

ANGEL GUSTILO ET AL., PLAINTIFFS AND APPELLANTS, VS. JUAN ARANETA, DEFENDANT AND APPELLEE.

G.R. No. 4448. December 03, 1908

Ponente: TRACEY, J.

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TRACEY, J.:

In 1886, Tranquilino Gustilo was the owner of a hacienda in Bago, Occidental Negros, known as "Bagtoc" or "Consortia," containing 72 hectares which, together with its crops and farming plant was attached at the instance of Alejandro Amechazurra on a debt of 4,033 pesos. Under this attachment, the defendant Juan Araneta was appointed receiver and inventories of the property coming to his hands as such were made by appraisers, two appointed by the plaintiff in the attachment, and two by the defendant, as follows:

Plaintiffs'
valuation.

Defendant's
valuation.

Bamboo.....

\$187.50

\$250.00

12 houses, at \$48.....

576.00

576.00

Storehouse with mill.....

1,500.00

1,060.00

Another storehouse

80.00

80.00

20 carabaos.....

270.00

376.00	
10 carts	
152.00	
152.00	
The land	
3,600.00	
7,200.00	

Total	
6,365.50	
9,694.00	

During the first three farming years the creditor, Amechazurra, supplied the receiver with working funds which at the end of each season were paid back to him with interest after an accounting. In 1890 or 1891, 52 hectares were sold under a seizure for nonpayment of monies due the Government, and were the subject of the action No. 4160 decided in this court on March 26, 1908,[1] leaving in the possession of the receiver only 20 hectares, and also a part of the personal property.

The present action is brought to recover what are claimed to have been the profits of the hacienda while in his hands, alleged to amount to 94,620.50 pesos, besides a parcel of 17 hectares of land, whether forming a part of the 72 hectares or in addition thereto, is not very clear.

In regard to this parcel of 17 hectares, we agree with the trial court that the preponderance of proof is in favor of the defendant.

The learned judge who tried this case expresses his dissatisfaction with the evidence presented by both sides. It seems improbable that, even under the ablest management, a hacienda and plant valued by the owners' own appraisers at 9,694 pesos could have produced net revenues amounting to over 94,000 pesos in these intervening years, particularly when we consider that these included years of insurrection and war, and that since 1891 but a small portion of the property remained unsold.

The defense testifies that, instead of yielding a profit, the business of the hacienda was in debt to him. It is conceded that the original claim of Amechazurra was never paid and some light appears to be thrown upon the character of the suit by the testimony of this creditor, who testifies that in the event of success the plaintiffs were to pay him one-half the recovery and that he knew that, if they succeeded to the extent of their full claim, he would be entitled to 48,000 pesos.

The pleadings of both parties set up an accounting pending between them involving these same items, in which, in 1901, an order was made by the Court of First Instance requiring the delivery of the remaining property in accordance with the accounts. It further appears from the testimony that thereafter the property was so delivered to the plaintiffs, whereupon it was attached by other creditors and sold at public sale, passing finally into the

hands of the defendant. Neither the items of this account nor the order of the Judge of First Instance have been put in evidence, but it is admitted to have covered the subject-matter of the present action. The trial judge stated in his opinion that the pendency of this proceeding was urged as a defense, and we are of the opinion that it should prevail. There was no reason why the entire accountability of the receiver could not be established in that proceeding, nor any justification for modifying in a second action the conclusions reached by the judge in his order of 1901.

The judgment of the Court of First Instance m affirmed with the costs of this instance. So ordered.

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

[1] *Gustilo vs. Matti* (11) Phil. Rep., 611).

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