

## THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. PAULINO CABALLERO, DEFENDANT AND APPELLANT

*G.R. No. 8608. September 26, 1913*

Ponente: ARELLANO, C.J.

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### ARELLANO, C.J.:

The crime under prosecution consists, according to the complaint, in that: "In or about the month of May, 1912, the accused, Paulino Caballero, being, as he then was, the municipal president of the municipality of Badian, Province of Cebu, and availing himself of his office, did, with intent to obtain gain through the employment of force and intimidation upon the person of Macario Pellire, seize a cow valued at P35 belonging to the said Macario Pellire, against the will of its owner."

This complaint was signed and filed by the provincial fiscal of that judicial district, on January 21, 1913, as the result of certain preliminary examinations held before the justice of the peace court of Badian, of the same Province of Cebu, on June 12, 1912, the record of which proceedings was transmitted, on June 19, 1912, to the office of the said provincial fiscal, whose files show that it was received on the 25th of the same month and year. There was, therefore, a delay of about seven months in preparing the complaint within the province itself. The information was presented to the justice of the peace court on the date aforementioned, June 12, 1912, but bore the date of June 3 of that year; so that the accuser had had it prepared from the 3d, but did not present it until the 12th of June, 1912.

The criminal act charged against the accused consists in that, when Macario Pellire passed in front of the house of Paulino Caballero, leading a cow by the halter, the accused came down out of the house, offered him P4.50 for the animal and tendered him the money, and, because Pellire would not accept it, "took the rope out of his hand and kept the cow, saying besides that he would send policemen to arrest him."

Testifying in connection with the facts bearing on this matter, Macario Pellire stated literally:

"Some time about the middle of May, one Monday, I sent my cow to the municipal hall to be branded. I had a companion, one Kikoy (Francisco Agravante). I bought a certificate and after it had made out I was called by the president, who said: 'Step over here.'

"Q. And did you go into his office?—A. Yes, sir. I had heard that one Kikoy (Francisco Agravante) wanted to buy a half interest in the cow; and the president said to me: 'Don't sell, for I want to buy.' But the president wished to pay only P4.50 for a half interest in the cow, and I would not accept the price because it was very low and I was not tendered the money. The president called Pascual (Canseco), a clerk. While Pascual was still in the president's office, the president delivered the certificate and sent it to the treasurer in order that the latter might erase my name and insert that of the president; but the treasurer refused. After the treasurer had given me the certificate, he ordered me to return home; but the president detained me in his office and took my certificate away from me. As soon as he saw that no other name had been substituted for mine, he put the certificate into his pocket and went home. After a while, we (myself and Agravante) also left. Kikoy (Agravante) had offered me P15 for a half interest in the cow, but had not yet given me the money, which he

was not to do until the cow should be branded."

The cow was branded with only the municipal iron, for Pellire had no brand; and yet the certificate was issued to him by a clerk of the treasury while the treasurer was present therein. Francisco Agravante, who accompanied Pellire during all these proceedings, corroborated the statements above quoted, and a cousin of his, named Balbino Agravante, those of them relative to the incident that occurred in front of the house of the accused at the time the latter seized the cow and threatened Pellire with imprisonment. Francisco, in relating what happened in the office of the municipal president, said one thing and gave certain details which Pellire did not say and did not give:

"While we two, Macario and I, were in the president's office, the president said to Macario; 'Macario, I have heard that you have offered somebody a half interest in your cow and the president said: 'Don't offer it to another, for I'll buy it.' Macario replied; 'I offered it to Kikoy because he asked it of me some time ago. The president insisted on giving Macario Pellire the P4.50 for a half interest in the cow, but Macario would not accept the money, because the price was very cheap.'"

Pascual Canseco, the treasury clerk alluded to in Macario Pellire's testimony, corroborated the statement concerning him therein made to the effect that he was ordered by the president to insert the latter's name, Paulino Caballero, in the certificate issued to Pellire, instead of Pellire's name, and testified that he consulted the treasurer and that the latter inquired of Pellire: "Have you come to an agreement?" As Pellire answered that they had not the treasurer delivered him the certificate and told him to go home,

The defense, even prior to this other testimony by the prosecution and subsequent to that given by Pellire, brought up the question as to whether the facts stated by the latter, though they be admitted to be true, involved the crime of robbery or rather perhaps some other crime that could not then be determined, and it did so again after all the testimony of the witnesses for the prosecution had been taken; but the court refrained from a final decision of the point.

During the course of the trial the defense endeavored to prove that the accusation made by Pellire was the work of the Agravantes and a result of the political dissensions of the general elections, for the accusation was made on the 3d of June, the day before the election, which was held on the 4th. An attempt was also made to prove, by the testimony of the provincial governor, that hard feelings, manifested on several occasions before the provincial board, existed between the treasurer and his employees and the president and his, of the municipality of Badian; that it was seen in the elections that the treasurer was the leader of one party and the president of another; that in such wise the contest was carried on at the polls, the president and his partisans being the successful candidates, and that for this reason on the 12th of June, as soon as the result of the elections was made known, the accusation against the municipal president was brought forward. The defendant stated in his testimony the reasons why each of the Agravantes, young men 24 years of age and school-teachers, both of whom had been dismissed, felt resentment against him.

The direct defense consists in the alleged fact that Pellire, needing money, went to defendant's house and transferred to him his rights in the cow, for the price of P27, for which purpose the proper certificate was issued. This document, found in the record, appears to have been issued on June 4, 1912, and was authorized by the treasurer who is said to be an opponent of the president herein prosecuted.

Article 502 of the Penal Code prescribes: "Those who, with intent of profiting thereby, shall take possession of the personal property of another, with violence or intimidation of the person or by employing force with regard to the personal property, are guilty of the crime of robbery."

One fact is certain and beyond all discussion, as having been alleged by him who claims to be the offended party,

to wit, that the cow which is the subject matter of this action was an offspring of another that belonged to the defendant. It is also certain, likewise because so affirmed by the party who claims to have been offended, that the latter was a tenant of the defendant and a herdsman charged with the care of his cows, under an agreement in the beginning that the calves should be divided between them in equal shares, but by a later stipulation, made at the defendant's request, that of each three calves born two of them should belong to the owner and the third to the herdsman. Continuing his testimony, he who appears as the offended party stated that the cow in question was the oldest, that there were two other younger ones, and, finally, that the cow herein concerned was his, as "his share." (Sten. notes, 5.)

The legal presumption from these facts is that the cow in question belonged to the defendant. Article 354 of the Civil Code provides: "The following belong to the owner:

1. Natural fruits \* \* \*"

Article 355; "Natural fruits are the spontaneous products of the soil, and the brood and all other produce of animals."

So, for the purpose of obtaining a certificate of ownership, Macario Pellire could not present the document of origin or acquisition that was necessary to enable him to register the animal in his name, for the reason that the cow that produced the offspring was not his, nor could he present a branding iron, wherefore the animal could be branded only with that of the municipality; all of which procedure was a manifest violation of the provisions of Act No. 1147.

"SEC. 2. All owners of large cattle shall register at the office of the treasurer of the municipality of their residence the private brand or brands used by them in marking their cattle \* \* \*."

Pellire had no private registered brand of his own, as he himself testified. (Sten. notes, 6.)

"SEC. 6. All unbranded cattle not less than two years old found within the jurisdiction of any municipality, shall be branded on the right hip with the registered brand of the owner and counterbranded on the left hip with the registered brand of the municipality in which they are found."

Pellire testified that his private brand was not asked of him, for which reason the animal was marked with only the municipal brand. (Sten. notes, 6.)

"The branding for which provision is made by this section shall be effected in the presence of the municipal president, the municipal treasurer, and the municipal secretary, \* \* \*." (Sec. 6, 2d paragraph.)

According to Pellire's testimony, neither the municipal president nor the municipal secretary was present. "Although he had no brand of his own, Lorenzo, a clerk of the treasurer, filled out the certificate and gave it to him." (Sten. notes, 6.) "The municipal secretary did not sign the certificate, nor did I observe that he was there." (Sten. notes, 7.)

"Sec. 9. Persons charged with the duty of branding or registering large cattle and issuing the proper certificates shall satisfy themselves of the ownership of the cattle so branded or registered, and shall take due care that no certificate of ownership is issued to any person other than the proper owner."

What information there was before the issuance of the certificate to Pellire is not shown by the record, for the treasurer did not testify at the trial. Had Pellire testified that the animal was an offspring of a cow that belonged exclusively to the defendant, it can only be conjectured what action would have been taken by the treasurer.

So it does not appear strange that the defendant, upon learning that a certificate of ownership had been issued to Pellire, should have demanded that it be made out in his name, which, although he might not have been well

possessed of his rights, was the proper lawful course to pursue, in view of those unquestionable facts against which none other were established destructive of such a legal presumption. It was impossible for the coowner to call himself the exclusive owner of the thing held in common, without proof of a partition or division thereof, and thereby such thing would have ceased to be property of joint ownership. This proof was not given, nor even offered.

Moreover, this court finds the following questions in the record of the testimony of Macario Pellire:

"The COURT. Would you have sold the cow (a half interest in the cow was meant) for P15, if the president had offered you the money?—A. I did not give it to him.

"Q. But you were willing to give it to him for P15, if he had made you the offer?—A. I did not wish to sell.

"Q. Why did you wish to sell to Francisco Agravante, and not to the president?—A. Because I had already closed the bargain with Francisco Agravante. The cow was still a heifer when it was promised to Francisco Agravante." (Sten. notes, 7.)

As hereinbefore stated, he had previously testified:

"I was called by the president, who said: 'Step over here.'

"Q. And did you go into his office?—A. Yes sir. I heard that one Kikoy (Francisco Agravante) wanted to buy a half interest in the cow." (Sten. notes, 2.)

Be that as it may, and even if it be admitted as true that the oldest offspring, the one herein concerned (and not one of the two younger animals, for example, the youngest) might pertain to the herdsman, Macario Pellire, as a real one-third interest allotted to him by the agreement, and though it also be conceded as true that he had sold a half interest in that offspring to Francisco Agravante for P15, still the owner of the cow which produced that offspring was entitled to redeem the latter after its sale, for the same price at which it had been sold to that third party,

"A coowner of a thing held in common may exercise the redemption in case the shares of all the other coowners, or of any of them, are sold to a third party." (Civil Code, art. 1522.)

Supposing such a sale to have been made in the present case, it would appear unjust that Francisco Agravante, merely through the will of Macario Pellire, assuming that the community of interests was unbroken, should have arrogated to himself rights in Caballero's stock, by claiming to be the coowner of a one-third interest in an animal in which Caballero recognized that Pellire alone had a share.

Among the legal redemptions established by the Civil Code, is that of coowners. Article 1521 says: "Legal redemption is the right to be subrogated, with the same conditions stipulated in the contract, in place of the person who acquires a thing by purchase or in payment of a debt."

The code refers to things in general. It applies the word thing, without adding the qualificative of chattel or of real property. (Manresa, Com.)

All the foregoing legal considerations indicate this to be, in its true aspect, a civil question requiring judicial determination before final judgment can be awarded, and which, before any crime was charged, should have been fully examined in the proper jurisdiction. This is not a common case of a public officer wresting through intimidation from the possession of its legitimate owner a thing genuinely another's, as this court has sometimes held was done, nor is it a case of one's seizing a thing belonging to his debtor with the purpose therewith to satisfy the debt, which act is defined by article 498 of the Penal Code as a crime of coercion. Upon the hypothesis that the facts charged are true, it is probable that the defense would have conjectured these conclusions, had it raised,

before continuing with the case, a preliminary question relative to the nature of the crime. It is evident that Paulino Caballero did not act as a creditor toward a debtor and seize a thing belonging to the latter in order therewith to satisfy the debt, but, at the worst, his conduct was that of a coowner who, under his own authority (if the charges are true, which is not admitted) wished to exercise the right of redemption with which unquestionably he was civilly vested, a right not comprised within the said article 498.

The present status of the case is that of a title of transfer upon which, rightly or wrongly, the defendant relies, a title which, neither civilly nor criminally, has been assailed as false and can not be passed by without the proper judicial pronouncement thereon, inasmuch as it is in form a legal title authorized by a public officer designated by the law, such as was the municipal treasurer of Badian who issued it as the certificate of ownership now required and which constitutes, pursuant to Act No. 1147, a presumption juris tantum that the animal in question belongs to the person designated in the said certificate.

The judgment appealed from is reversed, with the costs of both instances de officio and the reservation to both parties of such civil action as may lie in their behalf.

Torres, Johnson, Carson, Moreland, and Trent, JJ., concur.

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