

ANTONIO GARCIA PALOMAR, PLAINTIFF AND APPELLANT, VS. THE HOTEL DE FRANCE COMPANY, DEFENDANT AND APPELLANT.*G. R. No. 15878. January 11, 1922*

Ponente: STREET, J.

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This action was instituted in the Court of First Instance of the city of Manila by Antonio Garcia Palomar to recover of the Hotel de France Company a sum of money as damages for the alleged wrongful discharge of the plaintiff from the position of manager of the Hotel de France in the city of Manila. Upon hearing the cause, the trial judge found that the plaintiff had been wrongfully discharged, as alleged, but instead of allowing damages to the full extent of the sum of P23,100 claimed by the plaintiff in his amended complaint, awarded the sum of P6,000, less the amount of P328.88, admittedly due from the plaintiff to the hotel upon an account for tobacco. From this judgment both parties appealed, it being assigned as error on the part of the plaintiff that the award of damages made by the trial judge was inadequate, while on the part of the defendant company it is claimed that the trial judge erred in not absolving the defendant altogether from the complaint.

It appears in evidence that the defendant corporation, the Hotel de France Company, owns and operates a well-known hostelry in the city of Manila known as the Hotel de France, and that on July 15, 1916, the plaintiff, Antonio Garcia Palomar, became the manager of said hotel under a contract by which his compensation was fixed at the rate of P300 per month, with food and lodging in the hotel for himself and family. In January of the year 1917, the monthly pay of the plaintiff was by mutual consent of the parties increased to P400 per month. In the fourth paragraph of the contract it was provided that the plaintiff, as manager of said hotel, would be guided by the suggestions which Sr. A. M. Barretto, the president of the company, might make for the benefit of its business. The duration of the contract was fixed as from April 15 of the year then current, to December 31, 1920. On April 27, 1918, Sr. Barretto, in his capacity as president of the Hotel de France Company, by a communication in writing, relieved the plaintiff of his office of manager of said hotel and required him forthwith to surrender possession of the hotel and of all documents, keys, and household goods pertaining thereto. The plaintiff complied with this requirement, though under protest, and a few weeks thereafter instituted the present action to recover damages for the wrongful discharge.

There is no controversy as to the terms of the contract, or over the fact that on April 27 of the year mentioned the plaintiff was discharged. The principal questions therefore are two, namely, first, whether the discharge of the plaintiff from the position of manager of the hotel was wrongful; and, secondly, in case the foregoing question should be answered in the affirmative, what is the amount of the damages which should be awarded to the plaintiff? Upon the first point the burden of proof is clearly upon the defendant to prove that the discharge of the plaintiff was justified by the facts, while upon the second point the burden of proof is upon the plaintiff, in the event he is entitled to recover any damages at all, to show the amount to which he is justly entitled.

We observe that the defendant company has, in its answer, specified the following grounds as justifying the discharge of the plaintiff, namely, first, his failure after March 23, 1918, to obey the reasonable orders given to

him by the president of the company; secondly, the failure of the plaintiff after March 23, 1918, to comply with the obligations inherent in the office of manager, retiring to his quarters very early in the evening and remaining therein until the advanced hours of the succeeding day, and otherwise manifesting inattention to the guests and lack of vigilance in the supervision of the service in the dining room. It is furthermore alleged in the defendant's answer that, after the date stated, it had come to the knowledge of the president of the company that the plaintiff had failed to show the proper consideration to the employees of the hotel under his charge, using to and in regard to them low, dishonoring, and insulting epithets. As will be thus seen, the delinquencies actually imputed to the plaintiff in the defendant's answer as the reason for letting the plaintiff go, have relation to facts that occurred between March 23, 1918, and April 27, of the same year; but the proof covers the range of a much longer period of time.

It appears, then, that the discharge of the plaintiff, Sr. Antonio Garcia Palomar, from the position of manager of the Hotel de France is really rested on the ground of his supposed inefficiency and misconduct; and the charges against him may be summarized under the following heads: In the first place, it is claimed that the plaintiff, for some time prior to his discharge, had failed to make daily visits to the market, to buy the necessary foodstuffs for the hotel, as was the custom of his predecessor and as he himself had at first done. Secondly, it is claimed, that he was inattentive to the conditions and requirements of the hotel as regards the equipment of sleeping rooms, dining-hall, grill room, and kitchen. In this connection it is pretended that, at the time the plaintiff was displaced in the management of the hotel, the guest rooms were not adequately provided with bed linen, mosquito nets, and necessary articles of toilet; that there was a notable scarcity of table linen and table ware in the dining-hall and restaurant; and that the supply of kitchen utensils had become so far depleted that the cooking and cleaning operations in the kitchen were greatly hampered. Thirdly, it is claimed that the plaintiff had manifested a persistent attitude of discourtesy to guests and a querulousness over complaints about the service, both of which were in a marked degree prejudicial to the popularity and interests of the hotel. Fourthly, it is claimed that, under the plaintiff's regime, the servants had become disaffected and that the plaintiff had shown so much lack of tact in managing them that nearly the whole force was on the point of quitting at the time the plaintiff was relieved. Fifthly, it is claimed that the plaintiff had failed to make out and publish in the hotel a written scheme, showing accurately and fully the duties of the different employees of the hotel, notwithstanding the fact that he had been especially requested by Sr. Barretto to prepare such a scheme. Lastly, we find it suggested in the testimony of some of the witnesses for the defendant—though the charge is not openly formulated in the defendant's answer—that the plaintiff is addicted to drink; and it is intimated that indulgence in this vice supplies a reason for his supposed lack of attention to duty and especially for his alleged habit of remaining in bed until the hours of the day were far advanced.

Upon a considerate review of the voluminous proof, chiefly oral, adduced in the cause by the respective parties, we concur in the conclusion of the trial judge to the effect that no just or sufficient cause is shown by the defendant for the removal of the plaintiff from the position of manager of the Hotel de France, and we are accordingly constrained to hold that the act of Sr. Barretto in removing him summarily from that position was without justification in law or fact. Upon this issue, as already observed, the burden of proof is upon the defendant, and in our opinion the defense has failed to prove by a preponderance of the evidence any fact, or facts, which would constitute a sufficient ground for the action taken.

Among circumstances pertinent to the case, it may be mentioned that Sr. Barretto, the president of the Hotel de France Company, and himself the owner of far the greater part of the shares in that corporation, had lived in the hotel for much, if not all, of the time during which the plaintiff had been manager, and he was assuredly in a position to have had cognizance of many of the conditions which have been made the basis of complaint against the plaintiff; and yet Sr. Barretto says that his actual knowledge of these conditions was obtained from the reports

brought to him by his son Jose A. Barretto, a young man of about 22 years of age, who for a considerable period of time had acted informally as inspector and observer of affairs in the hotel, and who on March 10, 1918, was appointed by the board of directors of the Hotel Company—ruled of course by his father—to the position of chief inspector, "to the end that he might keep watch over the entire hotel and correct anything he might discover wrong." This looks very much as if the device of appointing a chief inspector had been adopted as a means of superseding the manager and as preparatory to the dismissal of the latter.

Reflection upon the anomalous position thus occupied by Jose A. Barretto, and consideration of his attitude towards the plaintiff, Antonio Garcia Palomar, lead to the conclusion that what the former probably saw and reported to his father concerning the conditions and management of the hotel was little likely to be favorable to Sr. Palomar. This conjecture is strengthened when it is recalled that Sr. Palomar, as manager of the hotel, at about the same time incurred the ill-will of Jose A. Barretto by forbidding the cashier to deliver money to Barretto on the vale of the latter only, without approval by himself or of Sr. A. M. Barretto. When to this is added the further circumstance that Jose A. Barretto was the individual who in fact succeeded to the position of manager of the Hotel de France after the plaintiff was discharged, it can readily be inferred that any reports which Jose A. Barretto might have made to his father were colored and misleading.

As regards the financial aspects of the plaintiff's management of the hotel, it is undeniable that more money was made during the two years he was in charge of the hotel than had been made in any similar previous period which has been made the subject of proof. Thus, we find that in the years 1911, 1912, 1913, and 1914, no dividends whatever had been distributed to the shareholders of the Hotel Company, while in 1915 a dividend of 6 per cent only was distributed. On the other hand for the years 1916 and 1917, during which the plaintiff was manager, dividends of 11 per cent and 12 per cent respectively were declared. With right good cause then did Sr. A. M. Barretto, under date of March 23, 1918, say in a letter to the plaintiff that the results of the hotel's business during the time of the plaintiff's management had been highly satisfactory.

With these facts in mind we are in a position to appraise at its true value the proof upon the various charges of inefficiency and misconduct laid to the account of the plaintiff; and we shall accordingly pass a few words of comment upon these several charges. In regard to the first count it is true that the plaintiff had abandoned the practice followed by his predecessor, and at first observed by himself, of going daily in person to the markets for the purpose of laying in the necessary supplies of foodstuffs for the hotel. In explanation he says in effect that he had a competent and trustworthy employee—Estanislao Vergara by name—who could deal with the native stall-keepers and venders in the market more advantageously than he himself could; and he claims that it was in the interest of the hotel for him to send this substitute rather than to go in person. Sr. A. M. Barretto says that just before he discharged the plaintiff, he called the attention of the latter to this practice, which Sr. Barretto considered objectionable, and admonished him that he should resume the practice of going to market in person. The plaintiff, however, did not act in accordance with this suggestion and continued to send Vergara on this mission.

By the fourth paragraph of the contract under which the plaintiff was employed, the latter was bound to obey the orders of the president of the Hotel Company made in the interest of its business, but we are not convinced that this suggestion of Sr. Barretto that the plaintiff ought to go to the market in person was either intended as a peremptory order or was really made in the interest of the business of the hotel. At any rate we are of the opinion, as was the trial judge, that this act of insubordination on the part of Sr. Palomar—if such it be considered—was too petty to serve as a basis for discharging the plaintiff. The real motive of the action taken is, we think, to be found in other considerations, and principally in the desire to make room for the promotion of Sr. Jose A. Barretto to the position of manager of the hotel.

With reference to the charge that the plaintiff had failed to maintain adequate equipment in the bed rooms, dining room, and kitchen, it may be observed that, while the oral testimony is conflicting, the preponderance of the evidence is rather against than in support of this charge. Certainly, if this ground of complaint were true, a most natural thing would have been that expensive outlays would have immediately been made by Sr. Jose A. Barretto, as the plaintiff's successor, to supply the deficiency, but this is not proved; and such testimony as appears in the record with reference to the matter would seem to indicate that few if any additions to the equipment were found necessary.

Again, it will be observed that if Sr. Palomar refrained from making expenditures for equipment, the amount thus saved contributed by so much to increase the revenue available for dividends, and the real beneficiaries of the economies thereby effected were the stockholders, not the manager of the hotel. If the depletion of the equipment had become as marked as some of the witnesses for the defendant would have us believe, it is surprising that knowledge of this condition did not sooner reach the president of the Hotel Company, himself an inmate of the hotel; and a few words from him addressed to the manager to the effect that lower dividends and better equipment for the hotel were desirable, a change for the better might probably have occurred. That there were some deficiencies in the equipment of the hotel—a condition more noticeable when the house was crowded—is doubtless true; and this feature of the service was of course offensive to persons accustomed to the conveniences and luxuries supplied in the high-grade hotels in the great cities of the world. But the Hotel de France has no pretension to rank among hotels of that sort.

The testimony of some of the witnesses for the defense tends to show that the plaintiff may have been guilty of occasional exhibitions of petulance over complaints from guests in regard to the hotel service, but this proof is not in our opinion sufficient to show a fixed attitude of discourtesy in him towards the hotel guests, such as would seriously impair his usefulness as manager, especially in view of the testimony of numerous other persons showing that the plaintiff is possessed of a courtesy and bearing appropriate to the place filled by him. We also are of the opinion that the charge of wilful and deliberate inattention to duty on the part of the plaintiff is not proved; nor is it shown by a preponderance of the evidence that the plaintiff had formed the habit of sleeping until 10 or 11 o'clock in the day, though it is admitted that this did occur upon occasions when the plaintiff had been kept up until late at night attending important functions given in the hotel. "Not proved" is also the estimate that must be passed upon the insinuation that the plaintiff was excessively addicted to drink; and in connection with this charge, it may be observed that, if true, it relates to a matter which inevitably must have been within the knowledge of Sr. A. M. Barretto before March 23, 1918, yet upon that date he wrote the letter saying to the plaintiff in unqualified terms that his management of the hotel had been highly satisfactory.

A more serious indictment is found in the charge that the plaintiff was lacking in ability to manage the servants of the hotel; and it is shown that on April 25, 1918, a paper signed by more than thirty of the hotel's employees was delivered to Sr. Barretto, as president of the hotel, in which the latter was informed that the parties whose names were signed to said paper would quit work on May 10, thereafter. No reasons for this step were assigned in the document itself, but reference was therein made to a written protest, dated December 13, 1917, which had been placed before Sr. Barretto. The author of this writing, admittedly somewhat antiquated upon the date when it was made the basis of this threat by the hotel employees, appears to have been one Jose E. Quintos, an electrician formerly in the employ of the hotel, and who notwithstanding his separation from the hotel as far back as May 5, 1917, had retained his position as a leader of the labor association formed by the employees of the hotel.

This document does, indeed, set forth certain grievances against Sr. Palomar, and alleges that the employees whose names are signed to it are dissatisfied with his management. What appears to be the capital ground of complaint from the point of view of the employees is found in the statement that Sr. Palomar was maintaining the

most rigorous regimen and discipline that had ever prevailed among hotel employees in Manila; and it is prayed that the board of directors of the hotel, of which Sr. Barretto was chairman, should take the necessary measures to bring back the conditions that had prevailed under an easier manager, one Sr. Luis Rodon. Among the irregularities imputed in this paper to Sr. Palomar are mentioned two of the items already referred to in this opinion, namely, his alleged proclivity for using disrespectful and insulting epithets to and concerning the servants, and his addiction to the vice of drink. Upon the whole we are of the opinion that his Honor, the trial judge, properly appreciated this incident with reference to the threatened strike and that he committed no error in attributing to it little weight.

It remains to comment on the failure of the plaintiff to prepare and publish a scheme for the internal regimen of the hotel, as requested by Sr. A. M. Barretto in his letter to the plaintiff of March 23, 1918. In this connection it appears that in making this request Sr. Barretto had in mind the drafting of a schedule which should define with particularity and precision the duties and hours of service of all the different classes of employees in the hotel. The idea appears to have been somewhat novel, and Sr. Palomar suggests that the promulgation of such a scheme would have produced embarrassment, for the reason that it would have made it less easy to shift the servants around from one thing to another. He says that after working for the time with the project he saw its manifest futility and after consultation with Sr. Barretto the matter was dropped with the consent of the latter. The explanation is credible, and we incline to the view that Sr. Barretto himself could not have attached much importance to this project, except as it affords some technical basis for the claim that Sr. Palomar had refused to obey orders.

Our conclusion upon the features of the case which we have just discussed is, as previously suggested, that the dismissal of the plaintiff from the position of manager of the Hotel de France was not justified, and such dismissal constituted a breach of contract upon the part of the Hotel Company.

In article 1586 of the Civil Code, it is declared, among other things, that workers hired for a stated time or for a specified work cannot be dismissed without sufficient cause; and this means that in case of the wrongful dismissal of the employee an action for damages will lie against the employer. (*Hicks vs. Manila Hotel Co.*, 28 Phil., 325; *Knust vs. Morse*, 41 Phil., 184.) This rule, so manifestly consonant with the principles of civil law, has also of late years been accepted as an axiomatic doctrine of the English common law. (1 *Labatt, Master and Servant*, 2d ed., sec. 343.) Under the law prevailing in this country the contract of employment is considered to be effectually ended in every case by the discharge of the employee, whether rightful or wrongful; and in conformity with this, the employer is given the right to dispossess the discharged employee at once of any property of which the latter may have had possession by virtue of the employment. (Art 1587, Civ. Code.)

Commenting upon article. 1586 of the Civil Code, the well-known author Manresa says that the obligation to indemnify is implicit in the prohibition to dismiss without cause; and in this connection he says that in strictness the employer who is proved to have dismissed his employee capriciously or unjustifiably should be considered a debtor in bad faith. Nevertheless, he adds, very justly we think, that the courts will do well to avoid a too rigorous application of this idea and instead they should take into consideration the particular circumstances of each case and be governed accordingly.

So much having been said with reference to the general doctrine, it will be helpful to state certain propositions deducible from this undeniable right of the employee to recover damages for a wrongful dismissal. Among such propositions it may be stated, first, that the cause of action accrues when the employee is wrongfully discharged; secondly, that for this discharge the employee may bring an action in which he can recover once and for all such damages -as he may have suffered by reason of the employer's wrongful act; thirdly, that the action to recover these damages may be brought immediately upon the breach of the contract or at any time thereafter before the

action is barred; fourthly, that the circumstance that the action is brought, or the trial had, before the term of the contract has fully passed does not affect the right of recovery, though practically the damages may be more precisely estimated if the trial in first instance takes place after the term of the contract has expired; fifthly, that the damages awarded should be such as to compensate for the breach of the contract, as of the date when the wrongful act was committed; sixthly, and finally, that in estimating the damages the tribunal should consider the contract as an entirety and take into account all of the elements of value pertaining to it, not omitting the consideration of the length of the term during which the employment should have continued.

In considering a problem like that now before us, it is important to bear in mind that while the right of the employee to recover full damages, assessed with reference to the whole term of the contract, is clear, and in estimating these damages account must sometimes be taken of the probable course of events after the action is tried, nevertheless the damages thus allowed are not damages which to legal intentment have accrued after the action is brought. The right to recover full damages accrues upon breach of the contract; and in estimating these the duty of the court is to give a pecuniary award sufficient to compensate for the wrong done, as of the date of the breach. Such damages are not speculative or prospective damages in an objectionable sense. They are the damages naturally resulting from the breach of the contract as an entirety, and being inflicted at the time of the breach of contract, they should be assessed as of that time.

Upon the question of the amount of damages to be awarded in an action of this character some helpful suggestions may be gleaned from the decisions of the American and English courts, though it is certainly necessary to make way carefully through the great mass of conflicting decisions which those courts have rendered on this subject. For this reason it is desirable here to call into requisition the services of a competent guide, whom we find in the person of Mr. Labatt, author of the most complete American treatise on the law relating to the relation of master and servant. From his pages we take the following passage in which he discusses the subject of the measure of damages in cases of the wrongful dismissal of the servant:

"As in other cases involving a breach of contract, the damages recoverable in an action for the wrongful dismissal of a servant are measured by, and limited to, the actual loss which he has sustained as a natural and proximate consequence of the dismissal. When viewed with relation to the rule stated in the following section [360], this principle implies that the amount of the stipulated compensation, or that portion of it which still remains unpaid at the time when the servant's claim is determined, is not necessarily and in all cases the measure of damages, but merely an evidential element, which may properly be considered by the jury in estimating the extent of the resulting damages. The actual loss sustained by the servant may, it is manifest, be represented by a sum which is either larger or smaller than that amount. The stipulated wages do not constitute a sufficient indemnity for the master's breach of contract in any case where special damage of some description is shown to be sustained by the servant. On the other hand, those wages will constitute an excessive indemnity in cases where the servant obtained, or might have obtained, other employment after his dismissal." (1 Labatt, Master and Servant, 2d ed., sec. 359.)

Proceeding further to consider the problem involved in the estimation of damages for the prospective period of the contract, the same author says:

"In respect of the period between the trial and the end of the term, the servant is entitled *prima facie* to recover a sum sufficient to compensate him for the loss of the future benefits which he would probably have obtained if the contract had not been broken. The elements which enter into a computation of the damages on the footing thus indicated are the following:

"(1) The amount of the stipulated compensation for the residue of the term. * * *

"(2) The extent of the probability that the lives of the servant and the master would have continued to the end

of the stipulated term of employment. * * *

"(3) The extent of the probability that the servant would have continued to be physically and mentally capable of performing his work to the end of the term. * * *

"(4) The extent of the probability that the servant will be able to earn money in other employments during the period between the trial and the end of the term.

"(5) * * *

"(6) Any other uncertainties growing out of the terms of the contract." (*Id.*, sec. 372.) From the considerations above adduced it is evident that the principal factor to be considered in a case like that now before us is the salary which the plaintiff was by contract entitled to draw, plus the value of food and lodging for himself and family, for the period during which the contract was yet to run when he was discharged.

As regards the stipulated compensation we note that, by the express terms of the contract, the plaintiff's salary is fixed at P300 per month. It is admitted, however, that in February, 1917, this amount was voluntarily augmented by the employer to P400 per month. As we understand the references to this matter, not only in the pleadings but also in the oral testimony, the extra P100 thus paid to the plaintiff was in the nature of a bounty. Certainly, there is nothing to show that there was any novation of the contract such as would have entitled the plaintiff to recover compensation at a higher rate than P300 per month, if the service had been rendered and it had been necessary to sue for the salary. In considering the contract right's of the parties to this action, it must, therefore, be assumed that P300 per month was the salary contracted for.

The perquisites incident to the plaintiff's position as manager of the Hotel de France consisted of food and lodging in the hotel for himself and family during the term of the contract; and it appears that the family vacated the hotel at the end of April, 1918. The uncontradicted testimony of the plaintiff is to the effect that the expenses thereafter incurred by him upon account of food and lodging for himself and family amounted approximately to P300 per month, and the trial judge accepted this estimate as correct.

It appears that the plaintiff has received no part of his salary for April, 1918, for the reason that upon the date of his discharge he was debtor to the hotel upon an account for tobacco to the extent of P328.88, there being a balance of P28.88 against him, as of the end of the month. At the end of April his family vacated their apartment at the hotel; and from that date the plaintiff's pecuniary loss by reason of his wrongful discharge, until the termination of the period of the contract, was at the rate of P600 per month. As by the terms of the contract the employment would not have terminated, in the ordinary course of events, until December 31, 1920, a simple arithmetical computation shows that, if the plaintiff had continued in the service of the defendant company until that date, he would have received after May 1, 1918, by way of salary and for food and lodging, as per contract, benefits of the value of P19,200. The apparent gross pecuniary loss to the plaintiff, by reason of his wrongful discharge, may therefore be taken to be the sum of P19,171.12, deducting the small balance due on May 1, 1918, upon his account for tobacco. But this is only one of the various factors to be considered in the estimation of damages; end in our opinion it would be about as unjust to the defendant to award this sum as damages as it would be to the plaintiff to award to him—as a few of the American courts appear to have done in such cases—only the damages that accrued prior to the institution of the action, or prior to the trial in the court below. Justice, we think, is to be found somewhere between these two extremes.

The principal consideration to be here taken into account against allowing the total gross amount above indicated is found in the fact that after his dismissal the plaintiff's time was his own, and he was free to seek other means of livelihood; and this consideration is particularly pertinent to that portion of the contract period which had not yet elapsed when the taking of proof was closed and cause submitted to the trial court. In this connection it appears

that the present action was instituted on May 8, 1918, or within about two weeks after the cause of action arose. The trial of the case was begun on December 12, 1918, and after one or more adjournments, the taking of proof was concluded April 23, 1919. The decision of the trial court was not rendered until September 4, 1919. It is thus apparent that when the cause was submitted, the contract had more than twenty months still to run.

As regards the period that elapsed between the date of the plaintiffs dismissal and the time when he testified in court, we are reasonably satisfied that he had been in enforced and involuntary idleness. The statement of the plaintiff, testifying as a witness in his own behalf, to the effect that he made efforts to secure employment from the time he left the hotel, but was unable to obtain it, seems to us to be true; and there is no proof in the record to refute it, or to show that he might have obtained employment if he had exerted himself more strenuously to that end. The letters presented in evidence as Exhibits L, M, N, O, P, and Q, show that in November and December, 1918, the plaintiff made efforts to secure employment in several commercial houses in Manila, but failed. The trial judge inferred that the plaintiff had made no previous efforts to secure employment, and bearing in mind the well-known fact that business was active in this city in the year 1918, his Honor concluded that if the plaintiff had desire to obtain employment at once upon his discharge, he could have done so. Nevertheless, his Honor awarded damages at the rate of P700 per month for eight months, in addition to the plaintiff's wages for April, 1918, thereby making casus omissus of damages with respect to the period of the contract which was still to elapse after the case was submitted. For reasons already expressed, it is obvious that this estimate of the damages is erroneous.

In the first place, we observe that it was not necessarily incumbent on the plaintiff to prove as a part of his case in chief that he had not been able to obtain remunerative employment after his dismissal and up to the time of the trial. By the weight of authority the burden of proof upon this point was upon the defendant. (*Aldaz vs. Gay*, 7 Phil., 268.) But having satisfactorily shown this fact, the plaintiff was clearly entitled to recover damages at the contract rate up to the time when the cause was submitted for decision, or at least to the date when the plaintiff testified in court. Thus far the damages may be said to be ascertainable with certainty, and such is usually the case where the trial is had after the term of the contract has expired.

As to the damages inflicted upon the plaintiff by reason of his being deprived of the benefits of the contract after the date of the trial below, precision in the estimation of the damages is impossible, for it cannot be assumed as a matter of law that the plaintiff's enforced idleness will continue indefinitely. The law of service is a law of life. The general rule is that sooner or later men who are capable of service find employment, and enforced idleness is the exception. It should not be presumed in advance that the exceptional will occur. To assume that the plaintiff must remain idle through the entire term of contract merely because he had not found employment up to the time of trial would put a premium on idleness and incompetency.

In this connection we may again quote to advantage from Mr. Labatt, who comments as follows upon the subject of the damages recoverable with respect to that portion of the term which is still to run after the trial:

"The obligation of the servant to seek for and accept any eligible employment is manifestly not less predicable with respect to the time between the trial and the end of the term than with respect to the period preceding the trial. Accordingly, the amount which, having regard to the elements specified in section 372, ante, would be recoverable, must be reduced to such an extent as may be reasonable in view of the considerations that the servant will be at liberty to obtain another position, and that he will remain under a continuous obligation to endeavor to obtain it, until the expiration of the period covered by the broken contract. The sum to be allowed under this head is that which, in the opinion of the jury or other tribunal which is assessing the damages, the plaintiff should, in the exercise of reasonable diligence, be able to earn before the end of the term. Some of the factors to be considered in this connection are the same as those which are relevant in determining whether the servant's duty to seek for other employment has been adequately fulfilled in respect to the period preceding the trial. But it is clear that the proper amount of the deduction to be made, with reference to the existence of this

duty, from the damages otherwise assessable, must be far more largely a matter of conjecture, where the future is in question, than it is where the estimate is concerned with past conditions." (1 Labatt, Master and Servant, 2d ed., sec. 400.)

In the light of the principles above enunciated, and having in view all the pertinent facts revealed in the record, it is the opinion of this court that the plaintiff will be adequately compensated for the breach of contract on the part of the defendant by an award of P12,000 as damages, over and above the amount owing by the plaintiff to the defendant on the account for tobacco, which is the subject of the cross-complaint.

Judgment will therefore be entered that the plaintiff have and recover of the defendant Hotel de France Company the net sum of twelve thousand pesos (P12,000), and the judgment appealed from will be modified accordingly, without costs. So. ordered.

Avanceña, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

Araullo, C. J., did not take part in the discussion and resolution of this case.

DISSENTING

MALCOLM, J.,

With much that is contained in the learned opinion of the majority, I am in complete accord. But as a portion of the opinion appears to depart from well-considered doctrines previously laid down in other decisions of this court, and to be in conflict with a controlling decision of the United States Supreme Court, I am constrained to register my nonconformity. According to the view I take of the facts and the law, the plaintiff should recover the full amount of his contract, or P19,171.12.

There is no escaping the conclusion, as announced by the trial court, and as found by this court, that the plaintiff was wrongfully discharged from his position of manager of the Hotel de France; that such dismissal constitutes a breach of the contract upon the part of the hotel; and that an action for damages brought by the employee will lie against the employer. The decision, following the lead of England, the more progressive jurisdictions in the United States, and decisions of this court, also announces the doctrine that in cases where the action is tried before the expiration of the term covered by the contract, the servant is entitled to have his damages assessed with reference to the entire period. But, unfortunately, the court having bravely announced these rules, falters in their application.

I would like to examine the applicable principles of the law of master and servant in the light of the civil law, in the light of the common law, in the light of the appropriate Philippine cases, and in the light of the controlling United States Supreme Court case.

The Civil Code provides in its article 1101 that "Any person who is guilty of fraud, negligence, or delay in the fulfillment of his obligations, or who in any manner whatsoever shall fail to comply with the terms thereof, shall be liable for any damage caused thereby." The Code also provides in article 1107 that "The losses and damages for which a debtor in good faith is liable are those foreseen, or which might have been foreseen, at the time of constituting the obligation, and which are a necessary consequence of the failure to comply with it." But article

1586 of the Code, mentioned in the majority decision, is deemed not to be applicable, for the plaintiff herein cannot be considered either a field hand, a mechanic, an artisan, or a laborer.

On an examination of the provisions of the Civil Code above-mentioned, this court deduced that under the Spanish law the employer, when he wrongfully discharges an employee, becomes, with respect to the employee, a debtor in bad faith (*Lemoine vs. Alkan* [1916], 33 Phil., 162), and that the doctrines established in Spanish jurisprudence are practically the same as those in American jurisprudence. (*Aldaz vs. Gay* [1907], 7 Phil., 268.) The rule of the civil law is believed to be that if a party to a contract shall fail to comply with the terms thereof, he is liable to the other party for the losses and damages which are a necessary consequence of the failure to comply with the contract. Otherwise stated, by no less an authority than Mr. Justice Story, "If the party be prevented, without his default, from performing full services, he is still entitled to the stipulated hire for the whole period for which he contracted to serve." (1 *Labatt's Master & Servant*, 2d ed., p. 1236; *Emerson vs. Howland* [1816], 1 Mason, 45, Fed. Cas. No. 4441; 1 *Domat*, Civil Law, bk. 1, vol. 4, sec. 9, art. 6, p. 107.)

As the best expression of the modern view relative to the measure of damages in an action for breach of contract, the majority decision relies, and very properly, on *Labatt's* treatise on *Master & Servant*. Let us, therefore, examine the works of this writer a little more comprehensively than has been done heretofore.

Mr. *Labatt* says that the measure of damages recoverable for the master's breach of contract is the actual loss suffered by the servant. He then explains the rule as follows: "The actual loss sustained by the servant may, it is manifest, be represented by a sum which is either larger or smaller than that amount (the amount of the stipulated compensation). The stipulated wages do not constitute a sufficient indemnity for the master's breach of contract in any case where special damage of some description is shown to be sustained by the servant. On the other hand, those wages will constitute an excessive indemnity in cases where the servant obtained, or might have obtained, other employment after his dismissal." In explanation of the last statement, the author says that the preponderance of authority is decidedly in favor of the doctrine that the burden of proving that the servant did not make an effort to procure suitable employment lies upon the master. (1 *Labatt's Master & Servant*, 2d ed., pp. 1129, 1130, 1187.) Recall in this connection that the plaintiff has shown no special damage and that the defendant has not shown that its servant, *Antonio Garcia Palomar*, "obtained, or might have obtained, other employment after his dismissal."

Mr. *Labatt* continues (pp. 1132, 1133) : "It is agreed by all the authorities that the stipulated compensation for the period with reference to which the damages are assessable should be regarded, *prima facie*, as being an adequate financial equivalent of the loss sustained by the servant as a result of his being prevented from completing the performance of his contract. Accordingly, in cases where the evidence does not show any of the elements which justify an award of special damage, the servant will be entitled to recover the entire amount of the stipulated compensation for the period in question, unless it appears that this sum should be reduced on one or other of the grounds explained in sees. 389, et seq., post." Applied to the present facts, the compensation of the servant being admitted, and no one of the grounds for reducing the full amount of the compensation having been demonstrated, obviously the servant is entitled to the sum fixed in his contract.

Mr. *Labatt* continuing (pp. 1160, et seq.), with respect to the *prima facie* measure of damages for the period between the trial and the end of the term, states the elements which enter into a computation of the damages (these are included in the main decision, but the further comments of Mr. *Labatt* are not included). The author announces that the first element entering into the computation of the damages is "the amount of the stipulated compensation for the residue of the term." The second element is "the extent of the probability that the lives of the servant and the master would have continued to the end of the stipulated term of employment." To this rule is appended the comment that "this element is obviously not of much importance, except in cases where the employment was permanent or for a long term." The third element is "the extent of the probability that the servant would have

continued to be physically and mentally capable of performing his work to the end of the term." To this rule is appended the comment that "this element is sometimes ignored in judicial statements of doctrine." The fourth, fifth, and sixth elements are: "The extent of the probability that the servant will be able to earn money in other employments during the period between the trial and the end of the term;" "any facts which, in a case where the servant is paid by commissions, may tend to show whether his future receipts will or will not be the same as they were up to the time of the trial," and "any other uncertainties growing out of the terms of the contract." Predicated exactly on the rules set forth by Mr. Labatt and relied upon by the majority decision, it is confidently asserted that the only element before us which can properly be taken into consideration in fixing plaintiff's damages is the amount of the stipulated compensation for the residue of the term. The only possible basis for any mitigation of the damage in respect to the period subsequent to the trial must be vague conjectures, neither supported by the facts nor the probabilities of the case.

It may be true that there is a "decided conflict of authority as to the measure of damages upon the wrongful discharge of a servant, especially where the action is tried before the expiration of the term. But this is of no importance in this jurisdiction since our decisions have heretofore been consistent and uniform in this respect. The general rule for the Philippines, as laid down in the leading case of *Aldaz vs. Gay*, supra, is as follows:

"The doctrine is well established in American jurisprudence, and nothing has been brought to our attention to the contrary under Spanish jurisprudence, that when an employee is wrongfully discharged it is his duty to seek other employment of the same kind in the same community, for the purpose of reducing the damages resulting from such wrongful discharge. However, while this is the general rule, the burden of showing that he failed to make an effort to secure other employment of a like nature, and that other employment of a like nature was obtainable, is upon the defendant. When an employee is wrongfully discharged under a contract of employment his prima facie damage is the amount which he would be entitled to had he continued in such employment until the termination of the period. (*Howard vs. Daly*, 61 N. Y., 362; *Allen vs. Whitlark*, 99 Mich., 492; *Farrell vs. School District No. 2*, 98 Mich., 43.)"

An exhaustive consideration of the exact question before us was made in the case of *Hicks vs. Manila Hotel Co.* ([1914], 28 Phil., 325). The authorities were there examined and much was made of the decision of the United States Supreme Court in *Pierce vs. Tennessee Coal, Iron and Railroad Co.* ([1898], 173 U. S., 1). The principles announced in the *Hicks* case are the following:

"The plaintiff, upon the breach of the contract by the defendant, was entitled at once to sue for damages, and in that action he was entitled to recover all that he would have received in the future as well as in the past if the contract had been kept. In so doing he simply recovers the value of the contract to him at the time of the breach, including all the damages, past or future, resulting from the total breach of the contract. Upon such breach the plaintiff was not bound to wait to see if defendant would change its decision and take him back in its service or to resort to successive actions for damages from time to time or leave the whole of his damages to be recovered at the termination of the period for which the service was contracted.

"The action to recover damages for breach of contract in this case having been brought before the termination of the period over which the services were to extend, defendant was entitled to have deducted from plaintiff's damages any sum that plaintiff might have earned in the past or might earn in the future; but no evidence having been offered upon that subject by the defendant, no deduction can be made. The opportunity to earn wages or profits in reduction of damages claimed will not be presumed but must be affirmatively shown by the defendant." (Syllabus.)

In the case of *Coleman vs. Hotel de France Co.* ([1915], 29 Phil., 323), the facts were that a written contract was entered into on September 13, 1912 between Geraldine Coleman and the Hotel de France Company commencing from the day Miss Coleman arrived in Manila, which was on October 10, 1912, and running three months from

that date. The agreement was not lived up to by the hotel, with the result that on October 31, 1912, an action to recover damages for the breach of the contract was instituted. This court, in its decision, said:

"Holding as we do that the defendant corporation without just cause or excuse discharged the plaintiff in flagrant violation of its contract of employment with her, we agree with the trial judge that plaintiff is entitled to recover not merely compensation for services rendered before the breach of the contract by her employer, but the full amount which she might have earned under the contract less such compensation as she actually obtained or might have obtained in some other employment during the term of the contract which had not yet expired at the date of the breach, the burden of proof as to the amount by which the prima facie damage may thus be reduced being upon the defendant. (Aldaz vs. Gay, 7 Phil., 268.) "

Lemoine vs. Alkan ([1916], 33 Phil., 162), is another Philippine case in point. In the course of the decision, it was said:

"This is an action brought to recover damages for breach of a contract for lease of services.

"On the 10th day of July, 1913, the plaintiff and defendant signed a written contract whereby the defendant hired the plaintiff, an expert automobile mechanic, to perform services as such expert mechanic in his automobile repair shop in the city of Manila for the period of three years from the date of the contract at a salary of P350 a month; Plaintiff entered defendant's service on the day on which the contract was executed and continued therein until he was discharged by the defendant the latter part of August of the same year, plaintiff actually leaving defendant's service on the 5th day of September. On the 8th of the same month this action was begun to recover, as damages for breach of contract, the wages to which he was entitled under the contract.

* * * * *

"Plaintiff proved no other damages than the loss of wages. The damages in an action for wrongful discharge are prima facie the amount of wages for the full term. These are the damages and the only damages which plaintiff proved. The complaint alleges damages to character and reputation arising from the fact of the wrongful discharge. No evidence was offered showing damages of that kind or the amount thereof. The amount which defendant proved in mitigation or recoupment is equal to the amount which plaintiff proved his damages to be, with the exception of the period between September 5th and December 5th of the same year. As a necessary result plaintiff can recover in this action only for the three months' period. The court below allowed plaintiff his wages for the months of September, October and November, but on a different theory from that on which we have based his right; but, whatever the theory, the amount is correct and the judgment of the trial court is to that extent proper.

"It is contended that the burden of proving that plaintiff could have procured like employment in the same locality under similar conditions is on plaintiff. We cannot agree with this under the principles either of Spanish or American law. Under the Spanish law, as we have seen, the employer, when he wrongfully discharges an employee, becomes, with respect to the employee, a debtor in bad faith. On a debtor in bad faith is laid the necessity of affirmatively establishing every fact necessary to extricate him from that position. In this necessity we find the germ of that principle of the American law which throws on the employer in an action for wrongful discharge the burden of proving affirmatively that if the employee had used due diligence he could, immediately on his discharge, have obtained like employment in the same locality. (Hicks vs. Manila Hotel Co., 28 Phil., 325, and cases cited.)"

The most recent enunciation of the rule is found in our decision in Knust vs. Morse ([1920], 41 Phil., 184), which follows the previous decisions of Aldaz vs. Gay, supra, Hicks vs. Manila Hotel Co., supra, and Lemoine vs. Alkan, supra, just discussed. The plaintiff was here discharged on August 8, 1917, when his contract should have expired on March 1, 1919. The action was begun and the judgment was rendered before the expiration of the

contract. It was said that plaintiff's prima facie damages would amount to his salary, and his share in the profits for the contract period, and that "no deduction from the amount of the wages for the full term need be made since the employer has not proved either lack of diligence on the part of plaintiff in seeking other employment, or the amount the plaintiff has earned in the business in which he did engage, that of selling embroidery and hats at retail. We agree with plaintiff-appellant that the plaintiff should be awarded damages in the amount stipulated in the contract, or P12,350."

If the foregoing be not considered sufficient authority, I would like to emphasize what is found in the decision of the United States Supreme Court in the case of *Pierce vs. Tennessee Coal, Iron & Railroad Co.* ([1899], 173 U. S., 1), a decision which for the Philippines should be deemed decisive, and which should be followed without hesitation. This was a case in which a railroad company promised to pay one of its employees, who had been injured by its cars, certain wages and to furnish him with certain supplies so long as his disability to do full work continued by reason of his injury, in settlement of his claim for such injury. In consideration of these promises, the employee agreed to do for the company such work as he was able to do and to release the company from all liability for damages for the injuries which caused his disability. The company attempted, at its own will and pleasure, to cease to perform its obligations, which were the consideration of the release. It was held by the United States Supreme Court that "Where the railroad company after a time abandoned the contract and discharged the employee without cause, the latter may maintain an action, once for all, as for a total breach of the entire contract, and may recover all he would have received in the future, as well as in the past, if the contract had been kept, deducting any sum he might have earned in the past or might earn in the future, and any loss the company had sustained by loss of his services without its fault." It is not necessary to quote extensively from the opinion delivered by Mr. Justice Gray, because this has already been done in the decision in *Hicks vs. Manila Hotel Co.*, supra. But it may be well to recall that the United States Supreme Court, in reaching its conclusion, relied on its previous decision in *Benjamin vs. Hilliard* ([1860], 23 How., 149), containing the general proposition that in an action for breach of contract, "the amount which would have been received, if the contract had been kept, is the measure of damages if the contract is broken." (This rule, it may be said, goes back to the old case of *Alder vs. Keighly*, 15 M. & W., 117, and to the historic case of *Hadley vs. Baxendale*, 9 Exch., 341; it may also serve some purpose to say that the decision in *Pierce vs. Tennessee Coal, Iron & Railroad Co.* has been approved and followed in the following cases: *Tennessee etc. R. R. Co. vs. Pierce* [1900], 99 Fed., 1006; *Edwards vs. Plains Light & Water Co.* [1914], 49 Mont, 549; *Chesapeake etc. Ry. Co. vs. Kelly* [1916], 241 U. S., 492; *Roehm vs. Horst* [1900], 178 U. S., 15; *Johnson vs. Harper Transp. Co.* [1915], 228 Fed., 743; *J. M. Guffey Petroleum Co. vs. Coastwise Transp. Co.* [1910], 180 Fed., 680; *Canada Atlantic, etc. S. S. Co. vs. Flanders* [1908], 165 Fed., 323; *American China Dev. Co. vs. Boyd* [1906], 148 Fed., 271; *Semet-Solway Co. vs. Wilcos* [1906], 143 Fed., 842; *Barker etc. Lumber Co. vs. Edward Hines Lumber Co.* [1905], 137 Fed., 308; *Allen vs. Field* [1904], 130 Fed., 653; *In re Stern* [1902], 116 Fed., 607; *Marx vs. Miller* [1901], 134 Ala., 352; *Mason vs. Mason*, 5 Ala. App., 382; *Scientific American Compiling Department vs. Gillespie*, 4 Ala. App., 592; *Brown vs. National Electric Works* [1914], 168 Cal., 338; *Bridgeford & Co. vs. Meagher* [1911], 144 Ky., 486; *Seymour vs. Oelrichs* [1909], 156 Cal., 802; *Harris vs. Cocoanut Grove Development Co.* [1912], 63 Fla., 176; *Webb vs. Depew* [1908], 152 Mich., 703; *Helfferich vs. Sherman* [1912], 28 S. D., 632; *Indiana Life etc. Co. vs. Reed* [1913], 54 Ind. App., 459; *Inland Steel Co. vs. Harris* [1911], 49 Ind. App., 164; *Barrie vs. Quimby* [1910], 206 Mass., 268; *McDaniel vs. United Rys. Co.* [1912], 165 Mo. App., 700; *Lee vs. Dow*, 71 N. H., 328; *Smith vs. Cashie & Chowan R. etc. Co.* [1906], 142 N. C., 36; *Menihan Co. vs. Hopkins* [1913], 129 Tenn., 26; *White vs. Lumiere North American Co.* [1906], 79 Vt., 215; *Parker vs. McKannon Bros. & Co.* [1903], 76 Vt., 102; *Rhoades vs. Chesapeake & Ohio Ry. Co.* [1901], 49 W. Va., 500.)

Keeping ever prominently before us the principles found in this opinion, as emanating both from the civil law and

the common law, and as fortified by Philippine decisions and the controlling decision of the United States Supreme Court, I cannot but deduce that for the wrongful discharge of the servant, he should receive in his action for breach of contract, to use the exact words of the United States Supreme Court, "the amount which would have been received, if the contract had been kept." I do not mean by this statement to give any one the impression that I agree with the doctrine of "constructive service" which has been unqualifiedly rejected in most jurisdictions. What I mean is that the servant wrongfully discharged may sue for the damages he has sustained in not being allowed so to serve, and that in analogy to the constructive service idea, the trend of judicial opinion is toward regarding the contract price as the controlling element for consideration in the estimation of the damages for a breach of a contract of employment for a certain time by a wrongful discharge before the expiration of the contract period. The measure of damages for a breach of a contract of employment is prima facie the contract price agreed upon for the services to be rendered. And although the contract price as a formal rule of damages is not the exact measure of the actual damages suffered by the employee for a wrongful discharge, the numerous matters which are to be taken into consideration by way of mitigation of damages must be proved affirmatively in some way by the employer before they are entitled to serious consideration. I consider the true rule to be this: The measure of damages recoverable by a discharged servant in an action brought by him for a breach of a contract of employment, is the stipulated salary for the contract period, and this is so even though trial is had before the expiration of the contract, less any amount he received for services rendered to others, or which he might have received, by the exercise of due and reasonable diligence during such period after discharge; proof of such mitigation to rest on the employer.

Plaintiff herein had a contract with the defendant which called for P19,171.12. He was entitled to damages to the full extent of the contract because no proof was submitted by the defendant which directly or indirectly indicated that plaintiff could have secured other profitable employment. But the court, and in my opinion, mistakenly, and without just cause, would "split the difference/" and would, by a course of reasoning which I am unable to follow, reduce the actual loss suffered by the plaintiff from about P19,000 to P12,000. The court apparently would have us understand that full damages may be recovered by the plaintiff if the action is instituted without waiting until the expiration of the term, for the rule is that, whether brought before or after the expiration of the term of the contract, the measure of damages is the same, but then inconsistently, fails to apply the rule. As near as I can gather, if the plaintiff had waited until the contract had expired and if during this period it had been shown that he neither had secured nor could have secured other employment, he would have been entitled to his actual damages. And the fact that he did not wait, and that only a short portion of the contract was to run, following the date when the trial was had, is not sufficient motive, in fact is no motive at all, for a reduction of the contract consideration.

I repeat that in my judgment, after a careful study of the facts and of the authorities, and more important still, after long reflection on the rationale of the case, both the lower court in awarding the plaintiff approximately P6,000, and this court in doubling the amount, have failed to give the plaintiff all that he is entitled to, and that instead of such attempted "estimation" of the amount of the damages, plaintiff should have and recover the exact and certain amount named in his contract, or a little more than P19,000.

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