

**RAFAELA SALMO, PLAINTIFF AND APPELLEE, VS. LUISA ICAZA ET AL., DEFENDANTS AND APPELLANTS.***G.R. No. 4167. March 21, 1908*

Ponente: CARSON, J.

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This is an action to recover the possession of two small tracts of land, instituted originally in the court of a justice of the peace, with Macario Icaza as defendant. Icaza having died during the course of the proceedings in the Court of First Instance, his children and heirs were substituted, without objection, as defendants in his stead. The trial judge being of opinion that "the evidence of the plaintiff was more logical, acceptable, probable, and worthy of credit than that of the defendants" rendered judgment in favor of the plaintiff and affirmed the judgment of the justice of the peace.

The decision does not contain a satisfactory finding of facts, unless the facts found by the justice of the peace can be regarded as adopted by the judge of the Court of First Instance, and, even in that case, an examination of the decision of the justice of the peace does not furnish much material assistance in reviewing the proceedings in the Court of First Instance. In this connection it may be well to indicate that since the trial on appeal from the court of a justice of the peace is always *de novo*, it is the duty of the trial judge to make his own findings of fact and to render a new decision upon the record of the proceedings in his court so that a judgment merely affirming the judgment of a justice of the peace would not appear to be formulated in consonance with the provisions of the Code of Civil Procedure.

The plaintiff alleged that in the year 1893 she was the owner of the land in question; that in that year she gave possession of this land to the original defendant in this action, Macario Icaza, to be held by him until she paid him a certain debt; that in 1899 she paid this debt by delivering to him two carabaos; and that since that time he has unlawfully retained the land and refused to return possession thereof to its lawful owner.

The defendant denied that he ever received the land or held possession thereof as security for a debt, and alleged that his wife, one Paula Palafox, bought the land of the plaintiff, and that he had gained possession of the land through and from her.

In support of his allegations he introduced a private document purporting to be a contract of purchase and sale whereby the plaintiff on the 14th of January, 1893, sold one of the tracts of land in question to Paula Palafox for 48 pesos. This document bears the signatures of the plaintiff and her husband and those of five witnesses. The document sets out that the signatures of the plaintiff and her husband were attached by a third person at their request, they adding crosses to evidence their conformity. The witnesses to this document were called and clearly and satisfactorily established its execution, notwithstanding the fact that the plaintiff and her husband went on the stand and swore that neither she nor her husband had ever signed such a document or authorized any other person to sign for them.

In support of defendants' allegations as to the purchase of the second tract of land in question, the testimony of

three witnesses was introduced to prove that a similar document had been executed by plaintiff and her husband in favor of Paula Palafox which they had signed as witnesses, but which could not be produced at the trial because it had been burned in the house of the justice of the peace to whom it had been sent for certification. Plaintiff also denied having signed this document, but the testimony of record seems to establish its contents and execution, not perhaps with the same degree of certainty as in the case of the document actually produced, but with sufficient certainty to raise a strong probability in its favor.

The plaintiff, upon whom rested the burden of proof, offered three witnesses in support of her allegations. By these witnesses plaintiff undertook to prove that, without any agreement in writing, she gave the original defendant possession of her land as security for a debt, which she later paid by delivering to him two carabaos worth considerable more than the amount of the debt. The testimony of these witnesses is conflicting and uncertain except as to the fact that plaintiff in or about the year 1899 delivered two carabaos to Macario Icaza. None of them knew anything definite as to the nature or origin of the debt in payment of which it was said the carabaos had been delivered, except what they had heard from the plaintiff herself. It may be that the carabaos were in fact delivered by the plaintiff to Macario Icaza, deceased, in the year 1899, but the mere fact that they were so delivered does not in itself tend to prove that the sale of the land in question, eight years prior thereto, was not a genuine sale as set out in the documents offered in evidence by the defendants.

We do not think that the vague, uncertain, and indefinite statement of these witnesses as to the terms and conditions under which the land in question came into the possession of the defendant, fourteen years before the date when their testimony was given, can prevail against the documentary proof offered by the defendants.

Plaintiff's counsel contends that the documents introduced by the defendant, not being public writings as defined in section 299 of the Code of Civil Procedure, were not admissible in evidence. It is true that these documents were not public writings, but there is no general provision of law which forbids the introduction in evidence of private documents when the execution and genuineness of such documents has been established by competent evidence as in this case; indeed, no evidence of the contents of such writings other than the writing itself is admissible save only in those exceptional cases set out in section 284 of the Code of Civil Procedure.

Plaintiff and appellee questions the jurisdiction of this court to review this case on appeal, on the ground that under the provisions of Act No. 1627 no appeal is allowed from decisions of Courts of First Instance on appeal from a court of a justice of the peace. Act No. 1027 did not go into effect until July 1, 1907, and this appeal was perfected prior to that date; this court having acquired jurisdiction was not deprived thereof under the terms of that act (*Pavon vs. Philippine Islands T. & T. Co.*,<sup>[1]</sup> 5 Off. Gaz., 1076; *Un Pak Leung vs. Nigorra*,<sup>[2]</sup> 6 Off. Gaz.. 154; *Priolo vs. Priolo*,<sup>[3]</sup> 6 Off. Gaz., 218.)

The judgment of the trial court should be, and is hereby, reversed, and judgment will be entered in favor of the defendant for the costs in the Court of First Instance. No costs will be allowed either party in this instance. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, Willard, and Tracey, JJ.,

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[1] 9 Phil. Rep., 247.

[2] 9 Phil. Rep., 281.

[3] 9 Phil. Rep., 566.

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