminution of the damages awarded to the plaintiffs.

"Article 1103, above mentioned, provides:

" 'Liability arising from negligence in the fulfillment of all kinds of obligations is also demandable; but it may be mitigated by the court according to the circumstances of the case.'

"Manresa, commenting on this article says:

" '* * * la accion de los tribunales, limitada a moderar las responsabilidades, no a determinar libremente la existencia de la culpa, no es aun en aquello completamente discrecional, puesto que habiendo de ejercerse tal accion, 'segun los casos,' habra de apreciar las circunstancias de estos sin olvidar para ello la norma de la ley.' (8 Manresa, 4a edicion, pag. 83.)

"There is no question that the liability for damages arising out of dolo is different from the responsibility arising out of negligence. The defendants are responsible for fraudulent acts and not for mere negligence.

"Instead of this unauthorized and unjustified mitigation of the damages the trial court should have deducted two-thirds (2/3) of the land taxes, which the tenants are bound to give the landowners, under their tenancy contracts.

"As to the counter-claim of the defendants, who pretend that they suffered damages, represented by 1/3 of the crop for the agricultural years 1933-1934 and 1934-1935, we concur with the trial court that the same should be dismissed for the following reasons: (1) if the damages were caused in the seasons 1933-1934 and 1934-1935, no plausible reason has been advanced to explain the failure of the defendants to file the corresponding action for damages as soon as the same were suffered, knowing particularly that at the time they were represented by Judge Vicente Llanes, who was then a practising attorney; (2) if these damages were real, this Court cannot understand why such counter-claim was alleged only in the amended answer of 14 March 1941, filed after the plaintiffs had closed their evidence (R. A., p. 27-36) and not in the original answer of 30 January 1940 (R. A. pp. 19-23); (3) the damages could not have been caused by the ditches indicated with the letters 'X' and 'Z' in the blue-print sketch (Exhibit 10), because (a) these ditches were too short to be of any use to the parties for whom they were intended; (b) they were never in use, as the dam was closed; (c) they were abandoned by reason of flood; (d) there was enough water anyway to feed these ditches (Exhibit 9); and (e) the ditch indicated with the letter 'Z' in the sketch (Exhibit 10) was constructed by Jacobo Capalungan and others only three months prior to the inspection of Engineer Bitanga (Exhibit 6), or approximately in the month of May 1935, long after the crop for the season 1934-1935 had been gathered.

"We have examined and weighed with utmost care all the different inculpations advanced by the defendants that may warrant the cancellation of the tenancy contracts annotated in their title of ownership. We have not detected one single justification, legal and logical, for a favorable pronouncement.

"The former decision of this Court providing for the annotation of these contracts constitute the best answer to the contention that the opposition to the land registration application amounted to a conduct inimical to the interests of the landowners, sufficient to vindicate the dismissal of the tenants. An employee or laborer who resorts to the processes established by law to defend and protect his legal rights against his employer, as long as he keeps himself within the bounds of propriety and legal procedure, can not be discharged from the service. In a true democracy, the defense of a right is sacred and inalienable to all persons, rich or poor, landlord or peasant, and can never be construed as a disrespect to any individual in this era of enlightenment, in which servilism, despotism, slavery and caciquism are anachronistic anathemas.

"The insistent attempts of the tenants to continue in the collection of the crop that they have prepared and planted and their persistence in returning to work are indicative signs of their desire to comply with their side of the

agreement with the landlords. It was the essential foundation for their subsequent actions for damages on a breach of contract.

"If it is considered that the sole object and purpose of the plaintiff corporation, headed and represented by the tenants, is to establish, own, maintain and operate an irrigation system (not necessarily exclusive for the defendants), that the water flowing on the beds of the Bacarra river was sufficient to irrigate the lands of the defendants and of other people, that the rights of the defendants on the irrigation system owned by the plaintiff corporation and its predecessors-in-interest were not exclusive, and that the approval of the proposed irrigation plan is a condition precedent before any actual work or digging is done, it follows perforce that the filing by Aceret, Capalungan and others of an Application of Water Rights from the Bacarra river for the benefit of the homesteads of one Barut and others in not a ground for the cancellation of the tenancy contracts. This Court takes judicial cognizance of the well-established fact, of common and general knowledge that the work of a riceland farmer is not continuous during the whole calendar year. Anyway, there is always a hiatus, caused by the cycle of our dry and rainy seasons and the growing characteristics of the palay plants, that allows rice farmer ample time to attend to many other activities aside from tending his farm. The plaintiffs were not only farmers but zanjeros or ditch-diggers as well, as part of their livelihood. This was not unknown at all to the defendants.

"There is no evidence that the plaintiffs and their privies were at fault in not making productive the whole area. We have not lost tract of the undenied fact that this land was originally stony and partly forested. The demand of an impossible condition is not countenanced in law. A farmer is but human and he cannot defeat the laws of nature.

"The defendants finally contend that the plaintiffs are guilty of grave bad conduct, deliberate disobedience, negligence, non-performance of their obligations and abuse of confidence. They desire to apply the standard of conduct regulated in Act No. 4054, without any showing that said law was made extensive to Ilocos Norte, which is a condition required in said law before it could be made applicable to any province or region in the country.

"In a memorandum of the plaintiffs and appellants, dated 14 April 1947, the latter discussed extensively the high prices of commodities, including palay, corn, mongo, and tobacco, during the periods of enemy occupation, Battle of the Philippines, and post-liberation, as evidenced by the price control laws and executive orders enacted and promulgated during those days, which attempted to establish price levels that were more than three times the pre-war values of such indicated commodities. This was a condition that was neither contemplated nor foreseen, not even imagined, at the time the trial court estimated the cash value of the damages suffered by the plaintiffs. We are enlightened by the ceiling prices established in Executive Order No. 91 of Sergio Osmeña, former President of the Philippines, promulgated on 5 February 1946 (42 Off. Gaz., 167-174), which in fact raised the palay to P29 per cavan, corn to P12.50 per cavan, mongo to P37.50 per cavan, and tobacco to a similar higher level. These prices are more than five times the pre-war prices adjudged by the trial court. The plaintiffs argue that it is not right nor just to allow the defendants-appellants to reap all the benefits represented by the difference between the pre-war prices set in the judgment appealed from and the prices they actually received for these agricultural products. This Court, however, has no concrete nor definite bases for a just and proper determination of prices, because the prevailing prices of the locality are not known. Furthermore, the plaintiffs have failed to consider that the increase in prices have also augmented the cost of production.

"In view of these considerations, the Judgment of the lower court is modified as follows:

"(a)

The damages, hereby reduced to P3,980.48 for every agricultural year, shall be paid in full for the agricultural year 1933-1934, inclusive, and for every agricultural season thereafter until the tenants are allowed to return to

work; and

"(b)

Two-thirds (2/3) of the land taxes paid during the same periods shall be deducted from these damages, the amount of such taxes paid to be determined by the trial court, within the earliest possible time.

"The judgment of the trial court is affirmed in all other parts, with costs for the plaintiffs. It is so ordered."

Defendants Teodora de la Cruz, et al. contend that, because plaintiffs have denied defendants' title over the land in controversy and, by such denial, they repudiated the tenancy agreements involved, plaintiffs have no right to enforce the same and claim damages thereon. This claim has no merit at all because, as averred by defendants themselves, the Court of Appeals, in its decision of October 21, 1938, held said tenancy contracts or agreements valid and it is only reasonable that plaintiffs should seek their full enforcement.

Defendants also contend that the Asociacion Zanjera Casilian was incorporated on August 22, 1934, and on November 11, 1934, the individual, signatories to the tenancy agreements, assigned their rights to said corporation and because of the personal character of the tenancy agreements involved, by the assignment, plaintiffs violated the personal character of said agreement and, therefore, defendants have the right to dismiss plaintiffs and the latter have no cause of action against the defendants for the enforcement of the agreements and for damages thereon.

It is further contended that the cession made to the corporation constituted a violation of the tenancy contracts, wherein the change of personnel, with the consent of the land owners was banned. Defendants contention has been disposed of by the Court of Appeals saying in its decision that "such violation, if any, was provoked and caused by the defendants themselves, because at the time the relationship between the parties was not only under strain but actually severed, through the dismissal of the plaintiffs on the flimsy excuse that they had opposed the registration of the property under the exclusive names of the plaintiffs." We find not enough ground in the arguments of the defendants' brief why the above pronouncement should be reversed. Upon the facts, as found by the Court of Appeals, plaintiffs' action appears to have been imposed on them and they took it to better protect their rights, it appearing that plaintiffs appeared to have been the victims of "violence and culpable fraud" on defendants' part, as found by the Court of Appeals.

Plaintiffs, on the other side, complain against the decision of the Court of Appeals because, in the award of indemnity for damages, said Court enforced the same pre-war prices for the products harvested during the enemy occupation and after liberation, said pre-war prices having been fixed on the evidence presented at the protracted trial that was closed on April 16, 1941, many months before the Pacific war broke out.

Defendants contend that for the products corresponding to the occupation and liberation years the ceiling prices fixed by the occupation authorities and in the executive orders issued by President Osmeña on November 6, 1944, and February 5, 1946, should be applied.

On this question the Members of the Supreme Court are divided.

In dismissing plaintiffs' contention, the Court of Appeals declared that it has "no complete, no definite basis for a

just and proper determination of prices, because the prevailing prices of the locality are not known," and "the plaintiffs have failed to consider that the increase in prices have also augmented the costs of production." A majority of the Members of the Supreme Court agree with this opinion while the minority, including the one drafting this decision, are of opinion that plaintiffs' contention, that it is not just to allow the defendants to reap all the benefits represented by the difference between the pre-war prices set in the trial court's judgment and the prices they actually received for these agricultural products, is based on the soundest principle of epikeia, as no one can deny the fact that the level of occupation and liberation prices were and are much higher than the pre-war ones, and that is precisely the reason why price fixing controls were established and ceiling prices were set, and that, if evidence is necessary to determine the difference between the prewar prices and the occupation and liberation prices, without prejudice to the enforcement of the payments ordered in the decision of the Court of Appeals, the trial court should be allowed to receive said evidence to determine what additional amounts plaintiffs are entitled to receive.

Conformably with the unanimous vote in dismissing defendants' contention and with them majority vote in dismissing plaintiffs' contention, the decision of the Court of Appeals is affirmed and, considering that this is one of the oldest litigations before us, this decision shall be final and executory five (5) days after its promulgation, unless reconsidered upon proper motion filed before the expiration of said five (5) day period.

Moran, C.J., Paras, Feria, Pablo, Bengzon, Briones, Tuason, and Reyes, JJ., concur.

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