

SIARI VALLEY ESTATE, INC., PLAINTIFF-APPELLEE, VS. FILEMON LUCASAN, DEFENDANT-APPELLANT.*G.R. No. L-7046. August 31, 1955*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/d54f086e5fc6/>**BENGZON, ACTING C.J.:**

SIARI VALLEY ESTATE, INC . , PLAINTIFF-APPELLEE, VS. FILEMON LUCASAN, DEFENDANT-APPELLANT

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In December 1948 the Siari Valley Estate Inc., a duly organized agricultural corporation, filed an action to recover about 200 head of cattle that were driven, or wandered, from its pasture lands into the adjoining ranch of defendant Filemon Lucasan, Sindangan, Zamboanga, Plaintiff asked for the return of its animals with their offspring, or for payment of those disposed of by defendant, plus damages.

In his answer, the defendant denied having appropriated or retained any cattle belonging to the corporation. On the contrary, alleging that plaintiff had taken away from his pasture 105 head of cattle thru force and intimidation, he demanded suitable compensation.

The complaint was afterwards amended and re-amended -after several months' interval, and after investigations by plaintiff- so as to allege that defendant took or retained about 740 head of plaintiff's animals- Accordingly the defendant reformed his answers to the amended complaints. Several motions and petitions were submitted, trial was held, and on June 30, 1952 the Hon. Patricio Ceniza, Judge, rendered judgment the dispositive part of which reads as follows:

"Premises considered, judgment is hereby rendered, adjudicating to the Siari "Valley Estate all the cattle that may be found in the cattle ranch of Filemon Lucasan, specially the 321 heads that had been entrusted to his care as receiver or trustee of this Court and ordering the defendant to deliver to the plaintiff all said cattle or their value mounting, to P40,000.00, to pay damages to the Siari Valley Estate for the 400 heads of cattle that he sold since 1946 up to the date of the trial at the rate of P100.00 per head or P40,000.00 plus interest at the rate of 6% from the date of the trial of this case in January, 1951 and to pay the costs of the proceeding. x x x

With regard to the contempt proceedings, Filemon Lucasan is hereby found guilty of the charges and he is hereby sentenced to pay a fine of P500.00 pursuant to Section 6, Rule 64, of the Rules of Court or suffer subsidiary imprisonment in case of insolvency at the rate of one day for every 2.50 that he fails to pay."

To explain the last paragraph it should be stated that after the defendant had answered the complaint, the court on motion of plaintiff, ordered on December 13, 1950 an inspection of Lucasan's ranch and the rounding up of plaintiff's livestock allegedly roaming there. The order said that such livestock shall be kept in an enclosure in defendant's ranch. The order was later supplemented by a directive turning over to defendant Lucasan, as trustee of the court, all the impounded cattle (about 321), which, plaintiff claimed, were its own.

However the court afterwards found that Lucasan, violating his duties as trustee, disposed of several head of such cattle; and fined him for contempt, as above related.

From the decision the defendant appealed in due time. His brief assigns several errors raising issues which may be boiled down to whether plaintiff's cattle were commingled with defendant's and whether the commixtion was made in bad faith. A third issue is whether he disposed of cattle in his custody as trustee.

The evidence of record sufficiently shows the following relevant facts:

The Siari Valley Estate Inc. started raising livestock on its 950-hectare ranch, in 1921, with 7 native cattle. In 1923 it acquired 30 native cattle and two Indian bulls. It also introduced native stock into its herd thru a native black bull. Male offspring of this bull were castrated.

Prior to the Japanese occupation, the fence enclosing plaintiff's pasture was well kept. However in 1943 a portion thereof was destroyed, with the result that some cattle strayed into the adjoining unfenced range of defendant Lucasan. And taking advantage of the situation several men in the employ of defendant willfully and deliverately rounded up and drove many animals from the Siari pasture towards Lucasan's grazing land. This was testified to by Jesus Pandi, farmer, who declared that during the war he saw the men of defendant, namely, Angel Galimon, Francisco Ramos and Bilingan Subane driving cattle (30 head) from the Siari Valley Estate to his ranch. The testimony of this witness remains uncontradicted. During the trial Galimon, Ramos and Bilingan were available; but they were not placed on the witness stand by defendant to contradict Pandi's assertions.

Eriberto Garrovillo, foreman of the company, swore that in 1944, defendant informed plaintiff that some of the latter's cattle were mixed with his cows. With due permission they (he and plaintiff's men) were allowed to catch eight (8) head of the Siari Valley Estate cattle in the toril of defendant. Lucasan also informed this witness that there were still about 200 head of the company's cattle, in his ranch mixed with his herd.

John H. Roemer, president of the Siari Valley Estate, Inc., testified that sometime in October, 1946, in one of his afternoon visits to Roemer's family -Lucasan and Roemer being good friends- Lucasan informed Roemer that the company had at least 250 head of cattle in his pasture land; that he and Lucasan came to an agreement permitting the former to round up and drive plaintiff's cattle. However, on the date set for the drive Lucasan's wife protested, and thereafter defendant refused to admit that there were 250 head of Siari Valley Estate cattle in his ranch. H. C. Smith, director of the company, corroborated Roemer's testimony. It may be added that Roemer saw two sons of defendant (Rafael and Vicente) driving some of plaintiff's cattle into defendant's ranch.

Francisco Martinez testified that in 1946, a Red Cross Committee, of which he was a member, requested John H. Roemer to contribute to the fund, Roemer offered to give at least 30 head of cattle provided the committee would make arrangements with Filemon Lucasan to permit him to get plaintiff's cattle inside defendant's toril. The help of Fiscal Ubay was sought by the Red Cross; he negotiated with Lucasan, the latter agreed; Roemer and his men were able to round up 78 head of cattle during the first day of the drive, but said cattle were turned loose the next morning by defendant and his wife.

At this juncture it must be related that during the Japanese occupation, the company's officers being American had to flee to the interior for personal safety. As a result the management and supervision of the ranch was practically abandoned.

The defendant, admitted that some cattle of the Siari Valley Estate did enter his ranch. He says however that thru the good offices of Fiscal Ubay the company rounded up and drove away from his ranch 98 head of cattle in November 1946; and that in May 1947 plaintiff's herdsman took away 5 more head of cattle. He affirmed that as of December 1951 he had 400 head on his ranch all belonging to him, after deducting 200 head which he had

disposed of.

After going thru the record, we have no doubt that hundreds of cattle belonging to plaintiff have been driven, into or wandered into defendant's land. Defendant himself admitted such commixtion although, he says, plaintiff had already retrieved its animals.

However, the following computation is quite conclusive against him:

Lucasan started raising his own cattle in 1939 with 53 head of cattle he received as his share from his partners R. Macias and Teck Lee. (432-433 s. n.)) A 30% increase per year (that is what Dr. Geronimo said) should give him around 417 head of cattle in 1951. Yet in 1951 he had 400 head, after disposing of 230 head according to his evidence, or "less than 800" (which means 700 at least) according to his answer (at p. 115 Record on Appeal.) Where did he get the excess of 200 or 700? According to Dr. Pacifico Geronimo, defendant sold 200 head in Ozamis City; and there is evidence that he marketed cattle in Sindangan, Dipolog and other parts of Zamboanga.

On the other hand the Report of the Siari Valley for September 1941 to September 1945 showed that the company had or should have 1768 head of cattle, 249 of which was slaughtered or died, leaving a total of 1513 head. Thereafter it sold 593 head; therefore it should have 925 head. Actually it could count only 102 head. Therefore it lost 823 head. Now then, is it far-fetched to conclude -as the lower court concluded- that these were part of the 700 which was disposed of by Lucasan, and a part is the remaining flock in his possession[1]?

No actual evidence exists that all these missing animals (323) were taken by defendant or his men; but in view of the proof that his men on two occasions drove away more than 30 head of cattle, it is not erroneous to believe that the others must have also been driven away on subsequent or prior occasions, applying, by analogy, the principle that one who stole a part of the stolen money must have taken also the larger sum lost by the offended party. (P. v. Fernandez, 58 Phil. 674; P. v. Buada, 60 Phil. 363.)

In fact George Puth, Plantation Manager, testified that before July 27, 1951, he saw from his plane 700 head of plaintiff's cattle on the ranch of the defendant-appellant. Now, as there are only 321 cattle impounded, the conclusion flows that defendant disposed of about 400 head of plaintiff's cattle. And this testimony was obviously the main basis of the trial court's adjudication.

Another thing, Of the heard now kept by defendant, 322 head were impounded for purposes of inspection and identification. Two out of three, experts found the great majority to be mestizos, (Indian or Nellore) an average of about 29 only being natives. This is significant, because defendant's flock could have mestizos, all his original stock being entirely native. It is true that he declared his partners "Macias and Te Teck Lee furnished him with 41 head of cattle - one of which was an Indian bull, and another Australian. But he was contradicted by Tee Teck Lee who asserted that the cattle delivered to Lucasan were all of native stock.

On course it is quite possible that some of these mestizos are the result of the intermingling which began in 1943 and continued up to 1951. Although generally, offspring or the increase of domestic animals belongs to the owner of the dam by accretion, (U.S. v. Caballero, 25 Phil. 356) In re Ebdon 98 N.Y.S. 2d. 697, it is impossible to trace such ownership of these mestizos under the circumstances. Yet as the trial judge said "Filemon had been actuated by bad faith in retaining in his ranch, to multiply and increased there for his own benefit, the cattle belonging to the Siari Valley Estate" and under the Civil Code "if the commingling of two things is made in bad faith, the one responsible for it will lose his share x x x". (Art. 382; See Art. 473 New Civil Code.)

The same principle obtains in the United States where parallel situations have arisen.

"Where the goods are so mingled that they cannot thereafter properly be identified or divided, all the inconvenience or loss resulting from the confusion is thrown on the party who occasioned it; and, generally, it

is for him to distinguish his own property or lose it, it being held, in this connection, that the rule of confusion of goods is merely a rule of evidence." (15 C.J.S. 963-964.)

"Where one fraudulently, willfully, or wrongly intermingles his goods with those of another, so that there is no evidence to distinguish the goods of the one from those of the other, the wrongdoer forfeits all his interest in the mixture to the other part. In other words, he cannot recover for his own proportion, or for any part of the intermixture, but the entire property vests in him whose right is invaded." (15 C.J.S. 961.)

"Thus where one wilfully places his brand on another's cattle, intermingling them with his own and on account of the change or destruction of the identity of the goods he is unable to distinguish and separate his own goods from the others, he will be held to forfeit his own." (Johnson vs. Rocker et al., Tex City A 39 S. W. 406.) (See also Hagan et al. v. Casper, 292 Pac. Rep. 1020.)

Did defendant act in bad faith? The circumstances disclosed in this record answer the question in the affirmative: his cowboys -and even his sons Rafael and Vicente- rounded up and drove plaintiff's cattle into his pasture; he knew he had plaintiff's cattle, but refused to return them despite demands by plaintiff; he even threatened plaintiff's men when the latter tried to retrieve its animals; he harassed them with false prosecutions for their attempts to get back the company's animals; he wouldn't allow plaintiff's cowboys to get into his pasture to identify its flock; he rebranded several Siari Valley cattle with his own brand; he sold cattle without registering the sales; after some cattle impounded were entrusted to his custody as trustee, he disposed of not less than 5 head of cattle among those he received as such trustee; lastly, he disposed of much more cattle than he had a right to.

There are several incidents which we do not think it necessary to describe in detail. Some are irrelevant; others are of minor importance. On the whole, we are satisfied that the appealed decision substantially accords with the facts and the law.

Therefore it is hereby affirmed, with costs against appellant, So ordered,,

Padilla, Montemayor, Reyes, Jugo, Bautista Angelo, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.

[1] The case by its very nature does not admit of exact mathematical figures. Calculations have to be mere approximation. Fortunately, as the issues have developed, it is unnecessary to consider differences of five or ten head of cattle.

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