

5 Phil. 539

[ G.R. No. 2244. January 18, 1906 ]

**LEONCIO PANAGUITON, PLAINTIFF AND APPELLEE, VS. JAMES J. WATKINS ET AL., DEFENDANTS AND APPELLANTS.**

**D E C I S I O N**

**WILLARD, J.:**

On the 4th of September, 1894, in an action commenced by Luchsinger & Co. against Tomas Cantoverly, there were attached sixty-eight carabaos as the property of said Cantoverly. The above action was terminated in the year 1903, and in the month of January of that year the deputy of the defendant Watkins, sheriff of the province, took from the possession of the plaintiff in this action ten carabaos, which he claimed were a part of the sixty-eight attached in 1894.

The plaintiff brought an action against the defendant sheriff to recover the carabaos so taken from him, and damages and costs. The court below entered judgment for the return of the carabaos, and 200 pesos as damages for their detention. The defendant moved for a new trial in the court below on the ground that the evidence did not justify the decision, which was denied, and he has brought the case here by bill of exceptions.

The only question for decision is whether the ten carabaos taken from the possession of the plaintiff in 1903 are ten of the carabaos which were attached in 1894. Upon this question the parties introduced a large amount of evidence in the court below. After an examination of it we think that it is preponderant in favor of the decision.

It having been established that the ten carabaos in question in this suit were not attached in the year 1894, the evidence offered by the plaintiff, together with the fact that the carabaos were in his possession when they were taken by the defendant in this case, are sufficient to show that the plaintiff was the owner.

The second assignment of error relied upon by the appellant relates to the depositions of certain witnesses, taken by the plaintiff prior to the trial, and presented by him as evidence thereat. The reason for taking these depositions is the one set out in paragraph 4 of section 355 of the Code of Civil Procedure, which is as follows:

“When the witness otherwise liable to attend the trial, is nevertheless too ill or infirm to attend.”

When the depositions were offered at the trial the defendant objected to their admission. From the record before us it clearly appears that he based his objection, among other things, upon the fact that the witnesses who lived in the province could have been produced at the trial. The judge below, considering that this objection had not been made, admitted the depositions. We do not find it necessary to decide whether the proviso found at the end of paragraph 6 of said section 355 is applicable to the whole of the section or not. As to three of the depositions the error, if any were committed in their admission, did not prejudice the real rights of the appellant (sec. 503, Code of Civil Procedure) since without the evidence furnished by these depositions the other evidence in the case preponderated in favor of the plaintiff. As to the remaining deposition, that of Leocadio Buenaflor, we think there was evidence in the case sufficient to show that he was not in a condition to attend at the trial at Iloilo, so that, applying to the section the construction claimed by the appellant, the court did not err in admitting his deposition.

The judgment of the court below is affirmed, with the costs of this instance against the appellant, and after the expiration of twenty days judgment should be entered in accordance herewith and the case remanded to the court below for execution. So ordered.

*Arellano, C. J., Mapa, Johnson, and Carson, JJ., concur.*