

ANTONIO G. JAYME ET AL., PLAINTIFFS AND APPELLANTS, VS. THE BACOLOD-MURCIA MILLING CO., INC., ET AL., DEFENDANTS AND APPELLEES.

G. R. No. 31624. January 28, 1930

Ponente: OSTRAND, J.

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OSTRAND, 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; This is an appeal from a decision of the Court of First Instance of Occidental Negros. Translated into English, the decision reads as follows:

"These five causes were tried separately, but in view of the relation between them and. of the identity of the principal parties, they will be jointly decided for the convenience of all parties concerned.

"CAUSE NO. 4357 "

"The plaintiffs herein are Antonio Jayme y Ledesma, and Antonio G. Jayme, father and son, respectively. In their third amended complaint dated July 6,1928, they pray for an indemnity of P189,245.80 plus the costs, from the defendants, the Bacolod-Murcia Milling Co., Inc., and the Philippine National Bank (for the sake of brevity the first will hereafter be referred to as the Company or Central, and the second, as the Bank), alleging that they have violated the contract commonly known as the Planter's, in that portion thereof which reads as follows:

" '5. That for the transportation of the sugar cane from the fields to the central, the mill shall construct, maintain, and operate wherever it may deem convenient, a motor and/or steam railway, with branches and sidetracks, in such a way that no part of the lands attached to the Central as adapted to the cultivation of sugar cane, shall be more than one mile from said branch, and it shall likewise construct and maintain the proper enclosures for keeping the necessary empty or loaded wagons,' (Exhibit 3), inasmuch as they failed to extend the railroad to the San Antonio and Santa Angela Estates, situated in Bacolod and Murcia, respectively, in the Province of Occidental Negros, which estates are owned by Antonio Jayme, sr., and leased by Antonio G. Jayme, jr., in accordance with this clause of the contract, thereby, during the agricultural year 1924-1925, causing the loss of the greater part of the harvest, amounting to 9,472.29 piculs of centrifugal sugar, for the reason that some sugar cane remained in the fields unharvested and unmilled.

"Timoteo C. Manalo was an industrial partner of Antonio G. Jayme in the Santa Angela Estate, who was impleaded as a party defendant, for failure to join the parties plaintiff.

"In its answer to said complaint, the Company, after admitting paragraphs I and II, and generally denying the others, alleges, by way of special defense, that Antonio Jayme, sr., was one of the central's directors from the time it was organized until the general elections held towards the end of 1926, acting as such during the whole

period. During that time, and even thereafter, the Bank which financed the Central through an agency opened and denominated the Philippine Sugar Central Agency, supervised, directed, and controlled its acts and transactions, and while it is true that it has not been able to extend its railroad in accordance with the contract, it is also true that from the agricultural year of 1921-1922, it established the practice, later converted into a formal agreement, of paying, as it has in fact paid, all those planters who did not enjoy the benefit of the railroad, a certain sum per kilometer for every ton of sugar cane transported from the imaginary point specified in the abovequoted clause, to the Company's nearest railroad station, the plaintiffs having agreed to, and collected certain sums upon this stipulation. By way of cross-complaint, the defendant Central prays that said planter's contract be rescinded in respect to the Santa Angela Estate, Antonio Jayme, sr., having failed to comply with his obligation annually to plant at least one-half of its area to sugar cane as per contract.

"The Bank's answer, the third amended complaint, sets up the following defenses:

"First, that the complaint does not allege facts sufficient to constitute a cause of action against the Philippine National Bank, and

"Second, that it denies generally each and every allegation of the complaint, "Timoteo C. Manalo's answer to the same complaint, after entering a general denial* sets up the defense that the facts therein alleged against him do not constitute a cause of action.

"The plaintiffs answered the Company's cross-complaint by a general denial, and alleged, as a special defense, that if the agreed portion of the Santa Angela Estate has not been planted to sugar cane, it is because the Company, in turn, has not fulfilled its obligation to extend its railroad to said estate.

"CAUSE NO. 4572

"The plaintiff, Antonio Jayme, sr., in this cause asks from the defendants, the Bank and the Central, an indemnity of one thousand five hundred (1,500) piculs of centrifugal sugar per year, from the crop of 1920-1921, up to the present time, or a quantity equivalent to one hundred thousand (100,000) or one hundred and fifty thousand (150,000) pesos plus the costs, from which must be deducted what he received from the lessees, particularly from Antonio Jayme, jr., equivalent to one-third of the amount demanded, for the same violation alleged in the first case, namely, that said defendants have failed to construct a railroad to the San Antonio and Santa Angela Estates, which prevented him from accepting advantageous proposals of lease of said estates, at a rental of one thousand one hundred (1,100) and eight hundred (800) piculs of centrifugal sugar respectively, per year, because a railroad was made requisite.

"The Central has presented practically the same defense and cross-complaint in this second cause as it did in the first.

"In like manner, the Bank's answer is a repetition of its answer to the first cause.

"CAUSE NO. 445

"In this cause the Bank demands from the defendants, Antonio Jayme, jr., and Timoteo C. Manalo, the payment of the amount of P3,139.27, with twelve per cent interest per annum upon the sum of P2,048.41 from January 16, 1928, plus ten per centum of the sum claimed, as attorney's fees, and the costs.

"In his answer to this cause, Timoteo Manalo, admits paragraphs 1 and 2 of the complaint, and denies generally the rest of the allegations made in the other paragraphs.

"And Antonio Jayme, Jr., in his answer admits paragraphs 1, 2 and 3, of the complaint, and denies the rest, setting up by way of counterclaim, the facts alleged as the cause of action in the damage suit No. 4357. brought by himself and his father.

"CAUSE NO. 4547

"In this cause, the Bank demands from Antonio Jayme, jr., the recovery of P62,332.83, interest at nine per cent per annum upon the sum of P42,571.97 from April 16, 1928, plus ten per centum of the sum claimed, as attorney's fees, and costs.

"The answer made by the defendant reads verbatim:

" 'The defendant, answering the complaint through the undersigned attorney, alleges:

" '1. That the facts alleged in the complaint do not constitute a cause of action.

" '2. That said facts alleged in the complaint might have served for a counterclaim, but not for a new complaint, inasmuch as they are closely related to the complaint filed by the defendant herein, who was plaintiff in civil case No. 4357 of this court.

" 'Wherefore, he prays that the complaint filed by the Philippine National Bank in civil case No. 4547 of this court, be dismissed, with costs against the plaintiff.

"CIVIL CASE NO. 4573

"In this cause, with Antonio Jayme, jr., as principal defendant, and the other defendants being Antonio Jayme, his father, and Genoveva Gamboa, and the Asia Banking Corporation, the first two as solidary sureties, and the last as holder of a subsidiary right, three causes of action are alleged: In the first, plaintiff prays for the foreclosure of a mortgage credit amounting to P152,723.64, interest at eight per centum per annum upon the amount of P112,554.22 from April 16, 1928, and ten per centum upon the latter sum, as attorney's fees; in the second, plaintiff also prays for the foreclosure of a mortgage debt amounting to P6,646.63, interest at nine per cent per annum upon the amount of P3,825.91 from April 16, 1928, plus ten per centum of the latter sum, for attorney's fees; and in the third, plaintiff claims from Antonio Jayme, jr., and Antonio Jayme, sr., payment of the amount of P4,947.75, interest at nine per cent per annum on the sum of P3,825.91 from April 16, 1928, plus ten per centum on the last-named amount, for attorney's fees, with the costs against the defendants.

"In their amended answer, the defendants, Antonio Jayme, jr., Antonio Jayme, sr., and Genoveva Gamboa, admit paragraphs 1, 2, 3, 4, 5, 6, 7, and 8, of the complaint of record, as to the first cause of action; and, as special defense, they allege that the guaranty to answer for the obligation of the principal defendant Antonio Jayme, jr., is limited to the amount of P126,000; that the lands ceded by Antonio Jayme, sr., and Genoveva Gamboa to Antonio Jayme, jr., as alleged in paragraph four of the same complaint, are worth one thousand pesos per hectare, and contain 437 odd hectares; that the additional guaranty given by the defendant Antonio Jayme, sr., was and is meant only in case the mortgaged property would not be sufficient to satisfy said sum of P126,000; and that Antonio Jayme, sr., and Antonio Jayme, jr., have instituted against the Bank civil case No. 4357 of this court, that is, the first case, for damages of more than P180,000, for which reason they pray that this case be stayed with respect to the first cause of action, pending the decision of the aforesaid cause, or until they are absolved therefrom. They admit the first paragraph of the second cause of action, and deny all the others, and they set up the special defense that the defendants Antonio Jayme, sr., and Genoveva Gamboa having conferred on defendant Antonio Jayme, jr., the special power to mortgage lot No. 192 of the cadaster of Bacolod, Occidental Negros, the obligation of the principals is limited to not revoking said power. And they admit paragraphs 1 and 2 of the third cause of action and deny the rest, setting up in defense that Antonio Jayme, jr., has already fully satisfied the sum claimed in this action.

"The answer of the Asia Banking Corporation is a general denial, admitting, however, the plaintiff's corporate capacity, and also admitting that it holds a subordinate interest in the property specified in the first cause of action.

"From this brief account of the allegations of each of these five causes, it will be perceived that they are intimately related to one another, for if the mutual claims of the parties prosper, they can be compensated, saving, of course, other remedies such as the rescission prayed for in the Central's cross-complaint.

"Taking them in order, we shall first consider the first two causes, that is, those instituted by the plaintiffs Jayme against the Bank and the Central, for damages, wherein, by way of cross-complaint, the Central prays for the rescission of the planter's contract with respect to the Santa Angela Estate.

"The ground for the action of the plaintiffs in both cases is, as we have stated, the alleged non-fulfillment on the part of the defendants, the Bank and the Central, of the clause copied at the beginning of this decision, which is part of the stipulations of the planter's contract, executed by and between Antonio Jayme, sr., and the Central in 1921, whereof Exhibit 3 is a copy or form. Neither the Bank nor Antonio Jayme, jr., was a party to this contract. But the Bank, which financed the Central, particularly supervised and controlled its acts and transactions by means of an agency called the Philippine Sugar Central Agency (see the contract transcribed in the answers of the Central, and Exhibits L-1, 1-3, L-4, 1-5, L-7, L-9, L-10, L-11, 1-12, 1-13, L-14, and L-17) and Antonio Jayme, jr., was a lessee of the San Antonio and Santa Angela Estates adhering to the Central by virtue of the aforementioned planter's contract from the crop of 1920-1921 until that of 1927-1928 (see the complaints in cases Nos. 4357, 4572, and 4573, third cause of action, testimony of Antonio Jayme, jr., and Exhibits C to C-16).

"While the evidence is contradictory as to whether during the crop of 1924-1925 all the sugar cane planted by Antonio Jayme, jr., in the San Antonio Estate was harvested and milled, with respect to his plantings in Santa Angela, it is admitted by the Company that a part of it remained in the fields, although it is alleged that it was milled during the following season {see testimony of Manalo, pp. 165, 160, s. n.).

"There is no dispute over the fact that the Company has not extended its railroad lines to the San Antonio and Santa Angela Estates, in conformity with the planter's contract (Exhibit 3, clause 5).

"It is contended, however, that the plaintiffs Jayme have accepted an agreement which had the effect of being a substitute for the obligation of the Central to extend its railroad lines, and which consisted in the payment of thirty centavos per kilometer for every ton of the cane the planter may convey from the imaginary point to which the Central bound itself to extend its lines from the nearest railroad station; that the plaintiffs Jayme have availed themselves of said agreement, collecting from the Company the payments thus established, with respect to the carriage of their cane from both the San Antonio and the Santa Angela Estate, until the nearest railroad station, as demonstrated by the receipts Exhibits C to C-16, which show payments or reimbursement made by the Company to Antonio G. Jayme, from 1921 to 1927, at the rate of thirty centavos per ton of sugar cane per kilometer, with the exception of Exhibit C, wherein it appears that the rate of reimbursement was fifty centavos.

"It is claimed that this alleged agreement has arisen from the resolutions of the company's board of directors, of which the plaintiff Antonio Jayme Ledesma was a member and one of those who adopted said resolutions appearing in Exhibits L-16 and L-17 and L-18, whereby reimbursement to the planters without sufficient railroad facilities was finally approved, in the form stated above. It does not appear that the plaintiffs expressly accepted this resolution, but it is an undisputed fact that Antonio Jayme, jr., has resorted to, and taken advantage of, said resolution for himself and for his brother Carlos G. Jayme (Exhibit A), who was also a sugarcane planter on the San Antonio plantation.

"The evidence raises no doubt as to the fact that during the season of 1924-1925, some cane sugar remained unharvested in the fields of the San Antonio and Santa Angela plantations, on account of heavy and continuous rains which softened the ground and converted it into a mass of mire, thus in a general way rendering the work of cutting and carting the cane from the fields to the nearest railroad station more difficult (testimony of Antonio G. Jayme, pp. 24, 35, and 37, and of Arsenio Brisuela, p. 72, s. n., and Exhibit S), so that even on the plantations with a railway, such as the 'Concordia' of A. P. Seva, the 'Rosario,' of Alunan-Araneta, both being in the same zone as the Bacolod-Murcia Central, there remained in the fields quantities of sugar cane calculated at two thousand and one thousand piculs, respectively (testimony of Rafael Masuiiana, pp. 154 and 155, s. n., and Exhibit C, p. 2).

"On the ' San Antonio' plantation, the uncollected plants belonged to Antonio G. Jayme, and on the Santa Angela, to him and to his industrial partner Timoteo C. Manalo, as lessees.

"The Company insists that as the plaintiffs have profited and taken advantage of the aforesaid reimbursement or bonification of thirty centavos, they have acquiesced in a substituted agreement, and have relieved it from constructing the lines up to the point agreed upon on each of the said plantations of San Antonio and Santa Angela. And the plaintiffs contend that the acceptance of said reimbursement does not constitute a novation of the planter's contract, Exhibit 3, with respect to clause 5 thereof, which establishes the Central's obligation to extend its railroad lines into said adjoining plantations.

"A material compliance tacitly accepted produces the effects of a specific compliance:

"In Corpus Juris it is said:

"S. 606-2. Mutual Assent. * * * The fact of agreement may be implied from a course of conduct in accordance with its existence. So assent may be implied from acts of one party in accordance with the terms of a change proposed by the other; - - -

"NOTE.—10. * * * (a) Illustrations.—(1) Wherein an action for milk sold and delivered, defendant counter-claimed for damages sustained by reason of plaintiff's failure to deliver at the place agreed, and it appeared that defendant received the milk at a substituted locality for five months without objection and renewed his contract for another year without dissent as to the place of delivery, it was held that defendant's course constituted an implied assent to a modification of the agreement. (Gibson vs. Donnelly, 13 NYS, 808.)'

"And in Sing Juco vs. Guaycong, our Supreme Court lays down the following doctrine:

" 'Damages for Breach of Contract; Acceptance of Tender; Waiver of Further Claim.—In an action for damages for breach of contract, the unconditional acceptance by the plaintiff of an amount tendered by the defendants in satisfaction of the claim constitutes a waiver of further claims under the contract.'

"The foregoing citations serve to establish these two conclusions:

"(a) That if a substantial compliance amounts to a specific compliance of an obligation in the case before us, its effects would be, at least to weaken the plaintiffs' action;

"(b) That if, a damage suit having been filed, the unconditional acceptance by the plaintiff of a sum of money offered by the defendants in payment of the claim constitutes a waiver of further claims, said reimbursement offered by the Central, which is in fact an indemnity for the expenses which the planters would not have incurred if they had the railroad, unconditionally accepted by the plaintiffs, who availed themselves of it, constitutes the tacitly agreed measure, and nothing else, of the Central's responsibility.

"The present case further offers another legal consideration. It is common knowledge that the harvest season of sugar cane in this province in general, and in the zone of the Bacolod-Murcia Central, is the dry season. The aforesaid reimbursement tendered by the Company to planters without the railroad, evidently compensated for the expenses of the latter, or at least for those of the plaintiffs, since they have been transporting their cane upon this basis of reimbursement from the season of 1920-1921 to that of 1927-1928. But it happened that the weather during the season of 1924-1925, was excessively rainy, and rendered the cutting and carting of the sugar cane more difficult, causing losses on the plantations with or without railroad, due to crops which could not be harvested. It is a case force majeure or a fortuitous event, for which no one is responsible, unless the law or the obligation expressly so declares, as prescribed by article 1105 of the Civil Code.

"Damages caused by a heavy "rain came up for the consideration of the court in Yap King Chuan vs. Tiaoqui, and the Supreme Court absolved the defendant saying: "

"No one, neither the defendant nor the plaintiffs, could have foreseen that on the said afternoon of April 14 it

was going to rain in torrents and in an extraordinary manner, wherefore it is neither right nor proper to ascribe the wetting of the merchandise of the plaintiff-tenants to negligence, carelessness, or fault on the defendant's part. It was a case of accident and force majeure which could not have been foreseen and which nobody could have prevented, and the fact that the defendant repaired and fixed the leaks in the roof the next day cannot be taken as proof of his liability, for he did not know and could not have foreseen that it was going to rain in torrents the said afternoon and that the roof of the building would leak and show defects.

"With respect to the claim of Antonio Jayme y Ledesma in cause 4572, it may be said, in addition to the legal considerations just stated, that the San Antonio and Santa Angela plantations have always been leased, from the season of 1920-1921 to that of 1927-1928, to Antonio G. Jayme, so that they have not been vacant for want of railroads.

"With regard to the Company's cross-complaint praying for the rescission of the planter's contract, Exhibit 3, with respect to the Santa Angela plantation, on the ground that Antonio Jayme, sr., never planted at least one-half of it to sugar cane as stipulated, it is held that the defense that the Company in turn did not specifically perform its obligation to construct a railroad to said plantation, is well founded. (Article 1100, last paragraph, Civil Code.)

"CAUSE NO. 4458

"The evidence adduced by the Bank in this case consists of Exhibit A, which is a loan upon sugarcane crops, in the amount of P16,000, executed in its favor on May 28, 1925, by Antonio G. Jayme and Timoteo C. Manalo, who formed a partnership called Jayme & Manalo; Exhibit D, which is a statement of the current account of Jayme & Manalo up to July 13, 1928, with a debit balance of P3,231.45, for capital (P2,048.41) and unpaid interest (P1,183.04); Exhibit C which is another loan upon sugarcane crops in the amount of ^8,000, executed on May 19, 1924, by the said Antonio G. Jayme and Timoteo C. Manalo; Exhibits D and D-6 and E, being promissory notes payable on demand, executed in the months of June to December, 1925, by Jayme & Manalo in favor of the Bank, which practically cover the sum claimed, where interest was stipulated at nine per cent per annum, plus ten per centum for attorney's fees; and from the testimony of S. G. Miranda, chief of the department of loans and discounts of the Bank, that the defendants have not paid their debit balance.

"Against this evidence, the defendants introduced no evidence but agreed with the plaintiff that the proofs adduced by both parties in the first case No. 4357, shall be here reproduced.

"CAUSE NO. 4547

"In support of its contentions, the Bank introduced the following evidence in this case:

"Exhibit A, which is a loan upon crops in the amount of P48,000 with interest at nine per cent per annum, executed on May 27, 1925, in favor of the Bank by Antonio G. Jayme; Exhibit B, which is a statement of the current account of said Antonio G. Jayme up to April 15, 1928, showing a debit balance in favor of the Bank of P62,332.83, for capital (P42,571.97) and unpaid interest (P19,760.86) ; Exhibits C to C-6, and D to D-11, all notes past due, executed by Antonio G. Jayme in the years 1924 and 1925 in favor of the Bank, where, besides interest, the payment of ten per centum for attorney's fees was stipulated, with the exception of Exhibits D-10 and D-11, where the attorney's fees are set at twenty per centum, said promissory notes covering the capital of the loan in litigation; and the testimony of S. G. Miranda, to the effect that Antonio G. Jayme has not paid the sum claimed herein.

"The defendant presented no evidence, but both parties agreed to admit, as reproduced in this case, the evidence taken in case No. 4357, and besides the question has been raised whether the claim made in this cause should have been set up as a counterclaim in cause No. 4357.

"These five cases having been instituted one after another, and heard together, as stated above, if the mutual claims of both parties prosper, they can be compensated, therefore, the question of procedure thus raised would

be in the instant case, a technicality, excused by the circumstance that the causes of action of one party against the other, and vice versa are all exercised and submitted for decision at one and the same time.

"CAUSE NO. 4573

"In support of its complaint, the Bank has introduced evidence, to wit:

"For the first cause of action

"Exhibit A, which is a deed of assignment of lots Nos. 844, 936, 1047, 1321, and 1601 of the cadaster of Bacolod, and Nos. 172, 221, 232, 554, and 779 of the cadaster of Murcia, both of this Province of Occidental Negros, executed on November 19, 1923, by Antonio Jayme Ledesma and Genoveva Gamboa in favor of Antonio G. Jayme, the latter assuming- the assignors' debt to the Bank, secured by the aforesaid lots; Exhibit B, which is a personal guaranty executed by Antonio Jayme, sr., on November 7, 1923, in favor of the Bank, answering solidarily to the amount of P126,000 with interest at eight per cent per annum, for any sum that may be loaned to Antonio G. Jayme, which guaranty, according to the allegations of paragraph 8 of this first cause of action, admitted by the defendant in the agreed statement of facts appearing in the record, was demanded by the Bank before consenting to and accepting the subrogation of Antonio G. Jayme in place of his parents Antonio Jayme y Ledesma and Genoveva Gamboa, with respect to their obligations mentioned in the former document Exhibit A; Exhibits C and D, being promissory notes signed by Antonio G. Jayme in favor of the Bank on December 19, 1923, for the amounts of P106,292.36, respectively, with interest at eight per cent per annum, payable on demand, with a further stipulation of ten per centum as attorney's fees; Exhibit E, a mortgage deed, duly recorded in the registry of deeds of this province, affecting the aforementioned lots, executed by Antonio G. Jayme on November 26, 1923, in favor of the Bank, to secure a loan of P126,000, plus eight per cent annual interest; Exhibit F, a statement of the capital (P112,554.22) and interests (P40,169.42) owed by Antonio G- Jayme, leaving a balance in favor of the Bank of P152,723.64; and the testimony of Amado F. Cortez, an employee of the Bank, to the effect that Antonio G. Jayme has not paid his said debit balance.

"For the second cause of action

"Exhibits C, H, and I, being mortgage deeds of sugarcane crops, executed by Antonio G. Jayme in favor of the Bank on April 17, May 26, and June, 1926; Exhibit J, an additional mortgage deed upon sugarcane crops executed by the same Antonio G. Jayme on January 19, 1927, in favor of the Bank; Exhibit K, a statement of Antonio G. Jayme's current account, or his loans upon crops, which show a balance in favor of the Bank of P6,646.53, for capital (P3,825.91) and interest (P2,820.62); Exhibits L to L-11, being all promissory notes executed by Antonio G. Jayme in favor of the Bank, stipulating interest at nine per cent per annum, plus ten per centum for attorney's fees, the amount of which notes cover the capital owed; Exhibit M, which is a special power of attorney executed by Antonio Jayme y Ledesma and Genoveva Gamboa on October 16, 1926, in favor of Antonio G. Jayme, authorizing him to mortgage in favor of the Bank, among other properties, lot 192 of the cadaster of Bacolod, Occidental Negros; Exhibit M-l, a mortgage deed duly recorded in the registry of deeds of this province, of lot 192 of the cadaster of Bacolod, Occidental Negros, ..executed by Antonio G. Jayme, by virtue of the special power of attorney, Exhibit M, on January 11, 1926, to secure a loan upon crops granted to him by the Bank; and the testimony of S. G. Miranda, an employee of the Bank, to the effect that said balance has not yet been paid by Antonio G. Jayme.

"For the third cause of action

"Exhibit N, a mortgage deed of sugarcane crops executed by Antonio G. Jayme on April 1, 1927, in favor of the . Bank; Exhibit O, a statement of Antonio G. Jayme's current account closed on April 15, 1928, showing a balance in favor of the Bank of P691.83, for unpaid interest; Exhibit P, a personal solidary bond executed by Antonio Jayme y Ledesma in favor of the Bank, to secure a loan up to the sum of P14,848, at nine per cent interest per annum, given to Antonio G. Jayme; and the testimony of S. G. Miranda to the effect that Antonio

G. Jayme owes the Bank the said sum of P691.83.

"As has been said, the Asia Banking Corporation is only made defendant because it holds an interest subordinate to that of the Philippine National Bank in the lots mentioned in the first cause of action.

"Considering the amount of the Bank's claim in each of the cases Nos. 4547 and 4573, the ten per centum prayed for as attorney's fees would be excessive, for which reason it must be reduced to one thousand (P1,000) and two thousand (P2,000) pesos, respectively.

"By virtue whereof, judgment is hereby rendered,

"(a) IN CAUSES NOS. 4357 AND 4572, dismissing the mutual complaints of both parties, without special pronouncement of costs;

"(6) IN CAUSE NO. 4458, sentencing defendants Antonio G. Jayme and Timoteo C. Manalo to pay the Philippine National Bank the sum of three thousand two hundred and thirty one and 45/100 pesos (P3,231.45), with interest at nine per cent per annum on the amount of two thousand and forty eight and 41/100 pesos (P2,048.41) from July 14, 1928, until fully paid, plus ten per centum of the last-named amount as attorney's fees, and costs;

"(c) IN CAUSE NO. 4547, sentencing defendant Antonio G. Jayme to pay the Philippine National Bank the sum of sixty-two thousand three hundred and thirty-two and 83/100 pesos (P62,332.83), interest at nine per cent per annum on the amount of forty-two thousand five hundred and seventy-one and 97/100 pesos (P42,571.97) from April 16, 1928, until fully paid, and the sum of one thousand pesos (P1,000) as attorney's fees, and the costs; and

"(d) IN CAUSE NO. 4573, sentencing—

"1. In the first cause of action, the defendants Antonio G. Jayme and Antonio Jayme Ledesma to pay to the Philippine National Bank jointly and severally, the sum of one hundred and fifty-two thousand seven hundred and twenty-three and 64/100 pesos (P152,723.64), interest at eight per cent per annum on the amount of one hundred twelve thousand and five hundred and fifty-four and 22/100 pesos (P112,554.22) from April 16, 1928, until fully paid, and the sum of one thousand eight hundred pesos (P1,800), for attorney's fees, and ordering said defendant to deposit with the clerk of this court the aforesaid sum within three months from this date; otherwise the court will order the sale of the said lots Nos. 844, 936, 1047, 1321, and 1601 of the cadaster of Bacolod, and Nos. 172, 221, 232, 554, and 779 of the cadaster of Murcia, both of this Province of Occidental Negros, to apply the proceeds thereof to the payment of said sums:

"2. In the second cause of action, the defendant Antonio G. Jayme to pay the Philippine National Bank the sum of six thousand six hundred and forty-six and 53/100 pesos (P6,646.53), interest at nine per cent per annum on the amount of three thousand eight hundred and twenty-five and 91/100 pesos (P3,825.91) from April 16, 1928, until fully paid, and the sum of two hundred pesos (P200) for attorney's fees, and ordering said defendant to deposit said sum with the clerk of this court within three months; otherwise, the mortgaged lot, No. 192 of the cadaster of Bacolod, Occidental Negros, shall be ordered sold, to apply the proceeds of its sale to the payment of said amounts; and

"(3) For the third cause of action, defendants Antonio G. Jayme and Antonio Jayme y Ledesma to pay to the National Bank jointly and severally the sum of P691.88 and the costs of this trial."

The documentary evidence has not been forwarded to this court, and we can therefore only review the questions of law involved. Basing our conclusions on the findings of fact made by the court below and on the undisputed facts appearing in the record, we can find no error in the appealed decision.

The appellants claims for damages in cases Nos. 4367 and 4572 are entirely without merit. The Milling Company

was organized with very little capital and was dependent on loans for its operations. Being unable to obtain the necessary funds, it failed to completely fulfill its obligations under paragraph 5 of its agreement with the planters. But subsequently, its board of directors passed a resolution allowing the planters who suffered from insufficient railroad facilities, a compensation of 30 centavos per kilometer for each ton of sugar cane hauled from the fields to the nearest loading station of the existing railroad. The plaintiff Antonio Jayme Ledesma, who was one of the organizers of the Milling Company and also one of its directors, was present when the resolution was proposed, and he voted in favor of its adoption. By virtue of this resolution, both he and his son Antonio G. Jayme received and accepted the compensation allowed. That, in itself, must be regarded as a waiver of damages for the non-fulfillment of the stipulations for the extension of the railroads. The appellants cannot eat their cake and have it, too. The underlying principle is much the same as that in *Ker & Co. vs. De la Rama* (11 Phil., 453).

The defendant Bank was not a party to the planters' contract and was under no obligation to furnish the Milling Company unlimited funds. Obviously, it has nothing to do with the appellants' claims. The appellants' assignments of error in cases Nos. 4547 and 4573 are so entirely without foundation as to merit no discussion.

The appealed decision is affirmed in toto with the costs against the appellants.

So ordered.

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

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