

[G.R. No. 1454. August 17, 1905]

**RAYMUNDO ECED, PLAINTIFF AND APPELLANT, VS. EUGENIO OCAMPO,
DEFENDANT AND APPELLEE.**

D E C I S I O N

WILLARD, J.:

There was no motion for a new trial in this case, and therefore the evidence does not appear in the bill of exceptions. The question presented is, Do the facts admitted in the pleadings and those stated in the decision justify the judgment in favor of the defendant?

The action was brought to recover the value of twenty-seven carabaos. The defendant, who lived at Nueva Caceres, being the owner of the carabaos, in 1897 was taken to Manila as a political prisoner. On his return from Manila he found the carabaos in the possession of officers of the revolutionary government, who delivered them to him. Later they all died while in his possession.

The plaintiff's claim is that while the defendant was in Manila he had in Nueva Caceres a general agent; that this general agent sold the carabaos in question to the plaintiff, and that they were afterwards seized by the authorities of the revolutionary government on the ground that the plaintiff was a Spaniard. The judge in his decision did not determine whether or not such a sale had taken place. He based his opinion in favor of the defendant upon the propositions (1) that the carabaos died without the fault of the defendant; (2) that the defendant took possession of them in good faith, believing them to be his, and without any knowledge of the sale alleged to have been made by his agent; and (3) that under these circumstances article 457 of the

Civil Code relieves the defendant of the responsibility for their loss.

The first and third of these propositions the appellant does not controvert, but he claims that the defendant did not take possession of the carabaos in good faith. His claim is that the defendant was informed of the sale made by his general agent and approved it expressly in a letter written by the defendant to such agent. The judge finds as a fact that this letter did not refer to the carabaos which are in question in this suit. The letter does not appear in the record, and inasmuch as there was no motion for a new trial we can not review the evidence, nor determine whether the construction which the judge placed upon the letter was the correct one or not. There is nothing in the facts stated in the decision which indicates that the appellant had knowledge of this sale, and the judge says in his decision that "it appears that the only written evidence of the alleged sale in existence at the time the defendant took possession of the carabaos was a private memorandum which the plaintiff then had with him in Manila, whither he had fled, and that the defendant knew nothing of the existence of this document." The fact that the defendant learned that the carabaos had been seized as the property of the plaintiff is not sufficient to prove fraud on the part of the former. Twenty of them still bore the marks of the plaintiff, and as to the other seven which bore the marks of the plaintiff, they were calves. No public record of this alleged sale by the general agent of the defendant to the plaintiff was ever made.

Under all these circumstances it can not be said that when the defendant took possession of the, stock he did so in bad faith. The judgment of the court below is affirmed, with the costs of this instance against the appellant. After the expiration of twenty days judgment will be entered in conformity herewith, and the cause will be returned to the lower court for execution.

Arellano, C. J., Torres, Mapa, and Johnson, JJ., concur.
Carson, J., disqualified.

