

SALMON, DEXTER & CO., PLAINTIFF AND APPELLEE, VS. NICOLAS WIJANGCO, DEFENDANT AND APPELLANT.

G.R. No. L-21649. October 09, 1924

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

On the 8th day of October, 1920, a contract was entered into between the parties to this action for the purchase and sale of a tractor and threshing machine upon the conditions specified in said contract, which is evidenced by Exhibit A set out in the complaint.

The price of the machineries sold is P12,400, payable by installments as follows: P400 at the signing of the contract of sale, to wit, October 8, 1920; P4,000 upon the delivery of said machineries by the defendant to the plaintiff; another P4,000 on June 15, 1921, and, finally, another P4,000 on December 15, 1921.

The plaintiff alleges four causes of action and upon each of them prays for judgment against the defendant:

- (1) For the sum of P188.96 claimed in the first cause of action, with legal interest thereon from the date of the filing of the complaint;
- (2) The sum of P5,000 claimed in the second cause of action, with interest thereon at 12 per cent per annum from the 16th day of January, 1923, until full payment, together with an additional 10 per cent of the amount due;
- (3) For the sum of P5,000 claimed in the third cause of action, plus interest at the rate of 12 per cent per annum from the 16th day of January, 1923, until full payment, together with an additional 10 per cent of the amount due;
- (4) For the sum of P1,547.35 claimed in the fourth cause of action, with legal interest thereon from the date of the filing of the complaint.

The defendant denies generally and specifically the facts alleged in the complaint, and as a special defense alleges:

- (a) That the tractor and threshing machine, which is the subject-matter of the contract set out in the second paragraph of the first cause of action and which was sold by the plaintiff company to the defendant, does not meet the conditions specified and guaranteed in the aforesaid contract of sale, to wit, (a) the good operation of the machineries; (b) the new quality of the materials employed in the construction thereof; and (c) the capacity to thresh 300 cavans of palay per day, all of which conditions are specified and guaranteed in subsection (b) of paragraph 2, and in paragraph 4 of the contract of sale aforesaid.
- (b) That in the month of April, 1921, the defendant has notified the plaintiff of the fact that the threshing machine sold to him pursuant to the contract above referred to could not thresh 300 cavans per day, as was guaranteed in said contract, and offered to return the aforesaid tractor and threshing machine, but the plaintiff company, without answering said offer, let the time elapse until the filing of the herein complaint.

(c) That all the amounts claimed in the herein complaint are based on the contract set out in paragraph 2 of the first cause of action, which as above stated, was violated by the plaintiff. And as a counterclaim the defendant prays that the plaintiff be ordered to pay him the sum of P4,211.04 paid by him on account of the aforesaid tractor and threshing machine, plus the amount of P5,000 as damages. And as a cross-complaint, the defendant prays that the contract in question be declared rescinded. After proper proceedings, the lower court rendered judgment sentencing the defendant to pay the plaintiff: First, the sum of P188.96 with legal interest thereon from the filing of the herein complaint; second, P4,000 with interest thereon at the rate of 12 per cent per annum from the 15th day of December, 1920, until full payment; third, P4,000 with interest thereon at the same rate of 12 per cent per annum from the 15th day of December, 1920, until full payment; and finally, P1,403.97 with legal interest thereon from the commencement of this action; and to pay in addition a sum equivalent to 10 per cent of the two amounts of P4,000 claimed by the plaintiff as attorney's fee and expenses of collection; and absolving the plaintiff from the counterclaim and cross-complaint set up by the defendant against it.

The appellant alleges that the trial court erred: (a) In holding that the preponderance of evidence shows that if the defendant could not thresh a larger quantity of palay in the period of time aforementioned it was due, not to the bad quality of the machineries in question, but to the poor quality of the palay harvested and threshed in Magalang and Concepcion, in said period of time, and in admitting as evidence Exhibit L of the plaintiff; (b) in sentencing the defendant to pay the various amounts specified in the judgment appealed from, or in absolving the plaintiff from the counterclaim and the cross-complaint interposed by the herein defendant, and in not allowing the latter the damages claimed in his answer; and (c) in denying the motion for new trial presented by the herein defendant and appellant.

According to the appellant, the question at issue in this case is whether or not the threshing machine purchased by the herein defendant from the plaintiff company can thresh not less than 300 cavans of ordinary palay, as was guaranteed by the seller, and upon which condition the contract of purchase and sale was executed. That is to say, if the seller company has complied with its part of the contract, according to the terms thereof, the purchaser is in turn bound to pay the price.

Upon the capacity of the threshing machine to thresh not less than 300 cavans of ordinary palay per day of ten hours' work, as a question of fact, proof was introduced by both parties, and the trial court in view thereof held that the preponderance of the evidence shows that if the defendant could not thresh a larger quantity of palay in the period aforementioned (1920 to 1921 agricultural year), it was due not to the bad quality of the machineries in question, but to the poor quality of the palay harvested and threshed in Magalang and Concepcion in said period. We have examined the record and do not feel justified in altering the conclusion reached by the trial court.

The appellant calls our attention to the testimonies of his six witnesses in support of the proposition that the palay threshed by the machineries in question is ordinary palay, and that notwithstanding this fact the threshing machine could not give out 300 cavans of palay per day.

A slight examination of the testimonies of said witnesses shows that there is no ground for complaint against the act of the trial court in giving them the merit it did.

For instance, Juan Feliciano testifies that in the 1920-1921 agricultural year he had 80 hectares of land planted with palay, and harvested more than 3,000 cavans. (That is to say, that his land yielded 37 cavans per hectare, and an output of from 30 to 40 cavans per hectare is what the parties understand by ordinary palay.) He affirms that the threshing capacity of the threshing machine was from 170 to 200 cavans per day, and that using said threshing machine it took him eight days to thresh 1,200 cavans, which means a daily capacity of 150 cavans.

Pablo A. Luciano affirms that the threshing machine threshed 172 cavans per day in the eight days he used it,

during which he threshed 1,232 cavans from the crop he had harvested in that year from his land of 40 hectares, which shows a capacity of 154 cavans per day. Andres Feliciano affirms having used the threshing machine for sixteen days during which he threshed 3,000 cavans of palay and that the daily capacity of the threshing machine is approximately 200 cavans, but then he adds that the machine did not give more than 100 cavans per day, and sometimes more than 100 cavans, but he could not tell the exact number of days during which the machine was used in one or the other case.

Anacleto Tuma testifies that he had harvested from his land of 35 hectares about 17 mandalas, some of which were big and some small. Fifteen mandalas were threshed by the threshing machine in question in six days and a half, and gave out 900 cavans, while the other two mandalas threshed by horses yielded 600 cavans.

Eutiquio Feliciano affirms that the maximum capacity of the threshing machine in that period was only 160 cavans per day, and it could not thresh 200 cavans per day. He threshed with the machine in question 2,400 cavans of palay in ten days, which means a daily capacity of 240 cavans.

Without the necessity of going into a minute analysis, the inconsistency of the evidence of the defendant will easily be noted; so that we cannot hold erroneous the finding of the trial court which has had the opportunity to observe the witnesses while they were testifying before it. Another error assigned by the appellant is the admission by the lower court of Exhibit L of the plaintiff, which is a certificate of the Director of the Bureau of Agriculture as to the average crop of palay produced in the municipality of Magalang in the 1920-1921 agricultural year, and is as follows:

"I, Adriano Hernandez, Director of the Bureau of Agriculture, hereby certify that the records of the said Bureau of Agriculture show that for the crop seasons 1920-1921 there was planted to palay in the municipality of Magalang, Province of Pampanga, 5,050 hectares and that the average yield per hectare for such crop seasons was 22 cavanese.

"(Sgd.) ADN. HERNANDEZ, Director."

The statistics prepared by the Bureau of Agriculture is chiefly based on the quarterly reports of the municipal presidents made pursuant to section 2202 of the Administrative Code, which provides:

"The president of each municipality shall, upon forms to be supplied by the Director of Agriculture, and in such detail as shall be required by him, make quarterly reports of the condition of agriculture and live stock in his municipality, and of such other matters as relate to the development of those interests.

"The reports so made shall be submitted to the municipal council, and, if approved, a copy thereof shall be forwarded to the office of the provincial governor, a second copy to the representative from the district, a third copy to the Director of Agriculture, and a fourth copy shall be filed in the office of the municipal secretary."

Under such circumstances, we hold that the certificate issued by the Director of Agriculture is admissible in evidence as an official document issued by a public officer authorized by law. Wigmore, in his treatise on evidence, vol. 3, section 1636, speaking of exceptions to the rule as to the inadmissibility of hearsay evidence, among other things, says:

* * * * *

"6. Certificates.—Every officer has an implied duty or authority to prepare and deliver out to an applicant a certificate stating anything which has been done or observed by him or exists in his office by virtue of some authority or duty, and the certificate is admissible."

The third assignment of error has reference to the alleged breach of the contract on the part of the plaintiff. Such a

breach of contract not having been proven, as we have seen in the discussion of the first two errors assigned by the appellant, the conclusion of law is inevitable that the claim for damages and refunding of what was paid is untenable.

For all of the foregoing, the judgment appealed from must be, as is hereby, affirmed with costs against the appellant. So ordered.

Johnson, Street, Malcolm, Avanceña, Ostrand, and Romualdez, JJ., concur.

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