

MARIA BARRETTO, ADMINISTRATRIX OF THE ESTATE OF MARCELO DOMINGUEZ, DECEASED, PLAINTIFF AND APPELLEE, VS. LEONA REYES, DEFENDANT AND APPELLANT,

G.R. No. 4300. March 21, 1908

Ponente: TRACEY, J.

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TRACEY, J.:

On June 30, 1898, the defendant and Marcelo Dominguez, the plaintiff's intestate, executed an agreement containing the following clauses:

"I, Doña Leona Reyes, widow of Don Teodoro Durante, do hereby acknowledge that I have on this date received from Don Marcelo Dominguez, a Peninsular Spaniard, married, and a resident of this town, the amount of 7,556 cavanese of palay, as a deposit without interest, which palay, clean and of good weight, I promise to deliver at the store of Sr. Dominguez on or before the 15th of June of the next year, 1899.

"In case that on the aforesaid date I am not able to deliver the whole number of cavanese as above stated, I promise to liquidate any undelivered balance and reduce the same to money, at the highest price for which the product may be sold in Nueva Caceres, and the resulting amount I likewise agree to pay for in palay, clean and of good weight, at his store on the 15th of June of the following year, 1900, at the rate of 30 provincial gantas for each peso."

The testimony established these additional facts:

That the defendant had in reality received from Dominguez not palay but money, estimated according to a standard not shown, as the equivalent of the palay mentioned, the result of a settlement of previous transactions between them; that during the absence of Dominguez from the province, he left his affairs in charge of an agent, whose powers included the carrying out of this contract; that the defendant made delivery on account, amounting to 253½ cavanese, leaving a balance of 7,302½ cavanese undelivered, and on May 14, 1903, the defendant offered in writing to settle at 2 pesos a cavan.

We also take judicial notice of the fact that a cavan contains 25 gantas.

This peculiar contract, locally known as *bulbulauen*, presents difficulties of construction but is not necessarily unconscionable, although its event is at the risk of the market. There is, in fact, no deposit and such is not the true nature of the transaction. The distant capitalist contributes his money with which the local merchant is to buy a stock of palay, having the entire season ahead in which to take advantage of the fluctuations in the market and the necessities of the local growers before the amount due in palay is delivered or its value is liquidated, with an additional season in which to make himself good in the amount ascertained by the liquidation. The fixing of the ultimate price of 1 peso for 30 gantas, equivalent to 1 1/5 cavanese, obviously secures the party advancing the money against a fall in price during the second year, while not depriving the dealer of the opportunity to buy at the cheapest rate in the interval.

In this instance it seems that about the date of the contract the price of palay was under 1 peso, but owing to rinderpest among the working cattle and to the insurrection, quotations steadily rose, at times reaching from 5 to 6 pesos a cavan. The trial judge assessed the damages at the market price on the date of his decision, giving a judgment for the return of 7,302 ½ cavanese or the recovery of its value at the rate of 3 pesos a cavan. We are of the opinion that he should rather have followed the method of ascertaining damages provided in the contract itself, which involved no illegality and no oppressive penalty.

There was much conflicting testimony as to the value of the grain at different periods, and especially in the year 1900, owing to the disordered condition of the country. The date of liquidation was set as June 15, 1899, and the price in that year has been variously estimated by different witnesses at P1.25, P1.31, and upward, but we think, in view of all the testimony, a fair maximum figure for that date is P1.50, which would liquidate the undelivered balance of 7,302 ½ cavanese at P10,953.75. This is the true measure of damages, as is seen from following out the process of the contract, the next step according to which is to ascertain the equivalent of this sum in cavanese of palay, at the rate of 30 gantas, that is to say, at the rate of P0.83 1/3 for each cavan, resulting in 13,144 cavanese. This is the quantity of palay to the delivery of which the plaintiff, under the contract, is entitled, and the amount of money to which, in default of such delivery, she has a right to be paid is its value at that time at the contract rate of P0.83 1/3, to wit, P10,953.75, with interest. In other words, the effect of the contract is to fix the damages by the price at the date of liquidation, although finally payable one year thereafter.

Our judgment, therefore, is that the plaintiff recover from the defendant 13,144 cavanese of palay, or in lieu thereof, at the option of the defendant, P10,953.75, with interest thereon at the rate of 6 per cent per annum from the 15th of June, 1900, without costs of this instance, and the judgment of the Court of First Instance is modified accordingly. So ordered.

Arellano, C. J., Torres, Mapa, and Johnson, JJ., concur.

Carson, J., reserves his vote.

DISSENTING

WILLARD, J.,:

I think that judgment should be entered in favor of the plaintiff for the market value on June 13, 1900, of 7,302,½ cavanese of rice (palay), with interest thereon at 6 per cent per annum from the time demand for payment was first made in 1903.

The court below disregarded the terms of the contract providing for a reduction on June 13, 1899, to money of the amount of rice not then delivered, at its then highest market price, and the subsequent second reduction of this amount of money to rice at the rate of 30 gantas for each peso. Had the contract been properly construed, the plaintiff would, in my opinion, have been entitled to a larger recovery. But inasmuch as he has not appealed, he can not insist upon a revision of this error.

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