

AUSTIN CRAIG, AS ADMINISTRATOR OF THE ESTATE OF RAMON VALENCIA, DECEASED, PLAINTIFF AND APPELLEE, VS. SERVULO LEUTERIO, DEFENDANT AND APPELLANT.

G.R. No. 4488. July 30, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

The plaintiff, alleging that he Was the judicial administrator of the estate of Ramon Valencia, deceased, brought this action against the defendant in the Court of First Instance of the Province of Mindoro to recover the possession of certain real and personal property which he alleged belonged to the estate of the deceased. Judgment was rendered in the court below in favor of the plaintiff for the real estate described in the complaint. From that judgment the defendant has appealed.

In the court below the plaintiff introduced in evidence and relied upon a deed of the land, made on the 25th day of November, 1893, conveying the same to Ramon Valencia, and which purported to be signed by the defendant. The defendant, in his answer, denied under oath the execution of this instrument, and the principal question of fact litigated in the court below related to the authenticity of this document. The evidence upon that point is conflicting, but after an examination thereof as the same appears in the stenographer's notes, we are satisfied that it clearly preponderates in favor of the plaintiff. It is true that, as said by the appellant, Amalia Puras, the widow of the deceased, did not see the defendant sign the document, but she testified positively that the defendant brought it to their house and delivered it to her husband. There was other evidence, tending to prove that the defendant signed the conveyance.

The document in question was not executed before a notary public and was not a public document within the meaning of that term as used in the Civil Code, and the appellant claims that, by the provisions of article 1280 of that code, it should have been rejected. This court Has repeatedly held that a deed of conveyance is good between the parties thereto although the requirements of article 1280 are not complied with. (*Thunga Chui vs. Que Bentec*, 2 Phil. Rep., 561; *Guillermo vs. Matienzo et al.*, 8 Phil. Rep., 368; *Couto Soriano vs. Cortes*, 8 Phil. Rep., 459.)

The appellant further claims that the inscription of this document in the registry of property in 1906 was invalid and that, not being duly recorded, it was not admissible in evidence by virtue of the provisions of article 389 of the Mortgage Law.

It has been frequently held that that article is not applicable to a case arising between the parties to the instrument, and that one in the position of the defendant in this case is not a third person, within the meaning thereof. (*Fabian vs. Smith, Bell & Co.*, 8 Phil. Rep., 496; *Guillermo vs. Matienzo et al.*, 8 Phil. Rep., 368; *Boncan vs. Smith, Bell & Co.*, 9 Phil. Rep., 109; and *Roxas vs. Aguirre*, 9 Phil. Rep., 475.)

None of the assignments of error made by the appellant can be sustained except the first one, but that, we think, is well founded. Plaintiff alleged in his complaint that he was the duly appointed judicial administrator of the property of the deceased, Ramon Valencia, and that he duly qualified for that office and was discharging the

duties thereof. The answer denied each and every allegation of the complaint. This was a sufficient denial of the allegation of the appointment of the plaintiff as administrator. We have examined the record and we find, as claimed by the appellant, that there is no evidence whatever relating to this appointment. The defendant having denied it, it was incumbent upon the plaintiff to offer proof thereof. It is said by the appellee in his brief that the defendant, by failing to demur to the complaint, waived this proof, but it is very apparent that a demurrer, so far from raising the question as to the appointment, would have admitted it, there being an allegation in the complaint to that effect.

For this error the judgment must be reversed, but the ends of justice require that a new trial should be granted to enable the plaintiff to remedy this defect in his evidence.

The judgment of the court below is reversed and the case is remanded for a new trial Without special ruling as to costs in this second instance. Upon such new trial, it will not be necessary to retake the evidence already presented, but either party will be at liberty to present such other evidence as he sees fit So ordered.

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

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