

FREDERICK R MOREY, PLAINTIFF AND APPELLEE, VS. LAO LAYCO ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 4067. February 29, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

The plaintiff, a resident of Thursday Island, in the Commonwealth of Australia, brought this action against the defendants, residents of the Province of Leyte, to recover a schooner in the possession of the defendant Floreneio Bustillo. Judgment was rendered in the court below in favor of the plaintiff for the possession of the schooner, or for its value, P5,324. From that judgment the defendant Bustillo has appealed.

The evidence shows that the plaintiff was the owner of a schooner called Gwendoline; that this schooner was stolen from him by certain Japanese in Thursday Island, and was afterwards found in the possession of the appellant at Tacloban. The only question in the case is as to the identity of the boat.

We think it was sufficiently proven that the boat now in the possession of the appellant, which is now called the Salvadora, is the boat owned by the plaintiff and formerly called the Gwendoline. One of the witnesses who came from Thursday Island and saw the Salvadora positively identified it as the Gwendoline. He caused a photograph to be made of the boat while he was at Tacloban, which photograph was exhibited to the plaintiff when he gave His deposition and he positively identified it as the Gwendoline. The appellant testified that he bought the boat of a Japanese to whom he paid a thousand pesos and that he borrowed the thousand pesos from the other defendant, Lao Layco, and had not yet paid the loan.

Among the errors assigned by the appellant is the admission in evidence of Exhibit D), which is a certificate of registry issued by the customs authorities of Thursday Island. Even if the admission of this document were error, it could not in any way have prejudiced the appellant, for eliminating the document from the record there is still sufficient evidence to support the judgment for the plaintiff.

The appellant presented in the court below a certificate of the collector of customs of Cebu dated October 4, 1905 (Exhibit E), certifying that the ownership of the vessel called Salvadora had been transferred from Yamashita to the appellant, and that the transfer had been recorded. He also presented a certificate (Exhibit F) issued by the same collector of customs on the same day, in pursuance of Chapter X, section 117 of the Philippine Customs Administrative Act (No. 355 as amended). This apparently states that the sale by Yamashita to the appellant had been proven to the satisfaction of the collector of customs. The appellant also presented in evidence a coastwise license issued by the same collector of customs on the 24th of September, 1906 (Exhibit G).

Whatever other effect these documents may produce, they certainly are not sufficient to show that the appellant had duly become the owner of the plaintiff's schooner Gwendoline. The collector of customs at Cebu had no jurisdiction to finally determine that question as against the plaintiff upon an ex parte application of which the plaintiff had no notice. The judgment of the court below is accordingly affirmed, with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, Carson, and Tracey, JJ., concur.

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