

ALFONSO DE CASTELVI, PLAINTIFF AND APPELLANT, VS. LA COMPANIA GENERAL DE TABACOS DE FILIPINAS, DEFENDANT AND APPELLEE.

G. R. No 24475, March 05, 1926

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

In the original complaint filed by Alfonso de Castelvi against the Compañia General de Tabacos de Filipinas on April 17, 1922, he prayed that the Court of First Instance of Tarlac render judgment ordering the defendant company to pay him the sum of P12,897.50 as damages for breach of contract, plus legal interest from the date of the filing of the complaint, and the costs of the action.

The defendant company filed a demurrer upon the ground that the complaint was uncertain, and after the court sustained said demurrer, the plaintiff, on April 23, 1922, amended his complaint.

The defendant company, in answering the amended complaint, denied each and every fact alleged therein.

The case having been called for trial and the evidence introduced by both parties, the plaintiff prayed for permission of the court to present a second amendment to the complaint for the purpose of making the allegations conform to the facts proven, which amendment was filed on January 29, 1925. The court refused to grant said permission and on April 30, 1925 rendered judgment absolving the Compañia General de Tabacos de Filipinas from the complaint, without any special pronouncement as to costs.

The plaintiff appealed from said judgment, assigning the following supposed errors as committed by the trial court, to wit: (1) In not admitting the second amended complaint presented by the plaintiff on January 26, 1925, in order to make the allegations conform to the facts proven at the trial of this case; (2) in not holding that the plaintiff suffered the damages alleged in the second amended complaint amounting to P25,808.61; (3) in holding that Adrian Got, the manager of the Hacienda Luisita, and not the defendant company, was personally liable for the damages caused the plaintiff by the illegal prohibition made by him to the plaintiff on April 19, 1920, and (4) in denying the motion for a new trial dated May 23, 1925, presented by the plaintiff.

In regard to the first assignment of error, it appears from the record that after having presented evidence tending to show greater damages than those alleged in the original, as well as in the amended complaint, the plaintiff attempted to file a second amended complaint in which he claimed damages amounting to P25,808.61, a greater amount than that alleged in the original complaint, in order to make the allegations conform to the facts proven at the trial of the action.

The plaintiff-appellant contends that, in accordance with the letter and spirit of section 110 of the Code of Civil Procedure, he had the right to file said amendment and the court the obligation to admit it. In regard to amending the complaint after the introduction of evidence, the provision of section 109 of the same Code must be taken into consideration, which authorizes such amendment when important variance exists between the allegations and the

facts proven for the purpose of making the former conform to the latter. It is to be noted, however, that the obligation imposed upon the court in section 110 in connection with section 109 refers to the case in which the court finds important facts to have been proven to which the allegations of the amended complaint must be made to conform and not simply to probatory facts. The facts to which the plaintiff tried to conform the allegations of the complaint by means of a second amendment thereto were not found by the court to have been proven, and in refusing to admit said second amendment it committed no error of law.

In regard to the second assignment of error, the facts show that Antonio Inchausti, acting manager of the Hacienda Luisita of the defendant company in the Province of Tarlac, in a letter dated July 7, 1919, granted the herein plaintiff-appellant the right to cut firewood in the forests of said hacienda until June 30, 1920, with the condition that he would not use the tenants, the carabaos or the wagons on said hacienda for the transportation of the wood, nor interfere in any manner with their work. Adrian Got, having again assumed the management of the hacienda, was surprised on April 9, 1920 to receive a bill from the plaintiff and appellant for the wood that the hacienda had used. After investigating the reasons for said bill and discovering the existence of the concession, he notified the main office in Manila of the facts, which gave instructions to suspend whatever permit the plaintiff might have to cut wood on the hacienda, effective May 20, 1921. The instructions of the main office were communicated by letter to the plaintiff-appellant under date of April 19, 1920, which resulted in a correspondence between the manager and the concessionaire and between the latter and the officers of the company with a view to reaching a settlement, and upon request of Mr. Antonio Correa, one of the officers of said company, Alfonso de Castelvi, under date of May 5, 1920, submitted a statement of the amount of the wood that he needed to cut and what had already been cut and the place where it was piled. Mr. Antonio Correa, in a letter dated May 13, 1920, agreed to almost all of the requests contained in the plaintiff-appellant's letter, but placed the limit of the wood to be cut at 1,300 cords, prohibiting him from using anything belonging to the hacienda. After this letter, or from May 13, 1920, nothing more was heard of the matter until two years later or on April 17, 1922, when Alfonso de Castelvi filed the herein complaint. It does not appear that the plaintiff made any objection to the limit placed by Mr. Antonio Correa upon the amount of the firewood that he would be permitted to cut until the end of the month of June, 1920; consequently, it can be presumed that he agreed to said counter-proposition made by Mr. Antonio Correa.

The contention made by Alfonso de Castelvi as to the damages said to have been caused by the suspension of the concession made in his favor is clearly untenable after the defendant company had conceded him all the facilities in order that he might comply with his obligations, entered into during the time said concession was in force, to furnish various firms and persons with firewood.

His contention is also groundless to the effect that the manager of the hacienda, Adrian Got, prevented him from taking the wood already cut and piled at different places on the hacienda, not only because such prohibition was denied, but because the plaintiff-appellant had not presented any complaint to that effect to the officers of the company who had authorized him to continue cutting the firewood on the hacienda until June 30, 1920, and to carry it away. Even if it were true, therefore, that the manager of the hacienda, Adrian Got, had prevented the plaintiff from carrying away the firewood cut and piled on the hacienda and he had thereby suffered damages, no liability can be enforced against the company for the reason that he did nothing tending to prevent said damages or at least to minimize them, when he could have done so by appealing to the officers of the company for relief.

The rest of the assignments of error are mere consequences of the previous ones for which reason it is unnecessary to discuss them.

In view of the foregoing and not finding any error in the judgment appealed from, the same is affirmed in all its parts, with the costs against the appellant. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

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