

6 Phil. 206

[ G.R. No. 2391. April 28, 1906 ]

**ANASTASIO MATEOS, PLAINTIFF AND APPELLEE, VS. FELIX LOPEZ, DEFENDANT AND APPELLANT.**

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

**MAPA, J.:**

The complaint prays for judgment in the sum of 15,000 pesos as damages for the breach of a contract. The contract which it is alleged the defendant has broken was for the sale of 1,000 head of horned cattle which, according to the plaintiff, the defendant sold to him at the rate of 31.50 pesos per head, upon the condition that they were to be taken by the plaintiff from the defendant's stock farm in the town of Mangarin, on the Island of Mindoro. The removal of the cattle was to be effected from time to time, but (the entire 1,000 head of cattle sold were to be withdrawn within six months from January 1, 1904. The plaintiff was to be entitled to make a selection from among the entire number of cattle on defendant's stock farm and was to pay the amount due for the cattle so taken at the time of each delivery. The defendant furthermore undertook, as alleged by the plaintiff, not to sell to any other person or permit the withdrawal of cattle from his stock farm until the entire 1,000 head sold to the plaintiff had been withdrawn within the time specified in the contract. The plaintiff furthermore states that he has delivered to the defendant the sum of 200 pesos on account of the total consideration for the sale.

It is alleged in the complaint that the defendant, violating the terms of the contract, has sold 1,000 head of cattle from his stock farm at Mangarin to Jose" Fernandez & Co., and has refused and continues to refuse to permit the plaintiff to take possession of the cattle which have been sold to him.

The court below rendered judgment against the defendant and in favor of the plaintiff in the sum of 10,000 pesos, Mexican currency, as damages and for the return of the 200 pesos paid on account of the consideration for the sale; these sums, according to the decision,

being equivalent to P9,272.72, Philippine currency.

The defendant denied the allegations of the complaint, and set up as a defense that, although he had certain dealings with the plaintiff concerning a sale to the latter of 1,000 head of cattle at 31.50 pesos a head, it was agreed between them that the contract was to be reduced to writing, to be executed on or before the 1st of February, 1904, and that at the time of its execution the plaintiff was to deliver to him the sum of 5,000 pesos as an advance on account of the 31,500 pesos, which was the total consideration for the sale of the 1,000 head of cattle contracted for; that the plaintiff did not comply with this condition and was not seen again by the defendant, although he made frequent attempts to find him from the month of December, 1903, at which time the agreement referred to was entered into, until about a month after January 1, 1904. In short, the defendant contends that the contract was not broken by him but by the plaintiff.

Sufficient proof was introduced at the time of the trial to support the allegations of the defendant. It is unquestionably true that the first time plaintiff and defendant entered into negotiations concerning the lousiness, which was on the 13th of December, 1903, it was agreed between them that the contract was to be reduced to writing before the delivery of the first lot of cattle sold. The plaintiff himself was constrained to admit this in his testimony, as did also his witness, Sixto Francisco, the only other person who was present at the time. On this occasion the defendant asked the plaintiff to advance him 200 pesos, to which the latter replied that he could not pay it just at that time but that if the defendant would come to the office of one Montes in nine or ten days that he would pay the money there. The defendant says that the plaintiff said to him, "I will give it to you," and adds, "then we expressly closed our agreement," and that then they separated, it being the defendant's understanding—to use his own words—that he "thought all the negotiations were to be closed when the 200 pesos were paid."

On December 24 the defendant went to the office of Montes, where he was paid the 200 pesos promised. In this office, according to the defendant, the contract was closed with the condition that it was to be reduced to writing before some notary public within five or six days, and that when the written contract was signed the plaintiff was to pay the defendant 4,000 or 5,000 pesos as an advance on account of the price of the cattle sold. The defendant says that this advance was to be security for the performance of the contract, as he was not acquainted with the plaintiff. The evidence shows, as a matter of fact, that the parties were not acquainted prior to the 13th of December, when they first entered into negotiations concerning this matter. The testimony of the defendant concerning the execution of the

written contract and the advance of 4,000 or 5,000 pesos as a condition to the making of the contract has not been disproved at the trial. It is true that Emigdio Montes states that he saw the 200 pesos delivered to the defendant in his office and that no conversation took place between the latter and the plaintiff, but this witness, in making this statement, merely relates what took place at the precise moment of the delivery of the money. The conversation between the defendant and the plaintiff as to these matters might have taken place before or after the delivery of the money. Montes, himself, testifies that they were in his office about a quarter of an hour, and it is not to be supposed that they were there during that time without saying a word, especially when it is considered that they had met there for the express purpose of closing up a business transaction of great importance; nor is it to be believed that the defendant would have acted in such an unbusiness-like way in a matter of such importance, as the plaintiff would have it understood. The latter was entirely unknown to the former; they saw each other for the first time on the 13th of December and on the second time on the 24th of that month, when the 200 pesos were delivered. From the very first the defendant was in a position to reach a conclusion as to the financial standing of the plaintiff from the fact that in order to pay such a small sum he needed ten days' time and the intervention of a third party (Montes). Under these conditions it is highly improbable that the defendant would have sold him property worth over 30,000 pesos without requiring any security for it, for the insignificant sum of 200 pesos can not be considered as such, more especially in view of the fact that he was not to be paid in cash even the value of the first lot of cattle which was to be taken from the farm, but only two-thirds of their value. This is the testimony of the plaintiff himself. This view is further strengthened when it is considered that the defendant, according to the plaintiff's own testimony, had assumed the onerous obligation of refraining from selling to any other persons any of the cattle on his ranch during the period of six months until the entire 1,000 head sold to the plaintiff had been removed. This conclusion is corroborated by the documents presented by the plaintiff himself at the trial. They consist of two public instruments concerning the sale of 1,000 and 2,000 head of cattle by the defendant to Sergio Osmeña and Ramon Lontoc, respectively. When making these sales the defendant demanded large advances from the purchasers, 10,000 pesos from Osmeña and 5,000 pesos from Lontoc. It would appear, judging from this, that the defendant was in the habit of asking large advances upon sales of cattle from his farm, and it would indeed be very strange if he had acted otherwise in the present case and had left everything, without any security whatever, to the good faith of the purchaser, who was an entire stranger to him.

There is another fact, also, which confirms the testimony of the defendant. It appears from

the testimony of Sixto Francisco—who is, by the way, the plaintiff's witness that during the first fortnight in January, 1904, the defendant was looking for the plaintiff and tried to discover his whereabouts in order to have him carry out the agreement. Other than the execution of the public instrument and the advance of the 5,000 pesos, no agreement had been made between the parties which the defendant was entitled to have performed at that time; consequently, if there had not really been an agreement consisting of these two points, it is hard to understand why the defendant should have been looking for the plaintiff in order to have him carry out the agreement. If the plaintiff's statements are true, then there would have been no agreement which the defendant would have been entitled to have performed at that time. This conduct on the defendant's part is entirely in harmony with his testimony on the subject. In our judgment the receipt, in which was stated that the 200 pesos had been received by the defendant on account of the selling price, is devoid of importance in this case. The receipt of this sum of money for this purpose is not inconsistent with the existence of an agreement consisting of the execution of the public instrument and the payment of the advance of 5,000 pesos. These two facts are entirely compatible with one another.

According to the opinion which we have formed of the case we believe that the plaintiff did not perform the undertaking to which he was bound by virtue of the agreements contained in the contract, consequently he is not entitled to insist upon its performance by the defendant or to recover damages by reason of its breach. The right to rescind is implied in reciprocal obligations in case one of the parties bound fails to perform his undertaking. (Article 1124, Civil Code.)

The judgment of the lower court is reversed and the complaint dismissed. No judgment for costs will be given in either instance. In view of the offer made by the defendant in his answer, he is ordered to return to the plaintiff the 200 pesos received by him on account of the selling price of the cattle contracted for. Twenty days from the date of this decision judgment will be entered in accordance herewith, and ten days after the entry of judgment the case will be remanded to the trial court for proceedings in accordance with law. So ordered.

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

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