

**[ G.R. No. 1443. January 16, 1904 ]**

**THE UNITED STATES, COMPLAINANT AND APPELLEE, VS. ALFONSO ABISON ET AL., DEFENDANTS AND APPELLANTS.**

**D E C I S I O N**

**TORRES, J.:**

On the 8th of June, 1903, the provincial fiscal of the district of Iloilo filed an information in the Court of First Instance of that district charging the defendants, Abison, Juares, and Celestial, as accessories after the fact to the crime of theft in that, on the 21st of December, 1902, notwithstanding the fact that the three defendants knew that the three carabaos presented to them by Susano Acasio, Benito Albao, and Florentino Apostol were not the property of the latter, but had been taken from certain malefactors by the said Acasio and Apostol in an expedition which they made into the forest as members of the Constabulary, the said defendants, Nevertheless, issued certificates of ownership in favor of the mistresses of the said Constabulary men and put the municipal brand of the township of Lemery on the carabaos in order that the said Acasio, Albao, and Apostol might appropriate to their own use the said carabaos. Albao, Apostol, Faustino Rosales, and Marcelino Bayona were cited as witnesses for the prosecution.

From the evidence introduced during the trial it appears that one day in the month of December, 1902, Susano Acasio, Benito Albao, and Florentino Apostol, Constabulary soldiers, while scouting in the woods, encountered six unknown men, who took to flight when fired upon; that these men had in their possession four carabaos and a horse; that Acasio, who was in command of the squad, upon his return to the town turned the horse and one of the carabaos over to Inspector Helt and

ordered that the three carabaos be taken to the town of Lemery, where the three Constabulary men appeared before the president and the municipal treasurer and obtained from them credentials of ownership in favor of their mistresses, which said credentials were signed by the president and treasurer, and also by the municipal secretary. The Constabulary men testified that the secretary knew that the carabaos had been taken from thieves in the woods and that although the defendants at first refused to issue the certificates they subsequently consented to do so in view of the persistence of Acasio, who assured them that he would be responsible for whatever happened.

The defendants pleaded not guilty, and as witnesses for the defense testified under oath that when these three Constabulary men came to them with the carabaos they assured them that they had purchased the carabaos in the Province of Capiz, but when they were asked to show their certificates of ownership Acasio replied that they had none; that the defendants thereupon told him that they could not issue any certificates or brand the carabaos; that Acasio then gave them to understand that, as the commanding officer of the post, it was his duty to make inquiries into matters concerning stolen stock and commenced to make threats; that in view of this action on the part of the Constabulary, and of the fact that they assured them that the inspector who resided some distance away knew all about these animals, for the purpose of avoiding trouble they consented to issue certificates of ownership for the three carabaos and to place the town brand upon them; that some twenty days later, they having heard that the said three carabaos had been taken from thieves, the president called a meeting of the municipal council and reported the facts; that the council resolved to report the matter to the provincial governor, as appears from a document exhibited on page 34, which is a certificate from the provincial secretary of Iloilo, who corroborates this statement of the accused; they further testified that they had only charged 75 cents each for the three certificates, which was the amount fixed by the tariff, and that the fees for the two certificates issued to Albao and Apostol have not been paid; that they did not report the facts to the Constabulary inspector because they did not deem it necessary, report

having been made to the governor of the province; that although the carabaos had an old brand mark on them they did not know they were stolen until after the report made to the provincial governor on motion of the president.

The secretary, Jacobo Celestial, testified to the same effect, adding that he was not present when the certificates were drawn up, he having returned to his house, and on the day following they were sent to him for signature, as he was at that time ill.

The court below, considering that the crime had been proven and the guilt of the accused established, condemned the first two to the payment of a fine of 1,250 pesetas and the third to the payment of a fine of 450 pesetas, with one-third of the costs to each one, and to suffer subsidiary imprisonment in case of insolvency, with no allowance for the preventive imprisonment suffered. From this judgment the defendants appealed.

If the crime of theft consists in the act of taking personal property belonging to another with intent to gain, without the consent of the owner, and without using force or intimidation in the taking, as provided by article 517 of the Penal Code, it is evident that if it is not proved that the property alleged to have been stolen was so stolen and it is not determined who the owner of the property is, the mere possession of such property can not be considered as the result of a crime, nor can the possessor be punished as a thief. This is the doctrine established by the courts in many decisions, among them that of the supreme court of Spain of May 19, 1882.

If we believe the statement made by the Constabulary men, Acasio and Apostol, the carabaos which were subsequently presented to the municipal president of Tubig were in the possession of six unknown men who were in the mountains and who ran away and abandoned the said carabaos when fired upon, and as these unknown men might have been the owners of the carabaos, and on the other hand even if they were thieves, it does not appear that the carabaos were stolen or who the owners thereof were, there can be no doubt that the mere possession of

these animals by the six persons unknown could not be considered as resulting from a theft or robbery, as the evidence does not show that the elements of this offense are present.

Common sense teaches that if there has been no crime and no punishable act has been committed there can be no punishment; and consequently if the record contains no proof of the existence of the crime of theft or any other crime the defendants can not be guilty as accessories.

Furthermore, the record does not contain evidence sufficient to show that the defendants had any knowledge of the means by which these carabaos had been obtained, for the Constabulary men assured them that they had purchased them in Capiz, and upon this assertion it is to be presumed that the accused acted in good faith and that they were influenced by the threats of the Constabulary men in question who were determined to get these certificates, which were in fact issued by the accused.

The best proof that the accused acted without criminal intent is the fact of their having reported the facts to the governor of the province a few days after the certificates were issued. Consequently, there being no evidence of any facts constituting the offense charged, the defendants must be acquitted.

For the reasons stated we are of the opinion that the judgment appealed must be reversed and the defendants, Alfonso Abison, Anselmo Juares, and Jacobo Celestial, acquitted, with the costs of both instances *de officio*; and it is so ordered.

*Arellano, C.J., Cooper, Willard, Mapa, McDonough, and Johnson JJ., concur.*

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