

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. ISIDORO MATA, DEFENDANT AND APPELLANT.

G.R. No. 4741. September 22, 1908

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

This case was appealed because the accused was sentenced to be imprisoned for six months in the provincial jail of San Isidro, Nueva Ecija, and to indemnify the injured party, Tecla de los Reyes, in the sum of P80, or to suffer subsidiary imprisonment in case of insolvency, and to pay the costs; the appeal was heard, both the defense and the prosecution having submitted their briefs.

Isidro Mata is charged with having received from Tecla de los Reyes one caraballa under a contract to divide the calves between them; the first calf was to be for the defendant, for his trouble in keeping the animal; the second was to go to the owner of the animal, and the third, if any, should also be for her; but just as the third calf came on the caraballa was said to have been lost, and the defendant requested Tecla de los Reyes to rescind the contract.

A complaint for estafa was presented. The fact that the caraballa was delivered to Isidoro Mata under the contract already mentioned was affirmed by two witnesses who had subscribed the document wherein it was so stated, one of whom further testified with regard to the existence of the caraballa which he had seen in the barrio of Lupao, and, furthermore, by another witness who was present when the document made out by Mata was handed to Tecla de los Reyes.

In the opinion of the court below it was proven that Isidoro Mata received one caraballa from Tecla de los Reyes under such conditions that he was bound to return the same; he was only entitled to share the calves during the time he rendered his services; the fiction of the disappearance of the caraballa with the intent to extinguish his obligation to return the thing that was received constitutes an act of appropriation punished by article 535 of the Penal Code.

Said intent was made manifest by the fact, proven by the accused himself, that he provided himself with a certificate of ownership of the caraballa having set forth therein that he had purchased the animal on the 15th of July, 1905, from his father, Laureano Mata, in whose name the animal had been previously registered in the municipality of Umingan, Pangasinan, on the 24th of June, 1905. But it has not been shown how it is that the caraballa, which bears the brand of the municipality of San Jose, ever came to be the property of Laureano Mata, and notwithstanding the fact that one of the witnesses for the defense affirmed that Tecla de los Reyes had sold the caraballa to Laureano Mata, Tecla de los Reyes denies this allegation; therefore, it can not be considered as proven, in view of the findings of the court below in which there has not been shown to be any error of law or of fact.

The judgment appealed from is hereby affirmed with the costs of this instance against the appellant; provided, however, that the penalty imposed shall be that of arresto mayor. So ordered.

Torres, Mapa, Carson, Willard, and Tracey, JJ.,

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