

**ZACARIAS BAGSA, PLAINTIFF AND APPELLANT, VS. CRISOSTOMO NAGRAMADA, DEFENDANT AND APPELLEE,***G.R. No. 4383. August 31, 1908*

Ponente: TRACEY, J.

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In the Court of First Instance of Samar, the plaintiff brought this action to recover from the defendant, his brother-in-law, cocoa lands in the municipality of Guiuan, but his action was dismissed and the land awarded to the defendant.

In 1887, the defendant borrowed 185 pesos of the plaintiff, which he claims to have repaid in various installments and in the right exercised by the plaintiff of taking during six months the products of the land, which are alleged in the complaint to have amounted annually to 460 pesos. It is the claim of the plaintiff, however, that the debt was paid by the conveyance to him of the land, and in proof thereof he offered a deed by the defendant, dated August 7, 1893, to him, which was received in evidence, containing a description of land so indefinite as to render the instrument inoperative. The incident that in the deed the 185 pesos was recited to have been paid at the time, whereas at that date they had already been received in the form of a loan, to which the judge of First Instance adverts in his sentence, we do not deem a material variance from the facts so as to discredit the deed.

The plaintiff sought to prove a deed dated October 14, 1893, confirmatory of the earlier deed, and in which the property was correctly described. For this purpose he offered a notarial certificate dated July 1, 1903, to the effect that the accompanying document was a copy of an original in the custody of the certifying notary. This evidence the judge rightly rejected, the notary, under the American system, being no longer the public custodian of such documents, and not being empowered to give certified copies thereof. By force of chapter 6 of Act No. 136, upon the passage of the Act for the registration of land titles, the old notarial system, as affecting them, went out of existence and documents in the possession of notaries were required to be filed in the office of the general archives of the Islands at Manila. The Land Registration Act (No. 496) took effect January 1, 1963. The notary's certificate, therefore, given on the first of the succeeding July, was not competent proof.

The existence of this same deed was sought to be established by the certified copy of the record of an action in the court of a justice of the peace between these parties for the recovery of this same land, it being assumed by the trial judge, and apparently assented to by the parties, that the justice court was without jurisdiction in that action. Upon this assumption, the ruling of the trial court in rejecting the record was proper, nor, was the mere copy of this deed therein contained rendered competent by reason of the judicial proceeding.

In the course of the trial before the justice of the peace, however, this defendant expressly admitted that the facts, as claimed by the plaintiff, were true, and that he had made the deed in question, but had done so only for the purpose of rendering himself ineligible to the burdensome office of cabeza de barangay. It is obvious that if this evidence had been offered on the examination in chief it would have been admissible, if properly attested, as an admission made by the defendant, a party in interest. It was, in fact, offered only as evidence in rebuttal, and as

such could serve no other purpose than to discredit the defendant. For this purpose the trial judge refused to receive it on the ground that proper foundation had not been laid by previous questioning of the defendant as to the time and circumstances of the alleged admission. We think that the trial judge must have overlooked the following questions which had been put to the defendant when on the stand:

"Q. Is it not true that you stated in the justice of the peace court that it was true that you had ordered a document of purchase and sale made for this land, but that it was only a pretended sale so that you might not be appointed a cabeza de barangay?—A. No, sir.

"Q. What did you answer to the justice of the peace when you were called there and shown the complaint?"

Question ruled out on the ground that it was indefinite.

"Q. Is it not a fact that you stated before the justice of the peace even if everything that the plaintiff has stated is true, the conditions specified in the document which he offered were not true, as we agreed in a contract to transfer the land to Zacarias Bagsa in order that I would not be appointed cabeza de barangay?"

Objection sustained.

"Q. Before the Americans arrived, don't you remember having ordered a document made in Guiuan?—A. No, sir. I did not order any made,"

Taken together, these questions, both those allowed and those ruled out, laid a sufficient foundation for the contradiction of the defendant by his admissions made before the justice of the peace.

The question remains as to whether these admissions came up in a properly authenticated form. They are contained in a duly certified copy of the record under the hand of the clerk. The trial court seems to have held this record inadmissible for the further reason that the justice having no jurisdiction over the cause, a record of it can have no official effect and no greater value as evidence than proof of any other transaction out of court. Assuming that the justice lacked jurisdiction, it is nevertheless the opinion of the majority of this court that the record, properly taken and in due form, constitutes a public record and as such, when properly certified, may be received as evidence of what took place on the hearing before him. This rule is a convenient one, as, otherwise, transactions of a court acting in excess of jurisdiction might be put beyond the possibility of certain proof. While they may not be given validity, it may be necessary to ascertain what they were.

The record of the trial in the justice court should, therefore, have been received to the extent of contradicting the denials of the defendant, and when so received, it would have sufficed to establish a decided preponderance of proof in favor of the plaintiff.

Examining the record, we fail to find therein sufficient evidence as to the value of the products of the land to serve as foundation for their recovery. The figures before us indicate, at best, only the amount of the gross receipts. Our judgment, therefore, is that the judgment of the trial court be reversed and that the plaintiff recover from the defendant the land described in the complaint, with costs of first instance, but without damages or costs in this court. So ordered.

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

WILLARD, J., concurring in the result:

I concur in the result, but I think that the admission made by the defendant before the justice of the peace, he being a party to this suit, is substantive evidence against him.

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