

RAFAEL LINSANGAN, PLAINTIFF AND APPELLANT, VS. SIMEON LINSANGAN, DEFENDANT AND APPELLEE.

G.R. No. 4833. October 27, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

Mariano Linsangan, the father of the plaintiff, died on the 26th of March, 1894, the plaintiff then being about 14 years of age. On the 30th day of March, 1894, a family council was duly constituted in accordance with the provisions of the Civil Code. By that council Simeon Linsangan the defendant, was appointed guardian of the plaintiff. An inventory of the property of the ward was duly made and presented to the family council on the 11th of May, 1894. On that day the council took, the following action:

"Upon examination of the inventory, whereby it appears that, with the exception of the palay, all the property belonging to the estate consists of realty valued at about 5,000 pesos, out of which only six rice fields are capable of raising any produce, and deducting therefrom the portion due the tenants, it is calculated that said products will consist of about 500 cavanese, approximately, which, according to the yearly current prices in this town, will amount to about 400 pesos, it was resolved by the council:

"First, to require of the guardian the filing of a bond in the sum of 600 pesos."

The guardian having given the bond required by the council, it, on the 17th day of May, 1894, took the following action:

"Furthermore, the council, taking into account the probable annual rents from the property of the ward, has resolved:

"First, that the allowance for the maintenance of said minor shall be understood to consist of the rents or returns from the property."

The defendant continued in the exercise of his office as guardian of the plaintiff until 1902, when he delivered to the plaintiff, who was then under age, all of the property in his possession as such guardian. The plaintiff became of age on the 20th of October, 1903. On the 30th of January, 1907, he brought this action against the defendant, claiming that the defendant had received as guardian a large amount of property which he had never delivered to the plaintiff; that the defendant had never rendered any account to the plaintiff of the rents and profits of the property and that such rents and profits amounted to a sum largely in excess of the amount which the guardian had paid for the support of the minor.

The defendant in his answer denied the allegations of the complaint and as a counterclaim alleged that, when he turned over the property of the plaintiff to him in 1902, there was included 800 cavanese of palay, and that the plaintiff took 1,512 cavanese of palay and never has paid the defendant the value of the 712 cavanese which did not belong to the plaintiff but belonged to the defendant. He asked that judgment be rendered in his favor for this amount, and also for the amount of P81.44, taxes paid by the defendant upon the lands of the plaintiff after the

plaintiff became of age.

Judgment was rendered in the court below acquitting the defendant of the complaint and ordering judgment against the plaintiff as prayed for in the defendant's counterclaim. From this judgment the plaintiff has appealed.

His principal contention is that the determination of the family council on the 17th day of May, 1894, giving to the guardian the rents of the minor's property in compensation for the expenses of his maintenance was illegal and void. This contention can not be maintained. Article 268 of the Civil Code is as follows:

"When the will of the person who appointed the guardian should make no mention of the allowance for support of the minor or incapacitated person, the family council, in view of the inventory, shall decide the part of the income or profit which shall be inverted therein.

"This resolution may be modified in proportion to the increase or decrease of the inheritance of the minor or incapacitated person or when the condition of the latter changes."

This article gave the family council the right to pass upon this, matter, and there is nothing in the case to show that the resolution was not at the time it was taken a just one. As has been seen, the council determined from the inspection of the inventory that the annual income of the estate would not be more than P400. The evidence is entirely insufficient to show that the family council did not exercise a reasonable judgment upon the question at the time it was presented to it.

This order of the family council giving to the guardian the rents in compensation for the expense of the maintenance of the ward being valid, an inquiry as to the amount of the rents and the cost of maintenance of the ward is entirely out of place. The first and second assignments of error can not, therefore, be sustained.

The guardian, having been given the rents of the estate as compensation for the maintenance, was under no obligation to render annual accounts to the family council. It is claimed, however, that the defendant was bound to render a final account to the plaintiff at the termination of the guardianship. The defendant testified that he rendered a verbal account to the ward on three different occasions, once in 1902, once in 1903, and once in 1904; that the plaintiff received the property delivered to him in 1902, and that neither then nor in 1903 nor in 1904 made any complaint that a full accounting had not been rendered. Whether or not this was a sufficient accounting, and whether or not the guardian was bound to render a final account under the circumstances, are questions which we need not decide here, for in this action itself there has been examined and determined the only matter which could be the subject of a final accounting. Such final account, in a case where the guardian is given the rents for maintenance, would only relate to the property of the ward which he received as guardian when he was appointed to that office, and, if the evidence in this case shows that he has duly accounted for all of that property, then the case itself is sufficient as a rendition of his final account.

It is claimed by the plaintiff that the defendant received jewels, carabaos, credits and other property at the time he was appointed, for which he never has accounted. The defendant denied this and alleged that he had delivered to the plaintiff all the property which he had ever received as guardian. Upon this point the evidence was contradictory, and we can not say that it preponderates against the decision of the trial court. All of the property included in the inventory has been delivered by the defendant. This inventory was made in strict accordance with the provisions of the law, and persons appointed for that purpose by the family council took part in its formation. It is persuasive evidence that all the property of the ward was included therein.

The plaintiff alleges that judgment was wrongfully entered against him for 712 cavanos of palay, on the ground that, when he received them in 1902, he was under age and could not be bound by any contract in relation thereto. The evidence in the case shows that no contract of any kind was then entered into between the guardian and the

ward. The defendant, testified that there was in the granary about 1,500 cavares; that of these only 800 belonged to the ward, and that he told the ward to take 800 from the granary and no more, but the plaintiff, instead of limiting himself to the 800 cavares that belonged to him, took all there was and appropriated it. to his own use. After he became of age, and in 1906, he signed a statement to the effect that he had taken 1,512 cavares and that he had used it in the cultivation of his property. It does not appear from the document signed whether he so used it before he became of age or afterwards, but this, to our minds, is a question of no importance. Having wrongfully taken the property and having used it, he is bound to pay its value.

The court ordered judgment in favor of the defendant for the amounts above-mentioned, with interest from the commencement of the action. The appellant claims that interest should only be allowed from the presentation of the answer, inasmuch as the answer of the defendant really constituted his complaint in the action. We think that this is the correct view of the matter.

The judgment of the court below is modified by allowing interest on the judgment in favor of the defendant from the 18th day of September, 1907, instead of from the 30th day of January, 1907. In all other respects it is affirmed. No costs will be allowed to either party in this court. So ordered.

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

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