5 Phil. 221

[G.R. No. 1341. November 08, 1905]

URSULA LIQUETE, PLAINTIFF AND APPELLEE, VS. EULALIO DARIO, DEFENDANT AND APPELLANT.

D E C I S I O N

MAPA, J.:

This purports to be an action for unlawful detention of personal property, but what is really sought in the complaint is the recovery of such property, or the value thereof, fixed by plaintiff in the sum of 11,942 pesos, in case restitution could not be made. The property claimed is set out in detail in a statement attached to the complaint.

The judgment appealed from directs that defendant return to plaintiff all the live stock specified in the said statement, to wit, 104 cows, 31 carabaos, 32 sheep, 17 goats, and 1 gray horse, or pay the amount of 6,408 pesos, the total value of the said property.

The court found that the property claimed in the complaint had been seized from the defendant by order of the Philippine revolutionary authorities; that the defendant had been appointed receiver of the same; that the furniture which comprised part of this property had been sold at public auction by order of the same authorities, and that part of the cattle and carabaos was sent by order of those in command to the authorities at Malolos, Tarlac, and Vigan, and part was consumed by the revolutionary troops, the exact number of either being unknown.

The court laid down as a conclusion of law that "all the property seized from Ursula Liquete and sold at public auction, as well as the cattle consumed by the revolutionary forces, should be considered as having been lost by reason of *force majeure*; and the fact

that the loss occurred without fault on defendant's part, who was in charge of the property as receiver, should relieve him from the obligation of returning the same."

Having taken this view of the case, the trial court found that the defendant was not liable for the return of the furniture (it is not, therefore, necessary to refer to it in this decision) because it had been sold at public auction.

The court below, however, entered judgment against the defendant for the return of the other property claimed, for the sole reason, as stated, that no evidence was adduced as to the exact number of the cattle consumed by the revolutionary forces. Proceeding upon this assumption, and considering that there was no evidence as to the increase in said cattle since 1898, when they were delivered to the defendant, the court below found that a just and equitable decision of the case would be to allow compensation for the possible increase of the cattle, with the decrease of the same by reason of the consumption of part thereof during the revolution. For this reason the defendant was ordered to return to plaintiff the total number of cattle enumerated in the said statement.

The above decision is expressly accepted by the plaintiff, who regards it as just and legal, as stated on page 6 of her brief. Considering the case from this viewpoint, it resolves itself into a question of figures, and all that is necessary to do is to determine the number of cattle delivered to defendant after their seizure from plaintiff, and the number of cattle consumed by the revolutionary forces.

As to the first point, the trial court found that the defendant received the total number of cattle appearing in the statement submitted by plaintiff. "This," says the trial court, "is a fact admitted by the defendant in his demurrer to the complaint. It would not do to say that he specifically denied this allegation in his answer, nor that he has attempted to demonstrate the contrary by the testimony of witnesses. The allegations contained in the demurrer are

conclusive and fatal to the party presenting the same."

This finding of the court is based upon the fact that the defendant seemed to have admitted in his demurrer the allegation in the complaint to the effect that the defendant, as a revenue agent of the town of Candon during the revolutionary government, had unjustly withheld the property sought to be recovered in this action, and applied part thereof to his own use, to the prejudice of the plaintiff.

We do not think that such a conclusion can be sustained.

The demurrer to a complaint can have no object other than to raise questions of law upon the facts alleged in the complaint. The party presenting a demurrer must proceed upon the assumption that the facts alleged in the complaint are true, and on this assumption, and no other, can he raise the legal questions upon which the demurrer is based. He can not demur by denying the facts alleged in the complaint, or by setting up new facts. That clearly appears from the definition given in section 91 of the Code of Civil Procedure, which is in part as follows:

> "The demurrer is an allegation that, admitting the facts of the preceding pleading to be true, as stated by the party making it, he has yet shown no cause why the party demurring should be compelled by the court to proceed further."

Therefore, the demurrer can not be regarded as an admission of the allegations contained in the complaint. To admit or deny such allegations should be the subject of the answer. The party demurring to the complaint must admit the allegations thereof, or assume them to be true. This is a necessary assumption, merely hypothetical, and therefore it can not be considered as proof of an admission on the part of the defendant.

In the case at bar the defendant, in his demurrer, repeats almost literally the allegations contained in the complaint, and attempts to

show that the complaint is defective on its face. Aside from any grammatical imperfections, it is evident from the demurrer, considered as a whole, that the object of the defendant in quoting the allegations of the complaint was that above suggested. It was not his purpose to admit such allegations, but to object to the action brought against him, assuming, for the sake of argument, that such allegations were true. Neither the general terms of the demurrer, considered in its entirety, nor its legal nature as a pleading would allow of any other construction. The defendant, in his answer, specifically denies the said allegation contained in the complaint, as stated in the judgment of the court below, and we find that said court erred in holding that the defendant admitted such allegation, notwithstanding his express denial thereof in the answer.

It is claimed by plaintiff in her brief that the pleading presented by the defendant has been improperly termed a demurrer, and that, as a matter of fact, it should be considered as an answer, alleging in support of this contention that there is no other pleading in the bill of exceptions that could be properly considered as an answer.

This last statement of the plaintiff is true, but it is nevertheless also true that in addition to the demurrer the defendant filed an answer specifically denying the receipt by him for safe-keeping of the property claimed in the complaint. This clearly appears from the judgment of the trial court, wherein it makes reference to the answer on two occasions. The court below, after referring to the demurrer, said:"It would not do to say that the defendant *specifically denied this allegation in his answer*" In another part of the judgment the following appears: "Furthermore, *the specific denial contained in the answer* has been entirely contradicted." Reference is again made to the answer in the order of the court allowing the bill of exceptions (p. 50, bill of exceptions) as follows: "It is further ordered that the clerk shall include in the bill of exceptions the particulars designated by counsel for plaintiff, to wit, the complaint, demurrer, and *answer*."

Notwithstanding this, and without reference to the demurrer, we are of the opinion that it has been sufficiently established that the

defendant received for safe-keeping not all but a part of the cattle claimed in the complaint. According to the evidence introduced by plaintiff, the defendant received from various persons the following: 70 head of cattle, 23 carabaos, 23 goats (of which 17 only appear in the statement attached to the complaint), and 8 sheep. There is no evidence that any other cattle were delivered to him, or that he ever received the horse referred to in the statement submitted by the plaintiff.

It has been also proven that the revolutionary authorities disposed of all the cattle delivered to defendant, for the use of the army, and that none of them were retained by him. The testimony of the witness Pedro Legaspi and that of Dionisio Abaya, who had been municipal presidents of the town of Candon, is conclusive upon this point. The first-named witness testified that the cattle (the property of the plaintiff) delivered to the defendant were, sent to the municipal *presidencia* of Candon, and that, pursuant to orders from his superiors, 20 of them were on one occasion forwarded by him to the government at Malolos, and 15 more at a subsequent time; that 16 cows were sent to the authorities at Vigan, and 27 carabaos to the authorities at Tarlac, besides the cows and sheep slaughtered at Candon for consumption by the troops stationed at that point, the exact number of which he did not remember. The second witness testified that while he was municipal president he slaughtered cows, sheep, and goats belonging to plaintiff for the use of the troops, pursuant to military orders; that he did not remember the exact number slaughtered, but that it consisted of about 20 cows (pp. 21, 25, and 26 of the bill of exceptions). These figures will show that the total number of cattle and carabaos consumed by the revolutionary forces at that time was a little more than, or at least equal to, the number which appears to have been delivered to the defendant. This slight discrepancy might well be explained by the fact that the witnesses did not remember exactly some of the items referred to by them in their testimony. As to the sheep and goats, the witnesses failed to name even approximately the number actually consumed; but taking into consideration the fact that they were used for several days for the maintenance of a large number of soldiers (two companies,

according to the witness Legaspi) and that the number of such cattle as given in plaintiff's statement was not large, we have arrived at the conclusion that all the sheep and goats appearing in the list submitted by plaintiff were actually slaughtered and consumed by the revolutionary forces.

The judgment appealed from is therefore reversed and judgment entered in favor of defendant, each party to pay its own costs. After the expiration of twenty days from the date hereof let judgment be entered accordingly, and the case remanded to the trial court for action in accordance herewith. So ordered.

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

Willard, JJ., did not sit in this case.

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