

43 Phil. 953

[ G. R. No. 19030. October 20, 1922 ]

**E. V. KIDWELL, EXECUTRIX OF THE LAST WILL AND TESTAMENT OF L. B. KIDWELL, DECEASED, PLAINTIFF AND APPELLEE, VS. C. B. CARTER, DEFENDANT AND APPELLANT. PORT LEBAK LUMBER COMPANY, CROSS-DEFENDANT AND CROSS-CLAIMANT.**

## **D E C I S I O N**

### STATEMENT

L. B. Kidwell was formerly in the lumber business at, and a resident of, Cotabato, of the Province of Cotabato.

The defendant Carter came to the Philippine Islands as a soldier in the United States Army, and afterwards became a lieutenant and later a major in the Constabulary, and at one time was governor of the Province of Cotabato. Through their personal dealings and intimate relations, the two became warm, personal friends. The defendant understood and spoke the native language of the province, and at various times rendered Kidwell valuable and important services which were appreciated by Kidwell and largely compensated in one form or another. Their friendship there covered a period of about eight years. Later Kidwell constructed a saw mill at Port Lebak, and organized the defendant company of which he became the president and owned all of its corporate stock, with the exception of a few shares that were distributed among the directors. This corporation was a financial success, and was making-good money on the investment. Later Kidwell developed a cancer and became a very sick man and realized that in a short time he would not be able to manage the business, and that sooner or later he would die from the effects of the cancer. In this condition he began to look around and figure out what to do with his business. Having absolute trust and confidence in Carter, he discussed the matter with him, and in the end a contract was drawn between them in and by which the defendant was given an option on 270 shares of the capital stock of the corporation, out of the 587 of which the plaintiff was

the owner, at an agreed price of P80,000. The capital stock of the corporation was P50,000 divided into 600 shares of the par value of P100 per share. The actual value of the stock, as it then corresponded to its par value, shows the financial condition of the company. At the time the contract was drawn, the defendant Carter did not invest any money in the business. It provided that one-third or more of the P80,000 was payable each year. By its terms it recited that Kidwell was desirous of returning to the United States on or before June 30, 1920, and the turning over of the general management of the corporation to Carter for a period of three years from the time that Kidwell left. That at the time of his leaving he would give Carter full and complete management of the company with sufficient funds, merchandise, buildings, tools, supplies, and equipment for the proper and efficient administration of the company's business, and that Carter should have all the powers of a general manager, and that, among other things, he should "thereafter devote his entire time and attention to the company's business and to the furtherance of its interest and shall in no way engage in outside business or business transactions," and that a meeting of the board of directors should be held at which he should be vested with such powers.

The contract was dated February 26, 1919, and, among other things, recites that should Kidwell desire Carter to take over the property prior to June 30, 1920, he should give him at least four months' notice, and that Carter "shall thereupon resign his then employment and enter upon his duties as general manager as herein specified," It further recites that the defendant should receive a monthly salary of P500, and should be reimbursed "for any money expended by him for his actual and necessary traveling expenses, incurred by him in or upon the company's business, provided, however, that said second party shall not be entitled to a cash advance of more than one month's salary." That he should render "written reports every three months, which said reports shall contain a statement of all business transactions of the company, a statement of the moneys received and expended," and of the corporate business in general. That upon Carter's assuming the duties as "general manager, Kidwell shall cause 270 shares of the capital stock, of the par value of P27,000, being 45 per cent of the capital stock of said company, to be issued to said first party and by him endorsed in favor of the second party, said stock to be deposited in escrow together with a copy of this agreement, in a sealed envelope with the Bank of the Philippine Islands in Zamboanga until such time as said stock shall be paid for as hereinafter stipulated and agreed." Section 10 of the contract then further provides:

"(a) The day said second party assumes the management of said company a full and complete inventory shall be made of all property, assets and liabilities of said

company, including the mill, machinery, logs, logging equipment, tools and equipment, logging accounts, supplies, goods, wares and merchandise, lumber on hand and in transit, and bills payable and bills receivable.

“(b) Thereupon as between the parties hereto, the mill machinery, logs, logging equipment, logging accounts, tools and equipment and mill supplies on hand shall be considered as the property of the company but the lumber on hand and in transit, and the goods, wares and merchandise on hand and in the company stores taken at their invoice price plus any launches now owned by said company or subsequently acquired shall as between the parties hereto be considered the individual property of said first party.

“(c) As the purchase price of the stock above mentioned said second party shall pay said first party the said eighty thousand pesos (P80,000) plus the inventory value of the property listed as the individual property of said party as set forth in the preceding paragraph with the understanding that said payments shall be made from the profits of the company’s business without, individual liability on second party and provided further that any payments made to said first party shall be considered as dividends from said company and shall not be considered as an advance to nor a liability from said first party of said company.”

Section 11 says:

“In the event that the amounts so to be paid first party are not so paid as they become due, then any and all amounts so paid from time to time shall, at the option of said first party, become his absolute property and the present agreement shall become null and void and the stock so deposited in escrow shall be returned to said first party and all further rights or liabilities between the parties hereto shall be terminated.”

It was agreed during the period of the contract that neither party would mortgage or encumber his stock or interest in the company. That should Carter die or become physically unable within the three-year period without having fully paid the stipulated price of the stock, Kidwell would fully compensate him or his heirs for any money earned under his contract.

Carter assumed his duties as general manager about the 8th of September, 1919, at which time Kidwell with his family went to the United States where he died in a very short time, and later his widow returned to the Philippine Islands, and was duly appointed and qualified as executrix of his last will and testament. Claiming that he had made full payment for his stock and complied with all the terms and conditions of the contract, Carter wrote the widow a letter asking her consent that the 270 shares of stock should be transferred to, and issued in, his name. Relying upon his statements and representations, the widow gave her consent, and that stock was issued to Carter. Later on the books of the corporation were examined by an expert accountant who found and reported that Carter had not paid the purchase price of the stock or any part of it, and that he had neglected the affairs of the company. This led to the present action in which the plaintiff, as executrix, alleges that on the 3d day of August, 1920, the defendant "wrongfully contriving and maliciously intending to defraud the estate of the said deceased and acting as the president of said corporation had the aforesaid 270 shares of stock transferred on the books of the corporation in his name and a stock certificate therefor issued to himself." That he had not complied with any of the terms of his contract, and that he had not devoted any of his time to the corporate business, and that he was then on a pleasure trip to America, and that since the 8th day of September, 1919, he had fraudulently appropriated to his own use more than P150,000 of the corporate funds. That the 270 shares of the capital stock were then of the value of P100,000 and are liable to loss unless a receiver is appointed, and prays for a judgment that the defendant has not complied with any of the terms of the contract; that he had embezzled the funds of said corporation; that he has no right to the 270 shares of stock; that a receiver should be appointed for the stock; and that the defendant be enjoined from disposing of or using it in any manner.

The defendant Carter denied all of the material allegations of the complaint, and, as a further and separate answer, and by way of cross-complaint, pleads the inducements which led up and entered into the making of the contract, and the payment to the widow under the contract of P130,000, and the further sum of P90,000 under her instructions to satisfy a mortgage on the property. That he had devoted all of his time and attention to the business, and that a correct accounting between the defendant and the corporation will show that there is a large sum due and owing to the defendant. That he was unlawfully removed as president of the corporation by the board of directors, and pleads a letter of the deceased to him written October 13, 1919, "on Board the Penn. Limited." That the widow is wholly incompetent to manage the affairs of the corporation, and that he is entitled to a salary of P3,000 per annum, and "earned profits on the shares of stock held by defendant," and prays

that the Port Lebak Lumber Company be made a party, and that the proceedings of the board of directors, removing him as manager and president of the corporation be declared null and void. That an accounting be had, and that defendant have judgment for any sum which may be found due him, together with the damages which he has sustained.

Based upon the order of the court, the Port Lebak Lumber Company appeared and filed an answer, denying all the material allegations of defendant's cross-complaint, and, among other things, alleges that the defendant Carter had taken and appropriated to his own use P188,614.16 "in excess of the money to his credit in his personal account, which said drawing was not authorized by the directors of the corporation," for which amount it prays judgment against the defendant Carter.

The plaintiff also filed a general denial to defendant Carter's cross-complaint.

The Philippine Trust Company was appointed receiver of the 270 shares of stock of the corporation of which it took possession.

Upon such issues a large amount of testimony was taken. There was a stipulation as to many of the material facts. In a very able and exhaustive opinion, the; trial court found that plaintiff should have and recover judgment from the defendant Carter for the 270 shares of the capital stock of the corporation transferred to him on August 3, 1920, free of any claim or interest thereon of the defendant; that the certificate for said shares should be delivered to the corporation by the receiver for cancellation; and that a new certificate should be issued to the plaintiff, as executrix, and that the corporation should have and recover from defendant Carter the sum of P57,620.70, with interest; and that defendant take nothing by his cross-complaint, which is dismissed, and for the costs of the action, from which the defendant Carter appeals, claiming that the lower court erred in sustaining an objection to the testimony of the witness Tillet as to the circumstances under which the contract was executed, and the negotiations between the parties which culminated in the contract, and in rejecting the testimony of the witness Tillet, and in striking portions of his testimony from the record, and in finding that the defendant made trips to Manila or Hongkong on his personal business, and in disallowing P8,885.22 expended by him as manager in charge of the company. In finding that P68,155.22 should be charged to his personal account, and that the sum of P381,778.05 credited to the account of Kidwell on the books of the company was composed of dividends earned by Kidwell's shares of stock prior to September 1, 1919. In refusing to find that the P134,610.13 was paid to Kidwell on account of dividends declared August 13, 1919, as of September 1, 1919, and in finding that Carter was addicted to excess

of drinking of liquor, and that plaintiff was ignorant of defendant's account in the company and in its interpretation of the contract between them. In holding that the defendant was not entitled to credit or to recover for the payments made to Kidwell and his estate on account of the purchase price of the 270 shares, and that the company was justified in removing him as general manager, or that he ever had breached his contract, or that plaintiff was entitled to treat it as a breach of the contract, or to rescind it, and in entering the respective judgments, and in refusing to enter judgment for the defendant Carter, and in denying his motion for a new trial.

Johns, J.:

It is very apparent that the contract was made between personal friends. That it was designed to equally protect both parties, and that neither sought an undue advantage over the other, and that it was not hastily signed or prepared. It was dated February 25, 1919, and by its terms a previous contract between them, of January 30, 1919, was "declared of no further force or effect." Carter was to become manager June 30, 1920, and should Kidwell desire him to assume his duties prior to that time, he was to give him at least four months' notice. He assumed his duties September 8, 1919, nearly six months after the contract was signed. Hence, if there was any doubt as to the meaning construction of the contract between them, there was ample time for discussion and settlement before Carter resigned his old and assumed his new position.

Clause (a) of section 10 provides that a full and complete inventory of all property of the corporation should be made on the day Carter assumed his duties as manager. As between the parties, clause (b) specifically defines what shall be deemed the property of the corporation, which includes "mill machinery, log, logging equipment, logging accounts, tools, and equipment and mill supplies on hand," and it then says that "the lumber on hand and in transit, and the goods, wares, and merchandise on hand and in the company's stores taken at their invoice price plus any launches now owned by said company or subsequently acquired shall as between the parties hereto be considered the individual property of said first party." It specifies and defines the rights of both parties, and is the basis for the purchase price of the 270 shares of stock. Carter did not invest any money. It is very apparent that he knew all about the business of the corporation, and was familiar with its assets, revenues, and profits. Also, that in the natural course of events, both parties fully expected that on or before three years Carter could and would fully pay for his stock out of his pro rata share of the profits. It was for such reason that the three-year limitation was placed on the contract. By its terms, in addition to his salary of P500 per month, he was

made the manager of the corporation, the profits of which, in the ordinary course of business, it was thought, would be sufficient in three years to pay for the 270 shares of stock.

In his letter of October 13, 1919, when he knew his sickness would be fatal, plaintiff says:

“I have also explained to her to have every confidence in you which she has and not to bother you in regards to your plans in carrying out the business.

“By all means see that that mortgage I gave Staples on the plantation amounting to thirty thousand pesos is liquidated as soon as possible and advise Mrs. Kidwell.

“I hope you have the statement showing” just how things stood at the time you took over the business, mailed to me- if not please mail same as soon as possible.

“It serves me much pleasure to know I have two men like you and Wheeler at the head of my business in the condition I am in.”

This was the last letter of a dying man to his trusted and confidential friend.

Carter’s contention that the contract creates a partnership between them is not tenable. The word partner is not used anywhere in it, and the contract itself does not have any of the elements or essentials of a partnership. It is true that the widow gave him a letter of introduction in which she referred to him as a partner, and that the offered and excluded testimony tends to show that Kidwell himself referred to Carter as his partner. The average person knows but little, if anything, about the subtle, legal distinction between a partnership and the stockholders of a corporation, and, as used by them, the word partner meant nothing more than that Carter was or would become manager of the corporation with valuable rights as a stockholder. It did not mean that the corporation had been destroyed or dissolved. Carter’s rights were based upon the value of the stock, and he could not become a stockholder unless the corporation continued to exist. This construction is further sustained by the fact that a meeting of the board of directors of the corporation was called at which the contract was ratified, and Carter was elected manager and later president of the corporation, and that the same board, with Carter as president, declared the dividend and issued direct to him the 270 shares of stock. By his own conduct he is estopped to claim or assert that the contract was a partnership.

In its final analysis, it was a three-year contract for the employment of Carter as manager at an agreed salary of P500 per month upon specified terms and conditions defining his powers and duties with a right and option to acquire 270 shares of stock and pay for them out of the profits of the corporation during the period of his contract. At the time of its signing Carter was receiving a salary of P750 per month with allowances for traveling expenses, a residential house, and an entertainment fund of P2,000 per annum as Provincial Governor, and the contract provides that he should have four months' notice in which to arrange his personal business and resign his old position before assuming the duties of the new. Hence, we must assume that he intended and expected to better his position, and that his right to acquire the 270 shares of stock out of the profits of the corporation was one of the main considerations and inducements for his signing of the contract, the value of which to him largely depended upon his abilities and the way in which he discharged his duties as manager. It provides that upon Carter assuming his duties, a full and complete inventory should be taken, and, as between them, what property shall belong to the corporation and what shall belong to Kidwell. That Kidwell shall give Carter full management, "together with sufficient funds and merchandise, buildings, tools, supplies and equipment," as may be necessary to the efficient administration of the corporate business. That Carter shall devote all of his time to the corporate business and receive a salary of P500 per month and render written reports every three months, and that he shall remain as general manager for three years. That upon assuming his duties Kidwell shall cause 270 shares of the capital stock to be issued in his name and endorsed to Carter to be placed in escrow in the bank which he agreed to sell to Carter upon the terms and conditions provided in the contract.

The important question here is the construction of the contract. It recites that the capital stock of the corporation is P60,000, and that Kidwell is the sole owner of 587 shares of stock in the company of the par value of P58,700; that, subject to its terms, Kidwell desires to sell and that Carter desires to buy 45 per cent of the stock of the corporation for the price of P80,000. Section 10 says that, subject to the provisions of the contract, Kidwell agrees to sell and Carter agrees to buy "270 shares of the capital stock of the said Port Lebak Lumber Company for the sum of eighty thousand pesos (P80,000)." Clause (a) of section 10 provides that, when Carter assumes his duties as manager, a full and complete inventory shall be taken of all of the assets of the corporation. Clause (b) provides, in effect, that, as between them, all of its liquid assets shall be deemed and treated as the individual property of Kidwell, and that the mill, logs, logging equipment, logging accounts, tools, and equipment and mill supplies should be deemed and treated as the property of the corporation. On assuming his duties an inventory of all of the property was taken from which it was found



that, the assets of the corporation known and designated "as the individual property of Kidwell" was of the value of P134,610.13.

Clause (c) of section 10 says:

"As the purchase price of the stock above-mentioned said second party shall pay said first party the said eighty thousand pesos (P80,000) plus the inventory value of the property listed as the individual property of said first party as set forth in the preceding paragraph, etc."

The plaintiff contends and the trial court found that, under this clause, the P134,610.13 should be added to the P80,000, and that the purchase price of the stock was P214,610.13. That ruling is assigned as error, and is the important question in this case. The language used is somewhat awkward, and its meaning is not definite or certain, and, hence, its proper construction must depend upon the relative situation and the purpose and intent of the parties.

It is stipulated that the value of the lumber on hand and in transit, the goods, wares, and merchandise in the company's stores, at the invoice price, and of the launches specified in clause (b) of section 10 of the contract was P134,610.13. As to Carter, this became the individual property of Kidwell, and was not an asset of the corporation. It appears from the balance sheet of date August 31, 1919, as certified by the public accountants, that the gross value of all of the assets of the corporation was then P449,486.46, in which the liabilities are as follows:

Capital stock.....	P60,000.00
Forestry dues.....	3,114.20
Notes payable.....	15,000.00
Accounts payable.....	13,115.52
Undivided profit from December 31.....	199,364.18
Profit for eight months ending August 31, 1919, as per profit and loss account.....	<u>158,892.56</u>

Making a total of..... 449,486.46

In its accounts receivable is a claim against L. B. Kidwell amounting to P182,508.24 which, with other claims and cash on hand, amount to P231,980.90, exclusive of the items constituting the P134,610.13 specified in the contract as Kidwell's "individual property." It will be noted that none of such items are specifically mentioned or specified in the contract. But assuming that Kidwell's personal debt to the corporation of P182,508.24 is wiped out, and that in addition thereto he receives the inventory value of the lumber and merchandise and launches of P134,610.13, it would make a total of P317,118.37; Deducting this from the gross liabilities of P449,486.46, which includes the capital stock of P60,000, the remaining assets of the corporation at the time that Garter became its manager would amount to P132,368.09, for which in any event Carter was to pay P80,000 for 45 per cent of the capital stock, and, if the theory of the trial court is sustained, he would have to pay P214,610.13, and yet they were warm, personal friends, and the contract was intended to be fair to both parties. There is no claim or pretense that Kidwell ever paid the P182,508.24 which he owed the company on August 31, 1919, or that he ever will. Hence, that item should be deducted from the undivided profits as they appear on August 31, 1919.

Although it appears from the balance sheet that there were other liquid assets amounting to P49,472, it is also shown that the company was in debt over P31,000, and the contract recites that when Carter becomes manager, that Kidwell will turn over "sufficient funds and merchandise, buildings, tools, supplies and equipment, and in general such property and properties as shall be essential to the proper and efficient administration of the corporate business." The floating debt of the company had to be paid and the new manager of the company needed the ready money with which to pay monthly bills. Hence, we have a right to assume that the parties intended that Carter, as manager, should have the use of the cash on hand and accounts receivable with which to pay the floating debt of the company and its monthly operating expense, and that all of such liquid assets were turned over and delivered to Carter as manager to be used in the future operations of the company. Including the cash on hand and bills receivable, and, excluding Kidwell's debt of P182,508.24, the assets of the corporation would then amount to P172,000, which is substantially the basis of value upon which Carter was to pay, P80,000, for the 270 shares, or 45 per cent of the 600 shares of stock, which would amount to P77,400.

The contract must be construed as a whole and as its different provisions relate to each other. As thus construed the amount which Carter was to personally pay for the 270 shares

of stock out of its own future profits under his management was P80,000, not less than one-third of which was to be paid each year. In addition thereto, and as manager, he was to pay Kidwell from and out of the present or future profits of the company P134,610.13 for his "individual property" as it is mentioned and defined in clauses (a) and (b) of section 10 of the contract. In other words, personally and out of future profits on the 270 shares of stock, Carter was to pay Kidwell P80,000 as the purchase price for his stock, and in addition thereto and as a part thereof, and as manager of and for, and on behalf of the corporation, he was to pay Kidwell the inventory value of the property listed as his "individual property," or P134,610.13. Under the financial condition of the company then existing, to require Carter to personally pay P214,610.13 for the 270 shares of stock out of its future profits would be unconscionable, and, in effect, would require him to pay at least three times its book value, as shown by the balance sheet when he became its manager. That was never the intention of the parties., Under this construction, it remains to be seen how much was paid Kidwell or his estate, by whom it was paid, from what fund and how it should be applied.

We agree with the lower court and the attorneys for the plaintiff that the purchase price of the 270 shares of stock was to be paid by Carter out of the future profits of the corporation to be earned after he became its manager. The parties have stipulated that the total profits of the company from September 1, 1919, to December 31, 1920, was P350,693.90 from which should be deducted P15,717.41 "to cover the depreciation and obsolescence." "The remainder, three hundred thirty-five thousand two hundred forty-six and 49/100 (P335,246.49) pesos, upon a declaration of a dividend, would be distributable among the shareholders of the corporation entitled hereto." But, as between Carter and Kidwell, the contract expressly provides that the P134,610.13 should be paid out of the profits of the corporation, and it should be construed to mean that the P134,610.13 should be paid out of such profits before either Carter or Kidwell would be entitled to receive any dividend on their respective stock. As between them this would leave a net dividend of P200,636.26 forty-five per cent of which would be P90,285 to which should be added the dividend upon the ten shares of stock which Carter acquired through his wife or P3,344, making a total of P93,629 of which P80,000, under the terms of the contract, would automatically and *ipso facto* become the property of the Kidwell estate as the amount of the purchase price of the shares of stock, subject to any charge or lien against the fund in favor of the company.

Applying this rule of construction to clause 18 of the stipulation of facts, the plaintiff would be entitled, as between it and Carter, first, to P134,610.13, and, second, to a dividend on its remaining 317 shares of stock in round numbers of P104,329, making a total of P238,939. The testimony is conclusive that after Carter became manager, the Kidwell estate at

different times and for different purposes received out of the assets of the company P244,689.

The trial court found, and we approve that finding, that there was a total amount of expenses of P9,493.46 which were improperly charged by Carter to the company and with which Carter should be personally charged. Turning now to Carter's private account as it appears in the corporate books, we find that on and between the first of August, 1919, and the 31st of December, 1920, that he drew out P215,672.03 from which should be deducted the check for P120,000 which he received from Findlay, Richardson & Company and endorsed to the plaintiff. In the same account he has total credits of P27,059.87.

Deducting the amount of credits and the charge of P120,000, we have a net balance on the books against Carter of P68,614.16 to which should be added the sum of P9,493.46, the money of the company which Carter wrongfully spent, as above stated, we have a total of net charges against Carter of P78,107.62. Deducting this from the 45 per cent dividend on the 270 shares of stock, we have a balance of 15,521.38.

Defendant's cross-complaint was filed January 24, 1921.

It must be conceded that conditions were abnormal, and that Carter did not give the company the business, care and attention which Kidwell had a right to expect, and which it was his duty to give under the contract. Be that as it may, the stubborn fact remains, which the stipulation between the parties admits, that during the period Carter was manager the company made a net profit of P335,246.49 upon a capital stock of P60,000.

Plaintiff cites and relies upon section 11 of the contract as follows:

"In the event that the amounts so to be paid first party are not so paid as they become due, then any and all amounts so paid from time to time shall, at the option of said first party, become his absolute property and the present agreement shall become null and void and the stock so deposited in escrow shall be returned to said first party and all further rights or liabilities between the parties hereto shall be terminated."

It was a three-year contract, sixteen months of which had expired at the time of Garter's removal. The effect of plaintiff's contention would be to keep and appropriate to its own use all of the moneys which were earned during the period that Carter was manager and leave

him with nothing but his salary of P500 per month. In other words, to take all of the P335,246.49 and to deny Carter any right to share in the profits. Under such a state of facts, it might be well contended that clause 11 is unconscionable, and, for such reason, equity would not enforce it.

Article 1154 of the Civil Code provides:

“The judge shall equitably mitigate the penalty if the principal obligation should have been partly or irregularly performed by the debtor.”

That section applies with peculiar force to this case.

Section 13 of the contract provides that in case of death or disability of Carter before the termination of the contract without having fully paid the purchase price of the stock that Kidwell is bound at his option to either pay in cash or to deliver stock to Carter for the value of all moneys which he has received as payments upon the Carter stock. It is true that Carter did not die and was not disabled, but in common with other provisions of the contract, section 13 provides for an equitable settlement between the parties or their heirs.

The purpose of plaintiff's complaint is to cancel the contract and to become reinvested with title to the Carter stock, and it is very apparent that the company removed him as manager at the instance and request of the plaintiff. To all intents and purposes the plaintiff controls, and is the owner of, the corporation, which, upon motion of Carter, was made a party in the action. In his cross-complaint he prays for an accounting and a judgment for whatever may be found due to him, including damages sustained, and for such other and further relief, general and special, as he may be entitled to under the facts. In its amended answer the corporation prays for a judgment dismissing Carter's cross-complaint and in favor of the company and against him for P12,053.99 upon its first counterclaim, and P188,614.16 upon the second with interests and costs.

We have given this case the careful thought and study which its importance demands. All of the parties are before the court, and, through the issues made in their respective pleadings, ail of the facts pro and con are fully presented. In legal effect, the plaintiff cancelled the contract and caused the removal of Carter as manager. As we construe the contract and analyze the evidence, there was due Garter at that time from accrued profits on the 270 shares of stock, over and above all set-offs and counter-claims, the sum of P15,521.38, with

interest. The judgment of the lower court that the plaintiff have and recover from the defendant Carter the 270 shares of stock of the corporation free of any claim or interest is affirmed, and the certificates of stock standing in his name are cancelled, for which new certificates for a like number of shares shall be issued to the plaintiff.

The judgment of the lower court in favor of the Lumber Company for P57,620.70 with interest is reversed, and one will be entered here in favor of the defendant Carter and against the Port Lebak Lumber Company for the sum of P15,521.38 with legal interest from the date of the filing of the cross- complaint, and, subject to, and under the provisions of, section 510 of the Code of Civil Procedure, such judgments to be and operate as a full and final settlement of all matters between the parties to this date. As between the plaintiff and Carter, neither party will recover costs in this court. As between Carter and the Lumber Company, Carter will have and recover costs against it in this and the lower court. So ordered.

*Johnson, Malcolm, Villamor, Ostrand, and Romualdez, JJ., concur.*

---

*DISSENTING*

**ARAULLO, C. J.**, with whom concur **STREET**, and **AVACEÑA, JJ.**,

I dissent. I am of the opinion that the judgment appealed from should be affirmed. Judgment affirmed in part and reversed in part.

PETITION FOR A REHEARING

*November 27, 1922.*

JOHNS, J.:

The Port Lebak Lumber Company has filed a petition for a rehearing in which, among other things, it contends that interest should not have been allowed “upon the amount of the judgment rendered in this court for defendant Carter.” The judgment as entered reads that the amount shall bear interest “from the date of the filing of the cross-complaint and subject to, and under the provisions of section 510 of the Code of Civil Procedure.”

The majority of this court is of the opinion that this was error, and that the judgment should only bear interest from the date of its rendition in this court. It is, therefore, ordered, adjudged and considered by this court that the judgment is modified as to interest, and that it should read that defendant Carter should have judgment against the Port Lebak Lumber Company for the sum of P15,521.38 with interest at 6 per cent per annum from October 21, 1922, and that, in all other respects, the petition is denied and the original judgment of this court is affirmed. So ordered. Johnson, Malcolm, Villamor, and Romualdez, JJ., concur.

---

*CONCURRING*

**ARAULLO, C. J., STREET, and AVANCEÑA, JJ.,**

The undersigned concur in the modification of the judgment for the reason that they are of opinion that the cross-complainant Carter is not entitled to recover the capital and hence cannot be entitled to interest.

---

*DISSENTING*

**OSTRAND, J.,**

I think the interest should be computed from the date of the filing of the cross-complaint and therefore dissent.

Date created: June 06, 2014