

**LOPEZ SUGAR CENTRAL MILL CO., INC., PLAINTIFF AND APPELLEE,
VS. MAGDALENA GONZAGA VIUDA DE CUAYCONG ET AL.,
DEFENDANTS AND APPELLANTS.***G.R. No. 43622, December 13, 1938*

Ponente: CONCEPCION, J.

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This appeal was interposed by the defendants in a civil case commenced by the Lopez Sugar Central Mill Co., Inc., in the Court of First Instance of Occidental Negros. They now seek to have the judgment of that court reversed and to secure an order from this court commanding the plaintiff corporation to restore to the appellants a stretch of land owned by them which the former has occupied for the widening of its railroad yard and to pay further the value of some rails and of 800 cubic meters of earth taken from appellants' sugarcane fields. It must be noted that the appeal as to the defendants Josefina, Maria Cristina and Anita, all surnamed G. Cuaycong, was dismissed on their failure to file their brief. This decision is, therefore, rendered with respect to the appeal of the other defendants.

The Hacienda Magdalena, which belongs to the defendants and appellants, is one of the haciendas bound to the sugar central of the plaintiff corporation by virtue of a contract executed in October, 1927 for the milling of the sugar, cane produced in said hacienda. The central has a railroad system for the transportation of the sugar cane the main line of which formerly terminated near the Hacienda Magdalena at a concrete wall which may be seen on the plan Exhibit C.

Since 1928 when, it appears, the first milling by the central took place, the number of haciendas bound to the company has increased almost three times so that the amount of cane milled by it has likewise increased. When the central was constructed, its minimum milling capacity was 400 tons daily which is equivalent to about 750 piculs of sugar. When the complaint was filed in February, 1931 the central had an output of 750 tons which was equivalent to about 1,300 piculs. As the number of haciendas bound to the central increased along with the output, the number of cars for the transportation of the cane also increased, for while the central used to employ only ten cars for this purpose, now it uses thirty-five or forty cars at a time. This gave rise to the necessity of extending the main line of its railroad which was done by occupying the portion of land which is the subject of this suit. Said portion has a length of 128 meters on the northeast side and 112 meters on the southeast side and a width of seven meters, and is comprised within the Hacienda Magdalena which belongs to the defendants. The extension of the main line of the railroad system over the portion of land in question was necessary in order that the cars which carry the cane and are pulled by the locomotive may reach the extreme northeastern part of that portion and be pushed back afterwards by the locomotive so as to make them enter the railroad yard of the central. The aforementioned portion of land appears in Exhibit C, while the switch which opens the way for the cars which move backwards, pushed by the locomotive until they reach the railroad yard, is marked No. 1.

The defendants having refused to grant gratuitously to the plaintiff corporation the aforesaid portion of land, the

same filed its complaint in this case to have the court declare that under the milling contract above-mentioned, it has a right of way over said portion for its railroad and railway system. In the meantime a writ of preliminary injunction was issued by the court in order to enjoin the defendants from obstructing or preventing the construction by plaintiff of the extension of said railroad over the portion in question.

After trial the judgment appealed from was rendered in accordance with the prayer of the complaint, declaring permanent the writ of preliminary injunction issued at the commencement of the action.

In their brief appellants contend that the court committed the twelve errors set forth therein which may be reduced to the following questions:

First. Has plaintiff a right to the free use of the portion of land in question for what it regards as an extension of the main line of its railroad system and what defendants allege, on the other hand, to be a widening of its railroad yard?

Second. Did plaintiff take possession of sixty-eight rails and remove 800 cubic meters of earth from defendants' lands? In the affirmative case, what should be the amount of indemnity to be paid defendants by the central?

Paragraph 6 of the milling contract of defendants, as amended by the parties on October 21, 1927, says:

"In case the central decides to construct a railroad as above stated, the planter shall give gratuitously, during the period of this contract, all the land needed for rights of way over the hacienda or over any other land of the planter in the said Province of Occidental Negros as the central may need for the laying of its permanent railroad lines, the installation of its telephone lines, pipes, water deposits or reservoirs, aqueducts or other conduits, and any other additional land which it may need for its excavation work and embankment building and the construction of switches and crossings and any other buildings which the central may require for the operation of its railroad. The right of way for the railroad shall include a distance of not more than 3½ meters on each side from the center of the railway line. The free right of way above-mentioned shall not include growing crops found on said lands, the value of which must be paid at the price agreed upon by the parties, and in case said parties cannot agree, they shall appoint a committee of three to be formed by a representative of the central, a representative of the planter and a third to be appointed by both. The central shall also pay for damages caused to the planter through other works of demolition. The total area of the land which the planter shall be bound to sell to the central for the construction of its buildings and other improvements which it may erect, with the exception of the right of way for the railroad line, shall not exceed two (2) hectares, for which the central shall pay P1,000 for each hectare under the same conditions above set forth as to the damages." Appellants do not deny that the portion of land in question is needed by the company for its railroad system, but they contend that what plaintiff attempts to obtain as a right of way is in reality a widening of its railroad yard.

Even under the concept of "yard" as denned in the American Civil Engineer Handbook and quoted in the brief of the appellants, the extension of the railroad line over the land of said appellants can not be considered as a widening of the railroad yard of the central. The definition is as follows:

"A yard is a system of tracks within denned limits for receiving, separating and making up trains, cars and other purposes. A large yard will have some or all of the following features. An incoming train leaves the main track and enters a receiving yard, where the train may wait temporarily * * *."

The underlined portions clearly show that the cars entering the yard have to leave the main line: "An incoming train leaves the main track and enters a receiving yard, * * * This is precisely what happens in the instant case. The cars loaded with cane and pulled by the locomotive have to leave the main line before entering the railroad yard upon opening of the switch. As may be seen from the plan Exhibit C, the main line formerly reached as far as point No. 2 which is a concrete wall, and from there the locomotive pushed the cars backwards until they entered

the yard, the switch which is indicated with number 1 in ink in said plan opening for that purpose. The extension of the railway line from the said concrete wall over the portion of land above-described does not, therefore, constitute a widening of the yard as the defendants contend but an extension of the main line. The yard begins from the switch indicated with number 1 on the plan. Before the filing of the complaint and the occupation of the portion of land of the defendants, the line from the concrete wall to the switch had already existed as part of the main line which comes from a remote distance. That part of the line which extends from the switch up to the concrete wall is, as may be realized from a simple view of the same, nearly equal to 1/8 of the entire length of the line which was constructed over the portion of land in question so that the line constructed over that portion does not begin from the switch marked No. 1 on the plan, but from the concrete wall which is 1/8 of the length of the extension of the main line from the switch. On this assumption, it can not be said that the extension of the line over the said portion is a widening of the yard, but an extension of or an addition to the main line which had existed up to the concrete wall. That is to say, that between the point (the concrete wall) from which the extension of the main line over the portion in question commences and the yard which begins from the switch, there was and had existed before a portion of the principal line, that from the switch up to the concrete wall. It, therefore, follows that the portion of land aforesaid merely constitutes an extension of the old main line of the railway system. It is not an addition to the railroad yard, but to the main line, which had already existed, with the view that, once the switch has been opened and passed, the last of the thirty-five or forty cars now in use, may move back and thus all the cars may enter the railroad yard on being pushed backward by the locomotive.

As has been said, the necessity for the extension of the line in the manner above-described has not been denied by the defendants and appellants, nor can it be denied for the reason that without such extension the thirty-five or forty cars used by the central for the transportation of the cane would not be able to enter the yard. Their entrance would not be possible, unless it be said that such transportation could be done with ten cars at a time, so that all the thirty-five or forty cars used by the central might enter the yard. This would not be practical and would be very costly. It would result in great loss of time in the transportation of the cane and in the milling of the same and would lead likewise to great expenses and big losses.

We, therefore, hold against the contention of the defendants in their brief as the second error committed by the lower court and declare that plaintiff has the right to extend the main line of its railroad even against their consent because, according to paragraph 6 of the milling contract as amended, defendants are bound to cede gratuitously to the central all the land necessary for its right of way through and over the hacienda which the central may need in laying its permanent railway line.

Defendants contend in their third assignment of error that the court erred in not finding that defendant Viuda de Cuaycong had delivered to the plaintiff sufficient land for its railroad yard, but that plaintiff, to the prejudice of the defendants, did not devote said land to that use but to another not agreed upon between it and said Viuda de Cuaycong; and in not finding that, for this reason, plaintiff can not now claim an equitable remedy like injunction inasmuch as it did not itself observe equity.

For the purpose of showing that the court committed the third assigned error, it is alleged that in the year 1927 the representative of the central "on acquiring from defendant Viuda de Cuaycong the land for the millsite, agreed with said defendant that the railroad yard of said mill would be installed on the northeastern side in order that the main line may lead directly to the Hacienda Conchita which belonged and still belongs to the defendants and is bound to the central." "But plaintiff," they say, "instead of making a yard of said place, utilized the same as site for the buildings of its employees and as a wee golf course, and made its railroad yard on the other side of the provincial road to the prejudice of the defendants." We believe that this contention is without merit for even on the supposition that all that defendants allege were true, it is entirely immaterial whether or not the land acquired

by the central from the Hacienda Magdalena has been devoted to a railroad yard, for the reason that, as we think it to have been shown further above, there has been no addition to the yard but an extension of the main line of plaintiff's railroad.

As to the questions raised in the cross-complaint of appellants, it is a fact admitted and proved that plaintiff has taken possession of the sixty-eight rails belonging to defendants without the latter's consent. It is also admitted that plaintiff removed for its use and benefit 800 cubic meters of earth from defendants' land. We believe that defendants are entitled as a matter of course to the payment of the value of the rails and the aforementioned 800 cubic meters of earth. Defendants, in their brief, ask that they be paid P1,300 for the value of the rails; P800 for the earth removed from their land, and P1,000 for damages caused by the excavation made by order of plaintiff.

We believe that the valuation given by plaintiff of the sixty-eight rails is acceptable. According to this valuation, said rails, if new, would cost P2,600 per kilometer; but as they are already ten years old, they now cost P450 per kilometer. As regards the 800 cubic meters of earth, plaintiff contends that the amount of the damages caused by the excavation has not been shown. We believe, however, that the sum of P800 is a reasonable compensation caused by the excavation of said 800 cubic meters of earth.

In view of all the foregoing, the judgment appealed from is affirmed; defendants' counterclaim for damages arising out of the issuance of the writ of preliminary injunction not having been proved, the same is dismissed; and by virtue of the cross-complaint plaintiff is sentenced to pay defendants the sum of P450 as the value of sixty-eight rails and P800 as indemnity for damages. There is no pronouncement as to costs. So ordered.

Villa-Real, Imperial, Diaz, and Laurel, JJ., concur.

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