

BENIGNO CATARIAN, PLAINTIFF AND APPELLEE, VS. FRANCISCO TUNGCU, DEFENDANT AND APPELLANT.

G.R. No. 3837. August 01, 1908

Ponente: TRACEY, J.

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TRACEY, J.:

The plaintiff sought to recover from the defendant a caraballa and her calf which had been for several years in his possession before they were delivered by his brother to the defendant, and he succeeded in his contention in the Court of First Instance. Counsel assigns two errors, as follows:

"First. The judge erred in applying to the case the provision of subdivision 3 of section 43 of Act No. 190, inasmuch as he lost sight of the disposition of article 612 of the Civil Code, treating of the prescription of tamed animals, which is the subject-matter of the present controversy.

"Second. The judge erred in omitting in his consideration of this action, the provisions of Act No. 1332 of the Philippine Commission, upon the marking and registration of cattle."

First. The provision of the third subdivision of article 612 of the Civil Code reads:

"The owner of tamed animals may also claim them within twenty days, counted from the date of their retention by another. After this period has elapsed, they shall belong to the person who may have caught and kept them."

It is a misconception to apply this provision to animals that have not strayed or been abandoned so as to have been taken possession of by another in default of the lawful possessor. These animals were delivered to the defendant by the person in lawful custody of them and the provision cited has no application to such a case, nor is it altogether clear that they fall within the term "tamed or domestic" (*amansados*). Sr. Manresa's commentary throws much light upon the object and force of this article.

We are unable to agree with the trial judge in applying to this case the prescription under the Code of Civil Procedure. Inasmuch as the period of the cause of action was running when that law went into effect, the proper prescription was the preexisting one of three years, under article 1955 of the Civil Code. The rule laid down in *Aranetat vs. Garrido* (5 Phil Rep., 137), for the prescription under, the prior law, when the Civil Code went into effect, holds good in the substitution for that code of the more recent Code of Civil Procedure.

Second. Act No. 1332 of the Philippine Commission, cited by counsel, is one amendatory of Act No. 1147, and section 35 of this Act, to which he appears to refer, makes the possession of cattle not branded or registered the presumptive evidence of ownership only "for the purposes of the section immediately preceding." The only purpose to be carried out by section 34 would seem to be the punishment by fine or imprisonment of persons refusing or neglecting to brand or register, and this restriction prevents the section from having any bearing on the facts now before us. Moreover, the presumption of ownership established by section 35 must be understood to be, not conclusive, but rather a disputable one, in harmony with the provisions of section 8 of the same Act, which makes the certificate of ownership of registered cattle only *prima facie* evidence that the animal is the property of

the person therein named as owner. It would not be consistent that the mere possession of unregistered cattle should create a presumption stronger than the due registration by the apparent owner.

Both assignments of error are overruled, and the judgment of the Court, of First Instance is affirmed, with the costs of this instance against the appellant. So ordered.

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

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