

FELIX DE LOS SANTOS, PLAINTIFF AND APPELLEE, VS. AGUSTINA JARRA, ADMINISTRATRIX OF THE ESTATE OF MAGDALENO JIMENEA, DECEASED, DEFENDANT AND APPELLANT,.*G.R.No. 4150. February 10, 1910*

Ponente: TORRES, J.

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On the 1st of September, 1906, Felix de los Santos brought suit against Agustina Jarra, the administratrix of the estate of Magdaleno Jimenea, alleging that in the latter part of 1901 Jimenea borrowed and obtained from the plaintiff ten first-class carabaos, to be used at the animal-power mill of his hacienda during the season of 1901-2, without recompense or remuneration whatever for the use thereof, under the sole condition that they should be returned to the owner as soon as the work at the mill was terminated; that Magdaleno Jimenea, however, did not return the carabaos, notwithstanding the fact that the plaintiff claimed their return after the work at the mill was finished; that Magdaleno Jimenea died on the 28th of October, 1904, and the defendant herein was appointed by the Court of First Instance of Occidental Negros administratrix of his estate and she took over the administration of the same and is still performing her duties as such administratrix; that the plaintiff presented his claim to the commissioners of the estate of Jimenea, within the legal term, for the return of the said ten carabaos, but the said commissioners rejected his claim as appears in their report; therefore, the plaintiff prayed that judgment be entered against the defendant as administratrix of the estate of the deceased, ordering her to return the ten first-class carabaos loaned to the late Jimenea, or their present value, and to pay the costs.

The defendant was duly summoned, and on the 25th of September, 1906, she demurred in writing to the complaint on the ground that it was vague; but on the 2d of October of the same year, in answer to the complaint, she said that it was true that the late Magdaleno Jimenea asked the plaintiff to loan him ten carabaos, but that he only obtained three second-class animals, which were afterwards transferred by sale by the plaintiff to the said Jimenea; that she denied the allegations contained in paragraph 3 of the complaint; for all of which she asked the court to absolve her of the complaint with the costs against the plaintiff.

By a writing dated the 11th of December, 1906, Attorney Jose Felix Martinez notified the defendant and her counsel, Matias Hilado, that he had made an agreement with the plaintiff to the effect that the latter would not compromise the controversy without his consent, and that as fees for his professional services he was to receive one half of the amount allowed in the judgment if the same were entered in favor of the plaintiff.

The case came up for trial, evidence was adduced by both parties, and their exhibits were made of record. On the 10th of January, 1907, the court below entered judgment sentencing Agustina Jarra, as administratrix of the estate of Magdaleno Jimenea, to return to the plaintiff, Felix de los Santos, the remaining six second and third class carabaos, or the value thereof at the rate of P120 each, or a total of P720 with the costs.

Counsel for the defendant excepted to the foregoing judgment, and, by a writing dated January 19, moved for a new trial on the ground that the findings of fact were openly and manifestly contrary to the weight of the

evidence. The motion was overruled, the defendant duly excepted, and in due course submitted the corresponding bill of exceptions, which was approved and submitted to this court.

The defendant has admitted that Magdaleno Jimenea asked the plaintiff for the loan of ten carabaos which are now claimed by the latter, as shown by two letters addressed by the said Jimenea to Felix de los Santos; but in her answer the said defendant alleged that the late Jimenea only obtained three second-class carabaos, which were subsequently sold to him by the owner, Santos; therefore, in order to decide this litigation it is indispensable that proof be forthcoming that Jimenea only received three carabaos from his son-in-law Santos, and that they were sold by the latter to him.

The record discloses that it has been fully proven from the testimony of a sufficient number of witnesses that the plaintiff, Santos, sent in charge of various persons the ten carabaos requested by his father-in-law, Magdaleno Jimenea, in the two letters produced at the trial by the plaintiff, and that Jimenea received them in the presence of some of said persons, one being a brother of said Jimenea, who saw the animals arrive at the hacienda where it was proposed to employ them. Four died of rinderpest, and it is for this reason that the judgment appealed from only deals with six surviving carabaos.

The alleged purchase of three carabaos by Jimenea from his son-in-law Santos is not evidenced by any trustworthy documents such as those of transfer, nor were the declarations of the witnesses presented by the defendant affirming it satisfactory; for said reason it can not be considered that Jimenea only received three carabaos on loan from his son-in-law, and that he afterwards kept them definitely by virtue of the purchase.

By the laws in force the transfer of large cattle was and is still made by means of official documents issued by the local authorities; these documents constitute the title of ownership[^] the carabao or horse so acquired. Furthermore, not only should the purchaser be provided with a new certificate or credential, a document which has not been produced in evidence by the defendant, nor has the loss of the same been shown in the case, but the old documents ought to be on file in the municipality, or they should have been delivered to the new purchaser, and in the case at bar neither did the defendant present the old credential on which should be stated the name of the previous owner of each of the three carabaos said to have been sold by the plaintiff.

From the foregoing it may be logically inferred that the carabaos loaned or given on commodatum to the now deceased Magdaleno Jimenea were ten in number; that they, or at any rate the six surviving ones, have not been returned to the owner thereof, Felix de los Santos, and that it is not true that the latter sold to the former three carabaos that the purchaser was already using; therefore, as the said six carabaos were not the property of the deceased nor of any of his descendants, it is the duty of the administratrix of the estate to return them or indemnify the owner for their value.

The Civil Code, in dealing with loans in general, from which generic denomination the specific one of commodatum is derived, establishes prescriptions in relation to the last-mentioned contract by the following articles :

"Art. 1740. By the contract of loan, one of the parties delivers to the other, either anything not perishable, in order that the latter may use it during a certain period and return it to the former, in which case it is called commodatum, or money or any other perishable thing, under the condition to return an equal amount of the same kind and quality, in which case it is merely called a loan.

"Commodatum is essentially gratuitous.

"A simple loan may be gratuitous, or made, under a stipulation to pay interest.

"Art. 1741. The bailor retains the ownership of the thing loaned. The bailee acquires the use thereof, but not its

fruits if any compensation is involved, to be paid by the person requiring the use, the agreement ceases to be a commodatum.

"Art. 1742. The obligations and rights which arise from the commodatum pass to the heirs of both contracting parties, unless the loan has been made in consideration for the person of the bailee, in which case his heirs shall not have the right to continue using the thing loaned."

The earabaos delivered to be used not being returned by the defendant upon demand, there is no doubt that she is under obligation to indemnify the owner thereof by paying him their value.

Article 1101 of said code reads:

"Those who in fulfilling their obligations are guilty of fraud, negligence, or delay, and those who in any manner whatsoever act in contravention of the stipulations of the same, shall be subject to indemnify for the losses and damages caused thereby."

The obligation of the bailee or of his successors to return either the thing loaned or its value, is sustained by the supreme tribunal of Spain. In its decision of March 21, 1895, it sets out with precision the legal doctrine touching commodatum as follows:

"Although it is true that in a contract of commodatum the bailor retains the ownership of the thing loaned, and at the expiration of the period, or after the use for which it was loaned has been accomplished, it is the imperative duty of the bailee to return the thing itself to its owner, or to pay him damages if through the fault of the bailee the thing should have been lost or injured, it is clear that where public securities are involved, the trial court, in deferring to the claim of the bailor that the amount loaned "be returned him by the bailee in bonds of the same class as those which constituted the contract, thereby properly applies law 9 of title 11 of partida 5."

With regard to the third assignment of error, based on the fact that the plaintiff Santos had not appealed from the decision of the commissioners rejecting his claim for the recovery of his carabaos, it is sufficient to state that we are not dealing with a claim for the payment of a certain sum, the collection of a debt from the estate, or payment for losses and damages (sec. 119, Code of Civil Procedure), but with the exclusion from the inventory of the property of the late Jimenea, or from his capital, of six carabaos which did not belong to him, and which formed no part of the inheritance.

The demand for the exclusion of the said carabaos belonging to a third party and which did not form part of the property of the deceased, must be the subject of a direct decision of the court in an ordinary action, wherein the right of the third party to the property which he seeks to have excluded from the inheritance and the right of the deceased has been discussed, and rendered in view of the result of the evidence adduced by the administrator of the estate and of the claimant, since it is so provided by the second part of section. 699 and by section 703 of the Code of Civil Procedure; the refusal of the commissioners before whom the plaintiff unnecessarily appeared can not affect nor reduce the unquestionable right of ownership of the latter, inasmuch as there is no law nor principle of justice authorizing the successors of the late Jimenea to enrich themselves at the cost and to the prejudice of Felix de los Santos.

For the reasons above set forth, by which the errors assigned to the judgment appealed from have been refuted, and considering that the same is in accordance with the law and the merits of the case, it is our opinion that it should be affirmed and we do hereby affirm it with the costs against the appellant. So ordered.

Arellano, C. J., Johnson, Moreland, and Elliott, JJ., concur.

Carson, J., reserved his vote.

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