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[G.R. No. 542. April 01, 1902]

JOSE GONZAGA, PLAINTIFF AND APPELLANT, VS. CARMEN CANETE, DEFENDANT AND APPELLEE.

D E C I S I O N

WILLARD, J.:

We have been very much embarrassed in the decision of this cause on account of the condition of the record. It is evident that, although the suit was commenced in accordance with the Law of Civil Procedure, it was carried on, after the 1st day of October, 1901, in accordance with the procedural law now in force. The court below, however, in its last order, directed the making of a bill of exceptions, and ordered that the original record should be sent to this court. An examination of the record shows that it does not contain the proceedings at the trial. Nor does it appear what the evidence received and considered by the court below was, nor whether or not the plaintiff offered proofs in evidence which the judge refused to admit. Notwithstanding the defective condition of the record, the parties at the last term in Iloilo argued the case, limiting themselves by agreement to a discussion of the questions of law, excluding from the discussion all questions of fact. There was not, however, any agreement in respect to the facts upon which the questions of law were to be based.

Certain facts have, however, been admitted by the pleadings which appear in the record. It is admitted that the estate in question was rented under the contract which it attached to the complaint; that there existed on said estate a hydraulic mill for the grinding of sugar; that upon the 1st day of August, 1900, the municipality of Granada decided to close the canal which furnished water to the mill, on the alleged ground that said canal was dangerous to the public health. There is nothing to show whether or not the new canal which was opened by the defendant was a sufficient substitute for the old canal. In this condition of the record we can not decide whether the said act of the municipality of

Granada is or is not sufficient ground for the rescission of the contract. The proof is not sufficient to enable us to determine whether or not the defendant had acquired by prescription the right to the enjoyment of the waters of the canal.

In accordance with the provisions of article 1554 of the Civil Code the landlord is bound to maintain the estate in proper condition for the use for which it has been rented. This provision requires the defendant to maintain the estate substantially, with reference to this mill, in the same condition as it was when the contract of lease was made. If the canal was closed by the municipality of Granada, acting in the exercise of its rights, the defendant, after having been so required, would be bound to furnish another canal as good as the old one, and if she failed to do so after such demand and the expiration of a reasonable time, the tenant would have a right to rescind the contract.

From what appears in the record the decision of the municipality of Granada can not be considered as a mere casual interference, and therefore within the terms of article 1560, since it does not appear in the record whether the council acted in the exercise of its rights or not. In the last case its action does not fall within the provisions of article 1560 by the express terms of the last clause. The parties have the right to present evidence upon the following points: (1) Did the council have, or not, the right to close the canal; and (2) Has the plaintiff furnished, or not, another canal as good as the old one?

The judge below made no decision concerning the right of the plaintiff to rescind the contract, and, as we understand, the judgment did not decide this question. It is inferred from the statement made by the lawyer for the defendant in his argument in this court that the evidence offered upon this point was excluded. If this is true, the court committed error.

The fact that the defendant has failed to furnish the thirty carts mentioned in the contract, if it is true, would not be ground for the rescission of the contract of lease, inasmuch as such omission only could affect the plaintiff with respect to the fulfilment of that part of the contract which was connected with the crop of 1899-1900, which crop was the property of the defendant.

The case having been carried on in the court below in accordance with the present Code, we think we are justified in applying to it the provisions of that Code so far as the judgment to be entered by this court is concerned. In accordance with that Code we have power to vacate a judgment and grant a new trial. (Art. 496.) In view of the fact that th,e judge ordered that the original record should be sent to this court without requiring the filing of a

bill of exceptions, it would be a manifest injustice to hear the case upon this defective record and to enter a final judgment against the defendant rescinding the contract, when, if we had before us the evidence, it might turn out that no such judgment should be entered. The plaintiff ought not to get this advantage from his own failure to bring the record here in the proper condition. Moreover, the agreement of the parties to submit to the decision of the court questions of law raised in a suit carried on in accordance with the present Code ought to give us the right to enter a proper judgment for the determination of such questions in conformity with the provisions of said Code.

For these reasons it is ordered that the judgment of the court below be vacated and that the record be returned to the said court for a new trial, in which the parties will be able to present such evidence as they think proper. No order is made with regard to costs.

Arellano, C. J., Torres, Cooper, and *Mapa, JJ.,* concur.

Ladd, J., did not sit in this case.

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