BOOK REVIEWS

The ATENEO LAW JOURNAL is published bi-monthly, July through March, by the Faculty and Student Body of the College of Law, Ateneo de Manila, DEOGRACIAS T. REYES, *Dean*, under the direct management of the College of Law Sodality of St. Thomas More, REV. AUGUSTINE M. BELLO, S.J., *Regent of Law and Student Counsellor*. Subscription: ₱1.50 this number.

VOLUME 1 JANUARY-FEBRUARY NUMBER 3

ATENEO LAW JOURNAL

JURISDICTION OVER THE EJECTMENT OF TENANTS OF RICE LANDS

Condensed from the Graduation Thesis of Jeremias U. Montemayor, Law '52

FOREWORD

THE wheels of progress must turn. No human hand can stop them. But we can regulate them in such a way that they do not sweep man off his senses and hurl him so inhumanly against his brother.

The Filipino farmer has awakened. He, who until recently has known only his duties, now opens his eyes to see his rights shining upon him. He has seen the light, and no power on earth can ever close his eyes again.

Yet, what he has seen may be spun like a coin before his eyes until he cannot make heads or tails of it, until he sees nothing but an empty, meaningless, ceaseless twinkle. This the communists in our country have done—until the farmer's hope became frustration, until his frustration became hate. And this they are bent on doing further, for in the history of their struggle for world domination the conquest of the peasants has often meant the conquest of the people.

Our tenancy laws have been promulgated to fight the inroads of communism in our peasantry. Ironically, however, these very laws have been utilized in many instances to further the cause they are intended precisely to combat. Mainly responsible for this is the unwillingness of many landowners to abide by the tenancy laws. Equally responsible is the greed and mental intoxication which the new rights have stirred up in many a tenant. Added to all this is the vagueness that pervades many aspects of our

tenancy laws—which vagueness has been taken advantage of by landowners, tenants, lawyers, politicians and agitators to suit their respective ends.

One such aspect of our tenancy laws which needs clarification is the question of jurisdiction over the ejectment of tenants of rice lands.

The Law on Ejectment

The Civil Code of the Philippines broadly provides for the ejectment of tenants of agricultural lands in the following manner:

> "Art. 1673.
> * * *
> The ejectment of tenants of agricultural lands is governed by special laws."
> "Art. 1685. The tenant on shares cannot be ejected except in cases specified by law."

On June 9, 1939, the Second National Assembly passed Com. Act No. 461, which provides in part as follows:

> "Section 1. Any agreement or provision of law to the contrary notwithstanding, in all cases where land is held under any system of tenancy the tenant shall not be dispossessed of the land cultivated by him except for any of the causes mentioned in Section nineteen of Act Numbered Four Thousand and fifty-four or for any just cause, and without the approval of a representative of the Department of Justice duly authorized for the purpose * * *"

On August 22, 1940, Com. Act No. 461 was amended by Com. Act No. 608, the important parts of which are hereby reproduced:

> "Section 1. Any agreement or provision of law to the contrary notwithstanding, in all cases where land is held under any system of tenancy the tenant shall not be dispossessed of the land cultivated by him except for any of the causes mentioned in Section nineteen of Act Numbered Four Thousand and fifty-four or for any just cause, and without the approval of a representative of the Department of Justice duly authorized for the purpose. ***The Department of Justice is likewise charged with the duty of enforcing the Rice Share Tenancy Act and, in pursuance thereof, may issue such orders as may be necessary with respect to the liquidation of the crops, the division thereof, and the apportionment of the expenses*** * * * [1]

Lastly, on October 3, 1946, the Congress of the Republic of the Philippines revised Com. Act No. 461, as amended by Com. Act No. 608, through the passage of Republic Act No. 44. We hereby set forth the parts of the said Republic Act which are pertinent to the subject of our discussion:

> "Section 1. Any agreement or provision of law to the contrary notwithstanding, in all cases where land is held under any system of tenancy the tenant shall not be dispossessed of the land cultivated by him except for any of the causes mentioned in Section nineteen of Act Numbered Four Thousand and fifty-four or for any just cause, and without the approval of a representative of the Department of Justice duly authorized for the purpose. *The Department of Justice is, likewise, charged with the duty of enforcing all the laws, orders and regulations relating to any system of tenancy* * * * " [2]

Construing the provisions of Com. Act No. 461, as amended, the Supreme Court of the Philippines has ruled that the dispossession or ejectment of a tenant of land held by him under any system of tenancy is under the exclusive jurisdiction of the Department of Justice or its duly authorized representative. This was held in the case of Ojo vs. Jamito, 46 O.G. (Supp. 11) 216, 219, 220:

> "Act 461, as amended... must be construed to have taken that jurisdiction out of the general jurisdiction of the Court of First Instance...
> Therefore, the respondent justice of the peace, as such, has no jurisdiction to take cognizance of the case at bar, in which the plaintiffs-respondents seek to dispossess the petitions of the lands claimed by them in possession of the petitioners as share-croppers..."

The above ruling was reiterated in the cases of Peña vs. Arellano, 46 O.G. (Supp. 11) 225, 228, and Infante vs. Javier, 47 O.G. 1167, 1169.

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[1] Author's italics.
[2] Author's italics.

Scope of the Law

Since certain tenancy cases have been taken out of the jurisdiction of the ordinary civil courts, it is important to determine exactly what these cases are. According to Com. Act No. 461, as amended, these cases are "all cases where land is held under any system of tenancy". When is "land held under any system of tenancy?"

There has been a belief in some quarters that the phrase "all cases where land is held under any system of tenancy" embraces every kind of tenancy involving agricultural land, including a fishpond (Buenaventura vs. Enriquez, CIR Case No. 456; Tenancy No. 275; Memorandum, Chief of the Tenancy Law Enforcement Division, Department of Justice, October 19, 1945). However, the Supreme Court of the Philippines has set down definite limits to the phrase "all cases where land is held under any system of Tenancy". The said Court limited the scope of the phrase to those systems of tenancy only, for which special tenancy statutes have been enacted (Arciga vs. De Jesus, G. R. No. L-2003, Jan. 28, 1950; Villanueva vs. Tenancy Law Enforcement Division, G. R. L-4019, July 31, 1951).

This ruling set down by the Supreme Court has been adversely criticized. It has been claimed, particularly in the Arciga case, that the ruling should refer only to the question of *liquidation* and not *ejectment,* and that with respect to ejectment, the jurisdiction of the Department of Justice extends to any kind of tenancy, whether or not there exist tenancy laws governing the same.

The difficulty seems to arise from an inconsistency in Com. Act No. 461 as it was amended by Com. Act No. 608. As may be noted by a perusal of the same, Section 1 thereof speaks, in the first part, of *ejectment* of tenants "in all cases where land is held under any system of tenancy;" and in the second part, it speaks of *enforcing* "the Rice Share Tenancy Act." So that, while *ejectment* and the question of jurisdiction which it involves extend to "all cases" of tenancy, *enforcement* is limited to the Rice Share Tenancy Act.

The inconsistency has been lessened, though not entirely removed, with the enactment of Republic Act No. 44. In said Act, the power over *ejectment* and the question

of jurisdiction it involves extend to "all cases" of tenancy; while the power over *enforcement* is limited to "all laws, orders and regulations relating to any system of tenancy", which implies that in the absence of special laws, rules and regulations, the *enforcement* of any provision of any tenancy contract does not fall under the operation of the Act.

The Supreme Court of the Philippines reconciled these conflicting provisions in the aforecited cases of Arciga vs. De Jesus and Villanueva vs. Tenancy, ruling that the scope of the power over *ejectment* is limited by the scope of the power over *enforcement.* Put in another way, the Department of Justice has jurisdiction over the ejectment of tenants only when and to the extent that there exist special laws which the same Department is empowered to enforce.

It is settled, therefore, that the application of Com. Act No. 461, as amended, is limited to "tenancies especially covered by tenancy laws" (Arciga vs de Jesus). But even this ruling is not entirely free from ambiguity. Suppose the special statute defines a certain kind of tenancy contract involving a particular kind of land? In that case, a question will arise: Will the application of Com. Act No. 461 be confined to that particular contract or will it extend to any kind of tenancy contract which involves the particular kind of land? To illustrate: Suppose (and we only suppose) that the Rice Tenancy contract defines the contract it purports to govern as a Partnership contract between landowner and farmer. Will Com. Act No. 461 be applied if the contract is one of Lease between landowner and farmer?

It seems that it will not. The Supreme Court in the cases we have mentioned have laid down the principle that the scope of the power of *ejectment* is limited by the power of *enforcement* of the special statute. Hence, the Department of Justice has jurisdiction over ejectment only in the cases where it has the power of enforcement. Hence, if the law, which the Department of Justice has the power to enforce, defines a certain contract which said law is supposed to govern, the jurisdiction of the Department of Justice over ejectment is confined to tenants who are parties to that particular contract. In other words, if the Rice Share Tenancy Act defines a rice share tenancy contract as a Partnership contract, the Department of

Justice will not have the power of ejectment in case the contract is one of Lease.

(From this point on we shall limit our discussion to the Rice Share Tenancy Act, our purpose being to determine the jurisdiction over the ejectment of tenants of rice lands only.)

So, it has been shown that the phrase "all cases where land is held under any system of tenancy" is limited to those systems of tenancy that fall within the kind of contract or contracts contemplated by the Rice Share Tenancy Act, this being the only tenancy act existing (aside from the Sugar Tenancy Act). In other words, the Department of Justice has jurisdiction over the ejectment of tenants only when there exists between the parties a relationship of landlord and tenant in the contemplation of the Rice Share Tenancy Act. In the words of the Court of Industrial Relations in the case of Gamboa vs. Pablo del Moral (Tenancy Case No. 188-R):

> "... for the Court of Industrial Relations to acquire appellate jurisdiction over a tenancy case from the Tenancy Law Enforcement Division, Department of Justice, the relationship of landlord and tenant should first be established. Where such relationship does not exist and on the contrary what appears as in the case at bar is one of lessor and lessee as defined under the provisions of the Civil Code, the Court of Industrial Relations does not acquire jurisdiction over it."

If the relationship of landlord and tenant must be established to give jurisdiction to the Department of Justice, then it is important to know the nature of such relationship—to know the nature of the contract contemplated by the Rice Share Tenancy Act. If its nature can be determined, it can be definitely stated whether or not any particular contract involving rice land falls under the purview of the said law—whether a particular question of dispossession is under the exclusive jurisdiction of the Department of Justice or under that of the ordinary civil courts.

The Rice Share Tenancy Act is entitled as follows:

> "AN ACT TO PROMOTE THE WELL-BEING OF TENANTS (APARCEROS) IN AGRICULTURAL LANDS DEVOTED TO THE PRODUCTION OF RICE AND TO REGULATE THE RELATIONS BETWEEN THEM AND THE LANDLORDS OF SAID LANDS, AND FOR OTHER PURPOSES."

The contract for which said Act provides is defined in Section 2 thereof, as follows:

> "Sec. 2. *Share tenancy contracts defined.* A contract of share of tenancy is one whereby a partnership between a landlord and a tenant is entered into, for a joint pursuit of rice agricultural work with common interest in which both parties divide between them the resulting profits as well as the losses."

What is the nature of the contract contemplated by the Rice Share Tenancy Act? Section 2 of said Act calls it a "partnership". Is it really a Partnership as this contract is contemplated in the Civil Code of the Philippines? It is, if their essential elements and characteristics are the same.

What are the essential elements and characteristics of Partnership under the Civil Code? They are:

> 1. The elements of a contract, which are: consent, object and cause (Art. 1318, Civil Code of the Philippines).
> 2. Mutual contribution of money, property or industry to a common fund (Art. 1767, Civil Code of the Philippines).
> 3. Intention to engage in a lawful business, trade or profession (Art. 1774, Civil Code of the Philippines).
> 4. Intention to divide the profits among parties (Art. 1767, Civil Code of the Philippines).
> 5. In case immovable property or real rights are contributed, a public instrument and inventory of said property (Art. 1771, 1773, Civil Code of the Philippines).
> 6. And, a juridical personality separate and distinct from that of each of the partners (Art. 1768, Civil Code of the Philippines).

There is no doubt that the contract contemplated by the Rice Share Tenancy Act has some things in common with a Partnership. But it lacks at least two of the elements and characteristics enumerated above: Numbers 2 and 6.

According to Article 1767 of the Civil Code, there must be a mutual contribution of money, property or industry to a *common fund.* The nature of this contribution to a common fund is such that it gives rise to a co-ownership among the parties over the money or property con-

tributed (Article 1811, Civil Code of the Philippines).

In the Share Tenancy Contract no such common fund or co-ownership exists. Nowhere does Act No. 4054, as amended, so provides. Section 2 thereof speaks of a "joint pursuit of rice agricultural work with common interest." But neither this nor any other provision so much as hint the existence of a common fund or co-ownership between the landlord and the tenant over any amount of money, any farm implement or land. On the contrary, there are many provisions of Act No. 4054, as amended, which unmistakably indicate the maintenance of separation of property between the landlord and the tenant during the tenancy relation.

If there is any money given by any party to the other, Act No. 4054 does not call it a contribution to a common fund but advances and loans bearing interest, which decidedly have a different nature (Sections 2 and 10). Implements used in the "joint pursuit of rice agricultural work" are owned separately (Implied in Section 7, second paragraph). The landowner remains the owner of the land which the tenant cultivates. Only the landlord bears the burden of the land tax (Section 18). When the land is sold, it is sold by the landowner and not by any partnership nor by the landlord and the tenant jointly (Implied in Section 26). As a matter of fact, the land is merely entrusted to the tenant (Section 25). Finally, the Act itself unmistakably declares that the landlord remains the sole owner:

> "Section 22. *Lot for dwelling*... the tenant shall be given forty-five days within which to remove his house from *the land of the landlord* in the event of the cancellation of the contract of tenancy for any reason "[3]

So that, at the termination of the contract, the Act does not provide for any dissolution of any partnership nor for any distribution of any partnership property, which are inescapable processess connected with the termination of a Partnership (Articles 1828-1842, etc., Civil Code of the Philippines). On the contrary, said Act provides for the dismissal or dispossession of the tenant by the landlord (Sections 19 and 21).

The use of the word "dismiss", "dismissal" and "dispossessed" in Sections 19 and 21 of Act. No. 4054, as amended, clearly implies that the landlord remains the owner even before such dismissal or dispossession. For at the end of a co-ownership, a co-owner is not spoken of as being dispossessed of or dismissed from the land owned in common. The property owned or held in common is merely partitioned or divided among the co-owners; or, in a Partnership, distributed among the partners. Furthermore, Act No. 4054, as amended, does not provide for the distribution of any joint assets or liabilities at the termination of the tenancy relation. Rather, it speaks of payment of debts (Sec. 14).

[3]Author's italics.

It is clear, therefore, that the element of common fund and co-ownership essential in a Partnership is lacking in the Rice Share Tenancy Contract. Another element essential to the former is lacking in the latter: the existence of a juridical personality distinct and separate from that of each of the parties.

According to Article 44 of the Civil Code of the Philippines, corporations, partnerships and associations become juridicial persons only when the law grants them juridical personality. The same Code expressly provides that a Partnership is a juridical person (Art. 1768, Civil Code of the Philippines). Does the Rice Share Tenancy Contract give rise to a juridical personality separate and distinct from that of each of the contracting parties? It does not. Nowhere in the Rice Share Tenancy Act or in any other law is there a provision creating a juridical personality upon the perfection of the Rice Share Tenancy Contract. On the contrary, the separate ownership of each of the parties as shown in the discussion just made indicates that such a juridical person does not exist.

In the title of Act No. 4054, as amended, the term "TENANTS" is parenthetically explained as "(APARCEROS)". From this it can be inferred that the contract referred to by the said Act is the contract denominated in Spanish law as *Aperceria*. Furthermore, the contract of *Aparceria* is specially provided for in Article 1579 of the Civil Code of Spain. Such Article is the basis for Article 1684 of the Civil Code of the Philippines. Hence, resort to Spanish authorities is in order.

According to Spanish commentators, the exact nature of the contract of *Aparceria* has been a subject of much

discussion and conflict of opinion. Castan says that some authorities consider *Aparcería* as Lease; others, as Partnership, and still others, as an *innominate* or a special contract (3 Castan, 6th Ed., 274, 275). Valverde makes a similar observation (3 Valverde, 4th Ed., 550); while Manresa discusses at greater length the views of the different schools of thought on the subject (10 Manresa, 4th Ed., 608-610). Scaevola points out that the difficulty arises from the impossibility of reconciling the distinctive attributes of *Aparcería* exclusively with the nature of Lease or Partnership (24 Scaevola, 795-796).

In providing that the rules of Partnership should be among those that should govern Share Tenancy Contracts, the Civil Code of Spain recognizes some similarity at least between the two contracts. All authorities admit the existence of the similarity. But what is the nature of the similarity? Manresa says that it is a similarity not of essence but of mere accident:

> "A poco que nos fijemos en la consideración de conjunto de los dos contratos de que hablamos, observaremos que el carácter aleatorio de los resultados que con ambos pueden obtenerse, no implica una semejanza en lo esencial, sino en lo que es de mero accidente, de detalle, semejanza que por cierto se da también entre otros muchos actos. (10 Manresa, 4th Ed., 611).

The same author states that two essential elements of Partnership are absent in the contract of *Aparcería*: The intention of the parties to form a Partnership, and the existence of a separate juridical personality:

> "En cambio, si atendemos a lo que todos los Códigos y autores reconocen que es de esencia de la sociedad, veremos que notoriamente falta en la aparcería. Que es en efecto, lo que constituye el nervio y la sustancia del contrato de sociedad? Dos circunstancias que se dan, la primera, en los sujetos que contratan, la segunda, en su obra contractual.
>
> "En los sujetos ha de darse lo que se llama intención de formar sociedad; es decir, aquel estado de conciencia de que arranca la voluntad, el deseo, el propósito de realizar, no un acto afin o semejante a la sociedad, sino la sociedad misma con todas sus consequencias.
>
> "En la obra contractual se ha de dar la otra circunstancia, que es aún mas característica y mas ostensible que la anterior. Nos referimos al nacimiento de la nueva personalidad, a la creación del nuevo ser de derecho que sin anular ni absorver la personalidad de los contratantes, sino antes al contrario, estando mantenido por éstas, es el primero de los resultados que el contrato de sociedad se derivan. Consecuencia de este efecto es que se considere que el contrato de sociedad es un acto traslativo de dominio, por cuanto los bienes aportados por los socios dejan de ser propiedad de éstos, para pasar a constituir el patrimonio privado de la nueva persona juridica social. Consecuencia también del mismo efecto es que las relaciones que la sociedad con terceros mantenga, a ella se entiende que afectan y no a las personas de los socios."
>
> Ninguna de estas dos circunstancias se da en la aparcería" (10 Manresa, 4th Ed., 612-613).

Valverde thinks that Partnership and *Aparcería* are not identical:

> "Por otra parte, se observan a primera vista sus semejanzas con el contrato de sociedad de ganancias y que hay un caracter aleatorio parecido en ambos contratos; pero no existe identidad entre ellos, antes bien, les separan caracteres muy fundamentales ya preciosos.
>
> "En efecto; con el contrato de sociedad nace una personalidad distinta de la de cada uno de los socios, siendo el contrato traslativo de dominio; porque los bienes aportados son de la sociedad una vez que ésta se constituye; y las relaciones con terceros las mantiene la sociedad con independencia de los socios. Esto no se da jamás en el contrato de aparcería, pues su contenido no es otra cosa que dar a otro el uso o goce de una cosa a cambio de una merced o renta, consistente en una parte alicuota de los frutos." (3 Valverde, 4a Ed., 550-551)

On the other hand, in American law, resort to which is reasonable as we shall see later, we find:

> "A contract for the cultivation of land on shares generally does not constitute the parties partners unless they clearly manifest an intention to create a partnership." (52 C. J. S. 722).

It must be clear by now that the contract contemplated by the Rice Share Tenancy Act is not a Partnership, notwithstanding the appellation of "Partnership" given to it by Section 2 of said Act.

In this connection, it is interesting to note that many years ago there has been a tendency in Spain to-

wards the dissociation of the contract of *Aparcería* from the contract of Partnership.

Said Castan:

> "No cabe solución mas ilógica al problema de la naturaleza de la aparcería que la de calificarla de arrendamiento y someterla, en primer lugar, a las reglas de sociedad..." (3 Castan, 6th Ed., Revised, 276)

In the same vein is the criticism of Valverde:

> "Lo que es insostenible es el criterio mantenido por el código civil nuestro, que empezando por calificar este contrato de arrendiamiento, en el mismo articulo dice que se rija por el contrato de sociedad, con lo cual se han originado verdaderas dificultades prácticas, sobre todo al determinar en los casos concretos occuridos, si procede o no el desahucio." (3 Valverde, 4th Ed., 551)

And Manresa had this to say:

> "Pero mencionar al *arrendamiento por aparcería* para regirlo, por los disposiciones de las partes y, en su defecto, por la costumbre de la tierra, excluyendo en absoluto las disposiciones del contrato de arrendamiento, es una solución que no podemos admitir, por creerla contraria al sentido común, al espíritu de la rey y la misma justicia." (10 Manresa, 4th Ed., 613)

In the "Proyecto de ley de 14 de Junio de 1905" the "Ministro de Gracia y Justicia" proposed an amendment to Article 1579 of the Civil Code of Spain (omitting any mention of partnership) so that it would read as follows:

> "Art. 1579. El arrendamiento por aparcería de predios rústicos, se regirá por las estipulaciones de las partes y en su defecto, por las reglas de esta Sección (Special provisions for Rural Leases) y la costumbre local." (Insertion ours).

It would seem that our legislators either overlooked or ignored the criticisms of older authorities against confusing Partnership with a Share Tenancy Contract. Instead of distinguishing one from the other, they have even defined a Rice Share Tenancy Contract as a "Partnership".

If the nature of the contract contemplated by the Rice Share Tenancy Act is not that of a Partnership, then what is it?

Act No. 4054, as amended, purports to define and govern a *tenancy* contract. In its title as well as in practically all its provisions, the Act mentions and repeats the words "tenancy", "tenant" and "landlord". What is the meaning of these words?

In order to answer this question as accurately and as clearly as possible, we shall first determine what they mean in general, and then define them in particular under the light of Act No. 4054, as amended.

These terms, "tenancy", and "tenant" and "landlord" must have found their way into our legal literature either from Spanish or American law and jurisprudence. This is so because our legal system is derived, at least immediately, from no other sources than the Spanish and American legal systems. Although according to Webster's International Dictionary, the terms "tenancy" and "tenant" are of old French etymological origin, they seem to have no Spanish legal etymological counterparts. The word "landlord" is clearly English. Hence, we conclude that Philippine law and jurisprudence derived the terms "tenancy", "tenant" and "landlord" from the American legal system.

It follows from the foregoing that to understand properly the meaning of these terms, resource must be had to American sources. According to Webster's International Dictionary, Second Edition, 1947:

> "Tenant... 1. *Law.* (As correlative to *landlord*), one who has the occupation or temporary possession of lands or tenements, the title of which is in another..."

Going to other sources, we find that the meanings given are the same:

> "Landlord and Tenant. A term used to denote the relation which subsists by virtue of a contract, express or implied, between two or more persons, for the possession or occupation of lands or tenements either for a definite period, from year to year, for life, or at will" (Bouvier's Law Dictionary, 3rd Ed.)
>
> "Tenancy... A tenancy exists where one has let real

estate to another, to hold of him as landlord..." (Ballentine's Law Dictionary)

"Tenant... One who occupies or is in possession of premises under a lease. Clark v. Harvey, 29 S.E. 2d. 231, 233, 182 Va. 410... (41 Words and Phrases, Perm. Ed., 1946 Cumulative Annual Pocket Part, p. 63)

"The terms 'lessor and lessee' are frequently used almost interchangeably with 'landlord and tenant' although, as discussed infra... in strict usage they should refer only to parties to a formal lease. 'Landlord' is synonym for 'lessor' (Vt. Foss v. Stanton, 57 A. 942, 76 Va. 365) and 'tenant' is a synonym for 'lessee'. (Tex.—Jackson vs. State, 179 S. W. 711, 77 Tx. Cr. 483)." (51 C. J. S. 509)

From the definitions quoted above, it is indisputably clear that the concept of "tenancy" in the American legal system is equivalent to the concept of lease of real property in Philippine law.

With respect, however, to the Tenancy Contract on Shares, American law and jurisprudence recognize three general forms:

"Contracts to farm on shares include leases and partnership agreements as well as the more informal agreements known as cropping contracts." (15 Am. Jur. 235)

Cropper Contract:

"A cropper is a person hired by the landowner to cultivate the land and raise a crop thereon and to receive for his labor a share of the crop which he works to make and harvest... a cropper has no estate in the land, nor as a general rule, in the crop, until the landlord assigns him his share." (15 Am. Jur. 236)

Lease Contract:

"...a tenant has an estate in the land for his term and, consequently, a right of property in the crop which he grows. If he pays a share of the crop as rent, it is he who divides the crop and turns the landowner's share over to him, having until such division, the entire property and right of possession of the whole." (15 Am. Jur. 237)

Distinction between Lease Contract and Cropper Contract:

"The most important question to be answered in arriving at the intention of the parties and the consequential relation created is which party was entitled to the *possession of* the land. If it was the intention that the landowner part with, and the other party have, the exclusive possession of the land for the purpose of cultivation, as a general rule the transaction will be considered a lease and the relation between the parties that of landlord and tenant. If the contractual relation of the parties is to the effect that the landowner is to have supervising possession of the land to be cultivated and the party working the land is to be a wage earner although in terms of part of the crop, the relation is that of landowner and share-cropper. (15 Am. Jur. 240;) [4]

Partnership Contract:

"The ordinary contract to farm on shares lacks two of the essential elements of partnership—namely, that the parties are mutually principals of, and agents for, each other, and that the business is conducted on a joint account. As in other cases, however, the intention of the parties to the contract will control; and a contract for the cultivation of land on shares in which the gross product is to be divided between the parties may be rendered a partnership by its express terms. In the absence of express intention, however, such contracts are ordinarily held not to constitute the parties to them partners." (15 Am. Jur. 241-242)

We have previously shown that the contract contemplated by the Rice Share Tenancy Act is not a Partnership Contract.

Neither is it the "share-cropper" contract. For, Com. Act No. 461, as amended, which implements the Rice Share Tenancy Act, speaks of dispossession and the procedure thereof. But the distinguishing characteristics of the "share-cropper" is that he is not given possession of the land, nor of the crop—that he is a mere wage earner, albeit in terms of shares in the crop. There can be no dispossession without prior possession. Hence, Com. Act No. 461 cannot apply to what is called the "share-cropper" contract under American law.

On the other hand, Act No. 4054 speaks of "landlord" and "shares" and "fixed rental", terms which are proper to, or at least not incompatible with, the contract of Lease.

Hence, if the Rice Share Tenancy Contract under Philippine Law, has any similarity with any share tenancy

[4] Author's italics.

contract under American law, that contract is the contract of Lease on Shares.

Let us try to verify this conclusion from other sources. As previously pointed out, in the title of Act No. 4054, as amended, the words "TENANTS" is parenthetically explained as "(APARCEROS)". It has also been inferred that the contract referred to by said Act is the contract of *Aparcería* defined in Article 1579 of the Civil Code of Spain. Hence, we resort again to the Spanish authorities.

Mucius Scaevola considers a Share Tenancy Contract as a contract of Lease (arrendamiento) *sui generis* (24 Scaevola, 1st Ed., 793). Castan, as previously cited, notes, although with a critical eye, that the Spanish Civil Code assigns to the Share Tenancy Contract the nature of Lease (3 Castan, 6th Ed., 276). And Valverde has observed that a Share Tenancy Contract is more of Lease than anything else:

> "Esto quiere significar, que la aparcería tiene más de arrendamiento que de otra cosa, y así suelen considerarla los códigos extranjeros; y es más la reforma del código en este punto se hará sobre está base, sin perjuicio de reglamentar la aparcería conforme a la especialidad de su contenido (3 Valverde, 4th. Ed., 551).

Manresa, after observing that the Share Tenancy Contract and Partnership have some things in common, concludes that the former is essentially a contract of Lease.

> "Es denotar que dicho artículo comienza por calificar de *arrendamiento* a la aparcería, (el arrendamiento por aparcería, se dice), y reconociendose expresamente que se trata de un verdadero arrendamiento, se dice en seguida que se rija por los disposiciones del contrato de sociedad, por los estipulaciones de las partes, por la costumbre de la tierra; es decir, por todo menos por aquello que es propio de la calificación que se ha dado al acto, por todo menos por los preceptos del arrendamiento..."
>
> "La sustancial diferencia entre la sociedad y la aparcería está ya de manifiesto; la manera como está participa de la naturaleza del arrendamiento por razón de sus fines, de los elementos que la integran, y principalmente del elemento intencional de los contratantes, queda ya expuesta tambien incidentalmente en el curso de lo que va dicho.
>
> "Podemos, pues, afirmar fundadamente que la aparcería es un arrendamiento (10 Manresa, 4th Ed., 608, 613).

It is clear, therefore, that in American as well as Spanish law and jurisprudence, the contract of Tenancy on Shares is fundamentally and generally of the nature of Lease. This being the case, the Contract of Tenancy on Shares provided for by our laws must be of the same nature since our laws are based on the American and Spanish legal systems. Furthermore, the provisions in the Civil Code of the Philippines governing tenancy on shares are embodied in articles falling under the Title on Lease. These provisions are the second paragraph of Article 1673, Article 1684 and Article 1685, all of which fall under Title VIII of said Code, entitled "Lease". This classification would at least suggest, that even granting that Tenancy on Shares is a special kind of contract, it, nevertheless, is fundamentally a Lease Contract.

Having found that a Tenancy Contract has in general the nature of Lease, we shall now examine more closely the nature of the contract contemplated by the Rice Share Tenancy Act and that of Lease contemplated by the Civil Code of the Philippines, and determine their relationship.

That there is some difference existing between the two contracts has long been realized. We have pointed out divergence of opinion noted down in the books of the Spanish commentators. In the Philippines, in not a few cases of dispossession of farmers, landowners have often refused to submit to the jurisdiction of the Court of Industrial Relations. These landowners claim that their contract with the farmers is one of Lease, that Lease is entirely different and distinct from Tenancy; and that, therefore, the dispossession of the farmers should be for causes and in the manner provided for by the Civil Code and the general laws of procedure, and not by special laws, such as Com. Act No. 461, as amended (See Circular No. 7, Tenancy Law Enforcement Division; Circular No. 124, August 2, 1947 and Circular No. 40, September 6, 1948, both of the Department of Justice). So far, the Supreme Court of the Philippines has not had any occasion to rule squarely on the point.

It is obvious that if there is any point of contact between Lease and Tenancy, it will be in contracts where the subject matter is agricultural land. Hence, from this point we shall limit every reference to Lease to Lease of Agricultural Land.

Under the Civil Code of the Philippines, Lease of Agricultural Lands has the following essential elements:

1. A Lessor, who has the enjoyment or use of an agricultural land, which enjoyment or use he can transmit to another (Article 1643).

2. A Lessee, who is any person who has the capacity to execute a contract and not otherwise disqualified by law (Art. 1643).

3. The subject matter, which is the agricultural land.

4. A consideration, which is, for the Lessor, a price certain in money or its equivalent; and, for the Lessee, the enjoyment or use of the land (Art. 1643).

5. The period of the contract, which may be definite or indefinite, but not for more than ninety-nine years (Art. 1643).

On the other hand, the Rice Share Tenancy Contract has the following essential elements:

1. A landlord, who is either the owner or legitimate possessor of the land (Sec. 3, Act. No. 4054, as amended).

2. A tenant, who is a farmer or farm laborer and works the land himself (Sec. 3, Idem).

3. The subject matter, which is rice agricultural land (Title, Sec. 2, Idem).

4. A consideration which, on the part of both parties, is a sharing in the profits or losses (Sec. 2, Idem). This sharing may take either of the following forms:

> a. The parties share in aliquot parts in the net produce (Sec. 8, Idem).
>
> b. Or the tenant gets all the produce and pays a fixed rental to the landlord (Sec. 7, Idem).

It might be claimed that one of the essential elements of a Rice Share Tenancy Contract should be the formalities which Section 4 of Act 4054 requires in order to make the contract "valid and binding." However, although said Section requires certain formalities in order that the tenancy contract be "valid and binding", it would seem that the absence of such formalities would not exclude a contract, which is a contract of tenancy in substance, from the operation of Act No. 4054 and Com. Act No. 461. Section 8 of Act No. 4054 lays down a "share basis" which seems to lay down a rule of public policy to be applied in every contract of Rice Share Tenancy whether or not

the formalities prescribed by Section 6 are complied with.

As a matter of fact, in the case of Camacho vs. Court of Industrial Relations (45 O. G. 4867) the Supreme Court of the Philippines, ruling that an *oral* Share Tenancy Contract is void, concluded in the same breath that Section 8 of Act No. 4054, as amended, is therefore applicable. A similar ruling was laid down by the Supreme Court in the very recent case of Deato vs. Rural Progress Administration, G. R. No. L-3413, April 13, 1951, wherein an *implied* contract of tenancy was made subject to the provisions of the Rice Share Tenancy Act. Therefore, since our purpose of determining the nature of the Rice Share Tenancy Contract is to determine the scope of the application of Act No. 4054 and Com. Act No. 461, we cannot consider the formalities prescribed by Section 6 of Act No. 4054 as one of the essential elements of the contract.

Considering the elements of each as enumerated above, we notice that there exists a difference between Lease of Agricultural Land and Rice Share Tenancy. But what kind of difference is it? Is it a difference between genus and species of the same genus, or a difference between one genus and another genus?

The points of difference are:

> 1. In Lease, the lessee may be a farm laborer or not; in Rice Share Tenancy, the tenant should be a farm laborer.
>
> 2. In Lease, the consideration is a price certain in money or its equivalent; in Rice Share Tenancy, it is a share in the product or a fixed rental.
>
> 3. In Lease, the subject matter may be any agricultural land; in Rice Share Tenancy, it must be rice land.

It appears from these that the tenant is just a kind of lessee; that the share in the product or fixed rental is just a kind of "a price certain in money or its equivalent"; that rice land is just a kind of agricultural land. Hence, the difference between Lease of Agricultural land and Rice Share Tenancy is one between a genus and a species of the same genus. In other words, a Rice Share Tenancy Contract is a form of Lease of Agricultural land.

This conclusion, however, is not entirely free from objections. These objections are:

> First. It does not clearly appear that there is a transfer of possession of land from the landlord to the tenant, as is the case between the lessor and the lessee.
>
> Second. It does not appear that the tenant owns the crop before division or payment of rental, as the tenant does whether he has paid the rental or not.
>
> Third. A share in the net produce seems to be incompatible with a contract of lease wherein the rental should be a "price certain" and may come from the produce or from any other source.

Concerning the question of the transfer of possession, some provisions of Act No. 4054, as amended, seem to indicate that there is no transfer of possession from the landlord to the tenant. For instance, Section 2 of said Act defines the Rice Share Tenancy Contract as a "partnership" for the "joint pursuit of rice agricultural work between the landlord and tenant," and Section 16 of the same Act designates the landlord as the manager thereof. If tenancy is a contract for the "joint pursuit of agricultural work" and if the landlord holds the "management of the farm", it would seem that the landlord does not part with the possession of the land.

On the other hand, Section 21 of the same Act provides that "the tenant shall not be *dispossessed* of the land he cultivates until he is previously reimbursed of his advances, if any..."[5] And it is provided in Section 19, No. 5; Section 23, 1st Paragraph; and Section 24 of the same Act that the farm is "entrusted" to the tenant. Furthermore, Com. Act. No. 461, as amended, which is intended to implement the provisions of tenancy laws purports to govern the *dispossession* of tenants (Section 1). How can the law govern the dispossession of a tenant unless possession has previously been conferred on him?

Article 538 of the Civil Code of the Philippines provides:

> "Possession as a fact cannot be recognized at the same time in two different personalities except in the cases of co-possession.
>
> * * * "

It would seem, therefore, that for the purpose of the

[5]Author's italics.

tenancy contract the landlord and the tenant have co-possession of the land.

With respect to the ownership of the crop, there is no specific provision of the law determining it. From the fact, however, that the law provides for its division between the landlord and the tenant, it can be deduced that before such division the landlord and the tenant are co-owners of the crop. This is confirmed by the fact that the Civil Code makes applicable to Share Tenancy Contracts the rules on Partnership wherein the parties enjoy co-ownership over Partnership property.[6]

In the early case of U. S. vs Reyes (6 Phil. 441) the Supreme Court of the Philippines had ruled that the tenant on shares had possession *de facto* and *de jure* over the crop, and that, therefore, he could not be guilty of theft thereof. In the subsequent case of Apundar vs. Andrin and Pilapil (42 Phil. 356), the Supreme Court ruled that the "cropper" might be considered as a "cotenant with the owner of the land with respect to the fruits of the soil".

It will be observed that the two cases above cited had been decided before the passage of any of the special laws on tenancy. And in the latter case of Apundar vs Andrin, the Share Tenancy Contract is identified with the "cropper" contract under American law. We have already pointed out that this comparison does not hold under our present laws.

However, both cases just cited have been decided under the provisions of Article 1579 of the Civil Code of Spain. This article has been retained in our new Civil Code. In the absence of provisions of special laws, the principles of the article mentioned may be applied. Therefore, some rulings of the Supreme Court on the provisions of the article will at least be enlightening.

In the Apundar case, even under the concept of a "cropper" contract, the tenant was acknowledged a co-possessor with the landowner with respect to the crop. With more reason then, under the concept of a "lease" contract under our present laws, may we say that the tenant and the landlord are co-possessors of the crop.

[6]This co-ownership over the crop should not be confused with co-ownership over the capital, the letter being essential to a Partnership but shown not to exist in the Share Tenancy Contract.

What is the basis of this co-possession? It can be nothing else but co-ownership. Before division, therefore, the landlord and the tenant are co-owners of the crop.

With respect to the consideration on the part of the tenant, we have observed that this may take the form of an aliquot share or a fixed rental. In case it is an aliquot share, there is no doubt that such share should come from the crop. So that if the crop is lost, both landowner and tenant suffer the loss jointly. But suppose it is a fixed rental? The Department of Justice in a Circular (Circular No. 40 issued on September 6, 1948) ruled that such rental could be in kind, money, or both. In any of these cases, should the rental come from the produce, or proceeds thereof? In any of these cases, who will bear the loss of the crop? Again, in this regard, the law is not specific.

However, it must be observed that Section 7 of Act No. 4054 provides that the "landlord and tenant shall be free to enter into any or all kinds of tenancy contract as long as they are not contrary to existing laws, morals and public policy." Does this mean that Act No. 4054 applies to any conceivable form of contract that may be formed between a landowner and a farmer? Obviously not. Said section says "any or all kinds of *tenancy* contracts". The law has defined a tenancy contract and has given to it certain elements that may be considered as of the essence of the contract. Aside from said elements the law has laid down rules which appear to be matters of public policy. However, there are certain provisions which seem to be neither essential to the existence of a tenancy contract nor matters of public policy. The most reasonable interpretation of Section 7 would, therefore, be that the parties may stipulate on any matters as long as the provisions of law prescribing the essential elements of a tenancy contract and those of public policy are not violated or set at naught.

We have set down the provisions of the law prescribing the essential elements of the tenancy contract. And the provisions that are of public policy refer not to the *nature* of the contract which we are discussing but, rather, to the *operation* thereof.

It would seem that the *objections* we have set forth, concerning the possession of the land (that is, on whether or not the tenant possesses the land exclusively or jointly

with the landowner), the ownership of the crop and the payment of the consideration belong to those parts of the law or other matters which are neither of the essence of the contract nor of public policy. Hence, they may be regulated in any particular case by the particular agreement of the parties. In other words, the fact that the landowner is or is not the manager of the farm; whether or not the tenant and/or the landlord owns and/or possesses the crop before division; whether or not the consideration should come from the produce—all these matters may be subject to stipulation in so far as they do not affect the essential nature of the tenancy contract and do not violate the principles of public policy ennunciated in the tenancy statutes. In the absence of agreement, they shall be governed by the rules on Partnership and by the customs of the place. These things have been provided for by the Civil Code in Article 1684 thereof.

> "Art. 1684. Land tenancy on shares shall be governed by special laws, the stipulations of the parties, the provisions on partnership and by the customs of the place."

Conclusions

From all the foregoing discussion we can derive the following conclusions:

First. That jurisdiction over the ejectment of tenants of agricultural lands is now vested exclusively in the Department of Justice, particularly in the Court of Industrial Relations, subject to the appellate jurisdiction of the Supreme Court.

Second. That this jurisdiction of the Department of Justice is limited to tenancies covered by special statutes.

Third. That in the particular case of rice lands, this jurisdiction of the Department of Justice is limited to the contract of tenancy contemplated by Act No. 4054, as amended, and as implemented by Com. Act No. 461, as amended.

Fourth. That the tenancy contract contemplated by Act No. 4054, as amended, is essentially not a Contract of Partnership but a Contract of Lease; and that, therefore, the definition given in Section 2 of said Act is misleading.

Fifth. That the contract of tenancy contemplated by Act No. 4054, as amended, is just a particular kind of Lease and is, therefore, not co-extensive with the latter. Hence, not any Lease contract between a "landowner" and a "farmer" will bring the question of ejectment under the jurisdiction of the Department of Justice.

Sixth. That to determine the existence of a tenancy contract under Act No. 4054, it is sufficient that the following elements are present:

1. A landlord, who is either the owner or legitimate possessor of the land,
2. A tenant who farms or works the land himself, taking possession of the land exclusively or jointly with the landlord,
3. The subject matter, which is rice agricultural land, and
4. That the consideration be a share of the crop or fixed rental in kind, money, or both.

Some of the conclusions just set forth have seen applied by the Supreme Court and by the Court of Industrial Relations in special cases. Some of these special cases are:

If "hacienda" A leases land to "inquilino" B who does not cultivate the land but employs "aparcero" C for the purpose, there exists between B and C the relationship of landlord and tenant, respectively, under Act No. 4054, as amended. But there exists no such relationship as between A and B or between A and C (Samahan Ng Mga Inquilinong Taga Nasugbu vs. Hacienda Palayera, CIR, 44 O. G 138).

Where there exists a single contract of tenancy covering both rice and coconut lands, the Department of Justice has jurisdiction over any question of dispossession arising from the said contract, as long as the dispute also involves rice land. (Villanueva vs. Tenancy Law Enforcement, G. R. No. L-4019, July 31, 1951, citing Ojo vs Jamito, 46 O. G. Supp. No. 11, 216).

The mere claim by one party that a tenancy contract is void does not divest the Court of Industrial Relations of its jurisdiction. This was the ruling of the Court of Industrial Relations in the case of Kapisanan Timbulan Ng Mga. Manggagawa vs. Gallego (44 O. G. 182). Upon appeal to the Supreme Court, this ruling of the Court of Industrial Relations was affirmed (Gallego vs. Kapisanan Timbulan Ng Mga Manggagawa, 46 O.G. 4248).

ATENEO LAW JOURNAL

Published five times a year during the academic year by the students of the College of Law, Ateneo de Manila.

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