

LEON SIBAL 1.^o, PLAINTIFF AND APPELLANT, VS. EMILIANO J. VALDEZ ET AL., DEFENDANTS. EMILIANO J. VALDEZ, APPELLEE.*G.R. No. 26278. August 04, 1927*

Ponente: JOHNSON, J.

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This action was commenced in the Court of First Instance of the Province of Tarlac on the 14th day of December, 1924. The facts are about as conflicting as it is possible for facts to be, in the trial of causes.

As a first cause of action the plaintiff alleged that the defendant Vitaliano Mamawal, deputy sheriff of the Province of Tarlac, by virtue of a writ of execution issued by the Court of First Instance of Pampanga, attached and sold to the defendant Emiliano J. Valdez the sugar cane planted by the plaintiff and his tenants on seven parcels of land described in the complaint, in the third paragraph of the first cause of action; that within one year from the date of the attachment and sale the plaintiff offered to redeem said sugar cane and tendered to the defendant Valdez the amount sufficient to cover the price paid by the latter, the interest thereon and any assessments or taxes which he may have paid thereon after the purchase, and the interest corresponding thereto and that Valdez refused to accept the money and to return the sugar cane to the plaintiff.

As a second cause of action, the plaintiff alleged that the defendant Emiliano J. Valdez was attempting to harvest the palay planted in four of the seven parcels mentioned in the first cause of action; that he had harvested and taken possession of the palay in one of said seven parcels and in another parcel described in the second cause of action, amounting to 300 cavans; and that all of said palay belonged to the plaintiff.

Plaintiff prayed that a writ of preliminary injunction be issued against the defendant Emiliano J. Valdez, his attorneys and agents, restraining them (1) from disturbing him in the possession of the parcels of land described in the complaint; (2) from taking possession of, or harvesting the sugar cane in question; and (3) from taking possession, or harvesting the palay in said parcels of land. Plaintiff also prayed that a judgment be rendered in his favor and against the defendants, ordering them to consent to the redemption of the sugar carie in question, and that the defendant Valdez be condemned to pay to the plaintiff the sum of P1,056, the value of palay harvested by him in the two parcels above-mentioned, with interest and costs.

On December 27, 1924, the court, after hearing both parties and upon approval of the bond for P6,000 filed by the plaintiff, issued the writ of preliminary injunction prayed for in the complaint.

The defendant Emiliano J. Valdez, in his amended answer, denied generally and specifically each and every allegation of the complaint and set up the following defenses:

- (a) That the sugar cane in question had the nature of personal property and was not, therefore, subject to redemption;
- (b) That he was the owner of parcels 1, 2 and 7 described in the first cause of action of the complaint;

- (c) That he was the owner of the palay in parcels 1, 2 and 7; and
- (d) That he never attempted to harvest the palay in parcels 4 and 5.

The defendant Emiliano J. Valdez, by way of counterclaim, alleged that by reason of the preliminary injunction he was unable to gather the sugar cane, sugar-cane shoots (puntas de caña dulce) and palay in said parcels of land, representing a loss to him of P8,375.20 and that, in addition thereto, he suffered damages amounting to P3,458.56. He prayed for a judgment (1) absolving him from all liability under the complaint; (2) declaring him to be the absolute owner of the sugar cane in question and of the palay in parcels 1, 2 and 7; and (3) ordering the plaintiff to pay to him the sum of P11,833.76, representing the value of the sugar cane and palay in question, including damages.

Upon the issue thus presented by the pleadings the cause was brought on for trial. After hearing the evidence, and on April 28, 1926, the Honorable Cayetano Lukban, judge, rendered a judgment against the plaintiff and in favor of the defendants—

- (1) Holding that the sugar cane in question was personal property and, as such, was not subject to redemption;
- (2) Absolving the defendants from all liability under the complaint; and
- (3) Condemning the plaintiff and his sureties Cenon de la Cruz, Juan Sangalang and Marcos Sibal to jointly and severally pay to the defendant Emiliano J. Valdez the sum of P9,439.08 as follows:

(a)

P6,757.40,

the value of the sugar cane;

(b)

1,435.68,

the value of the sugar-cane shoots;

(c)

646.00,

the value of palay harvested by plaintiff;

(d)

600.00,

9,439.08

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the value of 150 cavans of palay which the defendant was not able to raise by reason of the injunction, at P4 cavan.

From that judgment the plaintiff appealed and in his assignments of error contends that the lower court erred:

- (1) In holding that the sugar cane in question was personal property and, therefore, not subject to redemption;
- (2) In holding that parcels 1 and 2 of the complaint belonged to Valdez, as well as parcels 7 and 8, and that the

palay therein was planted by Valdez;

(3) In holding that Valdez, by reason of the preliminary injunction failed to realize P6,757.40 from the sugar cane and P1,435.68 from sugar-cane shoots (puntas de caña dulce);

(4) In holding that, for failure of plaintiff to gather the sugar cane on time, the defendant was unable to raise palay on the land, which would have netted him the sum of P600; and

(5) In condemning the plaintiff and his sureties to pay to the defendant the sum of P9,439.08.

It appears from the record:

(1) That on May 11, 1923, the deputy sheriff of the Province of Tarlac, by virtue of a writ of execution in civil case No. 20203 of the Court of First Instance of Manila (Macondray & Co., Inc. vs. Leon Sibal), levied an attachment on eight parcels of land belonging to said Leon Sibal, situated in the Province of Tarlac, designated in the record of attachment as parcels 1, 2, 3, 4, 5, 6, 7 and 8 (Exhibit B, Exhibit 2-A).

(2) That on July 30, 1923, Macondray & Co., Inc., bought said eight parcels of land, at the auction held by the sheriff of the Province of Tarlac, for the sum of P4,273.93, having paid for the said parcels separately as follows (Exhibits C and 2-A):

Parcel 1

P1.00

2

2,000.00

3

120.93

4

1,000.00

5

1.00

6

1.00

7 with the house thereon.....

150.00

8

1,000.00

4,273.93

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(3) That within one year from the sale of said parcels of land, and on the 24th day of September, 1923, the judgment debtor, Leon Sibal, paid P2,000, to Macondray & Co., Inc., for the account of the redemption price of said parcels of land, without specifying the particular parcels to which said amount was to be applied. The redemption price of said eight parcels was reduced, by virtue of said transaction, to P2,579.97, including interest (Exhibits C and 2).

The record further shows:

(1) That on April 29, 1924, the defendant Vitaliano Mamawal, deputy sheriff of the Province of Tarlac, by virtue of a writ of execution in civil case No. 1301 of the Province of Pampanga (Emiliano J. Valdez vs. Leon Sibal 1.^o—the same parties in the present case), attached the personal property of said Leon Sibal located in Tarlac, among which was included the sugar cane now in question in the seven parcels of land described in the complaint (Exhibit A).

(2) That on May 9 and 10, 1924, said deputy sheriff sold at public auction said personal properties of Leon Sibal, including the sugar cane in question, to Emiliano J. Valdez, who paid therefor the sum of P1,550, of which P600 was for the sugar cane (Exhibit A).

(3) That on April 29, 1924, said deputy sheriff, by virtue of said writ of execution, also attached the real property of said Leon Sibal in Tarlac, including all of his rights, interest and participation therein, which real property consisted of eleven parcels of land and a house and camarin situated in one of said parcels (Exhibit A).

(4) That on June 25, 1924, eight of said eleven parcels, including the house and the camarin, were bought by Emiliano J. Valdez at the auction held by the sheriff for the sum of P12,200. Said eight parcels were designated in the certificate of sale as parcels 1, 3, 4, 5, 6, 7, 10 and 11. The house and camarin were situated on parcel 7 (Exhibit A).

(5) That the remaining three parcels, indicated in the certificate of the sheriff as parcels 2, 12 and 13, were released from the attachment by virtue of claims presented by Agustin Cuyugan and Domiciano Tizon (Exhibit A).

(6) That on the same date, June 25, 1924, Macondray & Co. sold and conveyed to Emiliano J. Valdez for P2,579.97 all of its rights and interest in the eight parcels of land acquired by it at public auction held by the deputy sheriff of Tarlac in connection with civil case No. 20203 of the Court of First Instance of Manila, as stated above. Said amount represented the unpaid balance of the redemption price of said eight parcels, after payment by Leon Sibal of P2,000 on September 24, 1923, for the account of the redemption price, as stated above. (Exhibits C and 2.)

The foregoing statement of facts shows:

(1) That Emiliano J. Valdez bought the sugar cane in question, located in the seven parcels of land described in the first cause of action of the complaint at public auction on May 9 and 10, 1924, for P600.

(2) That on July 30, 1923, Macondray & Co. became the owner of eight parcels of land situated in the Province of Tarlac belonging to Leon Sibal and that on September 24, 1923, Leon Sibal paid to Macondray & Co. P2,000 for the account of the redemption price of said parcels.

(3) That on June 25, 1924, Emiliano J. Valdez acquired from Macondray & Co. all of its rights and interest in the said eight parcels of land.

(4) That on the same date (June 25, 1924) Emiliano J. Valdez also acquired all of the rights and interest which Leon Sibal had or might have had on said eight parcels by virtue of the P2,000 paid by the latter to Macondray.

(5) That Emiliano J. Valdez became the absolute owner of said eight parcels of land.

The first question raised by the appeal is, whether the sugar cane in question is personal or real property. It is contended that sugar cane comes under the classification of real property as "ungathered products" in paragraph 2 of article 334 of the Civil Code. Said paragraph 2 of article 334 enumerates as real property the following: "Trees, plants, and ungathered products, while they are annexed to the land or form an integral part of any immovable property." That article, however, has received in recent years an interpretation by the Tribunal Supremo de España, which holds that, under certain conditions, growing crops may be considered as personal property. (Decision of March 18, 1904, vol. 97, Civil Jurisprudence of Spain.)

Manresa, the eminent commentator of the Spanish Civil Code, in discussing section 334 of the Civil Code, in view, of the recent decisions of the Supreme Court of Spain, admits that growing crops are sometimes considered and treated as personal property. He says:

"No creemos, sin embargo, que esto excluya la excepcion que muchos autores hacen tocante a la venta de toda cosecha o de parte de ella cuando aun no esta cogida (cosa frecuente con la uva y la naranja), y a la de lefias, considerando ambas como muebles. El Tribunal Supremo, en sentencia de 18 de marzo de 1904, al entender sobre un contrato de arrendamiento de un predio rustico, resuelve que su terminacion por desahucio no extingue los derechos del arrendatario, para recolectar o percibir los frutos correspondientes al año agricola, dentro del que nacieron aquellos derechos, cuando el arrendador ha percibido a su vez el importe de la renta integra correspondiente, aun cuando lo haya sido por precepto legal durante el curso del juicio, fundandose para ello, no solo en que de otra suerte se daria al desahucio un alcance que no tiene, sino en que, y esto es lo interesante a nuestro proposito, la consideracion de inmuebles que el articulo 334 delCodigo Civil atribuye a los frutos pendientes, no les priva del caracter de productos pertenecientes, como tales, a quienes a ellos tenga derecho, llegado el momento de su recoleccion.

* * * * *

"Mas actualmente y por virtud de la nueva edicion de la Ley Hipotecaria, publicada en 16 de diciembre de 1909, con las reformas introducidas por la de 21 de abril anterior, la hipoteca, salvo pacto expreso que disponga lo contrario, y cualquiera que sea la naturaleza y forma de la obligacion que garantice, no comprende los frutos cualquiera que sea la situacion en que se encuentre." (3 Manresa, 5.[a] edicion, pags. 22, 23.)

From the foregoing it appears (1) that, under Spanish authorities, pending fruits and ungathered products may be sold and transferred as personal property; (2) that the Supreme Court of Spain, in a case of ejectment of a lessee of an agricultural land, held that the lessee was entitled to gather the products corresponding to the agricultural year, because said fruits did not go with the land but belonged separately to the lessee; and (3) that under the Spanish Mortgage Law of 1909, as amended, the mortgage of a piece of land does not include the fruits and products existing thereon, unless the contract expressly provides otherwise.

An examination of the decisions of the Supreme Court of Louisiana may give us some light on the question which we are discussing. Article 465 of the Civil Code of Louisiana, which corresponds to paragraph 2 of article 334 of our Civil Code, provides: "Standing crops and the fruits of trees not gathered, and trees before they are cut down, are likewise immovable, and are considered as part of the land to which they are attached."

The Supreme Court of Louisiana having occasion to interpret that provision, held that in some cases "standing crops" may be considered and dealt with as personal property. In the case of *Lumber Co. vs. Sheriff and Tax Collector* (106 La., 418) the Supreme Court said: "True, by article 465 of the Civil Code it is provided that

'standing crops and the fruits of trees not gathered and trees before they are cut down * * * are considered as part of the land to which they are attached,' but the immovability provided for is only one in abstracto and without reference to rights on or to the crop acquired by others than the owners of the property to which the crop is attached. * * * The existence of a right on the growing crop is a mobilization by anticipation, a gathering, as it were in advance, rendering the crop movable quoad the right acquired therein. Our jurisprudence recognizes the possible mobilization of the growing crop." (Citizens' Bank vs. Wiltz, 31 La. Ann., 244; Porche vs. Bodin, 28 La. Ann., 761; Sandel vs. Douglass, 27 La. Ann., 629; Lewis vs. Klotz, 39 La. Ann., 267.)

"It is true," as the Supreme Court of Louisiana said in the case of Porche vs. Bodin (28 La. An., 761) that "article 465 of the Revised Code says that standing crops are considered as immovable and as part of the land to which they are attached, and article 466 declares that the fruits of an immovable gathered or produced while it is under seizure are considered as making part thereof, and inure to the benefit of the person making the seizure. But the evident meaning of these articles is, where the crops belong to the owner of the plantation, they form part of the immovable, and where it is seized, the fruits gathered or produced inure to the benefit of the seizing creditor.

"A crop raised on leased premises in no sense forms part of the immovable. It belongs to the lessee, and may be sold by him, whether it be gathered or not, and it may be sold by his-judgment creditors. If it necessarily forms part of the leased premises the result would be that it could not be sold under execution separate and apart from the land. If a lessee obtain supplies to make his crop, the factor's lien would not attach to the crop as a separate thing belonging to his debtor, but the land belonging to the lessor would be affected with the recorded privilege. The law cannot be construed so as to result in such absurd consequences."

In the case of Citizens' Bank vs. Wiltz (31 La. Ann., 244) the court said:

"If the crop quoad the pledge thereof under the act of 1874 was an immovable, it would be destructive of the very objects of the act, it would render the pledge of the crop impossible, for if the crop was an inseparable part of the realty possession of the latter would be necessary to that of the former; but such is not the case. True, by article 465 C. C. it is provided that 'standing crops and the fruits of trees not gathered and trees before they are cut down are likewise immovable and are considered as part of the land to which they are attached;' but the immovability provided for is only one in abstracto and without reference to rights on or to the crop acquired by other than the owners of the property to which the crop was attached. The immovability of a growing crop is in the order of things temporary, for the crop passes from the state of a growing to that of a gathered one, from an immovable to a movable. The existence of a right on the growing crop is a mobilization by anticipation, a gathering as it were in advance, rendering the crop movable quoad the right acquired thereon. The provision of our Code is identical with the Napoleon Code, 520, and we may therefore obtain light by an examination of the jurisprudence of France."

The rule above announced, not only by the Tribunal Supremo de España but by the Supreme Court of Louisiana, is followed in practically every state of the Union.

From an examination of the reports and codes of the State of California and other states we find that the settled doctrine followed in said states in connection with the attachment of property and execution of judgment is, that growing crops raised by yearly labor and cultivation are considered personal property. (6 Corpus Juris, p. 197; 17 Corpus Juris, p. 379; 23 Corpus Juris, p. 329; Raventas vs. Green, 57 Cal., 254; Norris vs. Watson, 55 Am. Dec, 161; Whipple vs. Foot, 3 Am. Dec, 442; 1 Benjamin on Sales, sec 126; McKenzie vs. Lampley, 31 Ala., 526; Crine vs. Tifts and Co., 65 Ga., 644; Gillitt vs. Truax, 27 Minn., 528; Preston vs. Ryan, 45 Mich., 174; Freeman on Execution, vol. 1, p. 438; Drake on Attachment, sec 249; Mechem on Sales, sees. 200 and 763.)

Mr. Mechem says that a valid sale may be made of a thing, which though not yet actually in existence, is reasonably certain to come into existence as the natural increment or usual incident of something already in

existence, and then belonging to the vendor, and the title will vest in the buyer the moment the thing comes into existence. (Emerson vs. European Railway Co., 67 Me., 387; Cutting vs. Packers Exchange, 21 Am. St. Rep., 63.) Things of this nature are said to have a potential existence. A man may sell property of which he is potentially and not actually possessed. He may make a valid sale of the wine that a vineyard is expected to produce; or the grain a field may grow in a given time; or the milk a cow may yield during the coming year; or the wool that shall thereafter grow upon sheep; or what may be taken at the next cast of a fisherman's net; or fruits to grow; or young animals not yet in existence; or the good will of a trade and the like. The thing sold, however, must be specific and identified. They must be also, owned at the time by the vendor. (Hull vs. Hull, 48 Conn., 250 [40 Am. Rep., 165].)

It is contended on the part of the appellee that paragraph 2 of article 334 of the Civil Code has been modified by section 450 of the Code of Civil Procedure as well as by Act No. 1508, the Chattel Mortgage Law. Said section 450 enumerates the property of a judgment debtor which may be subjected to execution. The pertinent portion of said section reads as follows: "All goods, chattels, moneys, and other property, both real and personal, * * * shall be liable to execution." Said section 450 and most of the other sections of the Code of Civil Procedure relating to the execution of judgments were taken from the Code of Civil Procedure of California. The Supreme Court of California, under section 688 of the Code of Civil Procedure of that state (Pomeroy, p. 424) has held, without variation, that growing crops were personal property and subject to execution.

Act No. 1508, the Chattel Mortgage Law, fully recognizes that growing crops are personal property. Section 2 of said Act provides: "All personal property shall be subject to mortgage, agreeably to the provisions of this Act, and a mortgage executed in pursuance thereof shall be termed a chattel mortgage." Section 7 in part provides: "If growing crops be mortgaged the mortgage may contain an agreement stipulating that the mortgagor binds himself properly to tend, care for and protect the crop while growing * * *."

It is clear from the foregoing provisions that Act No. 1508 was enacted on the assumption that "growing crops" are personal property. This consideration tends to support the conclusion hereinbefore stated, that paragraph 2 of article 334 of the Civil Code has been modified by section 450 of Act No. 190 and by Act No. 1508 in the sense that "ungathered products" as mentioned in said article of the Civil Code have the nature of personal property. In other words, the phrase "personal property" should be understood to include "ungathered products."

"At common law, and generally in the United States, all annual crops which are raised by yearly manurance and labor, and essentially owe their annual existence to cultivation by man, * * * may be levied on as personal property." (23 C. J., p. 329.) On this question Freeman, in his treatise on the Law of Executions, says: "Crops, whether growing or standing in the field ready to be harvested, are, when produced by annual cultivation, no part of the realty. They are, therefore, liable to voluntary transfer as chattels. It is equally well settled that they may be seized and sold under execution." (Freeman on Executions, vol. 1, p. 438.)

We may, therefore, conclude that paragraph 2 of article 334 of the Civil Code has been modified by section 450 of the Code of Civil Procedure and] by Act No. 1508, in the sense that, for the purposes of attachment and execution, and for the purposes of the Chattel Mortgage Law, "ungathered products" have the nature of personal property. The lower court, therefore, committed no error in holding that the sugar cane in question was personal property and, as such, was not subject to redemption.

All the other assignments of error made by the appellant, as above stated, relate to questions of fact only. Before entering upon a discussion of said assignments of error, we deem it opportune to take special notice of the failure of the plaintiff to appear at the trial during the presentation of evidence by the defendant. His absence from the trial and his failure to cross-examine the defendant have lent considerable weight to the evidence then presented

for the defense.

Coming now to the ownership of parcels 1 and 2 described in the first cause of action of the complaint, the plaintiff made a futile attempt to show that said two parcels belonged to Agustin Cuyugan and were the identical parcel 2 which was excluded from the attachment and sale of real property of Sibal to Valdez on June 25, 1924, as stated above. A comparison of the description of parcel 2 in the certificate of sale by the sheriff (Exhibit A) and the description of parcels 1 and 2 of the complaint will readily show that they are not the same.

The description of the parcels in the complaint is as follows:

"1. La caña dulce sembrada por los inquilinos del ejecutado Leon Sibal 1.º en una parcela de terreno de la pertenencia del citado ejecutado, situada en Libutad, Culubasa, Bamban, Tarlac, de unas dos hectareas poco mas o menos de superficie.

"2. La caña dulce sembrada por el inquilino del ejecutado Leon Sibal 1.º, llamado Alejandro Policarpio, en una parcela de terreno de la ippetenencia del ejecutado, situada en Dalayap, Culubasa, Bamban, Tarlac de unas dos hectareas de superficie poco mas o menos." The description of parcel 2 given in the certificate of sale (Exhibit A) is as follows:

"2.[a] Terreno palayero situado en Culubasa, Bamban, Tarlac, de 177,090 metros cuadrados de superficie, linda al N. con Canuto Sibal, Esteban Lazatin and Alejandro Dayrit; al E. con Francisco Dizon, Felipe Mañu and others; al S. con Alejandro Dayrit, Isidoro Santos and Melecio Mañu; y al O. con Alejandro Dayrit and Paulino Vergara. Tax No. 2854 valor amillarado P4,200 pesos."

On the other hand the evidence for the defendant purported to show that parcels 1 and 2 of the complaint were included among the parcels bought by Valdez from Macondray on June 25, 1924, and corresponded to parcel 4 in the deed of sale (Exhibits B and 2), and were also included among the parcels bought by Valdez at the auction of the real property of Leon Sibal on June 25, 1924, and corresponded to parcel 3 in the certificate of sale made by the sheriff (Exhibit A). The description of parcel 4 (Exhibit 2) and parcel 3 (Exhibit A) is as follows:

"Parcela No. 4.—Terreno palayero, ubicado en el barrio de Culubasa, Bamban, Tarlac, I. F. de 145,000 metros cuadrados de superficie, lindante al Norte con Road of the barrio of Culubasa that goes to Concepcion; al Este con Juan Dizon; al Sur con Lucio Maño y Canuto Sibal y al Oeste con Esteban Lazatin, su valor amillarado asciende a la suma de P2,990. Tax No. 2856."

As will be noticed, there is hardly any relation between parcels 1 and 2 of the complaint and parcel 4 (Exhibits 2 and B) and parcel 3 (Exhibit A). But, inasmuch as the plaintiff did not care to appear at the trial when the defendant offered his evidence, we are inclined to give more weight to the evidence adduced by him than to the evidence adduced by the plaintiff, with respect to the ownership of parcels 1 and 2 of the complaint. We, therefore, conclude that parcels 1 and 2 of the complaint belong to the defendant, having acquired the same from Macondray & Co. on June 25, 1924, and from the plaintiff Leon Sibal on the same date.

It appears, however, that the plaintiff planted the palay in said parcels and harvested therefrom 190 cavans. There being no evidence of bad faith on his part, he is therefore entitled to one-half of the crop, or 95 cavans. He should therefore be condemned to pay to the defendant for 95 cavans only, at P3.40 a cavan, or the sum of P323, and not for the total of 190 cavans as held by the lower court.

As to the ownership of parcel 7 of the complaint, the evidence shows that said parcel corresponds to parcel 1 of the deed of sale of Macondray & Co. to Valdez (Exhibits B and 2), and to parcel 4 in the certificate of sale to Valdez of real property belonging to Sibal, executed by the sheriff as above stated (Exhibit A). Valdez is therefore the absolute owner of said parcel, having acquired the interest of both Macondray and Sibal in said parcel.

With reference to the parcel of land in Pacalcal, Tarlac, described in paragraph 3 of the second cause of action, it

appears from the testimony of the plaintiff himself that said parcel corresponds to parcel 8 of the deed of sale of Macondray to Valdez (Exhibits B and 2) and to parcel 10 in the deed of sale executed by the sheriff in favor of Valdez (Exhibit A). Valdez is therefore the absolute owner of said parcel, having acquired the interest of both Macondray and Sibal therein.

In this connection the following facts are worthy of mention:

Execution in favor of Macondray & Co., May 11, 1923. Eight parcels of land were attached under said execution. Said parcels of land were sold to Macondray & Co. on the 30th day of July, 1923. Rice paid P4,273.93. On September 24, 1923, Leon Sibal paid to Macondray & Co. P2,000 on the redemption of said parcels of land. (See Exhibits B and C.)

Attachment, April 29, 1924, in favor of Valdez. Personal property of Sibal was attached, including the sugar cane in question. (Exhibit A.) The said personal property so attached, sold at public auction May 9 and 10, 1924. April 29, 1924, the real property of Sibal was attached under the execution in favor of Valdez (Exhibit A). June 25, 1924, said real property was sold and purchased by Valdez (Exhibit A).

June 25, 1924, Macondray & Co. sold all of the land which they had purchased at public auction on the 30th day of July, 1923, to Valdez.

As to the loss of the defendant in sugar cane by reason of the injunction, the evidence shows that the sugar cane in question covered an area of 22 hectares and 60 ares (Exhibits 8, 8-b and 8-c); that said area would have yielded an average crop of 1039 picos and 60 cates; that one-half of that quantity, or 519 picos and 80 cates would have corresponded to the defendant, as owner; that during the season the sugar was selling at P13 a pico (Exhibits 5 and 5-A). Therefore, the defendant, as owner, would have netted P6,757.40 from the sugar cane in question. The evidence also shows that the defendant could have taken from the sugar cane 1,017,000 sugar-cane shoots (puntas de caña) and not 1,170,000 as computed by the lower court. During the season the shoots were selling at P1.20 a thousand (Exhibits 6 and 7). The defendant therefore would have netted P1,220.40 from sugar-cane shoots and not P1,435.68 as allowed by the lower court.

As to the palay harvested by the plaintiff in parcels 1 and 2 of the complaint, amounting to 190 cavans, one-half of said quantity should belong to the plaintiff, as stated above, and the other half to the defendant. The court erred in awarding the whole crop to the defendant. The plaintiff should therefore pay the defendant for 95 cavans only, at P3.40 a cavan, or P323 instead of P646 as allowed by the lower court.

The evidence also shows that the defendant was prevented by the acts of the plaintiff from cultivating about 10 hectares of the land involved in the litigation. He expected to have raised about 600 cavans of palay, 300 cavans of which would have corresponded to him as owner. The lower court has wisely reduced his share to 150 cavans only. At P4 a cavan, the palay would have netted him P600.

In view of the foregoing, the judgment appealed from is hereby modified. The plaintiff and his sureties Cenon de la Cruz, Juan Sangalang and Marcos Sibal are hereby ordered to pay to the defendant jointly and severally the sum of P8,900.80, instead of P9,439.08 allowed by the lower court, as follows:

P6,757.40

for the sugar cane;

1,220.40

for the sugar cane shoots;

323.00

for the palay harvested by plaintiff in parcels 1 and 2;

600.00

for the palay which defendant could have raised.

8,900.80

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In all other respects, the judgment appealed from is hereby affirmed, with costs. So ordered.

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

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