

WALTER E. OLSEN, PLAINTIFF AND APPELLANT, VS. BERT YEARSLEY, DEFENDANT AND APPELLEE.

G.R. No. 4385. August 31, 1908

Ponente: TRACEY, J.

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TRACEY, J.:

This is an appeal from a judgment of the Court of First Instance of the city of Manila, awarding to the plaintiff the possession of a National Cash Register or payment of its value, P300, but providing further that the defendant might retain the register upon the payment of P195 and become its owner.

One Myer Harris, the owner of a cash register, sold it for P330 to Louis Heymann, who paid down P140, leaving a balance of P190, it being orally agreed that title to the property should not pass until the final payment of the purchase price. Thereafter, Harris being about to depart for Iloilo, demanded the balance of the money and Heymann, being unable to pay it, made an offer to return the register, which was accepted, the machine, however, being left in the place of business of Heymann, who was then selling out to one Mrs. Booth. Thereupon Harris sold the register for P195 to Carl Hess, Heymann certifying in writing that Harris was the owner. Hess thereafter sold it to the plaintiff, Olsen.

In the meantime, the register remained in the place of business which Heymann had sold out to Mrs. Booth, who in turn sold the business to George M. Lack, who transferred it to this defendant. Of the previous history of the cash register, and of the claims thereto of Harris, Hess, and Olsen, these owners of the business all had knowledge, with the exception of Yearsley. He was a buyer in good faith, and, if he had bought from the true owner, would have brought himself under the protection of article 1473 of the Civil Code, providing that, when a thing is sold to different buyers, the property goes to him who first obtains possession. He bought it, however, from a person who was not the owner and who had knowledge of the true ownership. Therefore his defense can not prevail. The plaintiff is entitled to judgment for the possession of this machine, without any qualification obliging him to make further payment therefor, or to surrender the machine upon payment to be made by the defendant.

So much of the judgment of the Court of First Instance as declares the plaintiff the owner of the machine and awards it to him, is affirmed, and the remainder of the judgment is reversed, without costs of either instance. So ordered.

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

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