

[G.R. No. 268. August 05, 1902]

**THE UNITED STATES, COMPLAINANT AND APPELLANT, FRUTO ANDRADE ET AL.,
DEFENDANTS AND APPELLEES.**

D E C I S I O N

TORRES, J.:

On the 27th of January, 1896, the solicitor representing Gregorio Francisco and Antonia Rojas, husband and wife, filed a written complaint alleging that on the morning of the 16th of the said month Juan San Luis, Lorenzo Trinidad, Hermogenes Ignacio, and Fabian Francisco proceeded to cut some canes which were growing on a piece of land situated at a place called Carapdapan, of the town of Marilao, of the Province of Bulacan, of the exclusive ownership of the said complainants, and conveyed the same, with other canes already cut, and which were lying on the ground there, to a lot next to the house of Fruto Andrade, who at that time was there present, together with Melecio Rojas, this having been done by the four persons mentioned by order of Andrade, who subsequently made use of the canes taken; that as Maximo de los Santos, the person left in charge of the land and of the plantation by the owners, opposed this proceeding, Melecio Rojas threatened him that, as he, Rojas, was justice of the peace, he could have him tied up and sent to the capital city; and that, in view of this proceeding, Maximo left the place to report what had happened to the owners of the land.

Maximo de los Santos, the caretaker referred to, and seven other witnesses testified in corroboration of the facts related in the complaint. For the purpose of proving the ownership of the land the complaining witness exhibited the certificate of the registrar of property to the effect that a possessory information, prepared at the instance of Antonia Rojas, had been presented at his office for record, and in this possessory information the land on which the canes were cut is described. They also presented a will executed by Esteban Rojas, in clause 18 of which, as part of the share of Dofta Antonia, the land referred

to appears. The value of the canes cut was estimated by experts to be 18 pesos.

The defendants Lorenzo Trinidad, Juan San Luis, Hermogenes Ignacio, Fabian Francisco, and Fruto Andrade confessed that the four first-named defendants had cut a number of canes on the day mentioned in the complaint, and took them, together with others formerly cut, to Andrade's house by order of the latter. There was some conflict in their testimony as to the name of the place where the cane was cut, although Andrade testified that the place was called Donganpare or Carapdapan. All of them, however, denied that they or Melecio Rojas, who had gone there for the purpose of getting two pieces of bamboo, had made any threats against Maximo de los Santos, who, they said, was not there. This is also the testimony of Rojas, who, in turn, cited four witnesses who testified in corroboration of his statement to the effect that they had not seen Maximo de los Santos, the man alleged to have been threatened, in the place referred to.

Fruto Andrade further testified that he is the owner of the land where, the cane was cut, and that the land does not belong to Antonia Rojas, but to him (Andrade), he having inherited the same from his late father, Saturnino Andrade, who had been in uninterrupted possession thereof for thirty years. As witnesses he called five persons who were owners of adjacent lands. The first three of these witnesses testified in corroboration of the statement of Andrade, the fourth affirmed that her deceased husband had so informed her, and the last witness testified to the contrary.

It also appears from the case that an ocular inspection of the land in dispute was made in the presence of the parties in interest, the owners of adjacent lands, and of eleven other witnesses presented by Andrade, the result of which was that the lines of the land inspected and on which the canes were cut were found to be different from those of the land which the private prosecutors claim to be their property. The witnesses there present testified that the land in question and the bamboo canes were the property of Andrade. The record furthermore contains a copy of a complaint filed by Andrade against the private prosecutors, for the purpose of obtaining the annulment of the possessory information presented by them to the registrar of property.

From the facts above stated it appears that the record does not contain conclusive evidence of the existence of the crimes of theft and threat. On the one hand, it does not appear that Maximo de los Santos was present at the place where these threats are alleged to have been made, nor that Melecio Rojas, charged therewith, had made such threats; and, on the other hand, it does not appear from the record that the other defendants have stolen bamboo as

charged, with intent to profit thereby, inasmuch as the evidence does not sufficiently demonstrate that the bambpo or the land on which it was growing was the property of Antonia Rojas. Consequently, the question of the ownership of the land having been put in issue, and that question being now pending decision in the action for the annulment of the possessory information with respect to the land in question, brought by Andrade against the private prosecutor, Antonia Rojas, it does not appear that Andrade and his codefendants have committed the crime of theft.

To overcome the allegations and evidence of the complainants, Fruto Andrade, in turn, introduced evidence for the purpose of showing that he was the owner of the land and of the canes alleged to have been stolen, and as the boundary lines of the land which the complaining witness alleges to be her property are different from those of the land claimed by Andrade, as shown by the ocular inspection conducted in the presence of the parties, of the owners of adjacent lands, and of several other witnesses, the defendants must be acquitted on account of the absence of proof of the existence of the crime of theft as above stated, and because the fact of the cutting and taking of bamboo from the land in question by order of Fruto Andrade does not constitute the crime of theft, and because the question raised by the parties as to the ownership and possession of the land in question must be determined in the proper civil action.

Therefore, for the reasons stated, and in view of the provisions of section 57 of General Orders, No. 58, the judgment of the court below must be affirmed with costs *de officio* the judge to proceed in accordance with law with respect to the property belonging to some of the defendants which has been attached.

Arellano, C. J., Cooper, Willard, and Ladd, JJ., concur.

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