

SECUNDINO MENDEZONA, PLAINTIFF AND APPELLANT, VS. THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LIMITED, AND MANUEL DE GARAY, DEFENDANTS. THE PHILIPPINE SUGAR ESTATES DEVELO...

G. R. No. 13659. March 22, 1921

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

This action was instituted on June 19, 1914, in the Court of First Instance of the city of Manila by the plaintiff Secundino Mendezona against the "The Philippine Sugar Estates Development Company, Limited" and the defendant Manuel de Garay to recover of the defendant company by way of damages the sum of P228,023.36 arising from a breach of contract.

The plaintiff alleges that he entered into that contract with the defendant company on July 14, 1913, the corresponding document copied in the complaint having been executed in which the name of Manuel de Garay was made to appear as the tenant on shares for the sole purposes of satisfying the scruples of one of the directors of the company, but with the understanding between the parties that the plaintiff was to be the real tenant on shares; that by virtue of that mutual understanding, and in order to carry it into effect, he entered with the defendant Manuel de Garay on July 14, 1913, with the consent of the representatives of the defendant company, into a contract in which the said Manuel de Garay admitted that he was merely a subordinate of the plaintiff, with a right to only 10 per cent of the plaintiff's share in the profits which as tenant he might receive from the Hacienda de Bucal, which the defendant had in Calamba, Laguna; and that, said defendant Manuel de Garay, conniving with the defendant company, attempted to defraud him, claiming to be the true tenant, for which reason he lost his right to the share otherwise accruing to him under said contract.

The defendant corporation answered the complaint of the plaintiff Secundino Mendezona, denying his claims, and alleging, by way of special defense: That the defendant company had not entered into any rental contract on shares with the plaintiff and that the latter intervened in the work of cultivation of the Hacienda de Bucal as a mere attorney in fact of the defendant Manuel de Garay, who was discharged from that place when the company learned that the plaintiff had entered it in violation of the rental contract on shares which the defendant Manuel de Garay had with the defendant company.

The defendant Manuel de Garay denies all of the allegations of the complaint and by way of special defense alleges: (1) That the contract which he entered into with the plaintiff on July, 1913, was to the effect that he would sign a contract of rental on shares which said plaintiff had arranged with the defendant company, and in return, the plaintiff would make him an employee on the Hacienda de Bucal, with the right to receive 10 per cent of the profits which might accrue to the plaintiff, as tenant on shares; that, later, when he found out that the contract which he was to sign absolutely prohibited the transfer of the rental contract and required him to give a bond, then, at his instance and with the consent of the plaintiff, the terms of his contract were altered, in the sense that

between them the work of the hacienda would be divided, De Gray acting as tenant on shares and Mendezona as his attorney in fact, and the profits were to be divided equally among them; (2) that they took possession of the hacienda to cultivate it under this contract, but on January 9, 1914, Mendezona left the hacienda at the instance of the company because he had violated the terms of his obligation; (3) that in March, 1914, when the crops were being harvested the plaintiff Mendezona required him to take steps to have the defendant company pay 30 per cent of the harvest in payment for his services, and that he took steps to that end but failed to get it because said share of 30 per cent had not yet been liquidated at the time that the rental contract came to an end at the will of the defendant company.

The defendant Manuel de Garay also filed a complaint in intervention against "The Philippine Sugar Estates Development Company, Limited" to recover the sum of P217,660 as damages alleged to have been caused to him because of the unjustified rescission by the defendant of the rental contract on shares which was entered into with him.

The defendant company in its answer denied generally the allegations of the complaint, except the fact that the rental contract was entered into with Manuel de Garay, and by way of counterclaim, the defendant alleged: (1) That by virtue of said contract the defendant made advances to Manuel de Garay as required by the terms thereof, which, together with the stipulated interest thereon, amount to P59,745.09, and delivered all the material for work to him which existed on the hacienda, as well as other sums used in the purchase of animals and materials for work, the value of all of which amounting to P1,285.05 on which the tenant De Garay should pay to the defendant company 6 per cent interest a year as agreed upon; (2) that the defendant company spent for the milling of the harvest for the first months of 1914, the sum of P26,245.50, of which the tenant De Garay should pay 30 per cent according to the terms of the contract; (3) that the tenant De Garay did not comply with his obligations, as tenant of the hacienda to handle the same with due care and diligence, and the investments made by him with the money advanced to him did not produce any satisfactory results to the company; and (4) .that to comply with the obligations contracted by said Manuel de Garay, the latter mortgaged a launch belonging to him and named Gora Jell. In view of its allegations the defendant company asked that it be absolved from the complaint of Manuel de Garay, and that judgment be rendered ordering the latter to pay to the defendant company the advances referred to together with the stipulated interest, and that upon failure to do so the launch mortgaged be ordered sold and the proceeds applied to the payment of said sums.

Upon trial, at which evidence was introduced by the plaintiff Secundino Mendezona and the defendant corporation, the defendant De Garay not having offered any, he having limited himself to appearing in the case on February 6, 1917, that is, one month after the termination of the trial, the court, on October 17, 1917, rendered judgment, absolving each party from the complaint of all the others, whether original, in intervention or counterclaim, and without any special pronouncement as to costs.

To this decision exception was taken by the plaintiff Mendezona and the defendant company, both of whom asked for a new trial, on the ground that the decision was against the weight of the evidence and the law. Said motion having been denied, they excepted against and took the appeal to this court.

The plaintiff assigns in his brief, as errors committed by the trial court, the following:

- In not declaring that the plaintiff Secupdino Mendezona was the true tenant, on shares, by virtue of the rental contract and the other evidence adduced in support of his claim, and in declaring that the evidence did not show the existence of any juridical relation between the plaintiff and the defendant corporation,
- In declaring that neither the acts of the officers of the corporation recognizing the plaintiff as such tenant on shares, nor the knowledge that the members of the board of directors of the company had to the effect that he was

acting as such tenant and was in fact the person managing the hacienda, nor the public knowledge that he was such, which obligated the corporation to consider him as the tenant on shares of the hacienda.

- In not declaring that by virtue of the contract entered into between the defendant De Garay and the plaintiff with the knowledge and consent of the defendant, the plaintiff became a partner, or interested party in the rental contract on shares with the right to ask for the rescission thereof by reason of noncompliance therewith and to require a rendering of accounts and the consequent indemnity for damages.

- In not declaring that the defendant corporation had violated the rental contract with the plaintiff and that the latter had suffered the damages claimed by him as well as in dismissing the complaint and in denying the motion for a new trial.

The principal question raised in the briefs of the parties is whether the juridical bond created by the contract of rental on shares, which is transcribed in their pleadings, really existed between the plaintiff Mendezona and the defendant corporation, or between the latter and the defendant Manuel de Garay.

The facts which gave rise to the present litigation are the following:

On June 9, 1913, the plaintiff Secundino Mendezona addressed a letter to the manager of "The Philippine Sugar Estates Development Company, Limited," proposing to rent, on shares, the Hacienda de Bucal which said company had in the municipality of Calamba, Laguna, with the conditions which are mentioned in detail in his letter. This communication having been submitted to the board of directors of the defendant corporation, said board rejected the proposition by resolution of July 3, 1913, which was transmitted to the plaintiff by the manager.

Upon being notified of said resolution, Mendezona addressed the following letter to the president of the corporation :

"MR. PRESIDENT OF 'THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY, LIMITED.'

"DEAR SIR: Having been informed by your manager that my proposition of rental, on shares, has been rejected by the Board of Directors, of which you are the president, due to my connection therewith, and as my only object is to cultivate the land, I take the liberty of suggesting that a contract be entered into, not with me, but with Manuel de Garay, in order that it may not be said that I am in your service. Mr. Garay, in whom I have absolute confidence, has been manager of a hacienda of the Tabacalera in Negros as well as having been connected with their sugar warehouse in Shanghai, which company, I understand, can give him the best of recommendations.

"Hoping that the board will reconsider my proposition in the form herewith submitted, I remain,

"Very sincerely,

"S. MENDOZA."

This letter having been submitted to the board of directors of the company, said board in its session of July 7, 1913, agreed to the following:

"The president asked the board if it was willing to reconsider the contract of rental, on shares, of the Hacienda de Bucal proposed by Mr. Mendezona but rejected in the preceding meeting, on condition that the execution of said contract should be with Mr. Garay. The board reconsidered said contract of Mendezona and decided that the manager investigate the said Garay and that the result be submitted to the board for its action."

On July 9, 1913, the manager of the corporation sent the following letter to the plaintiff Mendezona:

"Mr. SECUNDINO MENDEZONA.

"DEAR SIR: In answer to your letter I have the honor to state that the vice-president, acting president of this corporation, informs me in his letter of yesterday, that the board has decided to reconsider the proposition of rental, on shares, offered by you in the name of Mr. Garay. The Board also discussed the matter of a bond, the number of hectares to be cultivated, etc., which will be taken up with you later.

"Very respectfully,

"JOSE MA. SUAREZ."

In its session of July 11, 1913, the Board of Directors of the defendant corporation approved the following resolution:

"The acting president reported favorably as to the qualifications and efficiency of Mr. Manuel de Garay given by the manager on the 7th instant. In view of such information, and after proposing and approving several amendments to the rental proposition as to the haciendas of Bucal and of Calamba, it was decided to vote on said rental proposition with Mr. Manuel de Garay. The result was the approval, by a unanimous vote, of said rental proposition together with the following rental contract of Bucal and Calamba between 'The Philippine Sugar Estates Development Co., Ltd/ and D. Manuel de Garay. '* * * '

On July 13, 1913, the president of the company sent to the manager the letter Exhibit L which is as follows:

"MANILA, July 13, 1913.

"THE MANAGER OF THE 'THE PHILIPPINE SUGAR ESTATES DEVELOPMENT COMPANY LIMITED, INC.'

"DEAR SIR: I wish to inform you that the Board of Directors of this Company in its session of the 7th instant, in view of the new policy to be established in the hacienda de Bucal and as a result of the last agricultural harvest, decided to cancel the appointment of D. Manuel Guazo as administrator of Bucal and Calamba.

"You will, therefore, as soon as possible communicate this resolution of the Board of Directors to him, requesting him to deliver an inventory to the person named below, settle his accounts at the proper time, and lastly to express to him, in the name of our company, our appreciation of his faithful service.

"I also wish to inform you that the board, in its session of the 11th instant, decided to reconsider the rental proposition of Bucal made by Mr. Mendezona, but rejected at the preceding session, on condition that the contract be made with D. Manuel de Garay, it having been agreed upon to give him the contract as to Bucal and Calamba under the following conditions:

General contract of rental on shares of Bucal in favor of Manuel de Garay:

"First. * * *

* * * * *

"Sixteenth. * * *

"I would be very much obliged if you will inform me of the conformity of Manuel de Garay to this contract.

"M. G. GRANDE, Vice-President,

"Acting President."

At the foot of said letter appear these words: "Having read and understood the foregoing communication I accept it in all its parts. Manila, July 14, 1913. M. de Garay."

Subsequently the parties executed the following contract of rental on shares:

"GENERAL CONTRACT OF RENTAL ON SHARES EXECUTED BETWEEN THE PHILIPPINE SUGAR ESTATES DEVELOPMENT CO., LIMITED, INCORPORATED, AND MANUEL DE GARAY.

"First. That D. Jose Ma. Garcia Suarez, in the representative capacity in which he acts, grants to D. Manuel de Garay in general rental contract on shares, the Hacienda de Bucal, which includes the parcels denominated Bucal, Lecheria, Real, Najada, Mayapa and houses at Calamba, subject to the following conditions:

"(a) Manuel de Garay will assume the agricultural part of the exploitation of the hacienda.

"(b) It shall be a necessary condition that the tenant shall permanently live and reside on the hacienda, the company having the right to be indemnified for damages suffered on account of lack of inspection and vigilance due to continuous and long absences.

"(c) The period of this contract shall be for one year, from the time of planting to that of harvesting, the period still lacking of the former being counted as the period for the taking of possession of and the preparation of the soil.

"(d) The company reserves the right to sell or dispose of, wholly or partly, the lots which are the object of this contract, during the period of its duration, with the understanding that the new owner shall recognize the contract of rental on shares or otherwise compensate the tenant.

"(e) The general tenant cannot transfer, or cede to another person this contract of rental, on shares, without the permission of the company.

"(f) The corporation shall make advances in cash to the tenant at the rate of seventy-five pesos (P75) for each hectare actually planted or which may hereafter be planted. Provided that this bonus of P75 for each hectare shall be from the time of planting to that of harvesting. These advances constitute the maximum amount which the tenant may dispose of during the year, and he shall make use thereof as the work on the hacienda may require, subject to weekly inspection and approval of the manager. In these advances are included the expenses of administration, traveling expenses of the tenant, compensation of subordinates, ordinary expenses for the preservation of the house of the hacienda and those of Calamba, fines for the violation of municipal ordinances, fees for the branding and transfer of cattle and expenses incident to compliance with municipal health ordinances with respect to persons and animals.

"For the purposes of the bonus granted amounting to P75, by one hectare of land newly cultivated, shall be understood all surface area of that extent, cleaned and harrowed, without trunks or roots, and plowed two or three times, so that it may be ready for immediate planting.

"(g) These advances shall bear interest at 10 per cent per annum.

"(h) At the expiration of each year there shall be a settlement of interest, all that which may be due from the tenant being capitalized up to the time of the harvest, at which time it shall be paid, with interest due from December 31, to the date of payment. During said harvest time the capital advanced for animals and agricultural implements shall also be settled.

"(i) The company shall furnish all work animals and materials which may, in its opinion, be necessary in connection with the cultivated hectares, or which are to be cultivated. The tenant shall take possession of all the cattle on the hacienda at the time of the execution of this contract, and shall be responsible for their assessed value. He shall also take possession of those which may afterwards be acquired and be responsible for them at their cost price. He shall also take charge and be responsible for the farm implements at their assessed value and cost price. Of the animals and materials thus capitalized an account shall be kept on which the tenant shall pay to the company interest at the rate of 6 per cent per annum.

"(j) With respect to the loss of animals, the following rules shall be observed:

"(a) The loss of animals which may imply abandonment, as disappearance, robbery, etc., shall be for the account of the tenant.

"(b) The loss of animals due to epidemic or plague shall be for the account of the company.

"(c) The loss of animals for other causes shall be equally apportioned among the parties.

"Furthermore:

" (a) The disappearance of agricultural implements, furniture and fixtures of the house and the hacienda which imply lack of care or abandonment shall be for the account of the tenant.

"(b) The disappearance of agricultural implements, furniture and fixtures of the house on the hacienda, for wear and tear, and use shall be equally borne by both parties.

"(c) The rents of the houses of Calamba and others, the annuities on the land, the rent of animals, proceeds of the sale of timber, bamboo, and other forest products and of every other kind of products shall be for the account of the company as well as of the general tenant.

"(k) The sugar and alcohol which may be obtained, as well as any other harvest which may be produced, shall be divided half and half between the company and the tenant, who at the same time obligates himself to mill his part of the cane harvest in the central of the company.

"(l) The means of transportation from the fields to the road shall be for the account of the tenant, and from that place to the central for the account of the company. It shall also be the duty of the tenant to furnish the personnel, animals and fire materials needed at the central during the milling season.

"(m) At any time before the expiration of this contract the company shall have the right to inspect the exploitation and investment of the advances, and if, in its opinion, the result is not satisfactory, it may rescind the contract, take possession of the guaranty, without any right on the part of the tenant to indemnification of any kind, and all the improvements on the land shall be for the benefit of the company.

"(n) With respect to the existing plants, which are of different seasons and represent to the company an investment of more than thirty thousand pesos, the following shall be followed:

" (a) The share of the general tenant in the actual harvest of sugar and alcohol shall be 30 per cent, the remaining 70 per cent being for the company.

" (b) The advances given for the time which may remain of the actual harvest until the time of gathering it, shall not be more than P10 for each hectare, and this sum shall be reduced according to the greater or less delay of the harvesting. These advances shall be the maximum which the tenant may dispose of during the actual harvest, including * * *. See letter (f).

"(ñ) The tenant obligates himself to cultivate at least fifty hectares. The company reserves the right to order the tenant not to cultivate or work a greater number of hectares or not to cultivate any, if the company deems it for its benefit.

"(o) The tenant shall pay one-half of the taxes on the lands rented by him and on the houses of Calamba, and also the other provincial and municipal taxes?

"Secondly. As a guaranty for the fulfillment of the obligations imposed by this contract and especially of the reimbursement of the advances and payment of interest thereon and of the capital and interest represented by the animals and the materials for work, D. Manuel de Garay gives a first special mortgage upon a launch belonging to him, valued at P5,700 and known as Gora Jell, which measures 42 feet long, 8 feet deep, 9 feet wide, made of teak wood and supplied with a petroleum motor of 15-horse power. He also obligates himself to insure it against all risk for that sum and to indorse the policy or policies of insurance in favor of the company, as well as to deposit with the company the title deeds thereof. This guaranty is without prejudice to the responsibility of the part pertaining to the tenant of the harvest of cane and other profits belonging to him.

"Thirdly. D. Jose Maria Garcia Suarez, in the representative capacity in which he acts, accepts this guaranty in favor of the company as good."

On the same day, July 14, 1913, the plaintiff Mendezona and the defendant Manuel de Garay executed a contract, in writing, in which Manuel de Garay delivered to Secundino Mendezona the direction and management of the work to be performed on the hacienda for the fulfillment of the contract of rental, executed by Manuel de Garay with the company, and he acknowledged himself as a mere subordinate of Secundino Mendezona, with the right to receive only 10 per cent of the profits which may belong to the tenant. In the contract the subscribing witnesses were two employees of the company.

The contracting parties immediately established themselves on the hacienda to begin the agricultural work. On July 15 and 22, 1913, the manager of the corporation sent to the plaintiff two letters in which he stated that the latter should show activity and that if the administrator did not like to deliver the hacienda through peaceful means he would get it by force and that he would not be afraid because the "company and the Vicar" were one and all on his side.

Secundino Mendezona has been receiving money from the company for the work on the hacienda, but he signed the receipts from July 14, 1913, until December of that year, as follows: "Pp. Manuel de Garay, (Sgd.) S. Mendezona."

About October, 1913, the acting president of the defendant corporation, Miguel Garcia Grande, left the Philippines, and before leaving, he sent Mendezona a card advising him of his departure and a gift as a testimonial of gratitude for the services he rendered to the Hacienda de Bucal, and during his voyage he sent the plaintiff post cards in which, after greeting him and his family, he goes on to praise his work and belittle that of Manuel de Garay.

Miguel Garcia Grande was succeeded by Valentin Marin as president. The latter inspected the hacienda several times, and after a month of observation, he reported to the board on the condition of things on the hacienda and stated that Mendezona was usurping the powers of the tenant De Garay and that the latter was being ignored. As a result of said report the Board of Directors agreed on January 7, 1914, to end that state of affairs and the resolution was transmitted by the manager to Manuel de Garay on January 8th of that year. Nevertheless Mendezona continued to stay on the hacienda until May 7, 1914, when Manuel de Garay addressed him the letter Exhibit 31 in which he told him to leave the house on the Hacienda de Bucal.

Finally, the conduct of De Garay was not satisfactory to the company, and the latter on May 20, 1914, agreed to advise De Garay as was in effect done by the acting president Valentin Marin, but the situation did not seem to change, and, by a resolution of the Board of Directors of the corporation, the rental contract, on shares, with De Garay was rescinded, said resolution having been sent by letter on June 10, 1914, signed by the acting president

and the manager of the company and addressed to Manuel de Garay.

Under the circumstances stated which unquestionably result from the documents in the record, the plaintiff Mendezona claims that the rental contract, on shares, was in reality entered into between him and the defendant corporation, and in support of his claim he took the stand as a witness and testified extensively on the acts performed by him and the representatives of the defendant corporation, which he alleges show an acknowledgment that in reality the contract of rental, on shares, was entered into with him and not with Manuel de Garay. But his claim

In the same letter in which Mendezona asked the president of the defendant corporation to reconsider his proposition, stating that he had no objection to the execution of the contract with Manuel de Garay, he stated that the latter was a person in whom he had great confidence and that as to his personal ability the Tabacalera Company could give information. If his intention was that Manuel de Garay was to be merely a fictitious tenant, there was no need of such information. The defendant company on the other hand did not immediately execute the contract with De Garay, and only after having received favorable information as to him did it decide to execute the contract of rental on shares. And in order to make it clearly appear that it was contracting with De Garay and not with Mendezona, it took special care to insert in the document containing the contract paragraph (e) of the first clause in which it forbids the general tenant to transfer or cede the contract to another without the knowledge of the corporation, from which it is seen that the company wanted to avoid Mendezona from being put in the place of De Garay one way or another to avoid having to deal with him as tenant, when he could not give to the corporation any guaranty for the fulfillment of the obligation created by the contract, he being an insolvent merchant who had been convicted of estafa and served his sentence in prison.

In the correspondence had between the plaintiff Mendezona and the defendant corporation, no word, not even the slightest indication, can be found to the effect that Manuel de Garay was to be a mere fictitious tenant. In the letters from which Mendezona infers the idea that the corporation treated him as the real tenant, the only thing that can be found is an indication that certain officers and employees of the defendant corporation considered him as the attorney in fact of Manuel de Garay, but this cannot be understood in the sense that they considered him as the real tenant, inasmuch as on July 14, 1913, he took money from the company to be spent on the hacienda and he signed a receipt as attorney in fact of Manuel de Garay, from which it is evident that the officers of the corporation could not have considered him as tenant, but as a mere attorney in fact of Manuel de Garay. And as he had also signed many other receipts in the same or identical form, whatever capacity was conceded to him by the officers of the company, he could not be more than an attorney in fact of De Garay, it not appearing in a clear manner in the documents issued by said officers or in their acts that they considered Mendezona as the true tenant connected with the corporation by virtue of the contract executed with Manuel de Garay.

The plaintiff lays stress upon the alleged attitude of the president Miguel Garcia Grande and of the manager Jose Ma. Suarez in consenting to the contract of partnership executed between the plaintiff Mendezona and the defendant Manuel de Garay, in which contract Manuel de Garay was recognized as a mere subordinate of Secundino Mendezona.

With respect to this, it should be noted, in the first place, that the contract of partnership between Mendezona and De Garay contains no indication that said Garay was a fictitious tenant; on the contrary, it is stated therein that in order to effect the rental contract which De Garay had executed with the defendant corporation, he and Mendezona associated themselves, and in order that Mendezona might supervise the work on the field, De Garay gave him ample powers and recognized himself as a subordinate of Mendezona. It here expressly appears that the real tenant was De Garay, and that Mendezona was a mere subordinate. That De Garay recognized Mendezona as technician is perfectly compatible with the proposition that De. Garay was the real tenant, for although

Mendezona was the one to superintend the work in the field, nevertheless, it appears in the same contract, that Mendezona was a mere agent of De Garay and that the latter was the tenant. The fact that De Garay was the subordinate of Mendezona because of the nature of the work which each had to do does not prove that De Garay was not the tenant; and the fact that the company permitted the services of Mendezona on the hacienda does not prevent this conclusion, for it is proved that said company, having no confidence that Mendezona would fulfill his obligations to whom it would have to make advances in great sums, it did not like to deal with him but with Manuel de Garay, who, according to its information, was a person of responsibility.

In the second place, it is hard to believe that said officers of the corporation, if they had any intervention in this contract between Mendezona and De Garay, should have made it to be understood that the real tenant was Mendezona and not De Garay, because the letter Exhibit L signed by president Garcia, addressed to manager Suarez, read by Mendezona and approved by Manuel de Garay, clearly states that the hacienda was to be delivered to Manuel de Garay as tenant. These two officers of the corporation had full knowledge that the board of directors did not like to contract with Mendezona and if it adjudicated the rental contract to De Garay, it was merely because of the good information which the company received as to him which was furnished by the manager himself, and which must have brought to their knowledge the fact that the board of directors wanted to contract with De Garay and not with Mendezona; and therefore it can not be believed that, as they acted contrary to the will of the board of directors, they had made it understood that Mendezona was the real, and De Gasay the fictitious, tenant. But supposing that they had acted against the will of the board, then their conduct does not bind the corporation, because "The declarations of an individual director relating to the affairs of the corporation, but not made in the course of, or connected with, the performance of the authorized duties of such director, are held not binding on the corporation. So, false statements made by a single director, for the purpose of defrauding the creditors of the corporation, including the corporation itself, could not affect or bind it." (2 Thompson, paragraph 1073.) "The general rule is that officers of corporations acting within the scope of their authority may bind the corporation in the same way and to the same extent as if they were the agents of natural persons, unless the charter or by-laws otherwise provide. They cannot, in general, bind the corporation by acts in excess of the authority with which they are clothed unless such acts are ratified * * *." (2 Thompson, paragraph 1408.) Under these well-settled principles of law, whatever be the nature of the acts performed by president Garcia Grande and manager Suarez, they can not prejudice the corporation in the sense that it is estopped to deny that they ever contracted with Mendezona, because said officers, in executing such acts, acted outside of their sphere of action and contrary to the resolutions of the board of directors of the defendant corporation, the terms of which are so clear and explicit as not to leave any doubt that they wanted to enter into a contract with Manuel de Garay and not with Secundino Mendezona.

The cards which president Garcia Grande had sent to the plaintiff Mendezona appear to the latter as another proof that he has been considered as the true tenant, but these cards far from justifying this conclusion rather imply that it was Manuel de Garay who was the real tenant. In effect, while president Garcia Grande praises, in said cards, the services of Mendezona on the hacienda, he also discredits those of De Garay. Now, if the tenant really was Mendezona, there was no reason for discrediting or mentioning the services of De Garay, inasmuch as if he was not the tenant but merely an ordinary subordinate of Mendezona, there was no reason why president Garcia Grande should recall him. He was the officer of the corporation who favored the proposition of Mendezona and therefore was against that of De Garay, as stated by the witness Valentin Marin, his successor; hence, when the services of Mendezona became satisfactory and those of De Garay did not, he attempted to criticise indirectly the resolution of the board of directors of which he had been a member and which approved the proposition of De Garay against his opposition and he also discredited the services of the latter.

Lastly, the true and incontrovertible fact is that it appears in a clear and unequivocal manner in a public document

that the tenant with whom the defendant corporation contracted was Manuel de Garay and not Secundino Mendezona. In order to contradict this, as the plaintiff attempted to do, it was incumbent upon him to prove his claim with clear, convincing and more than merely preponderant evidence (*Camacho vs. Municipality of Baliuag*, 28 Phil., 466 and *Centenera vs. Garcia Palicio*, 29 Phil., 470), something which the appellant Mendezona did not do.

That the agreement of October 17, 1916, between the plaintiff and the defendant De Garay, attached to the record on February 6, 1917, folio 610 of the third part, cannot favor the plaintiff, is beyond question for the following reasons: (1) Said document was attached to the record without the knowledge of the opposing party and after the close of the evidence, for the order of December 16, 1916, ordered a new trial for the only purpose of taking the testimony of the witness Nickelson and the evidence in rebuttal of the latter; (2) because the defendant De Garay cannot agree with the plaintiff, recognizing him as the real tenant, when in his answer to the complaint he denies this fact, alleging that he (De Garay) was the real tenant; and (3) because, after having subscribed the rental contract, Exhibit A, as such tenant, he cannot legally say, as he does, in said stipulation, that the tenant is the plaintiff Mendezona.

What has been said disposes of the first two errors assigned in the plaintiff's brief.

Errors Nos. 3 and 4 refer to the right, which the plaintiff alleges he has, to ask for the rescission of the contract, the rendering of accounts by the defendant corporation and the consequent indemnification for damages. These last two assignments of error are based upon the supposition that the plaintiff is the tenant in the contract in question. As it has been shown that he is a party to said contract, said errors have no foundation. Therefore, we conclude that there is no merit in the action instituted by the plaintiff Mendezona against "The Philippine Sugar Estates Development Company, Limited," and the judgment of the trial court must be affirmed.

We will now pass to the appeal interposed by the defendant corporation. This appeal is limited to that part of the trial court's decision which dismisses the counterclaim for the sum of P61,030.15 filed by said defendant against the intervenor and tenant De Garay. The latter did not appeal, and therefore, the judgment has become final and subject to execution in so far as it declares that he had given sufficient motives for the defendant corporation to rescind the contract, that his claim for damages on account of the loss of expected profits can not be granted, and that he has not shown that the defendant corporation 'was guilty of negligence to such extent as to entitle him to damages for the loss of the profits from the harvest collected while he was yet a tenant.

The defendant company, as appellant, makes the following assignment of errors in its brief:

- In finding that the sum of P59,745.09 received by the tenant as advances has been wholly used in the improvement of the hacienda and the purchase of animals and tools.
- In finding that the expenses of maintenance of the plaintiff and of the intervenor De Garay may be charged against the improvements as expenses of supervision.
- In not adjudicating in its favor the balance of P44,593.85 against the tenant.
- In dismissing the counterclaim filed by said defendant corporation.

The errors assigned by the corporation refer principally to the interpretation of the contract in question and this requires a revision of its most pertinent parts. By subdivision (f) of said contract, the company bound itself to make advances in cash to the tenant at the rate of per hectare actually cultivated or which may thereafter be cultivated. With these advances it is believed that the corporation gave the tenant facilities for the cultivation of the hacienda, which the latter should repay at the time of the harvest with interest at 10 per cent per annum.

(Subdivision g.) By subdivision (h) the liquidation of the capital advanced during the year is provided. By subdivision (i) the tenant takes charge of the animals on the hacienda at the time of the signing of the contract at their assessed value as well as of those which may afterwards be acquired at their cost price, an annual interest of 6 per cent being paid to the corporation on the capital invested in animals and agricultural implements. By subdivision (k) the parties agree to divide half and half the harvest for the year 1914-1915; and by subdivision (n) the tenant shall receive only 30 per cent of the harvest for the year 1913-1914.

From the examination which we have made of the evidence it appears that the following should be charged to the debit and credit of the tenant De Garay:

Debit

Credit.

Advances in accordance with letter (g) of the contract, with interest at 10 per cent.....

P59,745.10

Interest at 6 per cent on 939,658.18 invested in the purchase of animals and work materials, from the taking effect of the contract until Dec. 31, 1913. (Letter [i] of the contract)

941.45

Interest at 6 per cent on PI 1,010.56 invested in the purchase of animals, work materials, from Jan. 1 to the termination of the contract. (Letter [i] of the contract).....

293.60

Amounts to be proved from April 2 until June 10, 1914. (P. 495 et seq., s. n., third part)..

10,650.00

Fifty per cent of the expenses of transportation and commission on the sale of the harvest of 1913-1914 which amounts to P416.60.(P. 486, s. n., third part).....

208.30

Fifty per cent of the expenses of transportation and commission on the sale of the harvest of 1914-1915 which amounts to P2,708.78.(P. 540, s. n., third part).....

1,354.39

Thirty per cent of the harvest of 1913-1914 Debit. Credit. amounting to P6,072.34, subdivision (a) of the division (n) of the contract.....

P1,821.70

Fifty per cent of P33,555.90, the value of the harvest of 1914-1915, subdivision (c) of divisions (j) and (k) of the contract.....

16,777.95

Fifty per cent of P250.29 the value of the maize harvested in 1914-1915.....

125.14

Fifty per cent of P1,023.36, the amount of rents collected during the terms of the contract
.....

512.68

Total

P73,192.84

19,237.47

Balance against the tenant M. de Garay.....

P53,955.37

There is nothing in the contract which provides that all the incidental expenses of commission and transportation of the sugar sold shall be charged to the tenant only, and we believe it equitable to divide this item between the tenant and the corporation, as stated in the preceding liquidation, made in view of the evidence adduced at the trial. The defendant corporation includes in its counterclaim the 30 per cent of P26,245.50, or, P7,273.50, which it alleges was spent in the milling of the cane harvested during the first months of 1914, a sum which the tenant should pay according to the contract. We are of the opinion that this claim is not maintainable, because we do not find any evidence which shows that the tenant had assumed the responsibility of paying for the expenses incurred in the preparation and planting of the plants existing on the hacienda at the time of the signing of the contract; that the share of the tenant of 30 per cent of the harvest of 1914, instead of the 50 per cent assigned to him in the harvest of 1915, was undoubtedly determined in view of his having to take care only of the existing plants until the period of harvesting, for which purpose the amount which he was to receive as advances was limited to P10 per hectare (subsection [b] of section [n] of the contract) for the time that still remained for the harvesting of the crops in 1914 when the contract took effect.

The preceding liquidation shows that the counterclaim presented against the intervenor De Garay for the sum of P61,030.15 should be reduced to P53,955.37, which the defendant corporation is entitled to be paid by the tenant De Garay. The judgment appealed from should be reversed in this respect.

From what has been said, the judgment should be affirmed, in so far as it absolves the defendant "The Philippine Sugar Estates Development Company, Limited" from the claims of the plaintiff Secundino Mendezona, and reversed, in so far as it dismisses the counterclaim of the defendant corporation against the other defendant, tenant, and intervenor, Manuel de Garay, who is sentenced to pay to said corporation the sum of P53,955.37, with legal interest from the date of the judgment appealed from, without special pronouncement as to costs. So ordered.

Mapa, C. J., Street, and Avancena, JJ., concur. Malcolm, J., concurring in part:

I would affirm the judgment without modification.

MALCOLM, J., concurring in part:

I would affirm the judgment without modification.

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