

JEREMIAH J. HARTY, PLAINTIFF AND APPELLEE, VS. ANGEL LUNA, DEFENDANT AND APPELLANT.*G.R. No. 4943. February 19, 1909*

Ponente: WILLARD, J.

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At the time the judgment of this court was announced in the case of the Roman Catholic Apostolic Church vs. Leonardo Santos et al. (7 Phil. Rep., 66), there were in the chapel in the barrio of Concepcion, in the pueblo of Tambobong in the Province of Rizal, images, ornaments, and jewels which had been there in use for many years. That action was brought to recover the possession of the chapel and it was decided in favor of the plaintiff. One of the witnesses in the case at bar testified that when the said decision of this court was known the property above mentioned disappeared from the chapel. This action was brought by the plaintiff, the archbishop of Manila, against the defendant to recover the possession of these images, jewels, and other property alleged to belong to that chapel and formerly used therein.

At the trial the controversy was limited to the image of the Immaculate Conception and certain adornments used in connection therewith. The judgment finally entered was one in favor of the plaintiff and against the defendant for the possession of the image only.

It was proven that the image had been in the possession of the Roman Catholic Church and had been used in the chapel in question for many years. The defendant admitted that he now had the image in his possession, but presented no evidence to show that he had any right to such possession. Upon the merits of the case the judgment must be affirmed.

The appellant, however, claims that the action can not be maintained for several reasons.

It is said by him that the Court of First Instance had no jurisdiction of this case because Act No. 1376 of the Commission confers exclusive jurisdiction upon the Supreme Court of all controversies of this character. Many cases have been brought to this court under the provisions of that Act; the first one to be decided being the case of the Roman Catholic Church vs. the Municipalities of the Province of Tarlac (9 Phil. Rep., 450). A conclusive answer to the appellant's contention is found in the last paragraph of section 8 of the Act, which is as follows:

"Provided, however, That nothing in this Act contained shall prohibit the Roman Catholic Apostolic Church, the Independent Filipino Church, or any municipality or other person not taking advantage of the provisions of this Act from instituting actions in the Courts of First Instance, or in the Court of Land Registration, in accordance with existing provisions of law, to recover the possession and control of churches, convents, cemeteries, or other property."

The phrase "other property" does not have the limited meaning given to it by the appellant and is not restricted to real estate. It evidently was intended to cover personal as well as real property.

It is also said that the Court of First Instance of the city of Manila had no jurisdiction of this action because the

image was in the Province of Rizal, where the defendant resided. The image is an article of personal property and the place where an action relating thereto should be brought is determined by the provisions of section 377 of the Code of Civil Procedure. By the terms of that section this action could be brought either in the province where the plaintiff resided or in the province where the defendant resided. The plaintiff residing in the city of Manila, the action was well brought in the Court of First Instance of that city.

It is further claimed that the complaint is insufficient because it does not allege the time when the defendant took possession of the property. This point was not raised by motion in the court below but by a demurrer. It is now suggested that, if the time when the defendant took possession of the property had been alleged, the complaint would, perhaps, have been demurrable on the ground that the statute of limitations had run in favor of the defendant. But it has already been held by this court that the statute of limitations is a defense which must be set up in the answer (*Aldeguer vs. Hoskyn*, 2 Phil. Rep., 500), and that it, can not be raised by a demurrer, (*Domingo vs. Osorio*, 7 Phil. Rep., 405.)

The judgment of the court below is affirmed, with the costs of this instance against the appellant.

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

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