

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. MARTIN GORME, DEFENDANT AND APPELLANT.

G.R. No. 6176. January 27, 1911

Ponente: CARSON, J.

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CARSON, J.:

Martin Gorme, the defendant and appellant in this case, was convicted of the crime of estafa and sentenced to four months and one day of arresto mayor, together with the accessory penalties prescribed by law, upon an information filed by the fiscal of the Province of Leyte, which charged the commission of the offense in the following language:

"That the said accused, within the jurisdiction of the municipality of Cabalian of this province, on the 19th of September, 1908, by means of deceit and fraud and for his personal use and benefit and pretending to be the agent of Maximo Palabio, succeeded in redeeming and possessing himself of a carabao belonging to the aforesaid Maximo Palabio that was worth P200, and was then pledged for the sum of P20 and in the hands of Eliseo Saludo, the said accused making the carabao his own. With infraction of the law."

Counsel for appellant contends that the court below erred in overruling a demurrer to this information, and bases his contention on the provisions of article 1158 of the Civil Code, which is as follows:

"Any person, whether he has an interest or not in the fulfillment of the obligation, and whether the debtor knows and approves it or is not aware thereof, can make the payment.

"The person paying for the account of another may recover from the debtor what he may have paid, unless he has done it against his express will.

"In such case he can only recover from the debtor in so far as the payment has been useful to him."

Counsel insists that under the provisions of this article the payment by the defendant of the amount for which the carabao was pledged, entitled him to be subrogated to all the rights of the pledgee, so that he was wholly within his rights in taking possession of the animal, his right to subrogation being in no wise affected by the consent or failure of consent of the owner of the animal to the payment by defendant to the pledgee of the amount for which it was pledged. It will readily be seen, however, that the gravamen of the charge set out in the information is not that the defendant by paying the amount of the debt for which the animal was pledged secured his subrogation to the rights of the pledgee, but that by deceit and fraud he induced the pledgee to enter upon the transaction and deliver possession of the animal, and that having thus with deceit and fraud secured possession, he assumed a right of ownership in the animal to which he was not entitled. The demurrer was, therefore, properly overruled. The testimony of the witnesses for the prosecution and for the defense is contradictory to a degree, but on a careful review of the whole record we think that the findings of fact by the trial judge, in whose presence the witnesses testified, must be sustained. These findings sustain the judgment of conviction by the trial court, and we find no error in the proceedings prejudicial to the substantial rights of the accused. The sentence imposed upon the defendant and appellant should therefore be affirmed with the costs of this instance against the appellant. So

ordered.

Arellano, C. J., Torres, Mapa, and Trent, JJ., concur.

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