

[G.R. No. 1759. July 15, 1905]

ALEJANDRO MONTELIBANO, PLAINTIFF AND APPELLEE, VS. EMILIO LEDESMA, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

The contract in question between the parties was made on the 30th day of April, 1901. At that time the defendant, Ledesma, was occupying, as tenant, the hacienda Imbang, the property of Leandro Locsin. The annual rent of the hacienda was P3,000, payable P1,500 in the month of February of each year and P1,500 in the month of April. By the terms of the contract between plaintiff and the defendant, defendant admitted that he was then indebted to the plaintiff in the sum of P6,750. He agreed to deliver to the plaintiff all the sugar raised upon the estate belonging to him up to the 30th day of April, 1902. Montelibano, on his part, agreed to pay the rent of P3,000 for the year 1902.

The court below found as a fact that Ledesma did not deliver to Montelibano all of the sugar grown upon the place and belonging to him, but sold some of it to third persons. The evidence shows that this sale was made in January or February, 1902. The preponderance of the evidence is, in our judgment, in favor of the finding of the court below. The complaint in the action made no reference to any breach of the contract on the part of the defendant. The appellant in this court attaches great importance to this omission, but we do not think that it is significant. The plaintiff's cause of action did not rest upon the defendant's breach of the contract so far as the delivery of the sugar was concerned, but rested rather upon the debt which had existed before the contract was made, and which was recognized by the defendant in the

contract itself. The plaintiff could maintain this action without any reference to the delivery of the sugar, and it was not necessary for him, in his complaint, to make any allegations in that respect.

This finding of fact, supported as it is by the evidence, is conclusive of the case, for if Ledesma failed to fulfill the contract on his part, he can not recover damages for the failure of Montelibano to pay the rent. The evidence shows that of the rent due in February (P1,500) Montelibano paid P1,200 in that month. The remaining P300 he paid in the month of September. The P1,500 due in April he did not pay. It will be observed that this P1,500 was not payable until the 30th day of April, 1902—the very day on which the contract between Ledesma and Montelibano terminated. It is claimed by the appellant that the failure of Montelibano to pay the P300 due in February relieved him of the necessity of complying with the contract on his part, and delivering all of the sugar. We can not agree with this contention. His sale of part of the sugar to third persons took place before there was any failure on the part of Montelibano to pay the rent. Moreover, there is evidence in the case indicating that there was some arrangement between Montelibano and Locsin, by the terms of which Locsin agreed to give Montelibano further time for the payment of this P300; and the fact that Montelibano did make this payment in September, after the termination of his contract with Ledesma, after he had brought this action against Ledesma, and after Locsin had brought an action of forcible entry and detainer and ejected Ledesma from the premises, indicates that there was some arrangement of this kind.

The whole case turns not upon the cause of action set out in the complaint but upon the counterclaim set out in the answer, and the burden of proving that counterclaim was upon the defendant. He was bound to show by a preponderance of evidence that Montelibano had not complied with the terms of his contract, and that the damages set up in the counterclaim necessarily resulted from such noncompliance. The damages claimed by Ledesma in his counterclaim arise out of the fact that he was ejected from the estate for the nonpayment of rent. This proceeding on the part of Locsin was not commenced until the month of July, 1902, and we think it was based, not upon the failure to pay the

P300 due in February, 1902, but upon the failure to pay the P1,500 due on the 30th of April of the same year.

The judgment of the court below is affirmed, with the costs of this instance against the appellant. After the expiration of twenty days judgment will be entered, in accordance herewith, and the case remanded to the court below for execution. So ordered.

Arellano, C. J., Torres, Johnson, and Carson, JJ., concur.

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