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[G.R. No. 2123. October 03, 1905]

VICENTE NERY LIM-CHINGCO, PLAINTIFF AND APPELLANT, VS. CEISANTA TERARIRAY ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

WILLARD, J.:

Prior to the 3d day of October, 1889, Marcelo Quintano Lao-Yuco was the owner of the land in question. On the day named a public document evidencing the sale of this land was executed in Cagayan de Misamis. The purchaser named in this document was the plaintiff herein. As seller there appeared before the justice of the peace, who was acting as a judge of the Court of First Instance, with the powers of a notary public, a person who said that he was Marcelo Quintano Lao-Yuco.

Marcelo Quintano Lao-Yuco was the husband of the defendant Crisanta Terariray and the father of the other defendants. He died on the 4th day of November, 1902. The plaintiff after his death brought this action against his widow and children to recover the possession of the land. Judgment was rendered in favor of the defendants by the court below, and the plaintiff has brought the case here by bill of exceptions.

The principal question in the case is one of fact, and it is this: Was the person who presented himself before the notary public on the 3d day of October, 1889, and who signed the instrument above mentioned, Marcelo Quintano Lao-Yuco? Upon this question of fact the court below found in favor of the defendants. After an examination of all the evidence in the case we can not say that the preponderance of it is against this finding. The justice of the peace before whom the document

was executed certified in it that he did not know the seller, and he required the production of two witnesses who did know him, and the only disinterested witness who testifies that the husband of the defendant executed the instrument is one of these witnesses known as Nicomedes Ebarle. The evidence shows that Marcelo Quintano, with his wife, went to China in 1888; that he returned with her in 1891; that he was in possession of these lands when he went away, and that when he returned in 1891 he resumed possession of them, and that he remained in such possession until his death. The claim of the plaintiff is that Marcelo returned from China to the Philippines in the fall of 1889 for the purpose of executing these instruments and obtaining a residence license, remaining here, for about three months, and again departing for China. He explains the continuous possession by Marcelo of the lands in question, after his return in 1891, by producing a contract made in Cebu on the 16th day of December, 1891, which purports to be a lease executed by the plaintiff to Marcelo of the land for an indefinite time. The court below must have been of the opinion that this contract of lease was fictitious, and was never executed by Marcelo Quintano. The present appearance of this document, the fact that it was executed in Cebu, when the parties lived in the Island of Camiguin, north of Mindanao, together with other circumstances which appear in the case, satisfies us that the conclusion reached by the court below upon this point is correct.

In addition to the present suit two other suits were brought against the same defendants, one by Casiano Gomez Lao-Siamco and the other by Lao-Sum Chiam. The plaintiffs in those suits relied upon public documents executed before the same justice of the peace on the same day and the following day, purporting to be signed by Marcelo Quintano, and conveying to the respective plaintiffs other tracts of land of which Marcelo was then the owner. The three cases were all tried at the same time in the court below. In each one of the other two the plaintiff presented a contract of lease similar to the one presented in this case, purporting to have been executed on the same day in Cebu. No reason is giving why these four people should have left their homes and gone to Cebu for, as far as the evidence in this case shows, the sole

purpose of executing these contracts of lease.

The statement in the brief of the appellant that the surveyor whose certificate appears in the record necessarily went upon the land after this contract of sale was executed we do not think is borne out by the evidence in the case. He was employed simply to reduce the measurements contained in the plan attached to the deed, to the system then in force.

This deed was recorded in the registry of property, and the appellant claims that that inscription makes him the owner of the land. The finding of the court below, which we affirm, was that this deed was a forgery. It therefore was null and void.

Article 33 of the Mortgage Law is as follows; "The record of instruments or contracts which are null in accordance with the law are not validated thereby."

This case does not come within article 34 of that law, and the record of the forged deed could not give the plaintiff any additional rights. There was nothing decided in the case of the Compania General de Tabacos de Filipinas *vs*. Miguel Topino, April 22,1904,[1] which is opposed to this proposition. It is very probable that if the defendants hereafter wish to record any instruments relating to this land, it will be necessary for them to procure the cancellation of the record of the deed in question, but the fact that they have not commenced any such action does not prohibit them from proving, when they are sued for possession of the land, that the deed under which the plaintiff claims is a forgery.

Section 103 of the Code of Civil Procedure is also relied upon by the appellants. Passing the question whether this action of possession can be said to have been brought on the instrument set out in the complaint, we hold that the section does not apply to an action brought against the heirs of the person signing the instrument.

Reasonably construed, the purpose of the enactment appears to have been to relieve a party of the trouble and expense of proving in the first instance an alleged fact, the existence or nonexistence of which

is necessarily within the knowledge of the adverse party, and of the necessity (to his opponent's case) of establishing which such adverse party is notified by his opponent's pleading. With reference to this purpose, we think the second provision of the section under consideration applies only to an instrument upon which an action is brought against the maker thereof, or to an instrument upon which a counterclaim or defense against the maker thereof is founded. (Mast & Co. *vs*. Matthews, 30 Minn., 441, 443; Heinszen & Co. *vs*. Jones,[1] Sept. 16,1905.)

The plaintiff offered in evidence an inventory of the property left by Marcelo Quintano at his death, made by the executor, for the purpose of showing that this land had been disposed of by Marcelo before his death. The executor who made this inventory is the plaintiff in one of the other cases. The judge rejected this evidence, to which the plaintiff excepted. There was no error in this ruling. Plaintiff could not in this way create evidence for himself after the death of Marcelo.

Plaintiff also offered in evidence another written document, which was a protest made by the defendants against this inventory, on the ground that it did not include the land in question. The court refused to admit this document, to which the plaintiff excepted. The claim of the plaintiff is that the inventory made by the executor contained the same lands as those described in the will of Marcelo, and consequently that the protest made by the defendants was an admission that the will did not describe these lands. It does not appear from the evidence in the case that the lands described in this inventory are the same as those described in the will. There was no error in this ruling.

The motion for a new trial on the ground of newly discovered evidence was properly denied for the reasons stated by the court below in its order denying the same.

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

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

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[1] 4 Phil. Rep., 31.

[1] Page 27, *supra.*

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