

MONICO PUENTEBELLA ET AL., PLAINTIFFS AND APPELLANTS, VS. NEGROS COAL CO., LTD., ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 26216 and 26217. March 05, 1927

Ponente: OSTRAND, J.

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OSTRAND, J.:

These are appeals by both parties from the following¹ decision of the Court of First Instance of Occidental Negros:

"Due to the close connection between these two cases, they were tried jointly by agreement of the parties. They are actions for the recovery of damages for the sum of P50,000 and P40,000, respectively.

"It is alleged that the plaintiffs, having bound themselves to plant sugar cane which the defendants, in turn, promised to mill in a sugar central which they were to erect, complied with their contract, but the latter did not erect the central in due time, this delay causing the former to lose all of the said crop. It is further prayed that the contracts executed for that purpose be cancelled.

"It is alleged in the answer of the defendants that the Negros Coal Co., Ltd., was dissolved on June 16, 1923, by an order of the Court of First Instance of Iloilo, but that its rights, actions and obligations were placed in charge of the commercial firm of Hijos de I. de la Rama & Co., of which the defendant Esteban de la Rama is the manager; that due to force majeure, fortuitous events, and other circumstances independent of the will of the defendants, they were unable to complete the construction of the sugar central within due time and that the plaintiffs, after the construction of the central, refused to mill their cane and did nothing to lessen their losses.

"In the first case, they presented a counterclaim for P18,000 in damages for violation of the milling contract, and a cross-complaint for the foreclosure of the mortgage credits against Juliana Puentebella Vda. de Ferrer, for the sum of P39,114.63 and a penalty of P5,867.19; against Pedro Ferrer, for the sum of P19,557.30, and against Francisco Ferrer for the sum of P19,557.30, plus P2,933.59 for attorney's fees and expenses of litigation. In the second case, they likewise presented a counterclaim of P1,800 as damages for violation of the milling contract, and a crosscomplaint for the foreclosure of the mortgage credit for the sum of P44,169.90, plus a penalty of P6,625.48.

"And, moreover, in the first case it is alleged as a special defense, that it having been agreed in the contract upon which the plaintiffs base their action, that before commencing any litigation they would submit their differences to arbitrators, the plaintiffs have done nothing to comply with this stipulation. Indeed, paragraph 17 of the contract, Exhibit A, reads as follows:

" 'That they shall submit each and every one of the differences that may arise between the party of the first part and the party of the second part to the decision of arbitrators, two of whom shall be selected by the party of the first part and two by the party of the second part, who, in case of a disagreement, shall select a fifth arbitrator, and they shall respect and abide by the decision of said arbitrators or any three of them, as the case may be.'

"As may be seen, this clause states absolutely, and not as a mere condition precedent to judicial action, that all differences between the contracting parties shall be submitted to arbitrators, whose decision the parties shall

respect and abide by, and the clause is, therefore, void. (Rudolph Wahl & Co. vs. Donaldson, Sims & Co., 2 Phil., 301, and Teodoro Vega vs. San Carlos Milling Co., Ltd., G. R. No. 21549, promulgated October 23, 1924.) This is on one hand, while on the other are the documents, Exhibits 19, 20 and 21, executed separately by the plaintiffs on the same date as Exhibit A, all representing mortgage loans, and with the exception of Exhibit 20, they furthermore contain a stipulation on the part of Hijos de I. de la Rama to finance the farm laborers of the plaintiffs and to mill the cane in the sugar central of the Negros Coal Co., Ltd., but contain no agreement to submit the differences that might arise between the parties to arbitrators. These documents constitute a transaction of binding force, because they define the duty and obligation of each party, which is not the case in Exhibit A, in which an option is left to the plaintiffs to mill or not to mill their sugar cane in said central because, as may be inferred from its context, the purpose was only to obtain, as the Negros Coal Co., Ltd. did obtain, the right of way on the plaintiffs' land.

"At the trial of these cases the parties submitted a stipulation of facts, paragraph 5 of which, literally, reads as follows:

"That the partnership denominated "Hijos de I. de la Rama" was organized in the year 1907 for a period of ten years; that said period having expired in 1917, Esteban de la Rama was appointed liquidator of the property of the partnership by agreement between the members; that after the liquidation had commenced, and before the year 1920, Esteban de la Rama bought all the rights of his copartners in the property of the said firm in liquidation, to be paid in installments, with the right to use the firm name, but with the obligation not to dispose of the property of the firm in liquidation while the price stipulated in the contract of sale of rights remained unpaid;' Esteban de la Rama being, therefore, according to this agreement, the sole owner of the firm of Hijos de I. de la Rama, and having taken over the rights; actions and obligations of the Negros Coal Co., Ltd., as alleged in the first paragraph of the answer, it appears that he is at present in possession of all the rights, actions and obligations which originated from the contractual relations entered into in both cases by the plaintiffs on the one side and the, then, corporation, known as the Negros Coal Co., Ltd. and the Hijos de I. de la Rama on the other, by virtue of the documents, Exhibits A, B, 19, 20 and 21.

"On March 7, 1924, after the plaintiffs had filed their complaint in case No. 2911, the plaintiff Pedro Ferrer died, and intestate proceedings having been instituted, the court, upon motion, and under date of August 23, 1924, ordered the substitution, in this case, of the deceased Pedro Ferrer by Francisco Ferrer, judicial administrator of his estate.

"Exhibit A is a contract executed in Iloilo by Esteban de la Rama, in his capacity as President of the Negros Coal Co., Ltd., on the one hand, and by Juliana Puentebella, Pedro Ferrer and Francisco Ferrer on the other, which contract contains, among other things, a stipulation that the party of the first part shall erect a sugar central in the sitio denominated Labilabi, Escalante, Occidental Negros, with a railway across the land of the party of the second part for the transportation of sugar cane to the central, the said party of the second part binding itself to mill the sugar cane in said central, receiving 45 per cent of the total amount of the sugar manufactured; and the party of the second part grants an easement of way on their land to the party of the first part and, at its option, 'to mill or not to mill' its cane in the said sugar central.

"Exhibits 19, 20 and 21, as has already been stated, are contracts of mortgage loan executed separately, the first by Juliana Puentebella, the second by Pedro Ferrer and the third by Francisco Ferrer, as debtors, and by the Hijos de I. de la Rama, as creditor in each of said contract, it being further stipulated in the first and the third contract that the loans were to be used exclusively in the production of sugar cane on the mortgaged land; that the mortgagors bound themselves to mill their sugar cane every year in the sugar central of the Negros Coal Co., Ltd., then in course of construction, the central to receive 45 per cent of the total sugar manufactured from said cane,

and that the amounts borrowed should be amortized by an annual payments during ten agricultural harvests; and while, as has been said, Exhibit 20 is simply a mortgage loan by reason of its date, notwithstanding that it is the same as that of Exhibits A, 19 and 21, or July 23, 1920, from the date of the notarial acknowledgment in connection with Exhibit A, executed jointly by the plaintiffs in case No. 2911, it can be inferred that this loan, as the others, was made by the commercial firm of Hijos de I. de la Rama for the purpose of financing the haciendas of the plaintiffs for the cultivation of sugar cane and to supply the sugar central of the Negros Coal Co., Ltd.

"Exhibit B executed on June 17, 1920, by and between Monico and Luis Puentebella on the one hand and Hijos de I. de la Rama on the other, is practically the same as Exhibits 19 and 21, and provides for a mortgage loan for agricultural purposes and milling in said central, but with the following additional clause:

" 'In case the proposed sugar central of the Negros Coal Co., Ltd., is not in position the first year to mill the sugar cane of the mortgagor in time, the mortgagee binds itself to furnish the mortgagor with the sum of from P20,000 to P_____ pesos, Philippine currency, for the erection, under the supervision of the mortgagors, of a 12-horsepower mill for grinding muscovado sugar, and to install and equip the same with all the necessary material for the operation and milling of muscovado sugar; in that case the Hijos de I. de la Rama will have the right to mill all of their sugar cane planted in Jonobjonob, Escalante, Occidental Negros, and the said mortgagees will receive onethird of the sugar manufactured by the mortgagors in consideration of all of the foregoing.'

"By virtue of said contracts A, B, 19, 20 and 21, all of the plaintiffs in both cases tilled the mortgaged land and planted sugar cane during the months of September, October, November and December of 1920 and January of 1921 and, at about the time the cane was ripe Monico Puentebella at various times advised De la Rama, by letter, that his cane was ripening and he, therefore, demanded the erection of a mill for muscovado sugar in accordance with the agreement in the clause quoted from Exhibit B, which brought forth the following reply:

" 'PROGRESO 28, ILOILO, March 29, 1921

" 'MR. MONICO PUENTEBELLA

" 'Bacolod, Occidental Negros

" 'MY DEAR SIR: Replying to your letter of the 25th inst. which I have just received, I wish to state the following: That the Escalante Central will be erected; in fact, it is now in course of construction. For your information, I also wish to state that about two weeks ago all of the plans of said central were forwarded to Mr. Fortunato Fuentes, and that long ago all of the bricks, both common and fireproof, as well as the cement and lime were sent there. Therefore, there is no need for you to worry about your sugar cane planted in Cervantes, for I have more interest than you in milling it in order to recover the P30,000 which I have advanced to you for said purpose.

" 'Very respectfully,

" 'E. DE LA RAMA'

"Mrs. Juliana Puentebella, in company with her son Francisco Ferrer, also made a trip to Iloilo in March, 1922, for a conference with Esteban de la Rama and to advise him that their cane, as well as the cane of her sons Pedro and Francisco was ripe and some of it over-ripe, and asked permission to mill it in the San Carlos Sugar Central, Occidental Negros, in view of the fact that neither the sugar central of the Negros Coal Co., Ltd., nor the railway had been then constructed, but Mr. De la Rama laid down certain conditions which the petitioner considered burdensome; so nothing was done about milling the cane in the San Carlos Central.

"Esteban de la Rama while testifying concerning the petition of Mr. Monico Puentebella for the construction of a

muscovado sugar mill, said:

" 'For various reasons. Because when Mr. Monico Puentebella required me to comply with this clause of the contract, he did so at a time when I was building the central and I figured that the machinery would be installed in my mill, as work had already been begun and Mr. Fuentes was looking for the machinery and was to install it, before Mr. Puentebella's cane had ripened and the P20,000 would not be needed. In the second place, before that date, when Mr. Puentebella demanded the P20,000 of me, I had received a letter from the Bank of the Philippine Islands. From the contents of the letter received from the Bank of the Philippine Islands, I was of the opinion that said Bank was the owner of the land and held Torrens title thereto, and that it did not understand why Mr. Puentebella was cultivating this land which belonged to it without its permission, and said Bank required me to cause Mr. Puentebella to make a contract with it; and as Mr. Puentebella refused to do so, I thought it useless for us to meddle with a property which was not ours.'

"It having been positively stated in Exhibit B that the mortgagors Monico and Luis Puentebella are the undivided coowners with the Hijos de I. de la Rama and the Bank of the Philippine Islands of the mortgaged property, the last statement of Esteban de la Rama, in his testimony above quoted, that he considered it useless to build the mill on the said land, appears to be merely an excuse for not voluntarily complying with his obligation, and his estimate as to the completion of the central which he was building having been made by himself alone, and without the concurrence of the other contracting party, is not a sufficient reason for excusing him, for the fulfillment of a contract cannot be left to the will of one of the contracting parties.

"The result was that on account of the said reasoning of Mr. De la Rama with respect to the Puentebellas and his demands upon the Ferrers, the cane belonging to both of them was left in the fields without being milled, and with the exception of a small quantity belonging to the Puentebellas which they had sent to the San Carlos Central for milling was drying out and deteriorating and became a complete loss.

"It is alleged, nevertheless, that the delay in the construction of the central was due to force majeure, fortuitous events and other circumstances independent of the will of the defendants, in support of which they attempted to prove that there had been a strike in the factory of George Fletcher & Co., Ltd., Derby, England, from whom they had ordered their machinery, which strike delayed matters, but the evidence in this particular respect consists of reports from the agent of the defunct firm of The Cooper Company, with offices in the Philippine Islands, through which company the said machinery was contracted for, and, naturally, as it comes from an interested party and is, moreover, hearsay, it is of little or no value. And even if it be considered competent evidence, the total loss of the plaintiffs' crop cannot be attributed to force majeure, fortuitous events or other circumstances, for it was provided in the contract, with the Puentebellas that in case of delay in the construction of the central, a mill would be furnished for the manufacture of muscovado sugar which would not only mill the cane of the Puentebellas, but also that of the defendant Esteban de la Rama, and the same would have been done with the cane of the Ferrers, because their lands adjoin.

"It is also claimed that the frequent rains, inundations and crumbling of the earth considerably interrupted the construction of the central, and, judging from Exhibits 6-A to 6-X, which are all letters from the person in charge of its construction, and which include the period from November 5, 1920 to January 22, 1922, approximately one year and four months, it rained almost incessantly, which appears to have been an unusual occurrence of which the Weather Bureau should have had knowledge, and whose opinion would have been more impartial.

"Conceding, however, a certain value to this contention, it would, nevertheless, seem that these circumstances should have caused Mr. De la Rama to take all the necessary precautions for the purpose of insuring the milling of the plaintiffs' crop, especially so as it appears from the following letter that he himself foresaw losses:

" 'February 18, 1921

" 'THE COOPER COMPANY

" 'Iloilo, Iloilo, P. I.

" 'MY DEAR SIRS: In view of the long delay in the manufacture of the equipment which we have contracted for our central at Escalante, a delay which is almost double the time specified in the contract and which is causing us a great loss in not being able to mill the cane we have to mill at present, we have decided to cancel the order for said equipment, and you will do us the favor of returning the P50,000 which we advanced at the time of signing the contract, together with the interest thereon.

" 'Yours sincerely,

" 'HIJOS DE I. DE LA RAMA

By " 'E. DE LA RAMA'

"It is likewise alleged that after the central had been constructed the plaintiffs refused to mill their cane there and did nothing to minimize their losses, but the delay in constructing the said central having been expressly admitted in their previous defense, the conclusion is that it was completed after the season was over and the cane was over-ripe, for which reason, although the defendants were notified that the central would begin to operate within the first fifteen days of September, 1922, they ceased to cut their cane, because it was already useless and dried out as stated in the following letters of the plaintiffs:

" 'BACOLOD, September 2, 1922

" 'Messrs. HIJOS DE I. DE LA RAMA

" 'P. O. Box 298

" 'Iloilo, Iloilo

" 'MY DEAR SIRS: In answer to your letter of the 26th of last month, I have to inform you that my cane is completely dried out and useless for milling purposes. You are not ignorant of cause of this unfortunate result of my efforts in planting cane on the Cervantes Estate, for I have not even been able to produce muscovado sugar from it on account of your failure to comply with that part of our contract which binds you to make us a further loan of P20,000 in order to obtain machinery for that purpose in case of delay in the completion of your central, as, in fact, was the case. This advice from you has come extremely late and at a time when it is impossible to remedy the situation, as it is impossible to revive dead cane. You know very well that these disastrous consequences of my affairs are due to no fault of mine, but are due to your failure in not complying with your part.

" 'Very respectfully,'

" 'ESCALANTE, OCCIDENTAL NEGROS, November 2, 1925

" 'Mr. FORTUNATO FUENTES

" 'Manager of the H. I. R. Central

" 'Labilabi, Escalante, Occidental Negros

" 'MY DEAR SIR: In answer to your favor of September 28th last, I must advise you that the fields planted with sugar cane, according to the terms of our contract to mill it in the H. I. R. Central, are completely dead on account of not having been milled in said central at the proper time, for which reason it has been impossible to plant again, the non-fulfillment of said contract having caused us considerable damage.

" 'Very respectfully,

" 'FRANCISCO FERRER

" 'Administrator of J. Vda. de
Ferrer and Pedro Ferrer'

"It is said in these exhibits that the cane was useless, dried out and dead, which fact is proven by Exhibits D, E and F, communications to Monico Puentebella from the San Carlos Central to which Central, as already stated, Mr. Puentebella sent a few tons of cane for milling, which letters, dated from April 2 to 9, 1922, imply that they sent the cane there not later than the month of March, and, as may be seen from the letters, the milling was a failure and a complete loss, because said cane was already over-ripe and because it was sent from Escalante to the municipality of San Carlos for shipment, which is the only means of transportation, even today, between the said towns, and very costly; and considering that the cane which was sent to San Carlos, had been selected from the least over-ripe, an idea may be formed of the condition of the plaintiffs' sugar-cane fields in said month of April, and so disastrous was this shipment that, according to the testimony of Luis Puentebella, the share of the agriculturist was not even sufficient to cover the expenses.

"On the other hand, Francisco Ferrer, after the conference of him and his mother with Esteban de la Rama, attempted to mill his cane in the sugar mill on the neighboring estate belonging to Rosario Sanz, but the latter refused to do so because the season was over.

"If, therefore, the plaintiffs' cane was over-ripe in March, 1922, it seems certain that when they were notified on September 28, 1922 (Exhibit P addressed to the Ferrers) and on August 26, 1922 (Exhibit 16 addressed to Monico Puentebella advising him that the central would be ready to mill next September), or when the central commenced to produce sugar on September 15, 1922, in accordance with the stipulation of facts, the cane at the end of this period of five and a half months would be dried out, unserviceable and useless for milling, and moreover if in March, according to the result of the milling at the San Carlos, it did not give an average yield and was milled at a loss, we are more than justified in saying that five and a half months afterwards the yield would have been almost nothing.

"The witnesses for the defendants testified, however, that cane on virgin land used for the cultivation of sugar cane, lasts about eighteen months and Mr. De la Rama stretched it to 24 months, which implies that the plaintiffs' cane was still in condition to be milled when the central commenced to operate in September, 1922, because, according to the evidence, the plaintiffs' cane was planted in September, October, November and December, 1920 and in January, 1921; but applying this same theory to the plaintiffs' first plantings, in April, 1922, they were twenty months old, or more than eighteen, for which reason, when a few tons were sent to San Carlos in March they could no longer yield an average production, as stated by the Central, and, naturally, the best evidence as to whether the cane is still useful is not the theory of how long it will last, but the result of the milling.

"In 'Cane Sugar' by Noel Deerr, page 29, it is said:

" 'The harvest season generally extends over a period of four to six months and exceptionally in the arid localities may be continued over the whole year with such stops only as are required for overhaul and repairs. At the beginning of the crop an unripe cane of lower sugar content is harvested; the percentage of sugar gradually increases and is usually at a maximum in the third and fourth months of harvest, after which it increases as the cane becomes overripe. Taking Cuba as an example, in December the cane will contain from 10 per cent to 11 per cent of sugar, the maximum of 14-15 per cent being obtained in March and April, after which a fall occurs, which is very rapid if the crop is prolonged after the seasonal mid-year rains fall. It is easy to see that the combined questions of factory capacity, capital lost, duration of harvest, and yield per cent on cane form a most important economic problem, which is usually further complicated by a deficiency in the labour supply.'

"Early observations, later confirmed by chemists upon the establishment of sugar centrals in this province,

coincide with Mr. Deerr's theory, because, after the cane is ripe, what is called a 'reversion' takes place in the juice or the saccharose is converted into, glucose, which takes place very rapidly, the cane becoming more fibrous each time, until it finally dries up and dies.

"The plaintiffs Ferrer claim to have lost 120 lacsas of sugar cane, and the plaintiffs Puentebella, allege a loss of 115 lacsas (a lacsa is a unit of 10,000 sugar-cane plants) which they both testified having planted in their respective fields. In regard to the former's plants, in the affidavit of Antonio M. Lizares, then an employee of Esteban de la Rama, defendants' Exhibit 4, it is said that the witness inspected the Canquinto Estate of Francisco Ferrer and found about 60 lacsas of stalks which, according to his calculation, should produce from 25 to 30 piculs of sugar each, which corroborates the testimony of Francisco Ferrer that he planted 70 lacsas on the Canquinto Estate, and does not contradict the testimony of this same witness that his mother, Juliana Puentebella, planted thirty lacsas on the Mamposod land, while his brother planted twenty lacsas on the Ampanan land, making a total of 120 lacsas, which lands in Canquinto, Mamposod and Ampanan, according to the testimony of Francisco Ferrer himself, are respectively, those mortgaged by them to the Hijos de I. de la Rama by virtue of the documents, Exhibits 19, 20 and 21, and that, according to the stipulations made in Exhibits 19 and 21 and the interpretation that has been given to Exhibit 20, the mortgagors bound themselves to plant sugar cane. This testimony of Francisco Ferrer is also corroborated by Rosario Sanz, who testified having seen 100 lacsas of sugar cane on Ferrer's land in March, 1922, which were over-ripe, but if milled in said month would, nevertheless, have produced 40 piculs of sugar per lacsa, and would have produced 50 piculs had they been milled at the proper time. In regard to the cane of the plaintiffs Puentebella, it appears that in March, 1922, they asked the witness Simeon S. de Paula to inspect their fields. He testified that he only visited the Cervantes Estate, which contained not less than 100 lacsas and which might have produced 50 to 60 piculs of sugar per lacsa had the cane been milled when it was ripe, but they were then going out of season. In Exhibit 5, the affidavit of Gerardo Alunan, Uldarico Suison and Antonio Lizares, then employees of Mr. De la Rama, it is stated that they went to a place called Baldosa where they received the information that there was a field of 17,000 plants, and that they were informed at the Cervantes Estate that 48 lacsas of sugar-cane plants had been brought from Cadiz and had been planted in five fields, and that more than 7,000 plants were brought from Jonobjonob, making, therefore, a total of fifty lacsas and four thousand sugar cane plants. But, it may be seen, that all that is stated in this affidavit in regard to the quantity of plants is mere hearsay and is not a fact personally observed by the informants. It does not controvert the estimate of Simeon S. de Paula, nor of Dionisio Patrata who accompanied the former on the inspection of the fields of the plaintiffs Puentebella, in March, 1922, who likewise estimated that there were 100 lacsas of cane on the Cervantes Estate, which should have produced 5,000 piculs of sugar had the cane been milled in due time; nor does it contradict the testimony of Jose Alemani to the effect that at a place higher up adjoining his land, the plaintiffs then had three fields planted with thirteen or fourteen lacsas. It is true that Esteban de la Rama testified that the Puentebella fields visited by him contained only about seven lacsas, but it appears that this assertion is of little value, as it may be inferred that his visit did not extend to all of the planted fields; besides, his estimate does not come anywhere near that contained in the affidavit of his representatives, Exhibit 5.

"Antonio M. Lizares, in his affidavit, Exhibit 4, estimates an average of thirty piculs of sugar per lacsa from Ferrer's cane, but made no estimate in his affidavit Exhibit 5, in regard to Puentebella's cane. But from this estimate, as compared with that of German Carballo, Simeon S. de Paula, Rosario Sanz, and Dionisio Patrata, all sugar growers, some with considerable experience in the cultivation of sugar cane, who also inspected the plaintiffs' cane, and who unanimously stated that a lacsa of cane produces 50 piculs of sugar, none of them having any interest in these cases nor any proven motives for favoring or opposing any of the parties, it seems that the preponderance of judgment is in favor of the latter. Consequently, the 120 lacsas of sugarcane stalks belonging to the plaintiffs Ferrer should have produced 6,000 piculs of sugar, from which 45 per cent must be deducted which,

in accordance with the contracts, belongs to the central, leaving a balance of 3,300 piculs. The 115 lacsas of the plaintiffs Puentebella should have produced 5,750 piculs of sugar, of which 45 per cent belongs to the central, leaving a balance of 3,162.50 piculs. The parties having agreed in the stipulation of facts that the price of the 1921-22 crop was P10.50 a picul of centrifugal sugar, the plaintiffs Ferrer should have obtained, as a product, P34,650 and the Puentebellas P33,206.25. From these amounts must be deducted the expense of raising the crop and putting the sugar on the market in Iloilo, at the rate of P1.50 per picul, or P9,000 and P8,625, respectively, leaving a net balance, therefore, of P25,650 for the former and P24,631.25 for the latter.

"The plaintiffs allege, furthermore, that on account of not having harvested their crops, they could not prepare their fields for the cultivation of the ratoon crop for the agricultural year of 1922-23, and having lost the crop for that year, they pray for damages for such loss. The defendants likewise set up a counterclaim for damages for the loss of the central's share of the plaintiffs' crop for the agricultural year of 1922-23 by reason of the plaintiffs' failure to prepare their fields. The plaintiffs, not having prepared their fields for the ratoon crops or to cultivate the same, the ratoons requiring as much cultivation as new planting, nor performed any work, nor invested any capital, it is obvious that they are not entitled to any indemnity for such damages, which are remote; nor can the defendants claim any share in a supposed crop of 1922-23, nor recover. damages for failure to harvest, which failure was caused by the defendants' own acts in violating their contracts with the plaintiffs.

"In support of the defendants' counterclaim in regard to the plaintiffs Ferrer, there were presented, Exhibit 19, which is a mortgage to secure a loan for the sum of P25,000, with interest at 12 per cent per annum, payable annually, during ten agricultural years, executed by the plaintiff Juliana Puentebella Vda. de Ferrer, in favor of the Hijos de I. de la Rama, in which it is further agreed that the debtor shall pay 15 per cent of such amounts as may be claimed, in case of litigation, for attorney's fees and expenses; Exhibit 20, which is a mortgage to secure a loan in the sum of P12,500, with interest at 12 per cent per annum, payable within ten years, executed by the deceased Pedro Ferrer in favor of the Hijos de I. de la Rama; and Exhibit 21, which is also a mortgage for the sum of P12,500, with interest at 12 per cent per annum, likewise payable annually during ten agricultural years, and which mortgage was executed by Francisco Ferrer in favor of the Hijos de I. de la Rama, it having been furthermore stipulated therein that, in case of litigation, the debtor should pay 15 per cent of such amounts as may be claimed, for attorney's fees and the expenses of litigation; and in regard to the plaintiffs Puentebella, Exhibit B was introduced, which is a mortgage for the sum of P30,000, with interest at 12 per cent per annum, payable annually during twenty agricultural years, it having been further stipulated that in case of litigation, the debtor shall pay 15 per cent of such amounts as may be claimed, for attorney's fees and expenses; and Exhibit 18, which is a statement of the partial receipts and payments made by the plaintiffs, to wit:

1920

Nature of transaction

Debit

Credit

Balance

June 18, Received on account..... 5,000.00

.....

5,000

July 2, Received on account..... 5,000.00
.....
10,000
July 31, Double plough..... 323.00
.....
10,323
Aug. 8, 1 tractor 3,978.00
.....
14,301
Aug. 23, Received on account..... 5,000.00
.....
19,301
Sept. 13, Received on account..... 2,500.00
.....
21,801
Sept. 22, Received on account..... 1,400.00
.....
23,201
Oct. 4, Received on account..... 900.00
.....
24,101
Oct. 18, Received on account..... 2,000.00
.....
26,101
Nov. 17, Received on account..... 2,000.00
.....
28,101
Nov. 17, Received on account..... 500.00
.....
28,601
Received on account..... ..

500.00

28,101

Received on account.....

323.00

27,778

Dec. 8, Received on account..... 2,222.00

.....

30,000

1921

.....

Received on account..... 1,590.00

.....

31,590

"It will be observed that the installments in these contracts are not due, but as the plaintiffs themselves, in their respective complaints, ask for the cancellation of the contracts, it is clear that they have tacitly renounced the terms agreed upon. It is not believed, however, that the counterclaimants are entitled to any amount for attorney's fees and expenses of litigation as stipulated in the contracts Exhibits B, 19 and 21, because these two cases having been brought by the plaintiffs for violation of said contracts by the defendants, it would not be equitable and just—their non-fulfillment of the contracts being the determining cause of the action—to award them any amount for attorney's fees and expenses to defend these actions, which would not have arisen had the defendants been loyal to their contracted obligations.

"The mortgage loans earn interest at the rate of 12 per cent per annum, while the most that the defendants can be ordered to pay the plaintiffs on the amounts claimed by them is legal interest from the filing of the complaints herein, a circumstance which would place Mr. De la Rama in an advantageous position if the amounts claimed by the parties should not be held to be offset against each other as of the time the damages were caused. Such set-off is believed to be equitable because, as a matter of fact, were it not for the defendants' nonfulfillment of their obligations, said mortgage credits could not now be collected, nor would the plaintiffs have lost their respective crops, or contracted the obligation to pay 12 per cent interest upon the amounts lost through the fault, delinquency, or violation of the contracts by their creditors themselves, which are legal causes, giving the injured party a right to action for damages against the guilty party.

"In view of the foregoing, the following judgment is rendered:

"In regard to the complaint in case No. 2911,

"(1) The defendant Esteban de la Rama is ordered to pay the plaintiffs the sum of P25,650, and the costs of this action;

"(2) In regard to the cross-complaint, the plaintiffs are ordered to pay Esteban de la Rama, to wit: Juliana Vda. de Ferrer, the sum of P25,000, with interest at 12 per cent per annum from August 3, 1920, the date of the receipt of this amount (Exhibit 22); Pedro Ferrer, the sum of P12,500, with interest at 12 per cent per annum from August 3, 1920 (Exhibit 23), and Francisco Ferrer, the sum of P12,500, with interest at 12 per cent per annum from August 3, 1920 (Exhibit 24);

"(3) The counterclaim for damages is dismissed and it is ordered that the amounts awarded to the plaintiffs and the principal of the mortgage loan, which they are hereby ordered to pay, compensate each other proportionately up to the concurrent amount, said compensation to be effective as of April 1, 1922; and

"(4) It is ordered that the balance from the compensation be deposited with the court by the plaintiffs within three months from the date hereof, with the admonition that failing to do so, the sale of the mortgaged property will be ordered and the proceeds thereof applied to the amount of this judgment with respect to the counterclaim.

"In regard to the complaint in case No. 2912,

"(1) The defendant Esteban de la Rama is ordered to pay the plaintiffs the sum of P24,581.25 and the costs of this action;

"(2) In regard to the cross-complaint, the plaintiffs are ordered to pay Esteban de la Rama the sum of P31,590, with interest at 12 per cent per annum from the various dates of the partial receipts, as shown by Exhibit 18, quoted herein;

"(3) The counterclaim for damages is dismissed and it is ordered that the amounts awarded to the plaintiffs and the principal of the mortgage loans, which they are hereby ordered to pay, compensate each other proportionately up to the concurrent amount, said compensation to be effective as of April 1, 1922."

The plaintiffs under their first three assignments of error maintain that they are entitled to damages for the loss of the ratoon crop for the year 1923, but we agree with the court below that such damages are too remote. It is further to be noted that plaintiffs made no effort to reduce the loss for 1923 by cultivating the ratoons or by again planting the land to cane or other crops after the failure of the 1922 cane crop and it is elementary that a party injured by a breach of contract cannot recover damages for any loss which he might have avoided with ordinary care and reasonable expense. (Warren vs. Stoddard, 105 U. S., 224.) Assuming for the sake of the argument that the damages claimed were not too remote, there is no evidence sufficiently showing what the amount of the recoverable damages would have been if the plaintiffs had done their duty and sought to minimize the losses.

The plaintiff-appellants' fourth assignment of error is evidently the result of carelessness in reading the appealed judgment and need not be discussed.

The defendant-appellants present the following assignments of error:

"I. The court below committed an error in rendering judgment in case G. R. No. 26217 against Esteban de la Rama, ignoring the Negros Coal Co.

"II. The court below committed an error in holding that the defendants were obliged, by the terms of the contracts Exhibits A and B, to grind the plaintiffs' sugar cane in 1921.

"III. Even supposing that the defendants were obliged to grind the plaintiffs' cane in the central of the Negros Coal Company, the court below committed an error in holding the defendants liable for damages for not having completed the central in 1921.

"IV. The court below committed an error in not dismissing the complaint of Messrs. Ferrer (G. R. No. 26217), the plaintiffs not having complied with the condition precedent to submit their differences to arbitrators before

filing their complaint.

"V. Even supposing that the defendants were liable for damages, the court below committed an error in ordering Esteban de la Rama to pay Messrs. Ferrer the sum of P25,650, and to Messrs. Puentebella the sum of P24,581.25, by way of damages."

The questions raised by the assignments quoted are fully discussed in the decision of the court below and hardly require further elucidation. As to the first assignment, we may say, however, that aside from the fact that the Negros Coal Co., Ltd. has been dissolved and that De la Rama figures as its successor in interest and liabilities, it is further to be noted that the losses suffered by the plaintiffs were due to De la Rama's misleading representations and to his failure to fulfill his promises. In these circumstances, it was not error to give judgment for damages against him and not against the Negros Coal Co., Ltd.

The fourth assignment of error is likewise without merit. The arbitration clause in paragraph 17 of the Ferrer contract, Exhibit A, expressly provides that the parties shall "abide by the decision of said arbitrators or any three of them, as the case may be." The clause does not merely provide for arbitration as a condition precedent to recourse to the courts; it provides for a final determination of legal rights by arbitration. In other words, an attempt was made to take the disputes between the parties out of the jurisdiction of the courts. An agreement to that effect is contrary to public policy and is not binding upon the parties.

The defendant-appellants' other assignments of error relate only to questions of fact in regard to which the findings of the court below are fully sustained by the evidence.

The judgment appealed from is affirmed without costs to any of the parties. So ordered.

Johnson, Street, Malcolm, Villamor, Romualdez, and Villa-Real, JJ., concur.

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