

DOMINGO LIM, PLAINTIFF AND APPELLEE, VS. JOSE LIM, DEFENDANT AND APPELLANT.*G.R. No. 3612. March 27, 1908*

Ponente: ARELLANO, C.J.

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On the 23d of October, 1905, an amended complaint based on two causes of action was presented, alleging (1) that during the time the plaintiff leased the hacienda "Soledad" from the defendant, namely, the period of cultivation from 1904 to 1905, he had planted sugar cane to the extent of 45 lacsas, 20 of new planting and 25 of old, which, being ready to be harvested, was sold by the defendant to Telesforo Garcia, the plaintiff thereby losing one-half of the crop that should have appertained to him, which one-half would have yielded him at the time P3,000; and that during the period of cultivation from 1903 to 1904, he paid for account of the defendant, for repairs made to the mill machinery and warehouse, P487; and (2) that when acting as general agent for the defendant in 1903, he paid to a lawyer for account of the latter, P100.

The defendant, in answer to the complaint, denied each and all of the allegations, and in his turn demanded, as a counterclaim, the sum of P669.97, balance of an account due by the plaintiff to the defendant, as the result of money borrowed by the former from the Chinaman Yap Tico, amounting to P1,989.08, of which he had only paid P1,319.11, leaving a debit balance of P669.97, which the defendant paid Yap Tico for account of the plaintiff.

Oral testimony having been offered by both parties, the Court of First Instance of Iloilo, before whom the litigation was brought, decided the cause in favor of the plaintiff, allowing him to recover from the defendant the sum of P1,434.10 and the costs of the proceeding.

The defendant duly excepted to the above decision and moved for a new trial on the ground that the evidence did not justify the decision of the court; this motion was overruled and excepted to by the defendant who, in consequence thereof, has submitted to this court his bill of exceptions. On appeal the following errors are assigned:

- That the court erred when admitting the evidence of witnesses with regard to the contract of rental on shares, alleged in the complaint as having been made between the plaintiff and the defendant for the term of two years.
- That the court also erred when declaring that the existence of said contract had been proven, even though the testimony offered for such purpose were considered admissible.
- That the court likewise erred in acknowledging the validity of the verbal contract, which was held to have existed between the parties in this matter, compelling the defendant to fulfill what was said to have been stipulated by virtue of the same.
- That, lastly, the court erred in adjudging that the plaintiff recover from the defendants the appellant herein, the sum of P1,434.10 and the costs of the proceedings.

With regard to the first error, the appellant cites section 335 of the Code of Civil Procedure under which a contract for the lease of real estate for a period longer than one year must be proven by means of written evidence.

It is true that in paragraphs 3 and 4 of the complaint the existence of a contract of rental on shares for the hacienda "Soledad" for the term of two years is set forth; but the complaint does not refer to said contract of lease, nor is any action arising from the contract of lease, relative to rights or obligations arising therefrom, brought therein.

Said contract is cited in the complaint as a basis for the action brought. The act on which the complaint is based is that the defendant dispossessed the plaintiff of the sugar cane that he had sown in the field and, consequently, of one-half of the profit which he might have obtained if he had harvested the same and converted it into sugar; the action brought is, therefore, an action for damages, arising purely and simply from said fact. Therefore, section 335 of the Code of Civil Procedure is not applicable herein, and no error whatever has been committed in this respect. Paragraphs 3 and 4 of the complaint may, and should be, ignored as if the same had not been alleged, because, for the action that has been commenced, facts 5 and 6 thereof are sufficient, as they are strictly fundamental. For a similar reason the allegation and conclusion upon which the second alleged error rests are ignored.

As to the third error, it must be taken into account that the action brought is for damages, not for violation of a contract, but for the reason that the plaintiff was dispossessed of a planting from which he expected to obtain a crop and a profit, and because he was prevented from obtaining either.

The relevant conclusions with regard to which the fourth error should be examined are (1) that the defendant dispossessed the plaintiff of a pending crop of cane; (2) that from said planting the plaintiff expected to obtain a crop of 1,000 piculs of sugar; (3) that the profit which he could have obtained from the said 1,000 piculs was P1.50 per picul, one-half of the total obtainable, his share being therefore P1,500; (4) that besides this, he paid for account of the defendant, for the repairs stated in the complaint, P487; (5) that he further incurred an expenditure amounting to P123.82 for the transportation of sugar, of which the defendant should refund him P61.94, making together with the former amount the sum of P548.91; (6) that the latter sum, added to the P1,500, gives a total of P2,048.91, and that deducting therefrom P669.97, the amount of the defendant's counterclaim as allowed by the court, there remains a balance of P1,378.94 which, with interest since the 3d of July, 1905, the date of the complaint, make a grand total of P1,434.10.

The above conclusions are disputed by the appellant, and the appellee opposes his contention by alleging that the former has no right to ask for a review of the facts, for the reason that the motion for a new trial was, only made in accordance with section 145 of the Code of Civil Procedure, under which there can be no review of facts.

We consider that the claim on the part of the appellee has no foundation in law, inasmuch as Act No. 159G authorizes a review of the facts upon a motion for a new trial on the ground upon which it has been made.

But, at all events, the court below has reached the conclusions set forth, supported by a preponderance of evidence which it has considered to be in favor of the plaintiff, and this court finds nothing in such review of the case that constitutes an actual error of law or of fact.

Therefore, the judgment appealed from being wholly in accordance with the law, the same is hereby affirmed with the costs of this instance against, the appellant. So ordered.

Torres, Johnson, Willard, and Tracey, JJ., concur.

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