7 Phil. 275

[G.R. No. 2980. January 02, 1907]

ANICETA PALACIO, PLAINTIFF AND APPELLEE, VS. DIONISIO SUDARIO, DEFENDANT AND APPELLANT.

D E C I S I O N

TRACEY, J.:

At an interview at which were present the defendant and three herdsmen, the plaintiff made an arrangement for the pasturing of eighty-one head of cattle, in return for which she was to give one-half of the calves that might be born and was to pay the defendant one-half peso for each calf branded. On demand for the whole, forty-eight head of cattle were afterwards returned to her and this action is brought to recover the remaining thirty-three.

It is claimed as a first defense that the arrangement was made between the plaintiff and the herdsmen, the defendant, who was president of the municipality, tendering his good offices only. Upon this question, the finding of the court below is conclusive in favor of the plaintiff and is fully justified by the proofs, especially by a letter of the defendant in reply to the demand for the cattle, in which he seeks to excuse himself for the loss of the missing animals.

As a second defense it is claimed that the thirty-three cows either died of disease or were drowned in a flood. As to this point, on which the trial court has made no specific finding, the proof is conflicting in many particulars and indicates that at least some of these cattle were living at the time of the surrender of the forty-eight head. The defendant’s witnesses swore that of the cows that perished, six died from overfeeding, and they failed to make clear the happening of any flood sufficient to destroy the others.

If we consider the contract as one of deposit, then under article 1183 of the Civil Code, the burden of explanation of the loss rested upon the depositary and under article 1769 the fault is presumed to be his. The defendant has not succeeded in showing that the loss occurred either without fault on his part or by reason of *caso fortuito*.

If, however, the contract be not one strictly of deposit but one according to local custom for the pasturing of cattle, the obligations of the parties remain the same.

The defendant also sets up the six years' statute of limitation, under section 43 of the present Code of Civil Procedure. This action, having arisen before that code went into effect, is governed by the provisions of preexisting law (sec. 38) under which the prescription was one of fifteen years. (Civil Code, art. 1964.)

The judgment of the court below is affirmed with the costs of both instances. After expiration of twenty days let judgment be entered in accordance herewith and ten days thereafter the case remanded to the court from whence it came for execution. So ordered.

Arellano, C. J., Torres, Mapa, Carson, and *Willard, JJ.,* concur.

Date created: May 23, 2014