

43 Phil. 437

[G. R. No. 16753. June 08, 1922]

**ROSA GARCIA ET AL., PLAINTIFFS AND APPELLEES, VS. PLACIDO ESCUDERO,
DEFENDANT AND APPELLANT**

D E C I S I O N

ROMUALDEZ, J.:

Gregorio Garcia Verdejo, owner of certain properties situated in the municipality of Dolores, Province of Tayabas, died in Manila in the year 1895, leaving an open will wherein he named as his heirs his three sisters, the plaintiffs herein, and appointed as his administrators, Sisenando Marasigan and the defendant Placido Escudero.

Intestate proceedings were commenced in the justice of the peace court of Dolores for the settlement of the deceased's estate undisposed of by will, and testamentary proceedings leading to the settlement of his estate covered by his will were instituted in the Court of First Instance of Tayabas by whose order said justice of the peace, on February 24, 1896, delivered to the defendant the properties of the deceased. Such properties are those described in paragraph 1 of the complaint.

The plaintiffs, as the testamentary heirs of said deceased, brought this action based on four causes, of which the last three were withdrawn, leaving the first wherein it is prayed that they be declared heirs of the deceased and the defendant ordered: (a) To deliver to them the properties inherited by them, and (b) to render an account of his administration from February 24, 1896.

The defendant answered, praying the court to refrain from further proceeding with the case, for the reason that the properties not having been administered in accordance with the Code of Civil Procedure now in force (secs. 600 and 617 in connection with 377 and 704 of said Code), the plaintiffs have no standing in court, or, at all events, to absolve him from the complaint.

The last three causes of action having been withdrawn by the plaintiffs, the lower court limited itself to the first, and decided it with the following dispositive part of its judgment:

“The court hereby condemns Placido Escudero, the defendant, to deliver without any further delay the properties of the deceased Gregorio Garcia Verdejo to the heirs of the same, the plaintiffs herein, and to render accounts duly verified and proved of each year of his administration and management of the properties as executor and depositary thereof, provided that in lieu of the furniture and jewels, he must pay the sum of P230 unless he can deliver the same; in lieu of the cattle, the sum of P1,447 unless he can deliver the animals themselves whose deaths were declared not proven, and that the defendant must deliver the real properties described in the complaint with all the improvements thereon.

“To render his accounts, the defendant is given sixty (60) days from the date of notice of this judgment. Said accounts must contain a statement for each year and be verified and proved; they must cover the period from February 24, 1896, to the date of the delivery of the properties; they must be made, as regards the real properties, on the basis of the existence of the improvements aforementioned and must include all the fruits, receipts and expenses during the aforesaid period of administration.

“Execution shall forthwith issue upon this judgment, the delivery of the properties and their improvements to be made to the plaintiff heirs, and on their behalf, to Attorney Alfredo Chicote. The statement of accounts to be made as aforesaid shall be filed with this court within the time allowed. The sums above fixed as the value of the jewels, furniture and cattle shall bear interest at the rate of 6 per cent per annum from the date hereof and any balance that may result against the defendant from the accounts to be rendered to the plaintiffs of each year of administration, shall also bear interest at the same rate of 6 per cent per annum from the date on which the respective balance shall be found to have become due.

“The defendant is condemned to pay the costs of this suit, the same to be taxed when, upon the rendition of the accounts, a final judgment is entered by the court, either approving or adjusting them.”

The defendant excepted to this judgment and asked for a stay of execution upon the filing of the necessary bond, which was granted by the court. He, however, agreed to render an account of his administration, which he did, submitting the statement of accounts appearing on pages 44 to 56 of the bill of exceptions.

The plaintiffs impugned these accounts, and after hearing thereon, the court, by an order dated March 30, 1920, approved them only in part, making, among others, the following findings and order:

“The items appearing under ‘Sundries’ account, amounting to P1,491.50 must be rejected and disapproved. It was not satisfactorily proven that the defendant has really and actually incurred such travelling expenses, and, with the exception of his testimony, there is nothing in the record to justify said expenses. Said items are, therefore, disapproved and their amount must be deducted from the general account.

“In the decision rendered by the court on October 2, 1913, it was found that there were on the lands 1,997 fruitbearing cocoanut trees and they yielded an average of 50 nuts per year. The defendant must render an account on the basis of these receipts from the lands during the period from February 24, 1896, to January 1, 1902. The fact that during said period of time the realties were seized by the Revolutionary Government and taken from his administration and control is immaterial, inasmuch as in the aforesaid decision the defendant was held liable for the products of said lands during said period and he was required to render an account covering that period.

“The defendant must also render an account of the receipts from, and products of, the lands during what is called ‘Fourth Period’ in his statement of accounts, which is from January 1, 1902, to August 15, 1906. On this point the defendant himself admits in his statement of accounts (page 4) that in the years 1902 and 1903 the cocoanut trees produced something though it hardly covered the small expenses. In 1904 and 1905, says the defendant further, they began to produce something though very little. However insignificant the product of said lands might have been the defendant must render an account of said product and credit the plaintiffs with its value.

“Wherefore, the defendant is ordered to file within the period of 30 days, without

extension, from the date of notice hereof, an amended statement of account in accordance with the findings and rulings herein contained, under the penalties of the law.”

To these rulings of the court, the defendant excepted and perfected the present appeal, making the following assignments of error:

“1. The trial court erred in sentencing the defendant to pay the sum of P230, the value of the personal properties listed in Exhibit 2 of the plaintiffs; and in not holding that said properties perished by a fortuitous event or *force majeure* in a fire that broke out in the barrio wherein was situated the house of the defendant in which they were kept.

“2. The trial court erred in sentencing the defendant to pay the sum of P1,445, the value of the cattle claimed in the complaint, consisting of 1 black horse, 1 black mare, and 5 female carabaos, and in not holding that said animals died of rinderpest and that the defendant, therefore, was not responsible for their loss.

“3. The trial court erred in holding that the defendant was bound to render an account of the fruits of the cocoanut lands and liable for their value, notwithstanding the fact that those lands were seized and held by the revolutionists in Dolores during the period from February 24, 1896, to January 1, 1902, and notwithstanding the fact that said properties had been taken from his administration and control.

“4. The trial court erred in holding that the defendant was bound to render an account of the products of said cocoanut lands covering the period from January 1, 1902, to August 15, 1906, and in disapproving the account rendered, covering this period.

“5. The trial court erred in disapproving the account rendered by him insofar as the items under ‘Sundries’ account are concerned, and in not finding that the defendant had really incurred the expenses and disbursements therein specified.

“6. The trial court erred in denying the defendant’s motion for new trial and in not relieving him entirely from any further responsibility, by approving the accounts as rendered.”

In his brief plaintiffs' counsel questions the right of the defendant to prosecute this appeal. Such an objection has not been properly raised in this court, nor was it, nor could it be, included in any assignment of error, for, as said counsel very well says, it is not incumbent upon the appellee to make assignment of errors.

Turning to the assignments of error, the first refers to certain personal properties, which, as appears from the evidence, were destroyed by fire. The trial court held the defendant responsible for such properties, it being of the opinion that he was negligent in having left them in the barrio of Santo Nino where they were. Taking into account the fact that that fire occurred in a calamitous time, for, as appears from the evidence, it was caused by the North American forces who were fighting the Philippine revolutionists, we find that the disaster could not have been prevented by the defendant. It might be said that he could have foreseen it, but it does not appear just how and where those properties could have been kept absolutely safe by the defendant, it not having been proven that the town of San Pablo, the place of residence of the defendant, was any safer than that of Santo Nino. It was not shown that such properties were destroyed through the negligence of the defendant.

The second error assigned is concerned with the finding of the court below, holding the defendant liable for the value of the cattle that perished during the rinderpest of 1898, on account of the fact that no written evidence of their death had been introduced in accordance with the laws then in force on large cattle. In the first place the *fact* of the death of those animals is proven by the testimony of the defendant based on his personal knowledge, and this testimony is not a secondary, but original, evidence of such fact. It would be a secondary evidence if such testimony were a mere recital of the contents of the credentials or annotated certificates issued in accordance with article 7 of the Large Cattle Regulation approved by Royal Order dated August 19, 1862, in force in the Philippines in 1898. Besides, it does not appear that whenever an animal died, the officer having authority on the matter (*teniente de ganados*) was notified in all cases of the fact and the regulations complied with. In the second place, no timely objection was made to said testimony of the defendant. We find that the trial court committed the second error assigned.

Coming to the third error, it refers to the order of the court requiring the defendant to render an account of the products of the cocoanut lands from February 24, 1896, to January 1, 1902. The evidence shows that those cocoanut lands were seized by the Philippine revolutionists in the year 1899 and that in 1902 they were a forest. The Philippine Revolution lasted, practically, during the whole period from 1896 to 1902, and the defendant, residing as he was, in a town far away from the cocoanut lands, could not, as he

testified, go to the lands to gather their fruits, and thus he got none, according to his testimony. We hold that the defendant should be relieved from the obligation to render the account mentioned in this assignment of error.

With regard to the accounts referred to in the fourth assignment of error, which pertain to the period from January 1, 1902, to August 15, 1906, the defendant says in his statement of accounts that in 1902 and 1903 the fruit of the cocoanut trees hardly covered the small expenses; that in 1904 and 1905, they began to yield something but very little. It not having been proven that in those periods the cocoanut lands produced anything to be accounted for, we find the report made by the defendant sufficient on this matter, and it is unnecessary to require him to make a detailed statement of said products.

As to the fifth assignment of error, which has reference to those items of the defendant's accounts, appearing under "Sundries" account, we find that those items are proved by the testimony of the defendant, the plaintiffs' evidence being insufficient to overthrow or weaken it. We believe that the items under "Sundries" account in defendant's statement should have been approved.

The sixth error is but a conclusion from the preceding assignments.

We find that the trial court committed the errors assigned.

For the foregoing reasons, the account rendered by the defendant of February 8, 1917, is hereby approved in its entirety, and the rulings appealed from revoked, without special pronouncement as to costs. So ordered.

Araullo, C. J., Malcolm, Avanceña, Villamor, and Ostrand, JJ., concur.