

TIBURCIO LUTERO, PLAINTIFF AND APPELLANT, VS. SIULIONG & CO., DEFENDANT AND APPELLANT.

G. R. No. 31125. January 21, 1930

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; These are two appeals taken by plaintiff Tiburcio Lutero and by defendant Siuliong & Co. from the judgment of the Court of First Instance of Iloilo absolving the defendant from the complaint, and the plaintiff from the cross complaint, without costs.

In support of his appeal, the plaintiff assigns the following alleged errors as committed by the court below in its judgment, to wit:

"The lower court erred:

"1. In refusing to permit witness Rufino Abordo to testify with regard to a conversation between the plaintiff and the deceased manager of the defendant. "2. In holding: (a) That Exhibits A and C are contracts of sale of sugar; (b) that the P3,000 and P5,600 mentioned in said contracts are advances on the selling price of 500 and 800 piculs of sugar, respectively.

"3. In not holding: (a) That Exhibits A and C are contracts of loans of money payable in sugar; (b) that said contracts are usurious; (c) therefore, the current market price at the time of delivery, or MO per picul, should be fixed as the price of the sugar delivered by the plaintiff to the defendant; (d) consequently, the plaintiff is entitled to a balance of P8,187.75 against the defendant.

"4. In not ordering the defendant to pay plaintiff said amount of P8,187.75.

"5. In denying the plaintiff's motion for a new trial."

On the other hand, the defendant, in support of its appeal, assigns the following alleged errors as committed by the court below in its judgment, to wit:

"The court erred in all of the following particulars:

"1. In finding that the defendant by its silence had renounced its rights under its contracts with the plaintiff.

"2. In refusing; bo allow defendant interest at eight per cent per annum as provided for in Exhibit C.

"3. In refusing to allow defendant attorney's fees as provided for in contracts Exhibits A and C.

"4. In not rendering judgment in favor of the defendant and against plaintiff for all of the amounts prayed for in defendant's counter-complaint, including interest, attorneys fees, penalties and payment for sugar at prices agreed upon in the contracts between plaintiff and defendant."

The following facts were proved at the trial without dispute:

On June 30, 1919, the plaintiff Tiburcio Lutero and the defendant Siuliong & Co. entered into a contract (Exhibit A), the pertinent parts of which are as follows:

"Know all men by these presents:

"That I, Tiburcio Lutero, of age, married, and a resident of the municipality of January, Province of Iloilo, Philippine Islands,

"Do Hereby State :

"That I own. a sugar plantation located in the municipality of January, Iloilo, called San Ramon, from which I expect a crop of at least 1,200 to 1,500 piculs of sugar, more or less.

"That I have agreed with the firm of Siuliong & Co., of this City of Iloilo, represented by Mr. Yap-Inchong, to fix the selling price of 500 piculs of my sugar crop from said plantation during the season of 1919-1920 at the rate of P12 per picul for high class No. 1 sugar; P11.50 for No. 2, and P11 for No. 3, to be delivered to said firm in the month of March of next year, 1920.

"That by virtue of this agreement to sell, the firm of Siuliong & Co., through its manager, binds itself to advance to Mr. Tiburcio Lutero the amount of P3,000, Philippine currency, or, at the rate of P6 a picul for No. 1; and P0.50 less for each succeeding picul, as an advance upon the sale of said 500 piculs, and the remainder shall be paid to said Mr. Lutero from time to time, as he sends his sugar to the Iloilo market, until the full price of said 500 piculs of sugar is covered.

"I further state that should I be unable to deliver said 500 piculs, I bind myself to pay in specie to said firm of Siuliong & Co., the price of the undelivered portion according to the current market price during said month of March.

"I state likewise that for the security of Siuliong & Co., I, Tiburcio Lutero, constitute a second mortgage in favor of said firm on a sugar plantation located in the barrio of Ramirez, municipality of January, Province of Iloilo, with all the improvements thereon, consisting of a six-horse power steam engine with an eight-horse power boiler; a battery with two ovens and eight comas and a warehouse of mixed materials, which plantation is encumbered by a first mortgage in favor of the National Bank, and is described as follows: * * *. "That for the security of Siuliong & Co., I, Maximino Jalandoni, farmer, landowner, and resident of the municipality of Jaro, Province of Iloilo, P. I., do hereby bind myself as joint and several surety for Mr. Tiburcio Lutero in favor of Messrs. Siuliong & Co., for the sum of three thousand pesos (P3,000) in case said Mr. Lutero should be unable to fulfill his obligations stipulated in this contract.

"Any of the parties failing to fulfill the terms of this contract hereby binds himself to pay an indemnity of P200 as costs and attorney's fees.

"In witness whereof, we sign these presents in Iloilo, this thirtieth day of June, 1919.

(Sgd.) "Tiburcio Lutero

"Siuliong & Co.

(Sgd.) "Yap-Inchong"

On August 21, 1919, the same parties entered into another contract (Exhibit C), the pertinent parts of which are as follows:

"Know all men by these presents:

"That I, Tiburcio Lutero, of age, married, and resident of the municipality of Janiuay, Province of Iloilo, P. I.,

"Do Hereby State :

"That I, Tiburcio Lutero, own a sugar plantation located in the municipality of January, Province of Iloilo, P. I, from which I expect a crop of one thousand two hundred to one thousand five hundred piculs of sugar more or less.

"That I have agreed with the firm Siuliong & Co., through its branch in this City of Iloilo, Province of Iloilo, to fix the selling price of Eight hundred (800) piculs of sugar from my crop from said plantation during the season of 1919- 1920 at the rate of fourteen pesos (P14) a picul for No. 1 sugar; thirteen pesos and fifty centavos (P13.50) a picul for No. 2 sugar; thirteen pesos (P13) for No. 3; twelve pesos and fifty centavos (P12.50) for No. 4; and twelve pesos (P12) for No. 5; to be delivered to said firm in the months of December, January, February, March, and April of said year of 1920.

"That by virtue of this agreement to sell, the firm Siuliong & Co., through its manager, binds itself to advance to me the amount of five thousand six hundred pesos (P5,600), Philippine currency, that is, at the rate of P7 per picul as an advance payment upon the selling price of said eight hundred piculs of sugar, and the balance shall be paid to me from time to time as I forward my sugar to the Iloilo market, until the full price of said eight hundred piculs (800) is covered.

"I likewise state that should I be unable to deliver said eight hundred piculs of sugar or any part thereof, I bind myself to pay in specie the price of the undelivered portion to said firm of Siuliong & Co., according to the current market price in said months and on the day of the settlement of my account.

"I state further that to secure to said firm of Siuliong & Co., the sum of five thousand six hundred pesos (P5,600) which I have received from the same as an advance upon this sale, I hereby mortgage to said firm all the sugar cane now planted on my said San Ramon plantation, situated in the municipality of January, Province of Iloilo, P. I., with the exception of the five hundred (500) piculs, which was the subject of my contract with the same firm of Siuliong & Co., dated June 30th of this year.

"That for a further security of said firm of Siuliong & Co., and by virtue of the power of attorney conferred S4; upon Lutero vs. Siuliong & Co. me by Mr. Ramon Masa, attorney, farmer, and resident of the municipality of Sibalum, Province of Antique, P. I., which power remains to this day unrevoked, duly acknowledged before the justice of the peace of Sibalum, Province of Antique, Mr. Nicolas Tordecillas, on August 15, of this year, I do hereby mortgage in favor of said firm of Siuliong & Co. the forty head of cattle, consisting1 of cows and carabaos, all of which are at present on said Mr. Masa's farm in the municipality of San Remigio, Province of Antique, which are free from all Hens and incumbrances, and of which the documents of ownership are described as follows:

* * * * *

"Should any or all of said animals thus mortgaged die, I bind myself to replace the loss with my own carabaos.
"I hereby state that the amount of five thousand six hundred pesos (P5,600) Philippine currency, advanced to me by the firm of Siuliong & Co., shall earn 8 per cent annual interest until full settlement of my account.

"I hereby state that the date of maturity of this contract was fixed as April 30, 1920.

"I, Florentino Magalona, of age, married, resident of the district of Molo, municipality of Iloilo, Province of Iloilo, P. L, farmer, landowner, do hereby state that I hereby bind myself as joint and several surety for Mr. Tiburcio Lutero in favor of the firm of Siuliong & Co., should he be unable to meet his obligation stipulated in this contract.

"Any of the parties who fails to comply with the terms of this contract shall be bound to pay an indemnity of five hundred pesos (P500) as costs and attorney's fees.

"In witness whereof, we have hereunto set our hands in Iloilo, this 21st day of August, 1919.

(Sgd.) "Tiburcio Lutero

(Sgd.) "Florentino Magalona

"Siuliong & Co. "By (Sgd.) Yap-Inchong"

By virtue of the contract Exhibit A, the plaintiff delivered to the defendant a total of 337 piculs and 57 cates of muscovado sugar of different classes, and on different dates, the total price of which amounts to P3,405.58 (Exhibit 1), leaving an undelivered balance of 162 piculs and 44 cates The plaintiff received from the defendant in kind and specie the amount of P4,606.15.

In conformity with the contract Exhibit C, the plaintiff delivered to the defendant 309 piculs and 77 cates of muscovado sugar, the total price of which amounts to P3,822.40 (Exhibit 2), leaving an undelivered balance of 490 piculs and 24 cates. The plaintiff received by virtue of said contract Exhibit C, in kind and specie, the sum of P6,862 (Exhibit 2).

The first question to be decided in the present appeal is whether the contracts Exhibits A and C, entered into by and between the plaintiff Tiburcio Lutero and the defendant Siuliong & Co. are for usurious loans of money payable in sugar.

By contract Exhibit A, the plaintiff bound himself to sell to the defendant during the month of March, 1920, 500 piculs of sugar from the crop of the agricultural year 1919-1920, at the rate of P12 a picul for No. 1 superior sugar; P11.50 for No. 2; and P11 for No. 3.

By virtue, of the second contract Exhibit C, the plaintiff bound himself to sell to the defendant 800 piculs of sugar from his crop of the agricultural year 1919-1920 at the" rate of TU a picul for No. 1 sugar; P13.50 for No. 2; P13 for No. 3; P12.50 for No. 4; and P12 for No. 5, to be delivered in the months of December, January, February, March, and April, of the year 1920.

It is contended by the plaintiff-appellant that the defendant having advanced money to the plaintiff upon both contracts, said money was given as a loan payable in sugar, which, according to the law, must be computed on the

basis of the market price at the time of delivery; and that as the maximum price of sugar on the respective dates of delivery was P30, and the price stipulated in said contracts was not even one-half of the market price, said contracts are usurious. According to both contracts, the defendant was bound to buy the 500 piculs of sugar mentioned in the contract Exhibit A, and the 800 piculs of sugar mentioned in the contract Exhibit C, at the price stipulated in said contracts. It is not contended by the plaintiff-appellant that contracts for the sale of agricultural products to be delivered in future cannot be entered into. If so, the contracts made by the plaintiff and the defendant are perfectly valid, and the fact that on the date of delivery of the sugar, its market price is higher than that stipulated, does not make them usurious or illegal, because the defendant assumed the same risk of a loss taken by the plaintiff, due to difference in price, and if the price, instead of rising, had slumped, the defendant would have had to pay the price stipulated, and not the market price, as has happened to many farmers and merchants due to the sudden slump of prices at the end of the world war.

For the foregoing considerations, we are of the opinion and so hold that the contracts of sale of agricultural products to be delivered in future, fixing a selling price, are not usurious or illegal, even when the market price of the products sold should turn out to be higher at the time of delivery.

The second question to be decided in the present appeal is whether or not the plaintiff must pay to the defendant for the sugar which the former failed to deliver in accordance with the aforesaid contracts, Exhibits A and C.

The court below, considering the price of each picul of sugar to be P30, held that the defendant had been more than paid with the sugar delivered by the plaintiff, and considering also that from the month of July, 1921, when the defendant demanded of the plaintiff the delivery of the remaining portion of the sugar, until December 8, 1927, when the cross-complaint was filed, almost six years had elapsed, said court held that the defendant had renounced its rights and had been satisfied with the sugar theretofore received from plaintiff. This opinion of the court below is based neither on law nor on equity. That the defendant had not waived its rights to the balance of the amount of sugar specified in said contracts, is shown by the fact that it several times required the plaintiff, by means of letters, to deliver said balance and that the latter kept on asking for extension of time by reason of his critical financial situation. The defendant, taking this circumstance into account, did not press its demands on the plaintiff, and allowed some six years to elapse, until the plaintiff brought this action against the defendant, praying that said contracts be declared usurious, and that the defendant be sentenced to return the amount of P16,410, as the sum collected in excess of plaintiff's debt.

For laches and neglect on the part of those, who, under the law are entitled to require of others the fulfillment of their obligations, the statute of limitations has been enacted, which provides that such rights prescribe after a certain period of time, in order that it may serve alike as a punishment for those who do not know how to look after their own interests, and as a source of reassurance to those who may have rested on the belief that their creditors had waived their rights, and also to insure economic stability and the certainty of rights. In the case before us, there are written contracts by virtue of which the parties incurred mutual obligations, and, according to section 43, No. 1, of the Code of Civil Procedure, the action which one of the parties may bring against the other to require the fulfillment of his obligation, does not prescribe until after ten years. Inasmuch as only six years, more or less, have elapsed from the time the defendant last demanded of the plaintiff the fulfillment of the obligation, incurred by him by virtue of the contracts Exhibits A and C until it filed its counterclaim herein, said action has not prescribed, and the defendant is entitled to have a judicial pronouncement thereon.

Now then, if the defendant is entitled to demand of the plaintiff the fulfillment of his obligations under the terms

of the contracts Exhibits A and C, and if of the 500 piculs of sugar which the plaintiff bound himself to deliver in pursuance of the contract Exhibit A, he only delivered 337 piculs and 57 cates of sugar, thus incurring a shortage of 162 piculs and 44 cates; and if out of the 800 piculs of sugar which he bound himself to deliver in accordance with the contract Exhibit C, he only delivered 309 piculs and 77 cates, thereby defaulting with respect to 490 piculs and 23 cates, and as he cannot now deliver said shortages since the period for delivery has elapsed, what damages is the defendant entitled to?

Under contract Exhibit A, the plaintiff had received from the defendant in cash, goods, and other expenses the amount of P4,606.15. Having delivered 337 piculs and 57 cates of muscovado, the total value of which is P3,405.58, he had still a balance of P1,199.87 to pay, and 162 piculs and 44 cates of sugar to deliver.

Under contract Exhibit C, the plaintiff received from the defendant in cash, goods, and other expenses the total sum of P6,862. Having delivered 319 piculs and 77 cates of muscovado, the full value whereof is P3,822.44, he had still a balance of P3,031.54 to pay, and 490 piculs and 24 cates of sugar to deliver.

In accordance with contracts Exhibits A and C, mentioned above, the plaintiff bound himself to pay in cash, according to the current market price, for the undelivered difference.

The minimum market price of muscovado in the month of May, 1920, was P19 per picul. Fixing the average price of the sugar, which the plaintiff failed to deliver to the defendant, according to the respective contracts, at P10 under the contract Exhibit A, and at P12 under the contract Exhibit C, the difference between said respective contracts and the minimum market price would be the loss sustained by the defendant through plaintiff's failure to deliver the sugar at the proper time according to said contracts.

The undelivered quantity of 162 piculs and 44 cates of sugar under contract Exhibit A, at P19 a picul, yields a total sum of P3,086.36, and at P10 a picul, a total of P1,624.40, leaving a difference of P1,461.96. Inasmuch as under said contract the plaintiff owed the defendant P1,199.87, this amount and the difference just mentioned, give a total of P661.83, which is the aggregate amount which the plaintiff should pay to the defendant under said contract Exhibit A.

The undelivered quantity of 490 piculs and 24 cates of sugar under the contract Exhibit G, at the minimum price of P9 yields a total of P9,314.56, and at P12, a total of P5,882.88, leaving a difference of P3,431.68. Inasmuch as the plaintiff owed a balance of P3,031.54, this amount and the difference just mentioned, give a total of P6,463.22, which is the aggregate amount which the plaintiff should pay to the defendant under the aforesaid contract Exhibit C.

With respect to interest upon the sums advanced by the defendant to the plaintiff, and the attorney's fees, we do not believe it equitable to award them, considering the circumstances of this case.

For the foregoing considerations, we are of opinion and so hold: (1) That the sale of sugar to be delivered at a future definite time and for a fixed price, a part of which is advanced by the purchaser to the vendor, is neither usurious nor illegal even though said price should prove to be much less than the market price on the date of delivery; (2) that the fact that the purchaser does not bring suit against the vendor immediately upon the latter's default in the delivery of the sugar sold, and that he allows six years to elapse, does not deprive him of his right to bring such action on account of laches, inasmuch as such action, arising from a written contract, does not

prescribe until after ten years from the time the cause of action arises (section 43, Code of Civil Procedure); and (3) that the purchaser is entitled to damages sustained on account of the vendor's default, said damages consisting in the difference between the price stipulated and the market price of the goods at the time delivery thereof should have been made.

By virtue whereof, the judgment appealed from is reversed, and the defendant is absolved from the complaint; and the plaintiff is ordered, by virtue of the defendant's counterclaim to pay to the latter, under contract Exhibit A, the sum of P2,661.83 with legal interest from the date of the filing of the counterclaim until fully paid; and, under contract Exhibit C, the sum of P6,463.22 with legal interest from the date of the filing of the counterclaim until fully paid, with costs against the appellee. So ordered.

Johnson, Malcolm, Ostrand and Johns, JJ., concur.

CONCURRING AND DISSENTING

Street, J.:

I concur in the disposition made of the appeal with respect to the original complaint. I dissent from the disposition made of the appeal interposed by the defendant as appellant, for the reason that its brief upon appeal does not contain, as required by No. 19 of the Rules of this Court, any statement of the pertinent facts in the case nor any argument demonstrating the error, if any, committed by the court below. I submit that the judgment should have been affirmed in its entirety.

Avanceña, C. J., concurs in this dissenting opinion.

DISSENTING

Villamor, J.:

I concur in Justice Street's opinion, but I also believe that deciding the question upon its merits, the contract is usurious, and judgment should be rendered in favor of the plaintiff.

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