

**JOSE MITSCHIENER, PETITIONER, VS. CONRADO BARRIOS, AS
JUDGE OF FIRST INSTANCE OF ILOILO, CORAZON DE WIENEKEE
AND HER HUSBAND, ANDRES WIENEKEE AND ROSARIO DE
SANDEJAS AND HER HUS...**

G.R. No. L-112. February 01, 1946

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In an ejectment case, the Municipal Court of Iloilo rendered a decision directing petitioner to vacate the premises in question within ten days from receipt of the decision, to pay the rents due only for April and May, 1945, with legal interest at the rate of twelve per cent per annum from the date of the filing of the complaint, and costs.

The decision was rendered on May 23, 1945, and on the same day petitioner filed his notice of appeal, deposited the amount of P8 as appeal docketing fee, and deposited with the city treasurer the sum of P25 as appeal bond.

While the case was pending in the Court of First Instance of Iloilo, plaintiff filed on September 3, 1945, a motion to dismiss petitioner's appeal upon two grounds: first, because petitioner paid as appeal docketing fee P8 instead of P16, and secondly, because petitioner did not file the bond required by section 8 of Rule 72.

On September 10, Judge Barrios issued an order dismissing the appeal for failure of appellant to perfect it on time and for other reasons alleged in the motion.

Petitioner filed a motion to reconsider the order of dismissal, and on September 15 Judge Diaz issued an order declaring that, although the amount of P8 for appeal docketing fee was sufficient, no appeal had been properly perfected and that the decision of the Municipal Court has become final and executory on the sole ground that petitioner failed to file an indemnity bond within the time limit of appeal, Judge Diaz maintaining erroneously that, under the Rules of Court, it is no more possible to execute an appealed judgment and still have the appeal tried, a situation which he considers a legal heresy. In the same order petitioner is granted a period of ten days to file any recourse that he may deem advisable, suspending, during that period, the execution of the judgment of the Municipal Court.

On September 22, petitioner filed a notice of appeal to the Supreme Court against the orders of September 10 and 15, submitted on the same day a record on appeal, where it is stated that petitioner made the following deposits: (a) P20 with the clerk of the Municipal Court as rents for the months of April and May, (b) P40 with the clerk of the Court of First Instance as rents for June, July, August, and September, at the rate of P10 a month and within the first ten days of each month, and (c) P60 as appeal bond as required by section 5 of Rule 41.

On October 23, Judge Barrios issued an order declaring: (1) that the orders of September 10 and 15 became final and unappealable; (2) that the immediate remanding of the records to the Municipal Court for the execution of the decision is in order; (3) that the court chooses not to make any pronouncement upon the record on appeal, being without jurisdiction to admit the same; and (4) that the clerk should immediately remand the record to the Municipal Court.

To seek relief, petitioner filed the petition in this case.

The first question we are called upon to determine is whether petitioner perfected in due time the appeal against the decision of the Municipal Court.

Under section 2 of Rule 40, an appeal from a judgment rendered by a Municipal Court to a Court of First Instance shall be perfected within fifteen days after notification to the party of the judgment appealed from, (a) by filing a notice of appeal; (b) by depositing the appellate court docket fee; and (c) by giving a bond in the manner provided by section 3 of same rule.

All these requisites were complied with by the petitioner, who (a) filed his notice of appeal on the same day (May 23) the decision was rendered; (b) deposited P8 as appeal court docket fee; and (c) deposited with the city treasurer the sum of P25 as appeal bond. Petitioner's appeal, therefore, has been duly and timely perfected and the orders of September 10 and 15 issued, respectively, by Judge Barrios and Judge Diaz are erroneous.

The indemnity bond mentioned in the order of September 15 is not required by the Rules of Court for purposes of appeal, but only for staying the execution of the appealed judgment. Judicial Rule 40 requires the posting of a bond only to answer for the satisfaction of any judgment for costs, and for said purpose the amount of P25, deposited by petitioner, is enough under the same rule.

The second question is whether the orders of September 10 and 15 became final and unappealable as declared in the order of Judge Barrios, dated October 23.

No reason has been given in support of such pronouncement and the record is silent as to any ground on which to base it. On the contrary, as soon as the order of September 10 was issued, petitioner moved for its reconsideration; and in the order of September 15, Judge Diaz specifically reserved to petitioner the right to file any recourse, granting him a period of ten days for that purpose. Petitioner filed, within the time granted, his notice of appeal, his record on appeal, and made all the required deposits.

Having arrived at the conclusion that petitioner duly perfected on time the appeal against the decision of the Municipal Court, we hold that the Court of First Instance erred in dismissing the appeal and in ordering the return of the records to the Municipal Court for the execution of the judgment, and that the Court of First Instance is duty bound to proceed to try the case on the merits.

The third question is whether, notwithstanding the fact that the tenant, defeated in an ejectment case, has deposited in court all the back rents and is depositing the rent due from time to time during appeal, execution shall still issue if he fails to file the supersedeas bond mentioned in section 8 of Judicial Rule 72.

According to section 8 of Rule 72, if judgment is rendered against the defendant in an ejectment case, execution shall issue immediately, unless an appeal has been perfected and the defendant to stay execution files a sufficient bond "to enter the action in the Court of First Instance, and to pay the rents, damages, and costs down to the time of the final judgment in the action," and unless, during the pendency of the appeal, he pays the amount of rent due from time to time under the contract or the reasonable value of the use and occupation of the premises.

An analysis of section 8 of the Judicial Rule 72 will show that, notwithstanding the words in which it is couched, the supersedeas bond required therein has, in effect, the purpose of securing only the payment of rents in arrears.

To stay the execution of the decision of the Municipal Court, defendant is not required to pay or deposit the back rents but only those which may be due from time to time. That is the reason why the authors of the rule deemed it convenient to require the filing of a supersedeas bond.

The authors could have required the payment or deposit of back rents the same as those which may be due from time to time, but they thought it wiser to require instead the filing of a supersedeas bond. The reason is that it is a

lesser burden and easier for the tenant to undertake than to pay or deposit immediately back rents which may amount to a considerable sum of money, out of defendant's ability to raise it. In such case, the requirement of immediate payment or deposit of all back rents will mean denying defendant the relief that appeal may offer him.

It appears evident, therefore, that if the defendant chooses to pay the plaintiff or to deposit with the court all the back rents, the filing of a supersedeas bond becomes a useless and empty formality. Under the circumstances, it is unfair to trouble and burden the defendant with the imposition of a superfluous obligation and proceeding.

From the words of section 8 of Rule 72, the purposes, apparently, of the supersedeas bond are to answer for the payment of (a) rents, (b) damages, and (c) costs, down to the time of the final judgment in the action.

The first purpose, that is, to answer for the payment of rents "to the time of the final judgment," is better fulfilled by the actual payment or deposit of all rents due. The object is better served because, in case of execution, if the rents are directly paid to plaintiff, he is saved from the trouble of collecting rents already actually paid to him; and if the rents are deposited in court, it is much easier and safer to collect them than to execute first a supersedeas bond which will require an appropriate proceeding to do it, without precluding the possibility of the sureties strongly opposing the execution or, what is worst, becoming insolvent or, at least, hiding or destroying the properties offered as guarantee.

As to damages in ejectment cases there are none practically to be adjudicated except the loss of rents or of their equivalent. The Supreme Court has already declared that the only damages recoverable for illegal detainer are reasonable compensation for use and occupancy of the premises even in cases of usurpation (*Veloso vs. Ang Seng Teng*, 2 Phil., 622). In an action of forcible entry and detainer the damages consist in a reasonable compensation for the wrongful use and occupation of the premises, the legal measure of damages being the fair rental value of the property (*Sparrevohn vs. Fisher*, 2 Phil., 676). The measure of damages for forcible entry and unlawful detention of property, whether by a mere intruder or a lessee by contract not fixing the rent, is the same, namely, the reasonable value of the use and occupation (*Igama and Reyes vs. Soria and Nepomuceno*, 42 Phil., 11). Ordinarily, the amount allowed as damages may be presumed to be the reasonable value of the use of the land as fixed by the court (*De Castro vs. Justice of the Peace*, 33 Phil., 595). Damages may be recovered for the annual yield of the palms on the land, but not for the value of the palm trees cut down (*Santos vs. Santiago and Angeles*, 38 Phil., 575).

Undoubtedly, these pronouncements of the Supreme Court were taken into consideration by the authors of the Rules of Court when, although in section 1 of Rule 72, plaintiff is authorized to sue for the restitution of possession "together with damages," in drafting section 6 of Rule 72, as to judgment to be pronounced, the word "damages" was eliminated, placing, in lieu thereof, the words "reasonable compensation for the use and occupation of the premises". Said section reads:

"SEC. 6. Judgment.—If upon trial the court finds that the complaint is not true, it shall render judgment for the defendant to recover his costs. If it finds the complaint to be true, it shall render judgment in favor of the plaintiff for the restitution of the premises, for the sum justly due as arrears of rent or as reasonable compensation for the use and occupation of the premises, and for costs. If a counterclaim is established, the court shall render judgment for the sum found in arrears from either party, and award costs as justice requires."

That is, in an ejectment case, plaintiff may recover either rents or the reasonable compensation for the use and occupation of the premises, loosely designated in sections 1 and 8 of Rule 72 as "damages," which may be designated also as "fair rental value of the property." When rents are adjudged no reasonable compensation for the use and occupation of the property can be adjudicated, while, inversely, when reasonable compensation is adjudged, it is because no rents are adjudicated.

In the present case, the Municipal Court did not find any damages, neither rental value nor reasonable compensation for the use and occupation of the premises, needing to be adjudicated or guaranteed, because it already adjudicated rents to be paid to plaintiffs.

As to costs, the supersedeas bond is redundant because, as the one posted in the present case, the bond required by sections 2 and 3 of Rule 40 has no purpose other than to answer for said costs.

It must be remembered that the judgment of the Municipal Court in this case directs petitioner to pay only the rents for April and May, 1945, said rents, amounting to P20, having already been deposited with the Municipal Court. What rents, therefore, will have to be guaranteed by the supersedeas bond if all the rents due and adjudicated are already in the possession of the Municipal Court?

It appears, furthermore, that, although not required in the decision of the Municipal Court, petitioner had in good faith been depositing with the clerk of the Court of First Instance the rents of succeeding months, at the rate of P10 a month, including that of September, 1945. And there is no reason to suppose that petitioner failed to continue making rent deposits up to date for, in the first place, plaintiffs had not called our attention to any such failure and, in the second place, spontaneous deposits were made by petitioner for months not covered by the decision of the Municipal Court.

We are of opinion that the purposes of a supersedeas bond are duly complied with and petitioner's failure to file it, under the circumstances in the present case, is not a ground for issuing the writ of execution of the Municipal Court's appealed decision.

The deposits made by petitioner of the back rents for April and May have taken the place of the supersedeas bond.

It has been argued that with the dispensing of a supersedeas bond when defendant pays or deposits all the back rents, in case of execution for defendant's failure to pay or deposit any monthly rental that might be due, the landlord is in danger of failing to collect altogether said monthly rent in the absence of a bond guaranteeing it.

The argument lacks merit if we consider that such event will happen only if the defendant is insolvent, a hypothesis which cannot be countenanced in cases where the defendant pays or deposits all the back rents, which may cover several or many months and will represent an amount harder to raise than the one required to pay just one monthly rent.

Furthermore, with the doctrine we are laying down here, we offer the defendant the opportunity to choose between two alternatives, between filing a supersedeas bond and paying or depositing all the back rents. If he chooses the last alternative, the landlord will be assured of collecting the rents of several or many months against the possibility of failing to collect one month rent, while if the defendant chooses the first alternative, the landlord will have a written guaranty for all the rents due, including the one corresponding to the last month, against several possibilities that the bond might not be made effective and would not worth more than the paper it is written.

This is not the first time we are giving a liberal inter-pretation to the supersedeas bond provision of section 8 of Rule 72.

In a decision promulgated on October 18, 1945 (Tolentino vs. Court of First Instance of Manila and Vda. de Altonaga, 75 Phil., 282) following the doctrine laid down in Igama and Reyes vs. Soria and Nepomuceno, (42 Phil., 11), we sanctioned the thesis that the supersedeas bond may be submitted to, and admitted, and approved by, the judge of First Instance in the exercise of his lawful discretion, thereby swerving from the letter of section 8 of Rule 72 which especially provides that the bond must be filed before and approved by the justice of the peace or

Municipal Court. Although not explicitly stated in the decision, among the decisive reasons which induced several members of the Supreme Court to arrive at the same conclusion was that the back rents deposited by defendant Josefa Vda. de Altonaga served the purposes of a supersedeas bond, Justice Paras stating so unmistakably for himself.

In interpreting section 8 of Rule 72, we must not stick to the simple and lifeless mechanics of alphabet and syntax, or vocabulary and grammar, not even to routinary hermeneutics or formal semantics, but with broad and farsighting statesmanship adopt a liberal judicial attitude, always in painstaking search of the truth that will satisfy our reason, and indue the rule provisions with healthy pulsating vitality, in complete synchronization with the rhythm of human life and evolutionary development, taking into consideration the following:

1. The spirit pervading the Rules of Court is expressed in section 2 of Rule 1, which provides:

"SEC. 2. Construction.—These rules shall be liberally construed in order to promote their object and to assist the parties in obtaining¹ just, speedy, and inexpensive determination of every action and proceeding."

2. The fact that section 8 of Rule 72 places defendants in ejectment cases under harder conditions than those of the defendants in all other cases calls more imperatively for liberal interpretation. The provision for immediate execution of a judgment, even if appealed, has been enacted only against defendants in ejectment cases. The severity of the law must be tempered with a benign construction 'and application to avoid injustices.

3. The acute dearth of housing, created by the ravages of the recent global war in all theatres of battle, such as the Philippines, placing tenants in even harder situation than what they had faced before the war.

4. The dominant trend of legislative thought, prone to relieve tenants from their pitiful conditions, as evidenced by a recent enactment of our Congress.

By construing said section with a liberal spirit, with an attitude of broad understanding, and with full knowledge of the historical stage in which it is to be enforced and applied, we will be in a better position to strike the note that will be in harmony with true substantial justice.

One night a man was driving his car alarmingly faster than usual. An MP stopped him for speeding. He tried to exculpate himself saying he was in a hurry to buy a medicine to cure the sickness of his small child, showing the prescription issued by a physician. Not accepting the explanation at its face value, the MP said: "I will accompany you to the drugstore. If your statement is not true, you will be arrested; but if it is true, you may return to your home with the medicine, even faster." At the drugstore the man's statement was verified to be true. Then, the MP escorted the man by leading his car with a jeep, running at emergency's full speed and sounding all the way the siren, until the man arrived home safely with the medicine for his sick child.

Here is a symbol how law, as the glorified anthesis of justice, must be construed, applied, and enforced, more eloquent than volumes of lectures.

Let no one have a superficial view of the incident and infer that it countenances the maxim that the end justifies the means, such inference being possible only if, instead of understanding the profound and far reaching meaning of the essentials, the accessories and appearances are allowed to give a decisive sway.

That nonsensical maxim makes of the end a standard of morality through a lamentable confusion of ideas of different order and category. The relation of cause and effect, which is the idea connecting end and means, is an indifferent thing that has nothing to do with the ethical problem of justification.

There is nothing wrong in speeding in itself. In fact, an enormous amount of human endeavor is spent in attaining

speed. Since the first shepherds of Mesopotamia began gazing at the stars with dreamy eyes, since the Egyptian pharaohs tried to captivate immortality through the pyramids, since Hellenic imagination created the beautiful myths of Icarus and Mercury, man has always been, and will ever be, grappling with elusive space and fleeting time. By speed, space is narrowed and, by its narrowness the usefulness of life is enhanced in ever wider horizon, and its worth is deeply intensified. By speed, time is lengthened and, consequently, the span of life is prolonged for fuller and richer enjoyment. Speed will always be a substantial contributor to mankind's happiness.

Behind a great number of the most wonderful scientific inventions enjoyed at present by man, contributing not inconsiderably to his happiness, stands boldly the idea of speed. Speed in satisfying human necessities has been, and will be, always the object of unsatisfied cravings. If speed is regulated under certain conditions, it is because, then, it may endanger human safety. It may become *malum prohibitum*, but never *malum per se*. But when speed is necessary to save human life, as in the incident mentioned, it would be a travesty of human justice to stick to the regulation limiting speed, thereby sacrificing the substantial purpose of the law to the letter that kills it. Is there any one who would dare justify the stopping and arresting of the driver of a hospital ambulance, speeding to save a moribund patient? Is there any one who ever question why fire engines and cars are allowed to run in the streets like terrible demons or monsters of speed? At that moment the law against speeding is not repealed; but no one, much less an officer of the law, would stop the driver, not even to question him, as every passing moment may mean greater disaster: more property destroyed, more lives lost or endangered.

From all the foregoing, the orders of September 10 and 15 and October 23, 1945, of the lower court, are set aside:

we declare that petitioner's failure to file a supersedeas bond does not affect his right to proceed with the appeal against the decision of the Municipal Court nor make said decision executory, and the respondent judge is ordered to proceed with the case on the merits, without pronouncement as to costs.

Paras, Jaranilla, Feria, De Joya, and Briones, JJ., concur.

PABLO, M.:

Conforme con la parte dispositiva.

CONCURRING AND DISSENTING:

BENGZON, J., with whom concurs OZAETA, J.,

Petitioner had the right to appeal from the order of September 10, 1945. I agree with the majority that, instead of merely requiring the transmission of the record on appeal—which is the object of this proceeding—we may adopt a shortcut method and determine the only legal question involved in such record on appeal. I also agree that the appeal to the superior court from the municipal had been duly perfected, and, that, consequently the case should be tried there.

However, I believe that the ejectment order of the municipal court has become executory, by reason of Mitschiener's failure to submit the indemnity bond required by section 8, Rule 72, which provides in part:

"If judgment is rendered against the defendant, execution shall issue immediately, unless an appeal has been perfected and the defendant to stay execution files a sufficient bond approved by the justice of the peace or Municipal Court and executed to the plaintiff to enter the action in the Court of First Instance, and to pay the rents, damages, and costs down to the time of the final judgment in the action, and unless, during the pendency of the appeal, he pays to the plaintiff or to the Court of First Instance the amount of rent due from time to time

under the contract. * * *

Under this provision, execution of the judgment of dis-possession must be carried out, unless the defeated party, (a) perfects his appeal, (&) files that supersedeas bond, and (c) periodically pays the monthly rents. The Court of First Instance may, in its discretion, permit the appellant to file the supersedeas bond, which he had neglected to submit in the Municipal Court.[1] But no such permission was given in the litigation; so, our rulings apply, that, in the circumstances, the appealed decision of the municipal court is now executory,[2] although the appeal may continue its course in the Court of First Instance.[3]

The majority, however, in its sympathy for the tenant, discovering that the latter had paid the back rents for April and May, 1945, and continued to pay the other monthly dues, announces the new doctrine that such payment of the back rents was equivalent to the supersedeas bond, and that, consequently, no execution of the judgment would lie. Sympathy for the needy is all right, if limited by our solemn duty to administer equal justice to the rich and the poor, and if we are alert to the possibility, that, wearing such colored glasses (of sympathy) we might read into the statute something that is not there. Which is precisely what happened to the majority. Let us contrast the law as promulgated by this Court in 1940, and the rule as read by the majority.

Under the law (Rule 72, section 8)

Under the majority view:

"Execution shall issue unless

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defendant (a) files a sufficient

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bond * * * to enter the action

bond * * * to enter the action

* * * and to pay the rents,

* * * and to pay the rents,

damages and costs * * * and

damages and costs * * * or

unless (b) he pays * * * the

pays the back rents adjudged by

amount of rent due from time to

the justice of the peace and

time * * *."

unless (b) he pays * * * the

amount of rent due from time to time * * *."

The underlined portion is a new clause. We have authority to interpret the law—not to intersert nor interpolate. As I see it, a new provision has been inserted.

The majority considers its action as pure interpretation, liberal and progressive, approvingly citing the anecdote of the policeman who permitted the anxious father to violate traffic laws in order to obtain some medicine for his ailing baby. The illustration is not very happy, I am bound to say. Not because I berate that officer's juridical knowledge, but because it endorses the principle underlying all dictatorial governments, namely, the end justifies the means. Had that speeding father collided with a bus and killed all the passengers, he would, by the same token, be freed from responsibility. And if he needed money to purchase his baby's medicine, he could, likewise, rob and shoot to get it.

It is asserted that the bond to guarantee payment of "rents, damages and costs down to the final judgment in the action" would be superfluous in this litigation, because petitioner satisfied the back rents for April and May, and this payment, (according to the majority), "is equivalent" to such supersedeas bond. The conclusion is avowedly premised on three propositions, namely:

- (a) The bond guarantees payment of the back rents only.
- (b) No damages are recoverable in ejectment suits.
- (c) The appeal bond covers all the costs.

The first and last premises, upon a careful and unbiased examination, will prove to be erroneous.

The supersedeas bond insures payment of rents down to the final judgment in the Court of First Instance, or and the Court of Appeals (before the abolition), and/or the Supreme Court—not only the back rents, but also the future rents. Suppose petitioner defaulted or became insolvent in October, 1945, and the case can not finally be decided here, on appeal, until May, 1946. Who will answer for the unpaid rents for October, 1945-May, 1946? If the bond had been submitted, that bond would cover the period.

Of course, it may be argued that upon Mistchiener's default, respondents-plaintiffs could take possession in November, 1945. But supposing they did not, or could not, through their opponent's dilatory tactics?

The third premise overlooks the tenor of the appeal bond filed in this case, and in all municipal cases under section 3 of Rule 40. That bond undertakes payment of costs awarded by the Court of First Instance only. It does not cover costs awarded by the Court of Appeals (before the abolition), and/or the Supreme Court, which are all covered by the supersedeas bond.

Therefore, the payment of the back rents for April and May was not, and could not be, an adequate substitute for the supersedeas bond nor the equivalent thereof.

The equivalence theory disproved, the thesis of inter-polation becomes irrefutable.

Let it not be argued that this Court has power to amend the rules, and, by majority vote, add thereto new provisions. Because conceding that power, I deny its authority to apply such amended rule to controversies already pending before it, at the time of the amendment. An attempt in that direction would be entirely inconsistent with traditional notions of fair play and substantial justice.

[1] *Igama and Reyes vs. Soria and Nepomuceno*, (42 Phil., 11); *Tolentino vs. Court of First Instance of Manila and Vda. de Altonaga* (75 Phil., 282).

[2] *Sumintac vs. Court of First Instance of Rizal* (71 Phil., 445); *Felipe and Daguro vs. Teodoro* (46 Phil., 409).

[3] *Domingo vs. Flordeliza and Benito* (37 Phil., 694); *Moran, Rules of Court*, p. 138.

CONCURRING AND DISSENTING:**HILADO, J.,**

I concur in the foregoing concurring and dissenting opinion of Justice Bengzon. The theory of the majority which considers the payment of only the back rents by the tenant as equivalent to, or even better than, the execution and giving of the prescribed supersedeas bond is, be it said with all due respect, clearly erroneous, as a general proposition, and as particularly applied to the facts of the present case. The supersedeas bond guarantees the payment of all unpaid rents from the first to the last, as determined by the final judgment in the case, plus damages and costs, thus securing the landlord from all loss of rents during the entire period of occupancy by the tenant. Let us even suppose the possibility of payment of future rents besides the back ones. While the monthly payment of such rents may, at any time during said period, be discontinued by the tenant, and while it is true that upon the first default thus made, the landlord can ask for the execution of the judgment, in a case like the present where the rent for each month is payable during the first ten days of the succeeding month, in case of such default, the landlord stands to lose at least the rent of the last month of occupancy should the tenant prove to be insolvent. The landlord's situation will be worsened if through dilatory tactics the tenant should succeed in delaying execution and continuing his occupancy for a longer period. In such cases the importance of the supersedeas bond will be emphasized since, if it had been given, the landlord could proceed against the bondsman or bondsmen even should the tenant prove to be insolvent. The majority, in effect, afford the landlord only one of the two protective remedies that Rule 72, section 8 provides him. This provision is obviously directed at furnishing a remedy for a pre-existing evil, namely, the abuse on the part of tenants of the right to appeal even in cases of unlawful detainer for delinquency in the payment of rents, which cases are, by their very nature, clear and indisputable in favor of the landlord and against the tenant. By the most elementary rules of construction, such a provision should be interpreted in a way that would carry out its evident purpose, instead of crippling said provision and thwarting said purpose, unjustly against the victim of the evil—the landlord—and unduly in favor of the author of the same evil. With all due respect to the majority, I am of opinion that social justice can not be achieved by working a positive injustice to one of the contracting parties.

Orders set aside and case remanded with instructions.

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