

LA SOCIEDAD DALISAY, PLAINTIFF AND APPELLANT, VS. JANUARIO DE LOS REYES, DEFENDANT AND APPELLEE.*G.R. No. 32465. December 20, 1930*

Ponente: ROMUALDEZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-32465/>**ROMUALDEZ, J.:**

On October 3, 1924, Ramon Bartolazo brought an action against the "Sociedad Dalisay" in the Court of First Instance of Laguna (civil case No. 4179, G. R. No. 32466) for the return of 1,158 cavanese of palay and 27 cavanese of rice or the value thereof, amounting to P6,073.50, plus P1,500 as damages, and the costs. The defendant answered with a general denial, a special defense, and a counterclaim, praying that it be absolved from the complaint, and that the plaintiff be sentenced to pay it P2,000 as damages and any other sum which the court might deem just, and the costs. The plaintiff answered the counterclaim denying the facts alleged therein. Later on, said plaintiff amended clause (e) of paragraph II, and the first paragraph of the prayer of his complaint.

On February 18, 1926, the "Dalisay" brought an action against Januario de los Reyes in the same court (civil case No. 4583, G. R. No. 32465) for the return of the goods listed in Exhibit A, attached to the complaint, or, in default thereof, for the payment of their cash value, plus P4,000 as damages, and the costs. The defendant, admitting certain paragraphs of the complaint and denying others, set up special defenses and counterclaim upon two grounds, praying that the delivery to the owners of 568 cavanese of palay, the sale of 882 cavanese of the grain for the net amount of P2,238.98, and the delivery of certain items of Exhibit A to Jacinto Francisco, the defendant's successor be declared justified. He also asked that he be allowed to recover of the plaintiff the total amount of P2,811.50 mentioned in his counterclaim and to apply thereto the amount of P2,238.98 which he had in his possession, and that the plaintiff be sentenced to pay him the balance of P572.52, with legal interest. Finding that there were parties in interest not included in the case, the court ordered that they be summoned, and Matilde Laudato, Paula Carballo, Paz C. de Arambulo, Ricardo Perlas and Mariano Perlas, and Pablo Perlas, appeared and answered, indicating their willingness to accept whatever the plaintiff might decide to give them with respect to the value of the palay belonging to each one of them and saved from the fire which gave rise to the controversy. The municipality of Santa Rosa, Laguna, through the provincial fiscal, appeared and alleged that, without prejudice to any right which it might have against the plaintiff for the burning of the intermediate school building of the municipality, it was agreeable to receive its proportionate share of the palay saved from the fire.

In this latter case, Domingo Zavalla filed a third-party claim against the plaintiff entity and the defendant Januario de los Reyes, praying that the "Dalisay" be ordered to deliver to him the palay belonging to him according to the books of said entity, or, in lieu thereof, its value at P5 per cavan, with legal interest and that Januario de los Reyes be ordered to render an account of the palay sold, and to deliver to him the balance according to the account to be rendered.

The "Dalisay" answered this claim with a general denial and a special defense, and asked that it be denied.

Later, Ramon Bartolazo, Alfonsa Casapang, Teodora Nevalga, Segundo Papagayo, Segunda Ligaya, and Miguel

Lim Ako, appeared as parties with Januario de los Reyes, claiming their palay or its value from the plaintiff.

According to the bill of exceptions (p. 34), when case No. 4582 was again called for trial, the parties agreed, with the approval of the court, that civil case No. 4179 be considered a third-party claim, and that all the pleadings therein be deemed presented.

On August 21, 1929, the trial court decided both cases, the dispositive part of the decision reading as follows:

"Wherefore, the court hereby adjudges as follows:

"1. Sentencing the 'Sociedad Dalisay' to deliver to the above-mentioned depositors, except to those who have waived their claim, their proportionate share of the palay which was stored in the warehouse at the time of the fire; that is, 3,572 cavanese, or, in lieu thereof, the value of same at P5 per cavan.

"2. Ordering Januario de los Reyes to pay to the Dalisay the amount of P2,238.98 the net proceeds of the 882 cavanese of palay saved, after deducting therefrom his proportionate share of the 3,572 cavanese mentioned above.

"3. Finding that Januario de los Reyes is not entitled to the 170 cavanese of palay which he claims to have saved; and

"4. Approving the return of the 568 cavanese of palay placed in sacks identified by the several owners which were outside the warehouse and saved from the fire.

"Without express pronouncement of costs." (Pages 49 and 50, Bill of Exceptions.)

From this judgment the partnership "Dalisay" appealed, making the following assignments of error:

"1. The trial court erred in finding that at the time of the fire, there were only 3,085 cavanese of palay in the warehouse, that is, 1,017. cavanese less than the amount that should have been there at the time.

"2. The lower court erred in admitting Exhibit 18, the report of the clerk of the office of the engineer of the Province of Laguna.

"3. The lower court erred in holding that the manager of the appellant company made no attempt to save the palay in its warehouse.

"4. The lower court erred in holding that had the company's manager attempted to save the palay in time, not more than ten per cent would have been destroyed.

"5. The lower court erred in sentencing the company to deliver to the several owners of the palay damaged by the fire the amount they had in the warehouse, after deducting ten per cent as loss, or, in lieu thereof, its value at P5 per cavan, except to those who had waived their right.

"6. The lower court erred in holding that the appellees and intervenors were not estopped to claim all of their palay in the company's warehouse at the time of the fire.

"7. The lower court erred in ordering that from the value of the palay saved and scorched, amounting to P2,238.98, which Januario de los Reyes was sentenced to return to the company, there must be deducted his proportionate share of the 3,572 cavanese of palay for which the company was held responsible.

"8. The lower court erred in failing to sentence the appellee Ramon Bartolazo to pay the company P6,000 as damages suffered on account of the preliminary attachment issued by the court at his instance against the company's property.

"9. The lower court erred in denying the motion for a new trial filed by the company in both cases."

The evidence shows the following facts:

That the entity known as "Dalisay" is an industrial partnership legally existing, located in the municipality of Santa Rosa, Laguna, P. I. that prior to May 20, 1923, said partnership received in its warehouse located at the place mentioned/ certain lots of palay belonging to several persons; that early in the morning of that day, May 20, 1923, a fire broke out in said warehouse which at that time contained thousands of cavanos of palay, the number being disputed, and 568 cavanos outside; that cavanos of palay stored in the warehouse were saved, and that the 568 cavanos of palay outside of the warehouse were all saved. The lower court failed to find that the fire was intentional, or was caused by the negligence of the officials of the plaintiff company, and from these findings no appeal proper in form has been taken, for which reason, they must be accepted as indisputable.

Of the 1,052 cavanos saved from the warehouse, 170 were distributed by way of remuneration among those who helped to save them. The remaining 882 cavanos of palay were hulled and sold, yielding the net sum of P2,238.98.

The appellant contends that there were 4,620 cavanos of palay inside the warehouse at the time of the fire. The appellees allege in their brief that there should have been 4,620 cavanos in the warehouse at the time of the fire, but that, as a matter of fact, there were only 2,284 cavanos of palay.

The trial court found that there were only 3,035 cavanos of palay at the time, and this finding is assailed in the first assignment of error, which shall be considered together with the second.

In order to arrive at such a conclusion, the trial court took into account the ocular inspection and certain testimonies. It should be remembered that such ocular inspection was made over four years after the fire occurred by Judge Recto, who is not the judge who decided this case, but Judge Jugo. The judge should have based the finding of 3,035 cavanos upon the report, Exhibit 13, wherein the exact number is given; but it happens that said report, objected to, and admitted with due exception, is neither competent nor admissible, evidence, for neither is it a deposition taken in accordance with the law, nor has the appellant been given an opportunity to cross-examine the person making it. The parol evidence on the point is insufficient. At any rate, in considering this matter, due credit should be given" to the testimony of Valeriano Tatlonghari, subpoenaed by Judge Recto on the occasion of the ocular inspection, and according to which, the warehouse was divided into three compartments which contained palay at the time of the fire, designated in said inspection under No. 6, and which were not taken into account either by the clerk Pabello in his report Exhibit 13, or by the judge in his decision.

The first two assignments of error are well taken. ,

As to the third, we have examined the record and find with preponderance of evidence that the manager of the appellant company attempted to save the palay in the warehouse. Witnesses Jose Zavalla and "Hipolito Alibudbud have so declared, besides the manager, Perlas, himself, whom the court did not believe on account of finding various contradictions in his testimony touching certain remarks made by a woman called Honoris-Zerrate, who advised him not to remove the palay during the fire in order to avoid a greater loss by fire. Aside from the fact that such contradictions have, to our mind, been sufficiently explained by the witness Perlas, even supposing them to exist, they cannot have the effect of discrediting said witness in all respects, including his testimony with regard to his efforts to save the palay. Nor can such contradictions, if present, destroy the credibility of the other witnesses, such as Zavalla and Alibudbud.

The evidence leads us to believe that the third assignment of error is well taken.

With regard to the fourth and fifth assignments of error Which are a consequence of the third and which we also deem well founded,, suffice it to say that inasmuch as the fire, according to the judgment appealed from, was neither intentional nor due to negligence of the appellant company or its officials; and it appearing from the

evidence that the then manager of said company promptly ran to the fire and attempted to save the palay, said fourth and fifth assignments of error should also be deemed established.

The sixth assignment of error has no merit. The resolution No. 1, Exhibit D, does not constitute estoppel to the claim set up in these cases by the appellees and intervenors, for it is different from that provided in section 333, No. 1, of the Code of Civil Procedure.

The seventh assignment of error refers to the deduction to be made from the amount which Januario de los Reyes was, by the judgment appealed from, ordered to return to the partnership. There is not sufficient reason to order said deduction, it appearing that all the palay deposited in said warehouse, according to the receipts, was there at the time of the fire, and all that grain was burned except the portion saved, and it further appearing, in our opinion, that there was no negligence on the part of the manager, Perlas, in saving the palay.

There is no merit in the eighth assignment of error for the evidence does not sufficiently show the damages alleged by the appellant company as a consequence of the preliminary attachment of its property.

The ninth assignment of error is a consequence of the preceding ones.

Although the appellees did not take an appeal, they have assigned errors to the judgment appealed from, which are not substantiated by the evidence.

It is contended that the appellant has not alleged that the palay burned was destroyed without negligence on its part. The fact is, the appellant in its special defense alleged that the palay was burned. There was no need to make such an allegation for the presumption is that every person is deemed innocent of crime or wrong, and that he takes ordinary care of his own concerns. (Nos. 1 and 4, section 334, Code of Civil Procedure.)

As to the trial court not having found the fire in question to be intentional, or the result of negligence on the appellant's part, the evidence supports the said court's finding, in that it does not show sufficiently that the fire was intentional or was due to negligence on the part of the "Dalisay" partnership, or of the manager Perlas.

The lower court acted correctly in not adjudicating said 170 cavanese of palay to Januario de los Reyes; and the only reason which would justify said adjudication would be a statement to that effect from Ricardo Perlas, which he could not make, because said palay belonged neither to him nor to the company.

Wherefore, the judgment appealed from is modified absolving the appellant company from distributing or returning to the appellees any quantity of palay, or the value thereof, except that saved from the fire, amounting to P2,238.98, which sum is to be distributed by said company among the depositors mentioned in the dispositive part of the judgment, in proportion to the amount of palay which each of them had in the warehouse at the time of the fire; and this distribution shall be made as soon as Januario de los Reyes delivers to said appellant partnership, without any deduction, the aforesaid sum of P2,238.98, comprising the net proceeds of the palay saved. In all other respects the judgment appealed from is affirmed without express pronouncement of costs. So ordered.

Avanceña, C. J., Johnson, Malcolm, Villamor and Villa-Real, JJ., concur.

DISSENTING

OSTRAND and JOHNS, JJ.:

We dissent. In our opinion the appealed judgment should have been affirmed.

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