

ESTEBAN FABROS, PLAINTIFF AND APPELLANT, VS. JUAN VILLA AGUSTIN AND JUAN TABLIGA, DEFENDANTS AND APPELLEES.*G.R. No. 5861. January 28, 1911*

Ponente: ARELLANO, C.J.

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The appeal in this cause merely involves an incidental petition or one secondary order, which was denied in the judgment appealed from, and the payment of interest directed in the judgment. The principal petition was granted by the trial court and the judgment, in so far as it concerned, was not appealed by any of the litigants. The Court of First Instance of Tarlac, in conformity with the prayer of the complaint, decide that the plaintiff was entitled to redeem the land described in the comp (which redemption had been opposed by Juan Tabliga), upon payment to the defendant, Juan Tabliga, of the sum for which the latter had purchased it and, in addition, of the amount of the interest thereon, at per cent per annum, up to the time when the said plaintiff offered to redeem the land, and at 6 per cent from the date of the said offer.

No appeal was taken with respect to the right to redeem upon payment of the price of the sale; but the plaintiff appealed on account of the following assignments of error:

- Because the judgment did not allow him damages at the rate of P1,000 a year, from at least the 23d day of March, 1907; thus violation sections 93, 126, and 409 of Act No. 190, the Code of Civil Procedure.
- Because it compelled him to pay the 6 per cent, in addition to the per cent interest, on the sum which the defendant refused to receive as. price of redemption; thus violating article 1100 of the Civil Code an section 465 of the aforesaid Act No. 190.

With regard to the first error assigned, the trial court stated in it from the evidence: (1) That it did not deem the estimate of P1,000 to be either just or correct as the value of the products, in one year, o .small an area of land, not even though it contained a fishery; and (2) that the only proof presented, to wit, the testimony of the plaintiff not satisfied the court, and that in due time it had indicated to t attorneys the necessity of presenting satisfactory proof, and that, as had not adduced any further evidence in this matter, it concluded that would be improper to allow damages, which were not satisfactorily proved, in the amount requested. This court can not, in cases like this at a different conclusion. The existence and amount of the damages must be proved; otherwise, it is not possible to determine the obi lo pay them.

By the citation of section 93 of the Code of Civil Procedure, the appellant apparently wishes it to be understood that, the defendant not having demurred to the complaint, nor denied in his answer the facts all such facts must be accepted by the court as proved; but this theory is without foundation, in the present case, since the defendant expressly denied all the facts alleged in the complaint: "And answering the said complaint." read on page 8 of the bill of exceptions, "they deny each and all of the allegations thereof * * *" (they, the defendants Tabliga and Juan Villa Agustin).

The plaintiff averred that he was not contradicted by the evidence in statement of the amount which the property ought to have produced, and he cited section 126 of the code aforementioned. What this section does say is that if there is no answer offered to the complaint, the relief granted to the plaintiff can not exceed that which he shall have demanded in his complaint; but in this suit there was an answer to the complaint the trial was not prosecuted with the defendants in default.

With regard to the second assignment of error, the law provides that the redemptioner may, within twelve months from the date of the purchase, redeem the property sold, on paying the purchaser the amount of his purchase, with 1 per cent per month interest thereon in addition, up time of redemption. (Sec. 465, Code of Civil Procedure.) The judge divided this time into two periods: one, in which the plaintiff offered redemption price, and the other, that following this offer. He fix per cent per month up to the time of the offer, and 6 per cent per annum thereafter.

The following conclusions of the judgment appealed from serve to illus this point: In 1904 a judgment was rendered by the justice of the pea court of Tarlac, against Tomas Arenas and Esteban Fabros. On April 6 1906, the deputy sheriff of Tarlac proceeded to sell the lands of Este Fabros and Tomas Arenas. The land of Tomas Arenas was sold to Juan Tabliga for P120. On March 23, 1907, Esteban Fabros went to the house of Juan Tabliga and asked the latter to allow him to redeem the land of Tomas Arenas, which land was mortgaged to him, Fabros; but Tabliga replied that he would allow him to redeem his own land but n that which was sold as belonging to Tomas Arenas. This petition, the judge adds, was made, as may he observed, within the period of one year, as prescribed by law. Esteban Fabros, on a subsequent date, but before the expiration of the twelve months, again went to Tabliga's house, accompanied by the provincial sheriff, Santiago de Jesus, and asked that he be allowed to redeem the land referred to, but on this occasion also the redemption was refused by Tabliga. (B. of e., pp. 1 and 11.)

The legal grounds of the judgment appealed from are: (1) That, in conformity with section 464 of Act No. 190, a judgment debtor, or his successors in interest, may redeem the property sold, as may also a or having a lien by attachment, judgment or mortgage; so that while Fabros was in possession of the land by reason of a mortgage or whatever the lien was that arose from the credit which he held against Arenas, and latter not having exercised the right of redemption, the right pertain Fabros as the creditor of Arenas; and, (2) that the plaintiff Fabros offered to return to the defendant the sum which the latter had paid the purchase, together with the interest and costs; that, not knowing th amount thereof, he took with him P150 for this purpose "and offered to count out the amount in the presidencia, but the defendant Juan Tabliga refused to allow the redemption of the land which was sold as belonging to Tomas Arenas." (B. of e., pp. 12 and 13.)

The trial court, in its judgment aforementioned, imposed upon the plaint obligation to pay "the interest at 12 per cent per annum until the time the said plaintiff offered to redeem the land, and interest at 6 per cent from the date of the said offer of redemption." (B. of e., p. 13.)

We esteem the second assignment of error to be well founded, that is, the relative to the plaintiff's having to pay an annual interest of 6 per cent besides the 12 per cent which he was willing to pay up to the time o the redemption. In the case of Martinez vs. Campbell (10 Phil. 626) this court ruled:

"When the right of redemption is exercised within the term fixed by s 465 of the Code of Civil Procedure, and an offer is made of the amount due for the repurchase of the property to which said right refers, it neither reasonable nor just that the re-purchaser should pay interest on redemption money after the time when he offered to repurchase and tendered the money therefor."

Moreover, it is a provision of the Civil Code that if the creditor to the tender of payment has been made should refuse to accept it without reason, the debtor shall remain released from all liability by judicial (consignacion) of the thing due. (Art. 1176.) And the deposit properly made "by depositing the things due at the disposal of the

judicial authority (in the procedure now in force, the sheriff is also included before whom the tender shall be proven in a proper case and the notice of the consignment in other cases." (Art. 1178.) There is no reason for other interest, which appears to be a penalty for delinquency, while there was no delinquency.

The judgment appealed from is affirmed, in so far as it directs the payment of legal interest at 12 per cent, per annum up to the time when the plaintiff Offered to make the redemption, and it is reversed, in so far as it provides that the plaintiff shall pay 6 per cent per annum from the date of the said offer of redemption. No special finding as to costs is made in this instance. So ordered.

Torres, Moreland, and Trent, JJ., concur.

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