

MERCEDES CHINCHILLA ET AL., PLAINTIFFS AND APPELLANTS, VS. FRANCISCO GONZALEZ ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 9749. November 13, 1915*

Ponente: CARSON, J.

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This is an action brought by the plaintiff heirs of Eulogio Fernandez Latorre to recover damages for the alleged unlawful attachment and seizure of one hundred and one head of cattle by the defendant, Francisco Gonzalez, in the year 1896.

The certificate of the clerk below, remitting the record and exhibits to this court on appeal, set forth that: "Counsel for the plaintiffs and appellants has stated that he will furnish this honorable court with the transcription of the stenographic notes." These stenographic notes have never been united with the record on appeal, and we cannot therefore review the evidence taken in the trial court, being precluded from so doing by the well-settled rule in pursuance of which this court declines to examine evidence submitted at the trial for the purpose of reviewing the findings of fact by the trial judge, unless all the evidence taken in the course of the trial is brought here on appeal. We have frequently held that it is the duty of the appellant, if he relies upon alleged error in the findings of fact by the trial judge, to see to it that all the evidence is united with the record on appeal. (10 Phil. Rep., 619;[1] 15 Phil. Rep., 446;[2] 19 Phil. Rep., 379.[3])

It would appear from an examination of appellants' brief that they rely, not so much upon any alleged errors in the findings of fact by the trial judge, as upon alleged errors in his application of the law to the facts as found by him.

It appears that between the years 1892 and 1895 Chinchilla was a tenant of the defendant Gonzalez upon the hacienda "Esperanza;" that, a dispute having arisen between them, Gonzalez instituted "desahucio" (ejectment) proceedings against Chinchilla; that judgment having been rendered against Gonzalez in the Court of the First Instance, the case was appealed to the Audiencia de Manila where the judgment of the lower court was reversed on the 28th day of December, 1895; that thereafter Gonzalez procured the levy of an attachment upon 101 head of cattle which were found in the possession of Chinchilla's herdsmen on the hacienda "Esperanza;" that the cattle were levied upon as the property of Chinchilla, in the course of the legal proceedings pending between Gonzalez and Chinchilla; that some time in the month of April, 1896 Simplicio Sanzano, having been appointed "depositario" (receiver) took possession of the cattle thus attached; that some two years later the order of attachment was dissolved by the Court of First Instance of the province wherein it had been issued, on the ground of a failure to comply with certain provisions of law in connection with the proceedings which should be had thereon after the levy; but that before notice of the dissolution of the attachment was served upon the "depositario" (receiver) all the cattle had either died of disease or been seized and carried away by insurrectionary forces operating in the neighborhood.

The contentions of the plaintiffs are that the 101 head of cattle levied upon by Gonzalez as the property of Chinchilla were, at the time of the levy, the property of Eugenio Fernandez Latorre, deceased; that the plaintiffs

are the heirs of Latorre; that the levy of the attachment was unlawful; that none of the cattle levied upon were recovered by their real owner; that the defendant Gonzalez who procured the levy of the attachment and the defendant Sanzano, in whose care they were deposited after the levy, are jointly and severally liable for all the loss and damage arising from the levy of the attachment, which they allege amounted to thirty-six thousand, two hundred and seventy-five pesos.

In support of their contention that Latorre and not Chinchilla was the real owner of the animals levied upon, plaintiffs and appellants appear to have relied upon a certain notarial document, executed on the 23d day of August 1894, wherein Jose Chinchilla formally acknowledged that he was indebted to his son-in-law, Eulogio Fernandez Latorre in the sum of 1,874 pesos, and at the same time made provision for payment of the indebtedness as follows: "That the undersigned will pay the said sum to his said creditor in the following manner: P1,320 in 70 head of large and small cattle branded 'Chyque.' These cattle are all located in Umingan, Province of Nueva Ecija, and will be immediately delivered to his said creditor or his authorized representative in the said town * * *." The rest of the indebtedness was secured by a mortgage on certain real estate.

Plaintiffs insist that the 101 animals levied upon by Gonzalez were the seventy head of cattle mentioned in this document together with their natural increase at the time of the levy.

The contentions of the defendants and appellees are that neither the evidence of record nor the findings of fact by the trial judge sustain the plaintiff's allegations of ownership by Latorre of the animals levied upon; that the attachment was levied lawfully; that it was improvidently dissolved, without due notice to defendant Gonzalez; that all the animals either died of an epidemic disease or were carried away by insurrectionary forces while the attachment was still in force; that the defendants cannot be held liable for the loss of these animals while they were held under lawful attachment; and that in no event could the defendant, Sanzano, the depositario, be held liable for loss or damages which occurred without fault or negligence on his part.

A number of interesting questions, both of law and of fact, appear to have been raised in the court below as to the validity and effect of the order dissolving the attachment, which appears to have been issued not long before the court from which it issued was compelled to suspend its activities as a result of the outbreak of the insurrection. The solution of these questions in the lower court appears to have been rendered especially difficult by the destruction by fire of most of the records of that court; and it is very evident that both the plaintiffs and the defendants encountered no little difficulty in their efforts to establish by competent evidence the contentions upon which they relied, as a result of the disturbed conditions prevailing at the time when the incidents occurred in which this litigation has its origin.

But it is not necessary for us to consider or decide any of these questions, because we are of opinion that the judgment of the lower court dismissing the complaint must be affirmed, in view of the failure of proof that the seventy head of cattle mentioned in the document above were in fact delivered to Latorre, or that these cattle with their increase were the animals levied upon at the instance of Gonzalez.

From the summary outline of the facts above set out, it will readily be seen that in no event could plaintiffs recover in the absence of proof of these alleged facts. The trial judge, with whom we agree, was of opinion that the document on which plaintiffs rely in support of their claim of a sale of seventy head of cattle by Chinchilla to his son-in-law, Latorre, does not evidence an executed sale of these cattle, carrying with it an actual transfer of title, but merely an executory agreement to sell these cattle, to be consummated by their delivery to the purchaser on demand. He was of opinion further that the evidence submitted to him was insufficient to sustain a finding that these seventy head of cattle ever were in fact delivered to Latorre and further that the evidence does not sustain a finding that the 101 head of cattle, levied upon some two years after the date of the execution of the document,

which were found in the possession of Chinchilla's herdsmen on the hacienda "Esperanza" were the seventy head of cattle with their increase, in the town of Umingan to which reference is made in the document.

The stenographic notes of the evidence taken in the court below not having been brought here on appeal, we are bound by these findings of fact by the trial judge, and in the light of these findings the judgment appealed from must be affirmed, with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Torres, Johnson, and Araullo, JJ., concur.

[1] Valle vs. Galera.

[2] Breta vs. Smith, Bell & Co.

[3] Cuyugan vs. Ag-uas and Quintana.

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