

**ANGELA ESTATE, INC. AND FERNANDO F. GONZAGA, INC.,
PETITIONERS, VS. COURT OF FIRST INSTANCE OF NEGROS
OCCIDENTAL, BACOLOD-MURCIA MILLING CO., INC., AND THE
BACOLOD--MURCIA SUGAR...**

G.R. No. L-27084. July 31, 1968

Ponente: RUIZ CASTRO, J.

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RUIZ CASTRO, J.:

This is a petition for certiorari with preliminary injunction by the Angela Estate, Inc. and the Fernando F. Gonzaga, Inc., against the Court of First Instance of Negros Occidental, the Bacolod-Murcia Milling Co., Inc. and the Bacolod-Murcia Sugar Farmers Corporation.

All the petitioners and the private respondents are domestic corporations duly organized and existing under the laws of the Philippines. The Angela Estate, Inc. and the Fernando F. Gonzaga, Inc. (hereinafter referred to as the Landowners) are the owners of the hacienda Helvetia, comprising lots 1071, 1072 and 1073 of the Bacolod cadastre.[1] The Bacolod-Murcia Milling Co., Inc. (hereinafter referred to as the Central) is the owner and operator of the Bacolod-Murcia sugar mill, has operated the same since the 1920-1921 crop year, and manufactures sugar from sugar cane planted and grown by sugar cane planters in the Bacolod-Murcia mill district and surrounding areas. The Bacolod-Murcia Sugar Farmers Corporation (hereinafter referred to as the Planters) represents about 350 sugar planters-members, with an annual production of over 700,000 piculs of sugar, and a total acreage of about 10,000 hectares of land planted to sugar cane.

In 1920 the Central entered into identical printed milling contracts with the adherent planters in the Bacolod-Murcia mill district. In 1936 these milling contracts were superseded by identical printed amended milling contracts. Among the signatories were the predecessors-in-interest of the Landowners, then owners of the hacienda Helvetia.

The Central undertook to construct, maintain and operate a wharf (which the adherent planters could use for the shipment of their sugar or the unloading of materials needed by them), and rail-road lines for the transportation of sugar cane from the plantations to the central mill site, these obligations being imposed by paragraphs 3 and 5 (of the milling contracts) which provide:

"Que el Molino construira y despues mantendra un pantalan que, sin perjudicar los intereses del Molino, el Plantador podra utilizar para el embarque de sus azucares y desembarque de los materiales y efectos que necesite. Entendiendose, sin embargo, que no se permitira al Plantador depositar sus azucares, materiales o efectos en dicho pantalan (cuyo pantalan ha sido construido mucho antes de esta fecha)." (par. 3)

x x x x x

"Que para el transporte de la cañadulce desde los campos a la Central, el Molino construira, mantendra y operara en los sitios que crea conveniente, un ferrocarril de vapor o motor de ambas clases, con sus

correspondientes remales y desvios, de tal manera que ninguna parte de los terrenos adheridos a la Central como adapta-bles para el cultivo de la cañadulce, estara a mas de una milla de distancia de dicho ramal. Igual-mente construira y mantendra los patios conve-nientes para depositar los vagones cargados y vacios que sean necessitos. Entendiendose, sin embargo, que no obstante todo lo estipulado en este contrato referente a la construccion y funcionamiento de un ferrocarril y desvios, queda conve-nido que el Molino, a sea la Bacolod-Murcia Milling Co., Inc., debido a la situacion economica actual de la misma, en caso de que hasta ahora no se haya puesto via ferrea en los terrenos del Plantador, queda relevado de la obligacion de construir, extender o hacer llegar su ferrocarril a los terrenos del Plantador, y que dicho Plantador, sus herederos y causahabientes, se obligan a transportar la cañadulce que produzcan los mencionadas terrenos y cargarla en los vagones de la Compañia en la estacion de ferrocarril que el Molino, o sea la Bacolod-Murcia Milling Co., Inc., designe. Entendiendose ademas, que el Molino, o sea la Bacolod-Murcia Milling Co., Inc., se reserva el derecho, cuando lo crea conveniente y su situacione conomica lo permita, de construir, hacer funtionar y mantener el citado ferrocarril y desvios en lo que se refiere a los terrenos del Plantador ar-riba nombrado, de conformidad con lo estipulado en el presente contrato." (par. 5)

Concomitant to the obligations assumed by the Central, the adherent planters granted to it the corresponding rights of way on their lands for the duration of the milling contracts, that is, "por un periodo de cuarenta y cinco años o cosechas, a contar desde la cosecha de 1920-1921." Thus -

"Que con el fin que el Molino puede llevar a cabo las empresas arriba mencionadas, el Plantador facilitara o hara que se obtenga y facilite, al Molino mediante pago a razon de TRESCIENTOS PESOS (P300.00), por hectarea, libre de gravamen, todos los terrenos que el Molino requiera la estacion experimental de una extension no ma-yor de 10 hectareas, para el sitio de la Central, bodegas, depositos, almacenes, y otros edificios, para la estacion, y patios del ferrocarril; y cede-ra como por la presente cede gratuitamente, y libres de gravamen, los terrenos que el Molino requiem A para el tendido de las vias ferreas, sus rumales, desvios y Patios, para los canales, ca-nalizes y tuberias para la traida de aguas, y para la construccion de los postes de telefonos. En tendiendose que el Plantador cedera, como por el presente cede gratuitamente y libre de gravamen, cualquiera parte de sus terrenos que nece-site el Molino para el tendido de las vias ferreas, hasta los terrenos contiguos a los suyos a fin de que el Molino pueda moler las cañas de otras plantaciones. Entendiendose, ademas, que to-das las servidumbres para las vias ferreas, y para otros fines, quo el Plantador por el presente concede al Molino, seran por un periodo de cuarenta y cinco años o cosechas, a contar des de la cosecha de 1920-1921." (par. 9)

In the early 1920s the Central constructed railroad tracks on the lands of the adherent planters. One trunk thereof traversed the hacienda Helvetia, occupying at least 3,245 lineal meters with a width of 7 meters, or a total of 22,715 square meters, more or less.

When their 1936 printed amended milling contracts expired at the end of the 1964-1965 crop year, the Landowners required the Central to remove the railway tracks in the hacienda and threatened to deny passage to its cane cars.

In September of 1965 the Central filed a complaint with the respondent Court of First Instance of Negros Occidental (CC 7697) against the Landowners, praying that an ex parte writ of preliminary injunction issue restraining the latter "from removing and/or destroying the railroad tracks in question and from impeding, obstructing or in anyway preventing the passage and operation of plain-tiff's locomotives and canecars over defendants' property during the pendency of this litigation," and that, after a hearing on the merits, the Central be awarded "a legal easement of the right of way" over the hacienda Helvetia, plus costs. The Planters became a party to the suit as complainant-intervenor.

The Central took the position that it has acquired a legal easement on the hacienda through 45 years of continuous use of the railroad tracks under the aforesaid milling contracts and by virtue of article 649 of the Civil Code; that

the hacienda completely surrounds the mill site on the eastern side where the railroad tracks enter the sugar central; that the continuous use of the railroad tracks is "absolutely indispensable" for hauling cane from the adherent plantations to the central, for the transportation of export and domestic sugar from the mill site to the Sto. Niño dock for ship-ment, and for the transportation of materials and fertilizers from said dock to the central; that there is no other place through which the railroad lines could reach the sugar central, except the indicated portions of the hacienda; that the destruction and/ or removal of the railroad tracks in the hacienda would paralyze the operations of the Central and cause irreparable damage to it, the adherent planters, the sugar industry, and the national economy as a whole; and that the Landowners will not suffer any damage if the railroad tracks were allowed to remain in their hacienda.

The Landowners (Fernando F. Gonzaga, Inc. became a party to the action as intervenor-defendant) opposed the permanent establishment of the railroad tracks in their hacienda as well as the issuance of a writ of preliminary injunction, averring that the 1936 milling contract their predecessors-in-interest had entered into with the Central has ceased to have effect, its term having expired at the end of the 1964-1965 crop year; that although under article 849 of the Civil Code, an "owner, or any person who by virtue of a real right may cultivate or use any immovable, which is surrounded by other immovables pertaining to other persons and without adequate outlet to a public highway, is entitled to demand a right of way through the neighboring estates, after payment of the proper indemnity," the Central waived this right when, in the afore-said contract, it stipulated that the existence of the railroad tracks would be coterminous with the life of the contract; that the railroad tracks are neither necessary nor indispensable to the Central's operations, pointing out in this connection that at least two other sugar centrals in Negros Occidental employ trucks and truck-trailers in transporting cane from plantations to mill sites, and the Central, in fact, during the 1964-1965 crop year, utilized such means of transportation in hauling cane from adherent plantations to its sugar mill; that the continued existence of the railroad tracks in their hacienda unduly prevents them, particularly the Fernando Gonzaga, Inc., from utilizing the hacienda and makes it impossible for them to develop certain portions thereof into a real estate subdivision; and that their rights to the uninterrupted and exclusive use and enjoyment of their hacienda are far superior to the Central's claim of easement.

On October 4, 1965 the respondent court issued the writ of preliminary injunction prayed for by the Central, and maintained the same in its two subsequent orders of May 31 and November 26, 1966. It justified the writ by stating that "the continuance of the acts complained of during the litigation would work injustice to the plaintiff, and that great or irreparable loss and damage would result to the plaintiff before the matter can be heard on notice."

Hence the present recourse by the Landowners. They ask this Court to restrain the respondent court from enforcing the writ of preliminary injunction, and pray that after a hearing on the merits, the restraining order be made permanent and the orders complained of be annulled and set aside.

By resolution of January 25, 1967, we gave due course to the petition, and, on August 10, 1967, issued a writ of preliminary injunction enjoining the respondent court from enforcing the writ of preliminary injunction issued by it on October 4, 1965.

On October 12, 1967, acting upon a manifestation and motion that "through the mediation of the President of the Philippines, the parties herein have agreed, subject to this Court's approval, that the petitioners shall permit during the 1967-68 milling season only, the use of the railroad tracks passing through petitioners' properties for the same purpose for which they have been previously used, it being understood that this shall be without prejudice to the respective rights and positions of the parties herein and shall not be deemed a waiver of any of their respective claims and allegations either in the instant case or in Civil Case No. 7697 of the Court of First Instance of Negros Occidental or in any other case between the same parties, future or pending," this Court resolved to

approve the motion, and "as prayed for by the parties, the writ of preliminary injunction issued by this Court is temporarily lifted up to and including June 30, 1968, to give effect to this agreement, and shall be deemed automatically reinstated beginning July 1, 1968."

On March 12, 1968 the Central filed a motion to admit supplemental memorandum. Attached to it as part thereof is a copy of the amended complaint it filed with the respondent court, which pre-sents several "new issues." The first six, relied upon by the Central to sustain the writ of injunction issued by the respondent court, are quoted hereunder:

"a) That under Sec. 7, Act 2479, the mill-ing contracts that should be executed between the PLANTERS and the CENTRAL should 'convey to the Central such right of way as the Central may deem necessary for roads and railroad connecting the mill with the fields' which provision of law must be read into the said contract, and since a conveyance of a railroad right of way is not only an easement, but is a conveyance in fee simple of the strip of land covered thereby, then the provision of the milling contracts limiting the existence of the said right of way to 45 crop years or harvests is null and void, as being in conflict with the law and public policy, and since the Cen-tral is the owner of the said railroad right of way, then, it may not be prevented from using the same;

"b) That assuming arguendo that there is no conveyance in fee simple of the strip of land over the right of way, and the limitation of 45 crop years or harvests is valid, the same has not yet expired for there were no harvests during the six years from 1940-41 to 1946-47, hence, the said 45 crop-years will expire only in 1971-1972, hence, landowners' threat of closing the right of way is premature;

"c) That assuming that the 45 year-period has already expired, nevertheless, since according to sec. 1(a), subpar. 4(c) of ACT 4166, 'a plantation is adherent to a sugar mill by virtue of the sugar cane delivered to the mill regardless of the contract relations,' and that according to *Asturias Sugar Co. vs. Montinola* (69 Phil. 725) the contractual relations of planter and miller con-tinues by operation of law even after the expiration of the contract, then, the contractual obligation of the defendants to give such right of way to plain-tiff Central continues up to the present, hence, closing a said right of way is an impairment of that obligation;

"d) That, moreover, the contract for rights of way between the Central and the adhered planters, and the adhered planters themselves, is one entire and indivisible contract, considering that the performance of the Planters in granting the rights of way is the consideration in the perform-ance of the plaintiff in putting up the railways, with-out which collective promises or commitments, the plaintiff could not have built said railways, and since the contract is entire, it may not be termi-nated piecemeal, for an entire contract stands or falls together, hence, since the contracts or rights of way of most adhered Planters have not expired (assuming those of the defendants have expired), the entire contract is not deemed to have expired;

"e) That assuming that the defendants can now possess the land constituting the right of way, nevertheless, under art. 448 of the New Civil Code, the plaintiff being a possessor in good faith of the right of way and have built construction thereon in the form, of railway tracks, the same may not be removed without payment of the value the said railway tracks as well as the locomotives and cane cars using the same amounting to not less than P7 million, while on the other hand, the plaintiff is willing to buy the land covered by the railway tracks in Hacienda 'Helvetia' at the price that may be fixed by the court,, being smaller in value than the cost of improvements attached to the land, hence, impeding the passage thereof, which will amount to appropriating said improve-ments, without compensation, and without a hear-ing, hence, a denial of due process of law (sec. 1[1 & 2], ART. III, Constitution);

"f) That assuming that plaintiff Central is a possessor in bad faith, nevertheless, it is entitled to a legal easement under art. 649 of the New Civil Code, after payment of the proper indemnity."

In the said amended complaint, the Central prays that the Landowners (Fernando F. Gonzaga, Inc. was made a

party defendant therein) be ordered, jointly and severally, to pay attorney's fees and expenses of litigation plus costs. This amended complaint was admitted by the respondent court on April 5, 1968. The Planters, on its part, manifested that "it adopts and incorporates by re-ference all the allegations contained in the Amended Complaint."

As required in our resolution of April 23, 1968, the Land-owners, on May 1968, filed their reply to the supplemental me-morandum. The Central, in turn, filed a rejoinder-memorandum.

The basic issue, to which all other issues are subsidiary, is whether the respondent court acted in excess of jurisdiction and/ or with grave abuse of discretion in issuing the questioned writ of preliminary injunction.

Pertinent at this juncture is a summary of the whys and wherefores of a writ of preliminary injunction.

The writ may be issued at any time after the commencement of an action and before judgment, when it is established that the plaintiff is entitled to the relief demanded and only when his complaint shows facts entitling him to such relief.[2] This extraordinary writ is not designed to protect contingent or future rights.[3] "An injunction will not issue to protect a right not in esse and which may never arise or to restrain an act which does not give rise to a cause of action. (32 C.J. pp. 34, 35)"[4] "Injunction, like other equitable remedies, will issue only at the instance of suitor who has sufficient interest or title in the right or property sought to be protected. For the court to act, there must be an existing basis of facts affording a present right which is directly threatened by the act sought to be enjoined. An impending or threatened invasion of some legal right of the complainant, and the interest in preventing the wrong sought to be perpe-trated must be shown. It is always a ground for denying injunction that the party seeking it has insufficient title or interest to sus-tain it, and no claim to the ultimate relief sought - in other words, that he shows no equity. Want of equity on the part of the plaintiff in attempting to use the injunctive, process of the court to enforce a mere barren right will justify the court in refusing the relief even though the defendant has little equity on his side. The complainant's right or title, moreover, must be clear and unquestioned, for equity, as a rule, will not take cognizance of suits to establish ti-tle, and will not lend its preventive aid by junction where the complainant's title or right is doubtful or disputed. He must stand on the strength of his own right or title, rather than on the weakness of that claimed by his adversary."[5] If he possibility of irreparable damage, without proof of violation of an actually existing right, is no ground for an injunction, being a mere damnum absque injuria."[6]

Viewed in the light of the time-honored principles above restated, the problem at hand may be narrowed down to the inquiry: Has the Central made allegations in its complaints (original as well as amended) sufficient in law to entitle it to the principal re-lief therein sought, that is, "a legal easement of the right of way" over the hacienda Helvetia, so as to justify the lower court's issu-ance of the disputed preliminary writ of injunction?

By express provision of articles 649 and 650 of the new Civil Code, the owner of an estate may claim a compulsory right of way only after he has established the existence of four requisites, namely, (1) the estate is surrounded by other immovables and is without adequate outlet to a public highway; (2) after payment of the proper indemnity; (3) the isolation was not due to the proprietor's own acts; and (4) the right of way claimed is "at a point least preju-dicial to the servient estate, and in so far as consistent with this rule, where the distance from the dominant estate to a public high-way may be the shortest." The onus is upon the owner of the do-minant estate to show by specific averments in his complaint the existence of the requisites or pre-conditions enumerated. And in granting a writ of preliminary injunction, the order of the court must show by specific finding, even preliminary, that the pre-conditions exist. Thus -

"By express provision of law [Arts. 649 650, N.C.C.], therefore, a compulsory right of way can not be obtained unless the four requi-sites enumerated are first shown to exist, and the burden of proof to show their existence

was on the Central. Nowhere in the complaint is any specific averment, nor is there in the Court of First Instance orders for the issuance of the writ of temporary injunction, and denying its reconsideration, any specific finding, even preliminary, that each and every-one of the four preconditions do exist. * * * This deficiency made the issuance of a preliminary injunction improvident and arbitrary, for the first condition for the granting of the writ is 'that the plaintiff is entitled to the relief demanded' (sec. 3(a), Rule 58, Revised Rules) and 'that the complaint in the action is verified, and shows facts entitling the plaintiff to the relief demanded' (sec. 4[a], Rule 58)."[7]

Let us now take a look at the original complaint.

The Central alleged therein that the hacienda Helvetia completely surrounds the mill site "at its eastern side where the rail-road tracks enter." This allegation hardly satisfies requisite (1) above, for it fails to aver that it is "without adequate outlet to a public highway." The Central's own "Sketch" (annex A) conclusively shows that the mill site is easily accessible from various points through the existing provincial roads of Bacolod City, Bago and Murcia, aside from the main roads in Bacolod City itself.

The allegation in the complaint that the railroad tracks are "absolutely indispensable" for the operation of the Central is belied by the fact that during the 1964-1965 crop year, most of the sugar cane harvested in the adherent plantations was hauled to the Central by the use of trucks and truck-trailers. This is the same means of transportation used by two new sugar centrals in Negros Occidental - the First Farmers Milling Company and the AIDSISA - following the universal practice in Hawaii.[8] It may be true that the railroad tracks provide an economical and convenient means of transportation to and from the mill site. Unfortunately, our Civil Code speaks of necessity and not of comfort and convenience.[9]

The Central also alleged that it is willing to pay a "reasonable compensation to be fixed by the Court," corresponding to the value of the 22,712-sq.m. portion of the hacienda traversed by the railroad tracks, as well as the resultant damages. We observe, however, that this manifestation of willingness to pay was made for the first time only in the Central's complaint, and this only after the Landowners had made known their intention to make full use of their hacienda for their own purposes. The Central, before then, made no genuine attempt to negotiate with the Landowners for the continued use of the railroad tracks, and kept on using them for its benefit, totally disregarding the proprietary rights of the landowners.

Likewise the Central has not demonstrated that the isolation of the mill site - assuming that isolated it is - was due to the Landowners' acts. With full awareness that the conventional easement of right of way would expire at the end of the crop year 1964-1965 - which means that from then on the Landowners would be freed from the burdens imposed by the covenants entered into by their predecessors-in-interest - the Central did not seasonably pursue step to prevent the inevitable isolation consequent to the termination of the printed amended milling contracts of 1936.

Apparently realizing that its original complaint fails to state a solid cause of action upon which may be legally predicated the issuance of the writ of injunction in question, the Central abandoned its original theory. In its amended complaint is the altogether new thematic insistence that the Central, by virtue of specifically named laws and legal principles, has become the owner of the strip of land traversed by the railroad tracks in the hacienda Helvetia, which dominion sufficiently invests the disputed writ of injunction with intrinsic validity.

This new development has compelled us to examine the allegations of the amended complaint and their implications. After mature deliberation, we reach the view that the said amended complaint does not render the Central's position any less untenable.

The Central initially maintains therein that its right to the continued use of the railroad tracks traversing the

hacienda, after the printed amended milling contracts of 1936 expired with the 1964-1865 crop year, is authorized by sections 2 and 7 of Act 2479 (enacted February 5, 1913), otherwise known as the "Sugar Central Act." These sections read:

"SEC. 2. It shall be the duty of this board to promote and aid in the establishment of sugar centrals with their machinery, equipment, rights of way, railroads, and other appurtenances for the manufacture of sugar and industries derived therefrom in the sugar-producing provinces, if in its judgment the local conditions warrant the establishment of a sugar central."

"SEC. 7. A sum not to exceed two million pesos of the gold standard fund shall be available for investment by the Insular Treasurer, with the approval of the Governor-General, in accordance with the provisions of this Act: Provided, That the central sugar board shall not purchase bonds of any corporation except under the following terms and conditions, among others: That the amount of bonds issued by the corporation shall not exceed sixty per centum of the value of the property offered as security; that before such purchase is made, such corporation shall have contracts with the owners of not less than one thousand hectares of land suitable for the cultivation of sugar, obligating such owners to cultivate in sugar cane a reasonable area of their holdings and to deliver and sell to the corporation all the sugar cane produced on such land and to convey to the corporation may deem necessary for roads and rail roads connecting the mill with the fields; * * *."

It is argued that Act 2479 envisioned a sugar central and "railroads connecting the same to the plantations and rights of way for the said railroads;" that the Central having been created and financed by the said Act, the printed amended milling contracts of 1936 were also entered into in accordance with the intendment and provisions thereof; that the underscored words of section 7 above, reading "to convey to the corporation such rights of way as the corporation may deem necessary for roads and railroads connecting the mill with the fields," must be construed to mean "to transfer title," and the words "such rights of way" include not only the easement of railroad rights of way but also the strips of land traversed thereby; that, therefore, the quoted portion of section 7 should be understood to mean to transfer to the Central title to such rights of way as it may deem necessary for railroad tracks, including the strips of land of the hacienda Helvetia and other areas surrounding the mill site traversed by the railroad tracks; and that the amended milling contract of 1936 in so far as it did not provide for such transfer or conveyance, but instead provided for "45-year contractual limitation," is null and void, and in violation of sections 2 and 7 of the said Act, in relation to article 1300[10] of the new Civil Code.

The construction given by the Central to the word "convey" is its broad and comprehensive meaning, that is, to transfer property or title to property from one person to another.[11] The word "convey" may, however, include any other transaction by which any interest in real estate is created, short of transferring title thereto.[12] And construing the word in reference to the entire context of section 7, supra, more specifically in the light of the words, "rights of way," we hold that when the Philippine Legislature used the word "convey, it intended merely to allow, to permit, to grant, the Central "such rights of way" in the hacienda Helvetia and other surrounding areas, short of transferring ownership of the strips of land traversed by such rights of way.

A "right of way" is an easement, an encumbrance on a servient estate, a real right of limited use without possession and ownership of the land upon which the easement was established.[13] This, we are persuaded, is the meaning of the word "servidumbres" as used by the parties in the printed amended milling contract of 1936, which word, we must assume, was deliberately employed by them to express the real intention of the Act itself and of their own: "x x x que todas las servidumbres para las vias ferreas, y para otros fines, clue el Plantador por el presente concede al Molino, seran por un periodo de cuarenta y cinco años o cosechas, a contar desde la cosecha de 1920-1921." This conclusion is fortified by the admonition of the Civil Code that conveyance should be interpreted to effect "the least transmission of rights"[14] - and is there a better example of least transmission of rights than merely allowing or permitting the use without transfer of possession and ownership of the strip of

land traversed by the railroad tracks? At all events, if we are to follow the theory espoused by the Central, the use of the term "rights of way" in sections 2 and 7 of Act 2479 would be a patent superfluity. For if the said sections already conveyed to the Central the ownership of the land on which the railroad tracks are laid, the law itself would have dispensed with any mention or reference to "rights of way." We surmise that the law advisedly did not purport to convey in fee simple the affected strips of land because if it did so it would perhaps be afflicted with constitutional infirmity.

The next contention of the Central is that in view of the provisions of sections 2 and 7 of Act 2479, *supra* the milling contracts of 1930 are null and void insofar as they provided a contractual limitation of 45 years. To our mind, this does not merit extended attention. For there is nothing in the entire context of the said Act nor in article 1306 of the new Civil Code (cited by the Central in connection with the Act) that supports, either expressly or inferentially, this proposition. Moreover, we regard the argument as pure casuistry. In the long span of 45 years, the Central not only did not question the validity of any single provision of the milling contracts but, as far as we gather from the record, even unremittingly exacted compliance therewith from the signatories thereto. Now that the term of the contracts has expired, and the Central finds itself beset with difficulties, it executes a complete turn-about and invokes the invalidity of the said contracts to relieve itself of the inconveniences and vicissitudes confronting it.

The next argument of the Central is that, assuming that the milling contracts are valid, its "right of way has not yet expired" for the reason that there were no harvests during the crop years 1941-42 to 1946-47, and for this reason the 45 crop years envisioned in the contracts would expire only with the crop year 1971-72. This argument is likewise specious. A close scrutiny of the milling contracts can yield no inference that the inability on the part of the adhered plantations to raise sugar cane during the crop years alluded to automatically extended the contractual period of 45 years. Besides, the issue presented is not really one of first impression. In *Nueno vs. Angeles*,^[15] we held that the occupation of the Philippines by the Japanese Imperial Forces did not suspend the running of the term of office of the members of the municipal board of Manila, and in two other cases,^[16] we ruled that the terms of contracts of lease of urban properties were not suspended by the fact that the lessees did not enjoy the possession of the leased properties during such occupation. Reasoning by analogy, we hold the view that the intentment of the rulings in the cases adverted to applies with equal force to resolve the issue at bar against the Central's pretension.

The Central further maintains that pursuant to section 1, subparagraph 4(c) of Act 4166, otherwise known as "the Sugar Limitation Law" (approved December 14, 1934), providing that

"(c) The term 'mill district' is used to mean a centrifugal sugar mill together with all plantations adherent thereto. A plantation is adhered by virtue of sugar cane being delivered therefrom to a mill regardless of contract relations between the mill company and the plantation owner and/ or any other person cultivating sugar cane on the plantation,"

and the following pronouncement made in *Asturias Sugar Co. vs. Montinola* (69 Phil. 725),

"Fue en virtud de las mencionadas Leyes No. 213 del Congreso de los Estados Unidos, y No. 4166 de la Legislatura Filipino, como los recurridos se vieron obligados a moler sus cañas en la Central de la recurrente. Hubo por consiguiente una indeclinable reasunción tanto por los recurridos como por la recurrente de su contrato celebrado antes de la zafra de 1931-1932, re-anudando entre sí, las relaciones que entre ellos entonces existían, y viéndose necesariamente obligadas a las prestaciones que se habían prometido mutuamente. Esto es obvio porque las obligaciones no solamente nacen de los contratos y cuasi contratos, y de los actos y omisiones ilícitos, o culposos o negligentes sino también y más principalmente, de la ley. (Art. 1089, Código Civil.)",

the expiration of the term of the amended milling contracts of 1936 has not resulted in the absence of a contract

between the parties, for Act 4166 stepped in to effect renewal of the said contracts, and because the rights of way are a part thereof, these perform continue to exist.

It is our view that the Sugar Limitation Law is erroneously invoked as authority to sustain the above proposition. Unlike sections 2 and 7 of Act 2479 which expressly provided for the establishment of "such rights of way as the corporation may deem necessary for roads and railroad connecting the mill with the fields," Act 4166, even with the amendments introduced by Commonwealth Acts 77 and 323 and Republic Acts 1072 and 1825, contains no provision conferring upon the Central the right to establish rights of way in the lands of the adherent planters. It would appear from its title and declaration of policy that Act 4166 was enacted solely for the purposes of limiting and allocating the production of sugar in the Philippines as well as regulating the processing and marketing thereof.

For disparity in factual settings, the doctrine enunciated in *Asturias* is inapplicable. That case referred to a planter who had a verbal milling contract with a central before the crop year 1931-1932. Under this contract the former received from the latter a certain form of bonus as additional participation. In the crop years 1932-1933 and 1933-1934, the planter milled his sugar cane with another central. After the passage of Act 4166 in 1934, the planter resumed milling his sugar cane with the first central. Resolving the question whether the planter was entitled to the same bonus which the central had given him in the 1931-1932 and previous crop years, this Court ruled in the affirmative, holding that there was an indeclinable reassumption both by the central and the planter of their contract subsisting before the 1931-1932 crop year, re-newing the relations which between the then existed, they finding themselves necessarily obligated by the undertakings which they had mutually assumed. Apart, therefore, from the fact that the issue therein posed is completely alien to the main issue in the present case, which is, whether the Central is entitled to a right of way over the hacienda *Helvetia*, the inescapable, fundamental and decisive difference is that the verbal milling contract of the parties in *Asturias* was deemed renewed to govern the relationship which existed between them; while in the case at bar, the amended milling contracts of 1936 were not renewed after they expired at the end of the 1964-65 crop year.

The Central further maintains that the amended milling contracts of 1936 constitute "one entire and indivisible contract," for the collective performance of the planters in granting the rights of way was the consideration of the Central in laying the railways, without which collective commitment the latter would not have built the tracts, and for this reason the "entire and indivisible contract" may not be terminated piecemeal, as to terminate the same would require the collective action of all the adhered planters.

The novelty of this argument does not imply its validity. The amended milling contracts were distinct contracts entered into by the Central separately with the individual planters. To say, in effect, that all the contracts created obligations not only between each individual planter and the Central but also between the planters themselves, is to offend against logic and common sense. But in any event, the rights of way granted by the so-called "entire and indivisible contracts" all expired collectively at the same time at the end of the 1964-1965 crop year, so that whatever collective and indivisible obligations and covenants were supposedly agreed upon ceased to have any force and effect.

The Central finally contends that it is a possessor in good faith of the right of way traversing the hacienda *Helvetia*. Invoking article 448 of the new Civil Code,^[17] it argues that the railroad tracks may not be removed without payment by the Landowners of their value as well as that of the locomotives and cane cars using the same, all amounting to not less than P7 million, and asserts that on the other hand, "the Central is willing to buy the land covered by the railway tracks in Hacienda 'Helvetia' at the price that may be fixed by the court, being smaller in value than the cost of improvements attached to the land."

Good faith is one of the basic concepts articulated in article 448 of the Civil Code. It is present where one builds or sows or plants on land in which he believes himself to have a claim of title."^[18] In this case, the Central cannot validly lay claim to that good faith, because it knew and recognized from as early as 1920 that the strip of land traversed by its railroad tracks was owned and possessed by the Landowners.

After an assiduous analysis and examination of the order a quo of October 4, 1965, the allegations of the complaint and the amended complaint, and the other pleadings in the record, we conclude that the Central's conventional right of way over the hacienda Helvetia ceased with the expiration of the amended milling contracts at the end of the 1964-1965 crop year. In the absence of a renewal contract or the establishment of a compulsory servitude of right of way on the same spot and route which must be predicated on the satisfaction of the preconditions required by law, there subsists no right of way to be protected.

In our view, the following pronouncements made by Mr. Justice J.B. L. Reyes in *Bacolod-Murcia Milling Co. vs. Capitol Subdivision*, *supra*, control the present case:

"In truth, the court of origin seems to have proceeded on the erroneous assumption that, even after expiration of its contractual right of way, petitioner Central was entitled to a compulsory right of way in the same location and route it had been using up to the present. This is, not true: the Central's use of the present railway for the preceding 45 years was based on the assent of the Subdivision's predecessors-in-interest, as evidenced by their milling contract, while a compulsory servitude of right of way on the same spot and route must be predicated on the minimum inconvenience to the would-be servient estate, in addition to the other requisites above set forth. There is no specific finding by the court of origin that the prerequisites exist, and the lack of it suffices to negate the Central's right to the servitude claimed, as it likewise negates the propriety of the temporary injunction issued.

"In issuing the preliminary writ for defendant to permit the Central to use its railway, in the manner established under the milling contract, the court of origin in effect extended that corresponding part of the contract even beyond the term stipulated by the parties. Such action is not warranted by law. The function of an injunction is the maintenance of the status quo as of the time of its issuance, and at that time, the right of the Central under the milling contract had uncontrovertibly expired. It needs no emphasizing that the court can not create contracts between the parties.

x x x x x

"[T]he preliminary injunction was issued on an erroneous premise, 'the premature assumption that respondent Bacolod-Murcia Milling Co., Inc., is entitled to the legal easement prayed for by it', since the existence of the statutory requisites for such easement had not been properly averred or proved, x x x Of course, petitioner may duly show at the hearing on the merits that the preconditions required by the Civil Code do actually exist; but until that is done, the right to the legal servitude is not clear, and the writ of injunction is unwarranted, and issued in grave abuse of discretion."^[19]

ACCORDINGLY, the petition for certiorari is granted, and the three orders of October 4, 1965, May 31 and November 26, 1966 of the respondent court are annulled and set aside. The writ of preliminary injunction issued by this Court on August 10, 1967 is hereby made permanent. Costs against the private respondents.

Concepcion, C.J., Reyes, JBL, Dizon, Zaldivar, Sanchez, Angeles, and Fernando, JJ., concur.
Makalintal, J., did not take part.

[1] Lot-1073 and a portion of lot 1072 [lot 1072-C-3-B2] belong to the Angela Estate, Inc; lot 1071 and portions of lot 1072 [lot 1072-C-3-A and lot 1072-C-3-B-1] belong to the Fernando F. Gonzaga, Inc.

- [2] Sec. 3(a), in relation to sec. 4(a), Rule 58 of the Rules of Court.
- [3] Bacolod-Murcia Milling Co., Inc., et al., vs. Capitol Subdivision, et al, L-25887, July 26, 1966, 17 SCRA 736.
- [4] Cited in North Negros Sugar Co. vs. Hidalgo, 63 Phil. 671, 677.
- [5] 28 American Jurisprudence sec. 26, p. 517. (*italics ours*)
- [6] Note 3, 17 SCRA at p. 737.
- [7] Bacolod-Murcia Milling Co., Inc. et al. vs. Capitol Subdivision, Inc., *supra*, 17 SCRA at p. 736.
- [8] See Opposition Central's Urgent Petition to Dissolve Preliminary Injunction on Counterbond.
- [9] Manresa, 5th ed., pp. 653-654.
- [10] "ART. 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy."
- [11] 9-A Words and Phrases, pp. 215-216.
- [12] Cf. Monte, et al. vs. Angeles, et al., 101 Phil. 563, 564-565, citing 13 C.J. 900, and 18 C. J. S. 92.
- [13] II Civil Law, by Reyes and Puno, 67 ed., pp. 149, 151; 17-A Am. Jur., 619; Hicks Brothers vs. Swift Creek Mill Co., 57 L.R.A., 720, 721.
- [14] Art. 1378, 1st sent., N.C.C.; Cf. Olino vs. Medina, 13 Phil. 379.
- [15] 76 Phil. 12.
- [16] Lo Chung vs. Court of Appeals, 81 Phil. 601; American Far East-ern School of Aviation vs. Aguila y Cia, 89 Phil. 292.
- [17] "The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the build-ing or trees. In such case, he shall pay reasonable rent, if the owner of the land does not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms of the lease and in case of disagreement, the court shall fix the terms thereof."
- [18] Alburo vs. Villanueva, 7 Phil. 277, 280.
- [19] 17 SCRA, pp. 738 and 739.

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