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THE RURAL PRODUCT BALLOT

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Abstract: This dissertation aims to study and analyze the legal relations that refer to Brazilian Agrarian Law, analyzing the credit instrument called Rural Product Banknote. A credit bond widely used today and which considerably promotes the agribusiness market. Brazil is one of the largest powers in the world in this field, and there is a constant need to regulate and discuss these business relationships, whether between trading companies, rural producers, credit companies, among several other branches that govern this vast agribusiness scenario in Brazil, since, in addition to everything, it confirms every day its vocation as a major food producer for its own population and for export. With the advent of CPR, the legislator expanded the access of small and medium-sized producers to agriculture and the resources necessary for their production, increasing access to agricultural financing, in order to foster all activities in the production chain, commercial and financial, emerging as an important instrument for raising funds by rural producers. And due to all this rise that occurred in the agribusiness business provided by this more agile and unbureaucratic credit title, also occur the risks of default and the possibility of execution of this title in order to carry out search and seizure of the alienated asset that are characteristics that in addition to allowing greater legal certainty to the creditor, it also allows for faster measures to be taken in the event of breach or non-compliance with the contract.

Keywords: Credit title; Delinquency; Agribusiness; Producers; CPR

INTRODUCTION

The rural sector holds a position of sovereignty within the Brazilian economic system. For years the official credit played an extremely important role, which was that of funder of the agricultural market, which did

not prevent the fiscal crisis that began in the State during the 1980s, which had the result of an exhaustion of the segment, which required it to establish an adaptation.

Previously, the state was the largest stimulator and main investor for the development of the segment, and was unable to meet the high demand for credit and agribusiness aid. With this fact, there was a reduction in official financing programs and the market began to create alternative solutions for promotion aimed at private initiative, reducing dependence on formal mechanisms.

With the need to create new forms of financing agribusiness in Brazil, the Rural Product Banknote was created in 1994 by Banco do Brasil, as a way to promote agriculture in the country, which is nothing more than a credit title widely used in these relationships involving commodities² and has enormous importance today.

The CPR arises of a hybrid nature, thus as a title of credit, which is characterized as such due to the fact of expressing the existence of debt to be paid, and being a document that express rights, requiring its legal form for its composition and a net right, highlighting the characteristics of liquidity, certainty and enforceability. Whereas the document is also contractual in nature, since there is a manifestation of will between the parties, such as a contract for the purchase and sale of rural product, fulfilling its necessary requirements.

The banknote follows the principles of credit securities, which are the cartularity, which the existence of the title requires formalization in document, literalness, so that only produces legal effects what is contained in the document and autonomy, which undoes the legal link of the credit title with the motivation of creation under the legal business, that is, it would be a rolling, autonomous title.

With regard to the contractual nature, compared to the contract of purchase and sale - of rural product, it is costly with its own bilateral characteristics. When the banknote is issued, the buyer may only require the seller to deliver the signed product after satisfaction of his obligation, thus, the payment of cash on the rural product.

Thus, the CPR, a document that had the initial objective of facilitating the transactions of the rural producer through a simplification of the financial market and the management of the inherent risks of rural activity, was also, propitiated an increase in the volume of financing in the country, mainly to small producers and family farmers through private credit, leaving the big public funders the role of giving credit to the largest producers and the agricultural-industry. (BURANELLO, 2021).

In this sense, the problem to be solved with the development of the study is: How has the evolution of the rural product banknote benefited over the years the Brazilian agrarian scenario?

This article aims to analyze the legal relations that refer to Brazilian Agrarian Law, since Brazil is one of the greatest powers in the world in this field, and there is a constant need to regulate and discuss these business relationships, whether between trading companies, rural producers, credit companies, among several other branches that govern this vast agricultural scenario in Brazil.

HISTORY OF BRAZILIAN RURAL CREDIT

The agricultural sector has been a highlight in the Brazilian economy for many years. Since the beginning of the colonial period, the country has been able to enjoy important resources and the benefits have remained even after modernization. With a certain historical contextualization, it is

possible to notice that agriculture is a solid basis for achieving important economic data for Brazil, especially if we consider animal, mineral and plant extraction activities (REQUIÃO, 2003).

The expressive capital presented for centuries, provided the sector with an official instrument to finance products, called CREAM (Agricultural and Industrial Credit Portfolio of Banco do Brasil). In the mid-1930s, the government of former President Getúlio Vargas recognized the need for a credit system that met the field's demand for investment and growth. This initiative opened the door for the formalization of Law Number 492/37, responsible for regularizing the rural pledge, and Law Number 3253/57, which deals with rural credit cards (PIMENTEL, 2000).

After formalizing rural credit in the country, Law No. 4829/65 brings the creation of the National Rural Credit System (SNCR), which corresponds to the intervention of the State in the economy of the sector and the incentive of agricultural growth as a public policy. It is remarkable that, with the emergence of SNCR in the 1960s, Brazil was looking at the possibility of increasing rural investments in the storage and modernization part, to improve the costs of producing the products. In addition, the clear objective was to strengthen the sector and bring technological contributions to logistics and other modalities present in agricultural activities (FAZZIO JÚNIOR, 2005).

In 1965, with the creation of the National Rural Credit System (SNCR), the government sought to ensure access to agricultural financial products, because commercial banks, without the protection of the law itself, were not responding adequately. The urban industry and production in the field have certain differences that need to be considered to provide satisfactory support to users of RAMOS financing, 2010).

Thus, as a consequence of the formalization, the 1960s and 1970s had as a milestone a vertiginous modernization of numerous agribusiness segments. The main source of resources for the development of the country's rural sector was from state credit. Thus, it can be stated that the use of financed credit grew vigorously, representing, in the 1970s, 90% of the domestic product of Brazilian agriculture (MIRANDA, 2012).

The reality of the 1980s and 1990s points to an expressive growth in agricultural production, maintaining a privileged position in the national economic scenario, even at a time when prices are shown in adjustments not favorable. The 1980s was marked by an unprecedented fiscal crisis, so agribusiness, which benefited greatly from state subsidies, was strongly affected by the economic scenario. It is understood that it was necessary a great adaptation and management of rural producers to deal with the lack of available credit (RAMOS, 2013).

Given the scenario presented, it was evident that the new configurations needed a new model of financing, which could accompany and enable the growing numbers of agriculture. The substitution action was enunciated by the demand for credit not met by the institutions and by a constant search for financing possibilities of the sector. Thus, already in 1993 emerged the Certificate of Merchandise with Warranty Issue (CM-G), understood as a way to guarantee the deliveries and qualities of rural products. The CM-G modality did not work and soon this certification was disabled, even by different positions of its majority partner and the direction of the title (GOMES, 2007).

In 1994, the creation of the Rural Product Banknote (CPR) was formalized, through Law 8,929/94. The Rural Product Bill (CPR) came with a proposal to enable an alternative financing or credit supplement after a large

shortage of products that actually fuels the demand of the agriculture sector. This credit card was founded thinking about the sales of producers, represents the promise of a future delivery of products.

CPR - RURAL PRODUCT BALLOT

Regarding the information regarding CPR, it is worth mentioning that, in view of the difficulties encountered regarding the collection of resources in the agricultural segment, it was necessary for this sector to seek support in the private sector in order to support the development of their respective activities. Thus, based on the evidence of the limitation of the State on the possibilities of financing directed to the sector, we saw the need for the creation of Law No. 8,929/94, which tried to establish the Rural Product Card (CPR), the object of study of this research (RAMOS, 2013).

In a representative way, it is possible to affirm that credit is an efficient way to bring capital mobilization, being an important economic alternative to the modern market scenario and can be contemplated through credit securities. Thus, there is a function that stands out as a facilitator in the use of such mechanisms, in view of the simplified application to the user's private capital regardless of the size of rural properties, promoting a circularization of hidden wealth and in a state of disuse, an alternative for the use of currency and the multiplication of capital.

CPR is a enabling credit title for small and medium-sized rural producers. The grain producer, to raise the necessary supplies for its production must resort to some kind of granting of credit, since the production costs to leverage the entire production chain of a crop usually demand high values, reaching the millions most of the time. Thus, these loans emerged as facilitators for the trade of

these supplies, machinery and phytosanitary products that are necessary for production, from planting to harvesting (LEITE, 2009).

It can be said that the CPR is a recent title, since the Law establishing it was sanctioned on August 22, 1994. Thus, this legislation was responsible for important changes, so that it revolutionized the futures market in the face of the agribusiness scenario, evolving the forward market, since the futures market represents financial transactions in which the commitment between the parties to pay, sell and deliver the goods takes place in the future. And CPR today, that is, in 2022, the year of development of this study, is the most used instrument in this type of market (REIS, 2016).

The Rural Product Ballot is a credit title that is characterized as a model of what in the general theory of law is actually called the norm. The institution of the credit title in question marks the replacement of the historically interventionist State in the rural sector by the private financial market as the main promoter of agribusiness. The Brazilian Civil Code thus conceptualizes the title of credit in its article 887:

Art. 887. The title of credit, a document necessary for the exercise of the literal and autonomous right contained therein, only takes effect when it meets the requirements of the law.

Thus, it is characterized as a credit title typical of agrarian law that represents a commitment to deliver rural product, whose existence is conditional on compliance with certain legal requirements specified by law. In compliance with the principles of cartularity and literalness, Article 3 of the Law in question defines the requirements necessary for the issue of the title:

Art. 3 ° CPR will contain the following requirements, released in its context: - ; II - delivery date; III - creditor's name and clause

to order; IV - pure and simple promise to deliver the product, its indication and the specifications of quality and quantity; §1 - Without the essential requirement, the CPR may contain other clauses released in its context, which may appear in a separate document, with the signature of the issuer, making, on the ballot, mention of this circumstance.

BARTER'S CONCEPT

Barter, the English word that its translation means "exchange", acts as a financing mechanism for the Agribusiness chain, which consists of the acquisition of agricultural input by the grain producer from the fertilizer industries, plant protection products, distributors of inputs, tradings for post-harvest payments, using the product itself. So that the payment of the obligation will be these products collected, given as payment currency (BURANELLO, 2020).

These exchange operations, which have great complexity of financial negotiations behind them, are common in Brazilian agribusiness and appear among the main sources of credit and form of financing of production. Thus, the entire production chain moves, such as distributors and industries of input, which aim to commercialize these, trading stake in the product itself to resell or export, and the rural producer, which aims to leverage the production and consequent profitable sale of these products (MIRANDA, 2012).

Therefore, Barter acts as a commercial strategy that aims to exchange input for production, with a lock in the price of agricultural commodities, by the Hedge operation, which is a treatment that aims to reduce or eliminate risk with price fluctuation in the market. Analyzing otherwise, the hedge serves to fix the price of an asset, liability, exchange rate, interest rate, commodity or a debt in a given period. This negotiation

previously made with financial and trading brings greater security to the operation in relation to exchange variations and interest (MIRANDA, 2012).

As presented, CPR is the most widely used instrument in the formalization of these barter operations, where the entire transaction will be backed and will have greater legal certainty due to the specificity and speed inherent in it. In this case, the producer receives in advance the necessary supplies for its production, either partially or in its entirety, depending on the type of credit granted to him, issues a CPR as a form of contract and undertakes to end the obligation with the products departing from its agricultural production.

CPR AS A HEDGING TOOL

As presented, it must be noted that the financial market is constantly fluctuating, so these relationships that permeate Brazilian agribusiness are also exposed to various risks. In particular, the risk of agricultural commodity price falls on the market, which can substantially influence these trades. Hedge, also called Hedging, an operation carried out in the derivatives market, with the objective of reducing or eliminating the risk of price fluctuation of an asset, liabilities, exchange rate, interest rate or commodity in a given period of time. Thus, the product subject to operation is protected from possible unpredictable fluctuations of the value.

According to (BURANELLO, 2020) hedge operations then imply the existence of equal married transactions, and otherwise, simultaneously, in the spot market and in the forward market to avoid market variations and possible consequences.

In other words, the grain producer will fix the amount of product that must be delivered as a form of settlement of the obligation, while the creditor will also make fixing the value and commitment of confidence of delivery of the

product to trading, through trading, and this monetary value lock will be the Hedge.

Thus, Rocha (2008, p. 57) masterfully describes the logic of a hedging operation involving rural products on the Stock Exchange:

Moreover, when considering rural products such as alcohol and sugar, which are commodities with positions in international stock exchanges, the rural producer can stake their prices, through hedge operations on the exchanges, which reduces the risk of prices for both the producer and the investor. This is because the rural producer can sell his production at a future date, at a certain price.

RURAL PRODUCT BANK NOTE AS THE CONTRACT

The contract can be defined as an agreement of will and a proof of interests between parties, where a formality and guarantee of legal requirements are guaranteed. The objective is precisely to be able to determine agreements that can be regulated by law in legal ordinance, and may represent the extinction of legal relations of a patrimonial nature.

The Civil Code brings in its art. 104 some considerations about contracts, exposing it as a legal business that needs to contain a lawful and determined objectification, be trained and have prescribed functioning. Such exposed guarantee the validity of the document and benefits the parties involved. Thus, the Rural Product Banknote presents itself as a contract modality for purchases and sales of agricultural products, serving the interests of the producer and strengthening civil commercial relations (VENOSA, 2012).

The Rural Product Cell also brings great gains to Brazilian society that enjoys the important economic numbers coming from rural activities. If there is a facilitation between the transactions that occurred in the

field, the production of products increases and tends to improve their quality for the final consumer. In addition, it is a strengthener of the agricultural business and an important formalization of such negotiations, ensuring the commercialization of the crop (RODRIGUES, 2002).

As with any contract, CPR needs to meet certain fundamental concepts to be protected by law. Thus, one of his important considerations about what must be established is precisely the negotiated price, so that it disappears with any attempt at supremacy by one of the parties. If there is disagreement about the value, it must be reviewed until it is considered fair and agreed, ensuring that the buyer cannot stipulate according to their interests the prices of the product (VENOSA, 2012).

It is important to highlight that in rural negotiations irregularities can occur with some frequency as mentioned above, given that smaller producers may end up yielding in abusive negotiations due to a lack of official resources. Thus, the proper use of Rural Product Notes (CPR) can be a great aid to justice in agribusiness and strengthen small and large producers, ensuring that they are agreed with legal requirements.

RURAL PRODUCT BALLOT AS A FIXED TERM CONTRACT

Taking into consideration, the constant inflations present in Brazil, the Rural Product Banknote has as a triumph for its users the obtaining of financing in direct relation to the prices of the product. Thus, it can ensure producers and cooperatives that they plan and adequately scale their production costs to be adequate for inflationary interference. This demonstrates the feasibility of fairer operations, ensuring financial operations (VENOSA, 2012).

Within the standards to be followed, the

issuer must commit and deliver the products sold in the combined quality, also pay attention to the quantity of products and the period previously established. The contractor of the service must also be up to time with his debts, paid already in the formalization of the legal business. The Rural Product Ballot is what will guarantee the terms for compliance with all legal agreements between the parties (RODRIGUES, 2002).

It is understood that the title here exposed is transacted in the forward market, to hold its users against price instability. Thus, we see that it is an interesting resource to replace formal transactions, such as the mode of exchange or contracts that do not meet the current legal standards. Because it is more complete, safe and facilitated, the Rural Product Banknote is a smart way to make sales within agribusiness (RODRIGUES, 2002).

CPR - FINANCIAL AND EXCHANGE CURRENCY

When created, CPR was only the concept of a promise of future physical delivery of the agreed goods, in this agreement the quality and quantity of product was determined by prepayment.

In this new form of the credit title introduced by the Federal Government, the settlement of the transaction no longer depended on physical delivery, bringing the possibility of financial settlement of the security. Article 4a, introduced by the aforementioned law, is permitted by the financial settlement of CPR, provided that it meets the legal criteria. This moment can be understood as the moment when the buyer passes to the seller the values agreed by the rural product (DINIZ, 2011).

As for the requirements to allow settlement, it is necessary to explain and highlight in document the price or price index, as well as

the institution responsible for the calculation and a visualization of the market that refers to the prices offered. Another way to ensure legality is to establish that price indicators are being processed by correct and competent companies, which disclose their data on a regular or even every day.

The institution must also demonstrate clarity in its disclosures, so that there is no doubt from any of the parties involved in the transaction. Thus, it is possible to ensure that the financial settlement of CPR happens appropriately. Brazilian legislation itself ensures that making financial liquidity in this context is also requiring that there be an expiration date for offers in a way that considers multiplying the price according to each product specifically. Thus, being physical or financial CPR, this may have a legal nature of promise of delivery of rural product or the corresponding payment of certain amount in cash.

LEGAL NATURE OF CPR

In order to gain greater understanding of the subject in thesis, it is necessary to understand more widely what refers to the legal nature of the PrC. Thus, it is important to explain that the legal specifications of a given legal institution are given through wide coverage of the main attributes that establish the union of their respective elements, so that when these attributes are compared with a group of legal figures that are close to their respective classification, one will notice distinctions that categorize their differences in the context of law.

Thus, in a more practical way, it can be mentioned that the legal nature is intertwined with the elementary classification of the fundamental constituents of a particular institute. Thus, Diniz (2017) highlights in his writings that the legal nature refers then to the purpose belonging to an institute at different

points as an amplified legal category, which can be assigned the title of classification.

TITLE OF CREDIT

When it is spoken of credit card, it is important to understand the conceptualization adopted by several scholars which is found in the writings of the Brazilian civil code, which was first established by Vivante (1998, p. 57), an Italian jurist who determined in his writings that this document is of extreme necessity for “the exercise of law, literal and autonomous mentioned therein”. In this context, Ramos (2013) states that the conceptualization is convenient and assertive, since, through the inclusion of the terms “necessary”, “literal” and “autonomous”, in the speech of the author mentioned above, it is possible to reach the three principles informing the exchange rate legal regime, which are that of autonomy, cartularity and literalness.

Thus, Borges (1971) complements these writings highlighting that the credit title is responsible for materializing and incorporating the promises of future installments that are made by the debtor party, as octotic to the payment of the current installment made by the creditor.

In addition, there are also the understandings of Coelho Ulhoa (2016), which highlights that credit securities have three fundamental characteristics, which are the negotiation, the credit relationship and the ease of collection in court. Thus, with regard to the credit ratio, the author explains that nothing but due credit can be documented. With regard to the ease of collection, based on the definition as an extrajudicial enforcement order given by Article 784, I of the Code of Civil Procedure, the author in question points out that:

Not all written instruments documenting credit obligations have this characteristic.

If the creditor does not have a document to which the procedural law assigns enforceable nature, the collection of the represented claim must be made by means of an action of knowledge (or monitory), usually more time consuming than the execution (COELHO ULHOA, 2016).

Finally, with regard to the ease of movement that the possibility of the reversal of the title to credit, the exchange, which has the securities, is due to the legal-exchange regime that establishes rules that add to the person who received the credit, the expansion of guarantees when compared to the civil regime.

CIRCULATION OF CPR BY ENDORSEMENT

In general, it is possible to characterize the endorsement as a foreign exchange declaration released in the title to order by its respective owner, in order to make its transfer to another, thus, Reis (2016) elucidates in his studies that, it is through the endorsement that the reality of circulation of nominative securities is possible, given that in this context the bearer of the respective title carries out the transfer of such document to a third party, as well as, the right contained therein, so that the former bearer, appointed in this case as an endorser, becomes an indirect and responsible for the payment of the security.

It is then worth mentioning that according to Custódio (2018, p. 22) the endorsement is one:

[...] a formal unilateral act, declared in its own title, which fully transfers to the transferee a secondary right, that is, the title is transferred with the rights guaranteed therein to its rightful owner, acquiring the endorser the literal and autonomous right resulting from the title.

In the light of the foregoing, it must be noted that item III of Article 3 of the CPR Law establishes as a formality requirement the

launch of the CPR clause to order, in which the possibility of the tradition of this title by the endorsement is demonstrated. Furthermore, seeking to expand the information about the above, it must also be highlighted that Article 10 of the aforementioned legislation states that for the CPR, the endorsements must be complete, and the endorsers do not account for the delivery of the product, but only for the existence of the obligation.

DECREE LAW 167/67 AND ITS APPLICABILITY RELATED TO THE CPR GRANT

As stated at other times in these writings, CPR is specifically regulated by Law No. 8,929/94, however, many studies highlight the importance of Decree-Law 167/67, which in turn provides measures for the other Rural Credit Cells (CCR) that are used in the country, such as, Rural Mortgage Ballot, Rural Ballot, Pignocracy and Mortgage Rural Ballot, Rural Credit Note, Rural Promissory Note and Rural Duplicate.

However, it is important to highlight some differences between CPR and CCR, so that CCR usually has the availability of credit more slowly and with more bureaucracy, already with CPR it is possible to observe the provision of credit instruments more easily and for the whole, with longer payment terms. Thus, since some of the lines remain even with the validity of the CPR Law, as well as some similarities that it presents in relation to the Decree-Law mentioned, many of its articles apply in an equivalent way (COELHO ULHOA, 2016).

In this north, it must be mentioned that Law No. 8,929/94 left gaps in the regulation of the plurality of issuers of the rural product banknote causing problems about the use of the granted credit. Thus, it is said that Article 2 of Decree-Law No. 167/67 establishes the obligation for the issuer of the ballot to apply

the financing in the adjusted purposes, so that this application must be duly proven within the time limit and in the form required by the funding institution. Moreover, in the sole paragraph of that article, it establishes that in cases of plurality of issuers, any of the financed companies may make use of the credit, under the joint and several responsibilities of the other (COELHO ULHOA, 2016).

Moreover, it must be noted that, it must be noted that the Decree-Law in question allowed the supervision of the amount that had been financed by the creditor, and it is also appropriate to supervise the training properties, and /or location of the products and goods granted in real guarantee according to Articles 6 and 7.

On the other hand, CPR includes the inspection in its contexts in clause format, so that it is possible for the creditor to enter the properties where the crops are being formed, and perform the inspection of the conduct. Furthermore, Decree-Law 167/67 is also applied in situations of early expiration of the banknote, as well as other securities and contracts that are signed between the parties, that is, creditor and debtor, for default of conventional obligation, making the determinations of article 11 fulfilled (RAMOS, 2013).

With regard to the diversion or removal of the assets listed in the CPR, Article 18 of the Decree-Law mentioned, tried to mention the inviolability of these, without the consent of the creditor, while the writings found in Article 41 of said legal provision, mention the possibility of judicial sale of assets seized and seized before the end of the judicial process. As far as out-of-court sale is concerned, its specifications are highlighted in Article 59, which mentions that “the sale of assets secured or mortgaged by the rural credit card depends on the prior consent of the creditor in writing”.

Moreover, it is also observed that the mandatory extension of the assets given under guarantee, is duly highlighted in Article 64, which is also commonly used to cover loopholes of Law No. 8,929. with regard to the need for registration, it is important to note that, even if Article 12 of the CPR Law establishes its mandatory registration of the CPR in a notary's office, Article 34 of the Decree-Law highlighted, has, in a subsidiary manner and limits the collection of fees, as well as the cartorary fees for the purposes of registration of banknotes.

FINAL CONSIDERATIONS

Based on the development of this study, it was possible to understand the importance of the agrarian sector for the country's economy, so that this area economically moves several different sectors, such as agronomy, and even the legal scope, given, all of these issues, they act together for the proper functioning of the determinations established for the performance of their functions.

It is inferred through the realization of the research, that the participation of credit notes in this sense is paramount, this from the beginning of agrarian activities, given that the needs of the sector for its production and consequent development, in parallel the difficulties of the State in providing necessary financial support to rural producers, which as it was mentioned, it can contribute a lot to the development of the country, including, economically speaking.

Thus, it can be concluded that the evolution of legislation in this sense was of great value for the agrarian sector to be able to produce with the necessary financial support, thus going through several phases, with the creation of laws and decrees that acted seeking benefits in this sense, thus reaching the creation of the CPR, object of study of this research, which as noted throughout the writings, it is one

of the main legislations that has scope in the financial assistance of the agriculture sector.

Thus, it is concluded that the Rural Product Banknote had its rise in the Brazilian legal system in order to foster the private initiative of the agriculture segment, and yet, it was beyond what was expected, because in addition to being a rural financing instrument, it also became a hedging mechanism, considerably reducing the risks inherent to the Brazilian agribusiness sectors. Therefore, it contributed substantially to the development of the entire production chain linked to it.

Thus, it is suggested to carry out new research, studies focused on the applicability of these laws and their functioning in practice, where new researchers seek to go to the field to collect information that proves the benefits of CPR, so that, through the data obtained, it is possible to suggest possible improvements in the face of said legislation.

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