

JOSUE SONCUYA, PLAINTIFF AND APPELLANT, VS. JUAN AZARRAGA ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 43579. June 14, 1938*

Ponente: DIAZ, J.

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This case is now before us on appeal from the Court of First Instance of Capiiz. After trial, the plaintiff filed a second amended complaint, which the lower court at first refused to consider, but later on admitted after it was convinced that the allowance thereof was proper in order to make the allegations conform to the established facts. This was done without the defendants interposing any exception, notwithstanding that they had previously opposed the admission of the amendment. They did not afterwards and do not now, in their brief on appeal, question the aforesaid amendment.

It appears from the allegations of the complaint thus amended that the plaintiff has four causes of action. Under the first cause he seeks to recover from the defendants the sum of P118,635.68 as damages, which he alleges to have been caused by the defendants in fraudulently depriving him of the possession of four parcels of land with a total area of 296 hectares, 58 ares and 92 centares, which they, with knowledge that said real properties belonged to him exclusively, registered in their names in the registry of property and mortgaged in favor of "Hijos de I. de la Rama" to pay a certain obligation which they had contracted with the Panay Municipal Cadastre. Under the second cause, plaintiff seeks to recover P6,080 as the supposed value of the heads of cattle belonging to him, which the tenants of the defendants had slaughtered? Under the third cause, he seeks payment of the sum of P5,575 as the supposed value of 1,115 coconut trees which he had planted on the four parcels of land in question. Under the fourth and last cause of action, plaintiff prays that the defendants surnamed Azarraga, with the exception of Joaquin Azarraga, be ordered to make up to 123 hectares, 13 ares and 99 centares the land which the latter had sold to him, because plaintiff did not take possession of the land, except a portion thereof, having, an area of 72 hectares, 83 ares and 5 centares. In other words, the defendants should deliver to the plaintiff an additional 50 hectares, 30 ares and 94 centares inasmuch as the participation of said Joaquin Azarraga in the estate left to him and his brothers, his co-defendants herein, by their common grandfather, Juan Azarraga y Galvez, which Joaquin Azarraga sold to plaintiff, had that area according to the deed of partition, executed by all of them, and the plan of said estate which was subsequently drawn up.

In their answer of February 26, 1931, the defendants Azarraga interposed a general denial of each and all the allegations of the plaintiffs complaint, excepting those relating to their personal circumstances. They, in turn, alleged the following special defenses: First, that the complaint does not allege facts constituting causes of action; second, that the plaintiff and his predecessor in interest were negligent in failing to inscribe in the office of the register of deeds the supposed encumbrances in their favor over the lands in question, granting that said encumbrances had ever existed; third, that the plaintiff knew and was personally informed that the lands aforesaid would be surveyed at their instance and inscribed in their names as their own property, but that he did nothing to defend or protect his rights either during the pendency of the proceedings for the registration of the lands in

question or during the period prescribed by law after the issuance of a decree and title, within which the validity of the same may be assailed; fourth, that at the time of filing their application for registration as well as of the issuance of the decree ordering the inscription in their names in the registry of property of the lands in question, they were the sole owners of the same, and that admitting for the sake of argument the theory of the plaintiff that he had a right to said lands, it was nothing more than an expectation that he would be someday their owner; fifth, that the plaintiff had no right to apply for or obtain from the court a writ of preliminary injunction, wherefore, that obtained was illegal; and sixth, that the right of action of the plaintiff, if any, had prescribed.

The defendants Azarraga further alleged the following counterclaims:

(a) That plaintiff is liable to them in damages in the sum of P100,000 because while the contract which the defendants had entered into with Leodegario Azarraga was still in force, the plaintiff took possession of their lands not covered by the said contract; that he set loose therein his cattle, utilizing the same as grazing ground in a negligent manner and without taking the necessary steps to avoid damages to their plantations; that notwithstanding repeated requests, the plaintiff refused to fence the lands in which he had set loose his animals, thereby causing damages and destruction to their plantations; that the animals belonging to the plaintiff not only destroyed and damaged the coconut, palay and corn plantations existing already on the lands before said animals were brought thereto, but also destroyed their farms and plantations on their enclosed lands; that all this was due to the neglect and carelessness of the plaintiff; that by reason of his refusal to enclose the lands converted into grazing grounds, the defendants were unable to derive any benefits from their lands or to sell or rent them to those who desired to do so.

(b) That the plaintiff is further liable and should be sentenced to pay them in damages the sum of P15,000 for having caused the annotation in the corresponding registry book of the office of the register of deeds of the Province of Capiz of a notice of lis pendens not only with regard to the 150 hectares, 48 ares and 50 centares which he claims in his complaint, but also with regard to the whole area of 246 hectares, 27 ares and 98 centares, described in the original certificate of title No. 9785 issued in the name of the defendants; that as a result of this act of the plaintiff, they could not enter into any transactions over that unquestioned portion of the land to which said title relates.

(c) That the plaintiff is likewise liable and the defendants pray that he should be sentenced to pay them the sum of P30,000 also in damages, for having sought and secured the issuance of an order of preliminary attachment of their properties described in certificates of title Nos. 9804 and 10361.

(d) That the plaintiff is liable and should be sentenced to pay them in damages the sum of P10,000 for having asked and secured from the court on February 7, 1931 a writ of preliminary injunction in the same case, thereby preventing the defendants from exercising acts of ownership not only on the four parcels in question, but also on all the other lands belonging to them.

(e) That in case it is adjudged that the lands in controversy had been improperly inscribed by the defendants in their names in the registry of property, they pray that the plaintiff be ordered to reimburse them in the sum of P5,000 which represent the taxes paid by them on said lands, plus interest from the dates said taxes were paid;

(f) The defendants lastly pray that upon the dissolution of the writ of preliminary injunction issued against them on the date above-stated and the cancellation of the annotation of said writ in the corresponding book of the office of the register of deeds of Capiz, the plaintiff be sentenced to pay the costs of the suit.

"Hijos de I. de la Rama" and Panay Municipal Cadastre were included in the complaint only for the purpose of enjoining the former from increasing to P25,000 the credit it had extended to the defendants Azarraga, who had already obtained P16,000 on a mortgage of the lands in question executed by them in its favor; and of

restraining the latter from collecting from said loan of P25,000, extended by "Hijos de I. de la Rama" to the defendants, the credit which it claims to have against them under a contract whereby they bound themselves to provide it with funds to carry on the enterprise for which it has been organized.

"Hijos de I. de la Rama" showed very little interest in the case, for, according to the lower court, it merely filed an answer with a general denial.

Panay Municipal Cadastre, in its answer, denied all the allegations of the complaint in so far as it might be affected thereby, and alleged as special defense that the plaintiff had no right to ask for, and much less obtain, a writ of preliminary injunction against it. It further alleged as a counterclaim that the said plaintiff has become liable to it in damages in the sum of P15,000, plus P5,000 every month, beginning February 7, 1931, because the plaintiff prevented it from receiving from the defendants Azarraga or from "Hijos de I. de la Rama" the sums which they had bound themselves to deliver under a contract which they had executed on September 20, 1929. After trial, the court rendered judgment as follows:

"Wherefore, the defendants Juan, Jose, Salvador, Joaquin, Emilio, Luis, Rosario, Julio, all surnamed Azarraga, are hereby sentenced to pay the plaintiff, jointly and severally, the sum of P24,627.98, with legal interest from November 10, 1926, as damages because they fraudulently deprived the plaintiff of his lands in Bay-ang, and likewise to pay the plaintiff, jointly and severally, the sum of P5,575 with legal interest from November 10, 1926, representing the value of 1,115 coconut trees as improvements on said lands, and, with the exception of Joaquin Azarraga, to pay the plaintiff, jointly and severally, the sum of P5,030.94 with interest at the legal rate from November 10, 1926 for eviction and warranty.

"In case the defendants Azarraga have no unencumbered properties or can not redeem the mortgage over their properties, with which to satisfy the indemnity for damages, the payment of said indemnity shall be charged against the bond of the sureties, who secured the lifting of the attachment on the properties of the defendants.

"The writ of preliminary injunction issued in this case on February 7, 1931 against the defendants Azarraga, Hijos de I. de la Rama and Panay Municipal Cadastre is hereby made final, with the exception of that portion which enjoins Hijos de I. de la Rama from delivering to the defendants surnamed Azarraga and Panay Municipal Cadastre more than the sum of P16,000, which had already been delivered, and which likewise enjoins the latter from demanding from said entity more than the above-mentioned sum of P16,000, which portion is hereby declared dissolved.

"The plaintiff is absolved from the counterclaims interposed by the defendants Azarraga and by the Panay Municipal Cadastre. The defendants Azarraga shall pay the costs."

From the foregoing judgment the defendants as well as the plaintiff appealed, and in their respective briefs they assign the following errors:

ASSIGNMENTS OF ERROR OF THE DEPENDANTS

"I. The trial court erred in holding that the true nature of the stipulation between Attorney Leodegario Azarraga and the heirs of Don Juan Azarraga y Galvez as contained in the plan of partition Exhibit 'A' is one of cession of property in payment of a debt known in Spanish law as 'dacion en pago.'

"II. The trial court erred in not holding that the stipulation between Attorney Leodegario Azarraga and the heirs of the deceased Juan Azarraga y Galvez to the effect that the lands were to become the property of Attorney Leodegario Azarraga in case the defendants failed to pay his fees within five years and that during this period the said attorney had the usufruct and possession of the lands, as contained in Exhibit 'A', is one of pacto comisorio, which is prohibited by article 1884 of the Civil Code.

"III. The trial court erred in finding that the three parcels of land in question, lots Nos. 81, 82, and 83, were

sold by Attorney Leodegario Azarraga to the plaintiff herein.

"IV. The trial court erred in not holding that the right established by Attorney Leodegario Azarraga by virtue of Exhibit 'A' and transferred to the plaintiff is at most an attorney's lien over the properties in question and that the action of the plaintiff as transferee of this lien should be to compel the defendants to recognize it as a lien.

"V. The trial court erred in holding that the defendants procured the registration of the lands in question by fraudulent means.

"VI. The trial court erred in not holding that the plaintiff, having no real right over the lands in question, the omission of his name from the application is not fraudulent and not fatal to the registration of the lands.

"VII. The trial court erred in not holding that the plaintiff, being a mere usufructuary of the lands in question for a limited period of time by grace of the owners, was not entitled to be mentioned in the application for registration and to be notified personally of its proceedings.

"VIII. The trial court erred in not holding that the plaintiff had been negligent in not asking for the review of the decree within one year, and in not holding that the plaintiff purposely allowed the one-year period, within which he could petition for review of the decree, to elapse in order that he might have a cause of action for damages against the defendants.

"IX. The trial court erred in permitting the plaintiff to prove the market value of the lands in question although there was absolutely no allegation to that effect in the complaint notwithstanding the objection thereto and the exception taken by the defendants.

"X. The trial court erred in not holding that Joaquin Azarraga has not intervened in the registration of the lands in question, he being only a coowner pro indiviso and as such has not been guilty of fraud in connection with the registration of the lands.

"XI. The trial court erred in not holding that the plaintiff had no real right over the land referred to in Exhibit 'E' in view of the fact that the said document had not been registered.

"XII. The trial court erred in holding that the land referred to in Exhibit 'E' contains an area of 164 hectares instead of 63 hectares only.

"XIII. The trial court erred in finding that the total area of lots 81, 82, and 83, which are the subject matter of the 'pactum commissorium' between Attorney Leodegario Azarraga and the defendants, is 243 hectares instead of 87 hectares only.

"XIV. The trial court erred in sentencing the defendants to pay to the plaintiff the sum of P35,233.92 and in not absolving them from the complaint.

"XV. The trial court erred in disallowing all the five counterclaims of the defendants amounting to P58,000."

ASSIGNMENTS OF ERROR OF THE PLAINTIFF

"(a) The lower court erred in not finding that the market value of the lands in litigation in 1926 was P118,635.68;

"(b) The lower court erred in not sentencing the defendants to pay the plaintiff the sum of P6,080 as indemnity for the wrongful slaughter of his animals; and

"(c) The lower court erred in not sentencing the defendants to pay the plaintiff, jointly and severally, the sum of P130,290.68 as indemnity, plus legal interest from November 10, 1926."

The salient facts established at the trial which may serve as a basis for an intelligent discussion of the questions

raised by the parties and for a proper decision of the same, may be briefly stated as follows:

By reason of the proceedings had in case No. 11489 of the Court of First Instance of Manila, entitled "Testate Estate of the Deceased Juan Azarraga y Galvez", the defendants surnamed Azarraga became indebted to Attorney Leodegario Azarraga, who represented them in said case, for attorney's fees, which on October 21, 1919 the court, which took cognizance of the case, fixed at P3,000 (Exhibit B). The defendants Azarraga had previously agreed among themselves to pay Attorney Leodegario Azarraga attorney's fees in the manner set out in Exhibit A, which they executed on January 20, 1919 and approved by the court on August 29, of the same year. (Exhibit C.) The pertinent part of the aforesaid Exhibit A reads as follows:

"The parties also agree that the parcels of land located in Bay-ang, New Washington, Capiz, P. I., which are enumerated in the inventory of this partition as Nos. 81, 82 and 83, are specially mortgaged and subject to the payment of the fees of said attorney of the testate estate, which fees shall be fixed by the court, and said attorney may hold said lands under no obligation to pay any rent until his fees shall have been fully paid: Provided, however, that if, at the end of the period of five years from the date of the approval of this project of partition, said parties shall not have been able to pay in full the fees of said attorney, then said parcels of land, Nos. 81, 82 and 83, located in Bay-ang, shall be definitely adjudicated to said attorney, Mr. Leodegario Azarraga, as his property, in payment of his fees, and all sums which he may have received from time to time from the interested parties in these testate proceedings, within the said period shall be returned to said parties: Provided, further, that in case said interested parties in the testate proceedings shall be able to pay in full the fees of the attorney for the testate estate before the expiration of said period of five years, then said parcels of land situated in Bay-ang shall continue in the possession of said attorney for an additional period of three years from the date of the last payment in the event that said attorney may have kept livestock in said lands."

About nine months after the court approved Exhibit A, or to be exact, on June 9, 1920, which was long before the expiration of the period of five years within which the defendants Azarraga were bound to pay Attorney Leodegario Azarraga his fees, which had been fixed at P3,000, said attorney decided to sell and did sell to the plaintiff his credit against the defendants for the sum of P2,500 with all the rights inherent therein in accordance with the agreements and stipulations appearing in said document (Exhibit C). One of said agreements was that Attorney Leodegario Azarraga would take possession of the said parcels of land and, occupy the same, if he so desired, without paying any rent or annuity, until his fees shall have been fully paid. Said parcels were identical with lots Nos. 81, 82 and 83 described in paragraph II of the plaintiff's second amended complaint.

When the plaintiff became the creditor of the defendants Azarraga by virtue of the sale and cession which Attorney Azarraga had made in his favor of the rights which said attorney had under Exhibit A, he allowed the defendants an extension of a few years over the five years within which they would have to pay him his credit, or up to February 16, 1926, (but with the express condition that they would pay him interest at the rate of 12 per cent per annum, from August 30, 1924 (Exhibit 5). This term was later extended to April 26, 1926 on the request of the defendants, but also with the condition that they would pay the plaintiff the same interest of 12 per cent. (Exhibits L and M.) The plaintiff granted another extension to expire on October 31, 1928, but subject to the condition that instead of seven thousand and odd pesos, which undoubtedly referred to the interest of 12 per cent per annum charged the defendants, they should pay him P12,000 (Exhibit 2). In said two amounts of P7,000 and P12,000 the sum of P4,000 which the plaintiff had given to the defendant Joaquin Azarraga and which will be dealt with further in detail, was included.

Aside from the above transactions between the plaintiff and the defendants Azarraga, one of the latter, Joaquin Azarraga, executed in favor of the former, the deed known as Exhibit E of the record and dated October 14, 1922, by which he sold to the plaintiff, for the sum of P4,000, his portion of the inheritance in the testate estate of the late Juan Azarraga y Galvez, consisting of an undivided tract of land containing an estimated area of 63 hectares

and located in Bay-ang Chico, New Washington, Capiz. It is further stated therein that the period of redemption would be five years to be counted from February 16, 1921, which was later extended to April 26, 1926. In granting him this extension, the plaintiff imposed on Joaquin Azarraga the condition that he should pay him interest at the rate of 12 per cent from the expiration of the first term (Exhibit M; par. III of the second amended complaint of plaintiff; and page 5 of the brief of the plaintiff as appellant). A second extension was further granted, but under the condition that he should, together with his brothers, pay the plaintiff instead of seven thousand and odd pesos, representing the interest referred to in the preceding paragraph, in which the P3,000 mentioned in Exhibit A were included, P12,000 (Exhibit 2). The deed referred to was never annotated or inscribed in any register in the office of the register of deeds of said province.

By virtue of the transfer made to him by Joaquin Azarraga and also of the terms and conditions enumerated in said Exhibit A, the plaintiff took possession of practically the whole land of the defendants Azarraga, located in Bay-ang, placing therein livestock from the month of August, 1920 and in the same year built sheepfolds therein, besides erecting some wire fences. When the plaintiff took possession of part of the land in question in August, 1920 and another part thereof in February, 1922, after the execution in his favor of the deed of transfer, which is a clarification of Exhibit E, he found fruit-bearing and young coconut trees, the latter being more numerous. In 1925, 1926 and 1927, Joaquin Azarraga, either by himself or his laborers, planted therein hundreds of coconut trees of which but a few hundreds, as was the case with the old ones, remained on account of the long droughts or of destructive animals or other causes. There is nothing definite in the record to show the exact number of animals which the plaintiff had brought to Bay-ang or the cause of the death of some of them. It seems that some had been wounded, by whom it is not known, much less is it known whether they were wounded by men of the defendants Azarraga. The plaintiff himself has not spoken with certainty; his statements on this point are mere conjectures uncorroborated by anybody or anything (transcript of stenographic notes, pages 145-147). There have been also no exact accounts as to whether the animals of the plaintiff were those which destroyed the coconut trees planted on the land by Joaquin Azarraga during the years 1925, 1926 and 1927 above-mentioned, or were the animals of other persons.

Sometime in May, 1928, the plaintiff went to the house of the defendant Joaquin Azarraga to collect not only his credit against all the defendants Azarraga, but also the special credit which, according to him, he had against Joaquin Azarraga. And on October 9, 1928, he addressed a letter to each and every one of the defendants including Joaquin Azarraga whom he expressly mentioned therein, and, among other things, told them that:

"Last May, Messrs. Salvador and Joaquin came to an agreement with me whereby they were to redeem the land in Bay-ang for seven thousand and odd pesos last September, and in default thereof to transfer in my name the Torrens title of the portion belonging to me; but until now neither of these has been done.

"For this reason and in view of the fact that you have not stated in the Torrens title of the land in Bay-ang when you applied for the same, the two encumbrances thereon in my favor, I am compelled by this omission, which is a clear disregard of my rights, to seek redress therefor in the courts, if you refuse the same to me. Therefore, if you desire to redeem the land, you may do so for the sum of twelve thousand pesos (P12,000) until the 31st of this month of October; but should you not wish to redeem it, then in order to avoid the inconvenience of a law suit, I would request that on the same day or prior thereto that you shall have at least submitted to the court your motion praying for an order approving the segregation and transfer of the portion of said land which belongs to me, together with the corresponding plan, namely, that corresponding to the land which shall be in my name in the Torrens title. In the understanding that if said date, October 31st, arrives, and you have not done anything either one way or the other, then through your own fault, I would be compelled to resort to the courts to ask protection of my rights before I lose them, urging the court to order you to pay me by reason of such fraudulent omission a sum more than double the amount above-mentioned." (Exhibit 2.)

The land in Bay-ang to which the above-transcribed letter refers is the same land made up by the four parcels mentioned in paragraph II of the second amended complaint of the plaintiff, as parcels 81, 82, 83 and that having an area of 63 hectares.

Between the date of the execution of the document Exhibit A (January 20, 1919) and the date of said letter Exhibit 2 (October 9, 1928), the defendants secured the inscription in the registry of property and the issuance in their favor of the corresponding certificate of title of the Lands described in original certificate of title No. 9785, by virtue of the decree of registration of October 27, 1925 (Exhibit Q). Of this fact the plaintiff had full knowledge by reason of the letter dated July 9, 1924, which was sent to him by the defendant Juan Azarraga, wherein the latter, besides asking for an extension of three years, informed him (plaintiff) of the registration proceedings which were then going on. (Exhibit 1.) The plaintiff did not then nor thereafter take any step to oppose the same, or to ask at least for the revision of the decree of registration, which was issued later, within the period of one year prescribed by law. To this letter, the plaintiff replied on the 30th of the same month and year, stating, among other things:

"Now that I am somewhat relieved from the pressure of work, I am writing to inform you that, although I need cash to meet my pressing financial obligations, your requests have compelled me to grant you, as administrator of the undivided properties of the Azarraga brothers, an extension of the term for the payment of the credit which encumbers the land in Bay-ang, and, consequently, of the redemption of the same, up to February 16, 1926. Said land and its encumbrances are described in the deed of sale of the said credit with all the rights inherent therein, executed by Mr. Leodegario Azarraga in favor of the undersigned on July 9, 1920.

"As the granting of this extension is causing me a real sacrifice and a great financial strain, in justice and equity, I also ask from you, as administrator of the undivided properties of the Azarraga brothers, the *lucrum cessans* so that from August 30, 1924 the aforesaid credit of P3,000 shall earn 12 per cent annual interest.

"This letter will serve you as evidence of the granting of the extension of the term for redemption of the said land in Bay-ang, and, therefore, there is no necessity for executing another document to that effect." (Exhibit 5.)

At the time of the filing of the original complaint, plaintiff simultaneously asked for and obtained on February 7, 1931, upon posting a bond in the amount of P2,000, a writ of preliminary injunction against the defendants (Exh. 15), and in due time caused the annotation in the office of the register of deeds of the Province of Capiz of a notice of *lis pendens* not only with regard to the portion having an area of 150 hectares, 48 ares and 50 centares of the lands of the defendants Azarraga, but also with regard to the whole area of 246 hectares, 27 ares and 98 centares described in original certificate of title No. 9785.

The plaintiff also secured from the Court of First Instance a preliminary attachment of the properties of the defendants, described in certificates of title Nos. 9804 and 10351, on February 5, 1929 (Exhibit R); and the same was annotated in the registry of property in the same month. Seven months after, or on September 9, of said year, the aforementioned attachment was lifted by order of September 7, 1929 (Exhibit X) upon the filing of a bond required by the court in the sum of P12,500 by the interested parties. Said bond having been filed by the defendants, the court, on the same day, ordered the cancellation of the notice of *lis pendens* annotated in the office of the register of deeds and the inscription of all the necessary annotations. (Exhibit Y.)

As clearly proven as the foregoing are the facts that the defendant "Hijos de I. de la Rama" entered into a contract with its co-defendants Azarraga for the purpose of granting them a credit of P25,000, having delivered to them on different occasions after the execution by said defendants of a deed of mortgage Exhibit 16 in its favor on September 20, 1929, as part of the aforementioned sum, the total amount of P16,000. The Azarragas needed said amount for carrying on the business for which the defendant Panay Municipal Cadastre, Inc., had been organized,

as set forth in said Exhibit 16 and clarified in Exhibit 17.

By virtue of the writ of injunction issued by the lower court on February 7, 1931, enjoining the defendants Azarraga and the Panay Municipal Cadastre from obtaining from their co-defendant "Hijos de I. de la Rama" another loan, aside from the P16,000 which they had previously obtained (Exhibit 14), said defendant "Hijos de I. de la Rama" did not extend the credit, which it had opened to its co-defendants, to P25,000 as required by the contracts Exhibits 16 and 17 above-referred to. In connection with the issuance of the writ of preliminary injunction, the following facts must be mentioned: After the plaintiff commenced the present case against the defendants Azarraga on January 28, 1929 by means of his original complaint, he instituted another action against them, which was civil case No. 2643, for the purpose of obtaining a writ of injunction to prevent them from securing the aforementioned loan of P25,000 from "Hijos de I. de la Rama". This latter case reached this court on certiorari filed on March 22, 1930. As its sole object was the issuance of a writ of preliminary injunction, this court, reiterating once more the ruling that said remedy is purely subsidiary available only in aid of the right sought to be enforced in the action wherein the same is issued, and that a separate action to secure the same does not lie as it would permit of multiplicity of suits with the consequent needless expenses (Panay Municipal Cadastre vs. Garduno and Soncuya, 55 Phil., 574, 578), granted the certiorari prayed for on January 22, 1931, thus setting aside the writ of preliminary injunction issued by the court of Capiz on October 21, 1929, hence, it was in being for not more than one year, three months and one day.

The writ of preliminary injunction subsequently issued on February 7, 1931, has remained in force up to the present, as the lower court declared in its judgment that it shall be final with respect to the P9,000 still owing from "Hijos de I. de la Rama" on account of the loan which it had agreed to extend to the other defendants.

The works for which the Panay Municipal Cadastre had been organized were begun in October, 1929. According to the testimony of Gaspar Ferraren, for all the work which they intended to undertake, they needed a capital of not more than P40,000 to make a gross profit of P100,000. Of this estimated capital they invested the P16,000, obtained from "Hijos de I. de la Rama", which immediately yielded a return of P6,000. He also stated that the Panay Municipal Cadastre completed half of its works with only the capital obtained from "Hijos de I. de la Rama" (P16,000), plus its first profit of P6,000 and that it made a profit of P24,277.15, meaning thereby that with the aforementioned P16,000 it obtained P30,277.15, or a net profit of P14,277.15.

Another fact which has been clearly established by the testimony of the plaintiff himself is that he decided to sell all the animals which he had placed on the land in question because he became discouraged by the destruction of said animals by the tenants of the defendants Azarraga. This fact, however, has been established not by competent evidence, but by hearsay testimony, which was of course timely objected to; and, although he testified in the same breath that he had still some cattle there, he could not state their exact number, but limited himself to saying "I cannot tell whether there were fifty of them." (Transcript page 14.)

In his subsequent dealings with the defendants Azarraga, including Joaquin Azarraga, as in his pleadings and testimony, the plaintiff, in referring to the amount of P2,700 or P3,000, the value of the credit which he had purchased from Attorney Leodegario Azarraga, and to that of P4,000 which he gave to Joaquin Azarraga on the date and under the circumstances stated in Exhibit E, he alluded to, and considered them as his "credit". Thus, on page 176 of the transcript of the stenographic notes, he said: "* * * land mortgaged to me * * *;" and on pages 192 and 194 of said transcript, he also said: "Now I am not collecting the credit; I am collecting the damages. Although they may have sold that property to me for P1, if its commercial value has increased after they have deprived me of the same, I should collect from them such value;" and "* * * I want to say again that what I am collecting now is not the credit which I have against them, but the damages they have caused me by depriving me of the property."

The facts of the case being as above set out, the questions raised by the parties in their respective assignments of error, should now be considered. In fact, the most important or those discussed in the first fourteen errors attributed by the defendants to the lower court, and in the first and last errors, which plaintiff, in turn, assigned, may be reduced to the following:

- Was the contract entered into by the Azarraga brothers, the defendants herein, with Attorney Leodegario Azarraga from whom the plaintiff derived his right, a sale with pacto de retro, or an assignment in payment of a debt, or was it an antichresis partaking of the nature of what was anciently known as pacto comisorio, or a mortgage, or was it merely a loan with real estate security?
- Was the contract executed by the defendant Joaquin Azarraga, on the one hand, and the plaintiff, on the other, embodied in Exhibit E, a sale with pacto de retro or simply a loan with real estate security?

The first question offers no difficulty if account is taken of the established facts and the conduct of the interested parties after the expiration of the term of five years fixed in Exhibit A. When the plaintiff extended the period to February 16, 1926 within which the defendants Azarraga could pay him his credit, but imposed on them the condition that they pay him 12 per cent annual interest from August 30, 1924 on the principal of P3,000 (Exh. 5) and gave them another extension up to April 26, 1926, under the same conditions as regard interest (Exh. M), what perhaps could have been considered as an antichresis or pacto comisorio—not an assignment in payment of a debt, or a sale with pacto de retro because there is nothing in Exhibit A to indicate that such was the intention of the defendants Azarraga or, at least, that they bound themselves to deliver the land in question to the plaintiff and that the latter should pay them the value thereof; and because there was what may be considered the resolutory condition of five years—was converted into a simple loan by the decisive circumstance that plaintiff chose to collect thereafter, and the obligors agreed to pay him, 12 per cent annual interest. It is only in contracts of loan, with or without guaranty, that interest may be demanded (articles 1108, 1740, 1755, 1868, 1876, and 1881 of the Civil Code). As a matter of fact, the contract embodied in Exhibit A was novated by Exhibits 5 and M, and the plaintiff wanted to have it novated for the third time by means of Exhibit 2. It does not appear of record, however, that the defendants Azarraga ever assented to the latter novation. Perhaps, their refusal to agree to the same was due to the fact that the plaintiff wanted to raise their old obligation (P3,000 or P2,700 of all the Azarraga brothers, plus P4,000 which Joaquin Azarraga alone owed, which two accounts both the plaintiff and the defendants considered as amounting to P7,000, exclusive of the annual interest of 12 per cent) to the round sum of P12,000. From all this it may easily be inferred that the obligation which the defendants had imposed upon themselves by Exhibit A had ceased to exist and became a simple loan with security, if so desired, of the lands in question, but without prejudice to third parties as neither Exhibit A nor the deed of assignment Exhibit C, executed by Leodegario Azarraga in favor of the plaintiff, was inscribed in the registry of deeds.

There is also no difficulty in disposing of the second question, considering the various novations which, as has been said, had taken place and had been extended not only to the Azarraga brothers with respect to their obligation of P3,000 or P2,700, but also to the defendant Joaquin Azarraga as regard his personal debt of P4,000. We must not lose sight of the fact that the plaintiff never considered the contract entered into by him with Joaquin Azarraga as, strictly speaking, a sale with pacto de retro. And if he had ever considered it as such, it is, nevertheless, true that he novated it on February 16, 1926, considering it from that time on as a simple loan, inasmuch as on that date he began to charge the said defendant 12 per cent annual interest with the latter's assent and conformity. This clearly appears in Exhibit M which must be considered together with paragraphs 7 and 8 of Exhibit E, as the plaintiff himself does in his brief (brief for the plaintiff as appellant, pages 4 and 5), because the term of five years to which said Exhibit E refers and which should have expired on February 16, 1926 was extended by the said plaintiff, by Exhibit M, up to April 26, 1926 under the aforementioned condition that he

should be paid 12 per cent annual interest.

Consequently, the contention of the defendants that the plaintiff did not and could never receive the lands in question as an assignment in payment of a debt, and much less did he acquire them by purchase with pacto de retro, is well taken. It must also be noted that at no time did the plaintiff claim any rights of dominion over the lands since he did not even intimate to the defendants, either directly or indirectly, that for their failure to pay him his credit within the time provided therefor, he became the absolute owner thereof. Notwithstanding the fact that all the extensions he had given defendants had expired, he did not, even only for tax declaration purposes, declare the lands as his property. Having reached this conclusion, it is needless to state that the plaintiff has no right to the various sums which he seeks in his complaint and to which he refers in the first and last errors assigned by him. If, as has been shown, he never became the owner of the lands in question, he can neither claim payment of the value of the same nor ask to be indemnified for the deprivation of their possession. The plaintiff, moreover, has no reason to complain that his lien, if his right over said lands could be termed as such, was not annotated in the certificate of title which the defendants Azarraga had obtained, or that the latter did not ask that it be stated therein that the lands to which it refers are charged with his credit against them; inasmuch as he was himself negligent in that he did not ask the court, while the registration case relating to said lands was being heard, for the annotation of what he considered necessary to protect his rights, and in not seeking the revision or modification of the decree of registration within the period of one year provided for that purpose.

As to the fifteenth error attributed to the lower court by the defendants Azarraga, we hold that, in view of the established facts above-related, they have failed to show satisfactorily that they have any right under all or any of their several counterclaims. If the coconut trees planted by Joaquin Azarraga on a portion of the land in question were indeed lost or destroyed, it was due more to his own negligence than to that of the plaintiff; for he well knew on planting them in 1925, 1926 and 1927 that the plaintiff maintained therein, with his (Joaquin Azarraga's) approval, livestock which might destroy them, and he did not take the necessary precautions against such occurrence. This is, of course, upon the supposition that his coconut plantations died by reason of the devastation caused by the animals of the plaintiff. The preponderance of the evidence, however, has shown that they died on account of the drought alone.

We likewise hold that the issuance of the writs of preliminary injunction and attachment at the instance of the plaintiff did not prejudice the defendants, inasmuch as there is no competent evidence of record to the contrary. On the other hand, there is evidence to show that from the loan which the defendants Azarraga had obtained from "Hijos de I. de la Rama" they derived a net profit of P14,277.15 within the short period of one year and a few months.

There is no support for the contention of the defendants that they suffered damages by reason of the preliminary attachment ordered by the lower court because they were unable to sell one of their houses to the Calibo Institute for the price agreed upon by them and said entity. The record shows that they lost nothing because the Calibo Institute is at present occupying a portion of said house and they may, if they so desire, sell it even now to the occupant. It does not appear, on the other hand, that the latter desisted from buying it on finding a better building.

As to the second error assigned by the plaintiff, it suffices to recall that the established facts do not show that the tenants of the defendants were responsible for the killing and wounding of the animals belonging to him or that said tenants acted upon the instigation of the defendants. Consequently, the plaintiff's claim to this effect is entirely without merit.

In view of all the foregoing and in resume, we hold that the plaintiff alone has the right (1) to recover from the defendants Azarraga, by virtue of the assignment and sale made to him by Attorney Leodegario Azarraga of the

latter's credit of P2,700 against the said defendants, the aforesaid sum plus interest at the rate of 12 per cent per annum from August 30, 1924; (2) to recover from the defendant Joaquin Azarraga, in particular, the sum of P4,000 plus interest at the rate of 12 per cent per annum from April 26, 1926. We also hold that the defendants are not entitled to anything under their counterclaims.

Wherefore, reversing the appealed judgment,

(a) All the defendants are hereby sentenced to pay jointly the sum of P2,700 to the plaintiff, with 12 per cent annual interest from August 30, 1924 until said sum is fully paid; and

(b) The defendant Joaquin Azarraga is sentenced to pay the plaintiff the sum of P4,000 plus interest at the rate of 12 per cent per annum from April 26, 1926, until fully paid.

The plaintiff is absolved from defendants' counterclaims and the writ of preliminary injunction issued by the lower court on February 7, 1931, is hereby dissolved. There is no special pronouncement as to costs. So ordered.

Avanceña, C. J., Villa-Real, Abad Santos, Imperial, and Concepcion, JJ., concur.

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