

**REPUBLIC OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS.
JOSE V. BAGTAS, DEFENDANT. FELICIDAD M. BAGTAS,
ADMINISTRATRIX OF THE INTESTATE ESTATE LEFT BY THE LATE
JOSE V. BAGTAS, ...**

G. R. No. L-17474. October 25, 1962

Ponente: PADILLA, J.

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PADILLA, J.:

The Court of Appeals certified this case to this Court because only questions of law are raised.

On 8 May 1948 Jose V. Bagtas borrowed from the Republic of the Philippines through the Bureau of Animal Industry three bulls: a Red Sindhi with a book value of P1,176.46, a Bhagnari, of P1,320.56 and a Sahiniwal, of P744.46, for a period of one year from 8 May 1948 to 7 May 1949 for breeding purposes subject to a government charge of breeding fee of 10% of the book value of the bulls. Upon the expiration on 7 May 1949 of the contract, the borrower asked for a renewal for another period of one year. However, the Secretary of Agriculture and Natural Resources approved a renewal thereof of only one bull for another year from 8 May 1949 to 7 May 1950 and requested the return of the other two. On 25 March 1950 Jose V. Bagtas wrote to the Director of Animal Industry that he would pay the value of the three bulls. On 17 October 1950 he reiterated his desire to buy them at a value with a deduction of yearly depreciation to be approved by the Auditor General. On 19 October 1950 the Director of Animal Industry advised him that the book value of the three bulls could not be reduced and that they either be returned or their book value paid not later than 31 October 1950. Jose V. Bagtas failed to pay the book value of the three bulls or to return them. So, on 20 December 1950 in the Court of First Instance of Manila the Republic of the Philippines commenced an action against him praying that he be ordered to return the three bulls loaned to him or to pay their book value in the total sum of P3,241.45 and the unpaid breeding fee in the sum of P499.62, both with interests, and costs; and that other just and equitable relief be granted it (civil No. 12818).

On 5 July 1951 Jose V. Bagtas, through counsel Navarro, Rosete and Manalo, answered that because of the bad peace and order situation in Cagayan Valley, particularly in the barrio of Baggao, and of the pending appeal he had taken to the Secretary of Agriculture and Natural Resources and the President of the Philippines from the refusal by the Director of Animal Industry to deduct from the book value of the bulls corresponding yearly depreciation of 8% from the date of acquisition, to which depreciation the Auditor General did not object, he could not return the animals nor pay their value and prayed for the dismissal of the complaint.

After hearing, on 30 July 1956 the trial court rendered judgment—

* * * sentencing the latter (defendant) to pay the sum of P3,625.09 the total value of the three bulls plus the breeding fees in the amount of P626.17 with interest on both sums of (at) the legal rate from the filing of this complaint and costs.

On 9 October 1958 the plaintiff moved ex parte for a writ of execution which the court granted on 18 October and

issued on 11 November 1958. On 2 December 1958 it granted an ex-parte motion filed by the plaintiff on 28 November 1958 for the appointment of a special sheriff to serve the writ outside Manila. Of this order appointing a special sheriff, on 6 December 1958 Felicidad M. Bagtas, the surviving spouse of the defendant Jose V. Bagtas who died on 23 October 1951 and as administratrix of his estate, was notified. On 7 January 1959 she filed a motion alleging that on 26 June 1952 the two bulls, Sindhi and Bhagnari, were returned to the Bureau of Animal Industry and that sometime in November, 1953 the third bull, the Sahiniwal, died from gunshot wounds inflicted during a Huks raid on Hacienda Felicidad Intal, and praying that the writ of execution be quashed and that a writ of preliminary injunction be issued. On 31 January 1959 the plaintiff objected to her motion. On 6 February 1959 she filed a reply thereto. On the same day, 6 February, the Court denied her motion. Hence, this appeal certified by the Court of Appeals to this Court, as stated at the beginning of this opinion.

It is true that on 26 June 1952 Jose M. Bagtas, Jr., son of the appellant by the late defendant, returned the Sindhi and Bhagnari bulls to Roman Remorin, Superintendent of the NVB Station, Bureau of Animal Industry, Bayombong, Nueva Viscaya, as evidenced by a memorandum receipt signed by the latter (Exhibit 2). That is why in its objection of 31 January 1959 to the appellant's motion to quash the writ of execution the appellee prays "that another writ of execution in the sum of P859.53 be issued against the estate of defendant deceased Jose V. Bagtas." She cannot be held liable for the two bulls which already had been returned to and received by the appellee.

The appellant contends that the Sahiniwal bull was accidentally killed during a raid by the Huks in November 1953 upon the surrounding barrios of Hacienda Felicidad Intal, Baggao, Cagayan, where the animal was kept, and that as such death was due to force majeure she is relieved from the duty of the returning the bull or paying its value to the appellee. The contention is without merit.

The loan by the appellee to the late defendant Jose V. Bagtas of the three bulls for breeding purposes for a period of one year from 8 May 1948 to 7 May 1949, later on renewed for another year as regards one bull, was subject to the payment by the borrower of breeding fee of 10% of the book value of the bulls. The appellant contends that the contract was commodatum and that, for that reason, as the appellee retained ownership or title to the bull it should suffer its loss due to force majeure. A contract of commodatum is essentially gratuitous.[1] If the breeding fee be considered a compensation, then the contract would be a lease of the bull. Under article 1671 of the Civil Code the lessee would be subject to the responsibilities of a possessor in bad faith, because she had continued possession of the bull after the expiry of the contract. And even if the contract be commodatum, still the appellant is liable, because article 1942 of the Civil Code provides that a bailee in a contract of commodatum—

* * * is liable for loss of the thing, even if it should be through a fortuitous event:

(2) If he keeps it longer than the period stipulated. * * *

(3) If the thing loaned has been delivered with appraisal of its value, unless there is a stipulation exempting the bailee from responsibility in case of a fortuitous event:

The original period of the loan was from 8 May 1948 to 7 May 1949. The loan of one bull was renewed for another period of one year to end on 8 May 1950. But the appellant kept and used the bull until November 1953 when during a Huk raid it was killed by stray bullets. Furthermore, when lent and delivered to the deceased husband of the appellant the bulls had each an appraised book value, to wit: the Sindhi, at P1,176.46; the Bhagnari, at P1,320.56 and the Sahiniwal; at P744.46. It was not stipulated that in case of loss of the bull due to fortuitous event the late husband of the appellant would be exempt from liability.

The appellant's contention that the demand or prayer by the appellee for the return of the bull or the payment of its value being a money claim should be presented or filed in the intestate proceedings of the defendant who died on

23 October 1951, is not altogether without merit. However, the claim that his civil personality having ceased to exist the trial court lost jurisdiction over the case against him, is untenable, because section 17 of Rule 3 of the Rules of Court provides that—

After a party dies and the claim is not thereby extinguished, the court shall order, upon proper notice, the legal representative of the deceased to appear and to be substituted for the deceased, within a period of thirty (30) days, or within such time as may be granted,

and after the defendant's death on 23 October 1951 his counsel failed to comply with section 16 of Rule 3 which provides that—

Whenever a party to a pending case dies * * * it shall be the duty of his attorney to inform the court promptly of such death * * * and to give the name and residence of the executor or administrator, guardian, or other legal representative of the deceased * * *.

The notice by the probate court and its publication in the Voz de Manila that Felicidad M. Bagtas had been issued letters of administration of the estate of the late Jose V. Bagtas and that "all persons having claims for money against the deceased Jose V. Bagtas, arising from contract, express or implied, whether the same be due, not due, or contingent, for funeral expenses and expenses of the last sickness of the said decedent, and judgment for money against him, to file said claims with the Clerk of this Court at the City Hall Bldg., Highway 54, Quezon City, within six (6) months from the date of the first Publication of this order, serving a copy thereof upon the aforementioned Felicidad M. Bagtas, the appointed administratrix of the estate of the said deceased," is not a notice to the court and the appellee who were to be notified of the defendant's death in accordance with the above-quoted rule, and there was no reason for such failure to notify, because the attorney who appeared for the defendant was the same who represented the administratrix in the special proceedings instituted for the administration and settlement of his estate. The appellee or its attorney or representative could not be expected to know of the death of the defendant or of the administration proceedings of his estate instituted in another court, if the attorney for the deceased defendant did not notify the plaintiff or its attorney of such death as required by the rule.

As the appellant already had returned the two bulls to the appellee, the estate of the late defendant is only liable for the sum of P859.63, the value of the bull which has not been returned to the appellee, because it was killed while in the custody of the administratrix of his estate. This is the amount prayed for by the appellee in its objection on 31 January 1959 to the motion filed on 7 January 1959 by the appellant for the quashing of the writ of execution.

Special proceedings for the administration and settlement of the estate of the deceased Jose V. Bagtas having been instituted in the Court of First Instance of Rizal (Q-200), the money judgment rendered in favor of the appellee cannot be enforced by means of a writ of execution but must be presented to the probate court for payment by the appellant, the administratrix appointed by the court.

Accordingly, the writ of execution appealed from is set aside, without pronouncement as to costs.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Paredes, Dizon, Regala and Makalintal, JJ., concur.

Barrera, J., concurs in the result.

[1] Article 1933 of the Civil Code.

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