

MANUEL CRAME SY PANCO, PLAINTIFF AND APPELLEE, VS. RICARDO GONZAGA ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 4203. March 27, 1908

Ponente: MAPA, J.

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MAPA, J.:

In an action instituted by the plaintiff herein against a certain Alejo Lanzon in the court of the justice of the peace of the town of Victorias, Province of Occidental Negros, for the recovery of the sum of P300.42, the plaintiff asked for and obtained a preliminary attachment of the property of the defendant Lanzon, which was levied on three carabaos owned by the latter. The said attachment was released under a bond given by the defendants in this action for the sum of P500. The terms of the said bond are as follows:

"Therefore, we, the undersigned * * * do hereby bind ourselves, jointly and severally, in favor of the plaintiff, in the aforesaid sum of five hundred pesos, Philippine currency, on the condition that, should judgment be rendered in favor of plaintiff, the defendant, on request, shall again deliver the attached carabaos to the officer of the court, in order that the same may be applied to the enforcement of the sentence, and in the event that he should fail to do so, to pay to the plaintiff the total value of the said carabaos."

In that suit, the defendant, Lanzon, was finally sentenced to pay to the plaintiff the amount claimed by him. In consequence thereof a writ of execution was issued which could not be enforced because no property of any kind subject to execution was found in the possession of the latter. Neither were the carabaos produced, the preliminary attachment of which had been raised by means of the bond executed by the defendants.

The enforcement of the said bond up to the sum of P300.42, to the payment of which with legal interest thereon Lanzon has been sentenced, is what constitutes the first point of the complaint in this action.

The defendants alleged and offered evidence to show that the three carabaos above mentioned had died of a disease prevailing in the province. Two witnesses have testified without contradiction as to the truth of this fact. The court, however, says in its judgment, "that it can not consider as proven that the carabaos have all died." It is apparently the opinion of the court that one or more of them have died, but not all. It is not easy to see on what grounds such an opinion of the court is based, inasmuch as, according to the witnesses, not one, nor two, but all of the said three carabaos died, and there is no reason whatever to consider that the testimony of the witnesses on this score was only true in part. The testimony of the aforesaid witnesses has not been contradicted or overcome in any manner at the trial, and it sufficiently proves that the three carabaos in question really died of the "prevailing disease," and, therefore, without fault on the part of the defendants.

The death of the carabaos being fortuitous, it results upon the one hand that the obligation contracted by the defendants to return or deliver up the said carabaos was extinguished as a matter of fact and of law (art. 1182, Civil Code), and on the other, that they were exempted from the other subsidiary obligation contracted by them, to pay the value of the said carabaos in default of the carabaos themselves, because, in accordance with article 1105 of the above cited Civil Code, unless there is a legal provision or an express covenant, which in this case does not

exist, no one should be held to account for fortuitous cases.

Besides, there is another reason whereby the defendants can not, in this case, be compelled to pay the sum of P300.42 which Alejo Lanzon owes to the plaintiff. The defendants did not execute a bond or contract any obligation whatever for the said indebtedness of Lanzon. The obligation contracted by them was to respond for the delivery of the carabaos, and, in default thereof, to pay the value of the same, so long as it did not exceed the sum of 500 that was fixed as the maximum limit of their liability. Said bond was executed under the provisions of section 440 of the Code of Civil Procedure, according to which the bondsman is not responsible for other than the property so released, or for the payment of the value thereof. It is so much so that the same section expressly declares that such obligation shall stand in place of the property so released. As the actual value of the carabaos, the delivery of which was guaranteed by means of the obligation executed by the defendants, has not been proven in the case, there is no true basis from which to start in order to determine the sum that the latter should pay on said obligation, even on the hypothesis that they were so bound by virtue of the obligation mentioned above. For the reasons above set forth, the judgment appealed from should be reversed in so far as it sentences the defendants to pay to the plaintiff the sum of P300.42 first claimed in the complaint.

Payment has also been asked therein of the sum of P57.47, the amount of the costs in the action instituted by the plaintiff against Alejo Lanzon, to which reference was made above, by virtue of the obligation executed by the defendants for the effects of the appeal interposed by Lanzon in said action. There is no question as to this point, since the defendants expressed at once their agreement to the claim of the plaintiff, saying in their answer to the complaint that they are, and have always been, ready to pay the said sum. That portion of the judgment which refers to this amount should, therefore, be affirmed.

The judgment appealed from is hereby reversed in so far as it sentences the defendants to pay the sum of P300.42 and legal interest thereon, and the complaint is dismissed in so far as it relates to said amount; and that portion of the judgment which sentences the defendants to pay to the plaintiff P57.47, the amount of the costs in the action against Alejo Lanzon, is hereby affirmed. No special ruling is made as to costs in both instances. So ordered.

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

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