

7 Phil. 169

[G.R. No. 2777. December 10, 1906]

MARIA CASAL, FOR HERSELF AND AS EXECUTRIX OF MANUEL ESCUDERO, PLAINTIFF AND APPELLEE, VS. EMILIO MORETA, MANAGING DIRECTOR OF THE MONTE DE PIEDAD Y CAJA DE AHORROS OF MANILA, DEFENDANT AND APPELLANT.

D E C I S I O N

CARSON, J.:

Judgment in favor of the plaintiff for the sum of 984.66 pesos, with interest at the rate of 6 per cent from the 19th day of November, 1902, was rendered in the trial court upon the following findings of fact, which are fully sustained by the evidence of record:

“First. That Manuel Escudero, deceased, pawned certain jewelry on the 0th day of September, 1898, in the ‘Monte de Piedad’ for the sum of 700 pesos;

“Second. That the said Escudero died on the 26th day of March, 1899, without having redeemed this jewelry;

“Third. That the said Escudero executed a will in which he named the plaintiff as his albacea (executrix) ; that the said will was duly probated and that the plaintiff accepted the said appointment as albacea;

“Fourth. That subsequently, and after the period prescribed for the redemption of said jewelry had expired, the defendant sold the said jewelry at public auction in accordance with the rules provided in such cases, and applied the proceeds to the payment of the said loan of 700 pesos, interest, and costs of the auction, placing the balance of 984 pesos and (Hi cents to the credit of Escudero;

“Fifth. That some time in the month of November, 1900, some one unknown,

impersonating the said Manuel Escudero, deceased, presented himself to the defendant and stated that he was Manuel Escudero and that he had been a prisoner in the hands of the Filipinos, who had destroyed his pawn tickets; that this unknown person requested that he be informed what was necessary for him to do in order to withdraw the amount which he claimed to have to his credit in the said 'Monte de Piedad;' that he was informed that he must submit a statement in writing setting out the contents of the pawn tickets which had been destroyed; that some days afterwards he returned, giving the description of the said jewelry; that the customary notice was duly published and that on the 1st day of, February, 1901, the prescribed period of sixty days having expired and no protest having been submitted, six duplicate pawn tickets were issued to the said unknown individual who was impersonating the deceased Escudero; and that on the 11th day of February, 1901, the defendant paid to him the sum of 474 pesos and 5 cents, and on the 12th day of the same month and year the sum of 510 pesos and 61 cents; and

“Sixth. That at the time when this payment was made Manuel Escudero was dead and that the said payment was not made to his lawful representative nor to any other duly authorized person.”

Counsel for defendant insists that judgment should have been rendered in his favor because, as he alleges, the proceedings in connection with the issuance of the duplicate pawn tickets were had in exact conformance with the statutes of the establishment of which he was director and the payment made upon these duplicate pawn tickets relieved him and his establishment of all responsibility, in accordance with the provisions of article 1873 of the Civil Code, which provides that:

“Respecto a los Montes de Piedad y deinas establecimientos pttiblicos, que por instituto o profesion prestan sobre prendas, se observaran las leyes y reglamentos especiales que les conciernan y subsidiariamente las disposiciones de este titulo.”

The record discloses that under, the statutes of the “Monte de Piedad y Caja de Ahorros” of Manila all articles pawned are required to be held in safe-keeping for one year and, if within that period the original pawn tickets are not presented, such articles are to be sold at public

auction, and the proceeds applied to the reimbursement of the establishment for the amount loaned, together with interest and expenses lawfully incurred, any balance remaining to be placed to the credit of the account of the holder of the pawn ticket and to remain to his credit for a period of ten years, when such funds become the property of the establishment if within that period the pawn ticket has not been presented and demand made for the balance to the credit of the holder.

At the time when these jewels were pledged there was a rule of the establishment, approved by a statute of the Consejo de Administracion, which authorized the issuance of duplicate pawn tickets to persons claiming to have lost originals, when such persons could produce satisfactory evidence of ownership of the lost tickets, and after due notice published in the public press for a certain prescribed number of days. Subsequently, on the 1st day of September, 1899, a new rule appears to have been adopted by which notices of claims on account of alleged losses of pawn tickets and applications for duplicates were not published in the public press unless the party claiming to have lost the pawn tickets assumed the expense of such publication, and in lieu thereof notices were posted at some public place within the establishment.

The proceedings in the case under consideration were had in accordance with this new rule, and it is claimed that this rule was duly authorized by the statutes of the establishment, and that compliance therewith relieved the defendant of responsibility for all losses arising thereunder. It is not necessary for us to consider whether the defendant would have been relieved from responsibility in this case if such rule had been duly authorized by a statute of the establishment, because it does not appear of record that the new rule was, in fact, authorized or approved, and it was the duty of the defendant who claimed exemption thereunder to submit proof in support of this allegation.

Article 14 of the statutes of the Monte de Piedad is as follows:

“Son atribuciones del Consejo:

“1.^a Dictar disposiciones que eonceptue necesarias para la ejecucion de estos estatutos, aprobando los reglamentos por los cuales se haya de regir el establecimiento.

“3.^a Resolver cuantas dudas y cuestiones se presenten en la marcha ordenada del servicio, y para las cuales no est& facultada la Junta de Gobierno o el Director

gerente.”

The only competent evidence of record showing the adoption or approval by the council of administration of rules touching the mode of procedure in cases where loss of pawn tickets is alleged consists of extracts from the record of sessions of that body held on the 16th of March, 1883, and December 6, 1887, wherein the mode of procedure in force at that time, including publication in the public press, was authorized and approved, but the change of that mode of procedure as above set out did not take place until the 1st of September, 1899, as appears from the evidence introduced by the defendant himself, and there is no evidence whatever to show that this change was authorized or approved by the Consejo de Adnivist radon.

It is by no means improbable that had the defendant adhered strictly to the authorized and approved rules of his establishment, and had notice of the application for duplicate pawn tickets been published in some newspaper circulating in the city of Manila, the holder of the original tickets would have entered protest, and thus the improper payment of the balance due the holder of these tickets would have been avoided, and however this may be, we are of opinion that the defendant having failed to comply with the provisions of the authorized and approved rules of his establishment, his claim for exemption under and by virtue of those rules can not be considered.

The judgment of the trial court is affirmed, with the costs of this instance against the appellant, and after twenty days judgment will be entered in accordance herewith, and ten days thereafter the record will be returned to the trial court for execution. So ordered.

Arellano, C. J., Torres, Mapa, Willard, and Tracey, JJ., concur.

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