2 Phil. 682

**[ G.R. No. 1299. November 10, 1903 ]**

**VICENTE PEREZ, PLAINTIFF AND APPELLEE, VS. EUGENIO POMAR, AGENT OF THE COMPANIA GENERAL DE TABACOS, DEFENDANT AND APPELLANT.**

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

**TORRES, J.:**

In a decision dated February 9, 1903, the judge of the Sixth Judicial District, deciding a case brought by the plaintiff against the defendant for the recovery of wages due and unpaid, gave judgment against the latter for the sum of $600 and the costs of suit, less the sum of $50, Mexican.

On August 27,11)02, Don Vicente Perez filed in the Court of First Instance of Laguna a complaint, which was amended on the 17th of January of this year, asking that the court determine the amount due the plaintiff, at the customary rate of compensation for interpreting in these Islands, for services rendered the Tabacalera Company, and that, in view of the circumstances of the case, judgment be rendered in his favor for such sum. The complaint also asked that the defendant be condemned to the payment of damages in the sum of $3,200, gold, together with the costs of suit. In this complaint it was alleged that Don Eugenio Pomar, as general agent of the Compana General de Tabacos in the said province1, verbally requested the plaintiff on the 8th of December, 1901, to act as interpreter between himself and the military authorities; that after the date mentioned the plaintiff continued to render such services up to and including Hay 31, 1002; that he had accompanied the defendant, Pomar, during that time at conferences between the latter and the colonel commanding the local garrison, and with various officers and doctors residing in the capital, and at conferences with Captain Lemen in the town of Pilar, and with the. major in command at the town of Pagsanjan,. concerning the shipment of goods from Manila, and with respect to goods shipped from the towns of Santa Cruz, Pilar, and Pagsanjan to this city; that the plaintiff during this period of time was at the disposal of the defendant, Pomar,

and held himself in readiness to render services whenever required; that on this account his private business, and especially a soap factory established in the capital, was entirely abandoned; that to the end that such services might be punctually rendered, the agent, Pomar, assured him that the Tabacalera Company ahvays generously repaid services rendered it, and that he therefore did not trouble himself about his inability to devote the necessary amount of time to his business, the defendant going so far as to make him flattering promises of employment with the company, which he did not accept; that these statements were made in the absence of witnesses and that therefore his only proof as to the same was Mr. Pomar's word as a gentleman; that the employees of the company did not understand English, and by reason of the plaintiff's mediation between the agent and the military authorities large profits were obtained, as would appear from the account and letterpress books of the agency corresponding to those dates. In the amended complaint it was added that the defendant, on behalf of the company, offered to remunerate the plaintiff for the services rendered in the most advantageous manner in which such services are compensated, in view of the circumstances under which they were requested; and that the plaintiff, by rendering the company such services, was obliged to abandon his own business, the manufacture of soap, and thereby suffered damages in the sum of $3,200, United States currency.

The defendant, on the 25th of September, 1902, filed an answer asking for the dismissal of the complaint, with costs to the plaintiff. In his answer the defendant denied the allegation in the first paragraph of the complaint, stating that it was wholly untrue that the company, and the1 defendant as its agent, had solicited the services of thv, plaintiff as interpreter before the military authorities for the period stated, or for any other period, or that the plaintiff had accompanied Pomar at the conferences mentioned, concerning shipments from Manila and exports from some of the towns of the province to this capital. He stated that he; especially denied paragraph 2 of the complaint, as it was absolutely untrue that the plaintiff had been at the disposal of the defendant for the purpose of rendering such services; that he therefore had not been obliged to abandon his occupation or his soap factory, and that the statement that an offer of employment with the company had been made to him was false. The defendant also denied that through the mediation of the plaintiff the company and himself had obtained large profits. The statements in paragraphs 6, 7, 8, and 9 of the complaint were also denied. The defendant stated that, on account of the friendly relations which sprang up between the plaintiff and himself, the former borrowed from him from time to time money amounting to $175 for the purposes of his business, and that he had also delivered to the plaintiff 36 arrobas of oil worth $106, and three packages of resin for use in

coloring his soap; that the plaintiff accompanied the defendant to Pagsanjan, Pilar, and other towns when the latter made business trips to them for the purpose of extending his business and mercantile relations therein; that on these excursions, as well as on private and official visits which he had to make, the plaintiff occasionally accompanied him through motives of friendship, and especially because of the free transportation given him, and not on behalf of the company of which he was never interpreter and for which he rendered no services ; that the plaintiff in these conferences acted as interpreter of his own free will, without being requested to do so by the defendant and without any offer of payment or compensation; that therefore there existed no legal relation whatever between the company and the plaintiff, and that the defendant, when accepting the spontaneous, voluntary, and officious services of the plaintiff, did so in his private capacity and not as agent of the company, and that it was for this reason that he refused to enter into negotiations with the plaintiff, he being in no way indebted to the latter. The defendant concluded by saying that he answered in his individual capacity.

A complaint having been filed against the Compania General de Tabacos and Don Eugenio Pomar, its agent in the Province of Laguna, the latter, having been duly summoned, replied to the complaint, which was subsequently amended, and stated that he made such reply in his individual capacity and not as agent of the company, with which the plaintiff had had no legal relations. The suit was instituted between the plaintiff and Pomar, who, as such, accepted the issue and entered into the controversy without objection, opposed the claim of the plaintiff, and concluded by asking that the complaint be dismissed, with the costs to the plaintiff. Under these circumstances and construing the statutes liberally, we think it proper to decide the case pending between both parties in accord- ance with law and the strict principles of justice.

From the oral testimony introduced at the trial, it appears that the plaintiff, Perez, did on various occasions render Don Eugenio Pomar services as interpreter of English; and that he obtained passes and accompanied the defendant upon his journeys to some of the towns in the Province of Laguna. It does not appear from the evidence, however, that the plaintiff was constantly at the disposal of the defendant during the period of six months, or that he rendered services as such interpreter continuously and daily during that period of time.

It does not appear that any written contract was entered into between the parties for the employment of the plaintiff as interpreter, or that any other innominate contract was entered into; but whether the plaintiff’s services were solicited or whether they were offered to the defendant for his assistance, inasmuch as these services were accepted and

made use of by the latter, we must consider that there was a tacit and mutual consent as to the rendition of the services. Tin's gives rise to the obligation upon the person benefited by the services to make compensation therefor, since the bilateral obligation to render service as interpreter, on the one hand, and on the other to pay for the services rendered, is thereby incurred. (Arts. 1088, 1089, and 1262 of the Civil Code). The supreme court of Spain in its decision of February 12, 1889, holds, among other things, "that not only is there an express and tacit consent which produces real contracts but there is also a presumptive consent which is the basis of quasi contracts, this giving rise to the multiple juridical relations which result in obligations for the delivery of a thing or the rendition of a service."

Notwithstanding the denial of the defendant, it is unquestionable that it Avas with his consent that the plaintiff rendered him services as interpreter, thus aiding him at a time when, owing to the existence of an insurrection in the province1, the most disturbed conditions prevailed. It follows, hence, that there was consent on the part of both in the rendition of such services as interpreter. Such service1 not being contrary to law or to good custom, it was a perfectly licit object of contract, and such a contract must necessarily have existed between the parties, as alleged by the plaintiff. (Art. 1271, Civil Code.)

The consideration for the contract is also evident, it being clear that a mutual benefit was derived in consequence of the service rendered. It is to be supposed that the defendant accepted these services and that the plaintiff in turn rendered them with the expectation that the benefit would be reciprocal. This shows the concurrence of the three elements necessary under article 1261 of the Civil Code to constitute a contract of lease of service, or other innominate contract, from which an obligation has arisen and whose fulfillment is now demanded.

Article 1254 of the Civil Code provides that a contract exists the moment that one or more persons consent to be bound, with respect to another or others, to deliver some thing or to render some service. Article 1255 provides that the contracting parties may establish such covenants, terms, and conditions as they deem convenient, provided they are not contrary to law, morals, or public policy. Whether the service was solicited or offered, the fact remains that Perez rendered to Pomar services as interpreter. As it does not appear that he did this gratuitously, the duty is imposed upon the defendant, he having accepted the benefit of the sendee, to pay a just compensation therefor, by virtue of the innominate contract of facio ut dex implicitly established.

The obligations arising from this contract are reciprocal, and, apart from the general

provisions with respect to contracts and obligations, the special provisions concerning contracts for lease of services are applicable by analogy.

In this special contract, as determined by article 1544 of the Civil Code, one of the parties undertakes to render the other a service for a price certain. The tacit agreement and consent of both parties with respect to the service rendered by the plaintiff, and the reciprocal benefits accruing to each, are the best evidence of the fact that there was an implied contract sufficient to create a legal bond, from which arose enforceable rights and obligations of a bilateral character.

In contracts the will of the contracting parties is law, this being a legal doctrine based upon the provisions of articles 1254, 1258, 1262, 1278, 1281, 1282, and 1289 of the Civil Code. If it is a fact sufficiently proven that the defendant, Pomar, on various occasions consented to accept an interpreter's services, rendered in his behalf and not gratuitously, it is but just that he should pay a reasonable remuneration therefor, because it is a well-known principle of law that no one should be permitted to enrich himself to the damage of another.

With respect to the value of the services rendered on different occasions, the most important of which was the first, as it does not appear that any salary was fixed upon by the parties at the time the services were accepted, it devolves upon the court to determine, upon the evidence presented, the value of such services, taking into consideration the few occasions on which they were rendered. The fact that no fixed or determined consideration for the rendition of the services was agreed upon does not necessarily involve a violation of the provisions of article 1544 of the Civil Code, because at the time of the agreement this consideration was capable of being made certain. The discretionary power of the court, conferred upon it by the law, in also supported by the decisions of the supreme court of Spain, among which may be cited that of October 18, 1899, which holds as follows: "That as stated in the article of the Code cited, which follows the provisions of law 1, title 8, of the fifth partida, the contract for lease of services is one in which one of the parties undertakes to make some thing or to render some service to the other for a certain price, the existence of such a price being understood, as this court has held not only when the price has been expressly agreed upon but also when it may be determined by the custom and frequent use of the place in which such services were rendered."

No exception was taken to the judgment below by the plaintiff on account of the rejection of his claim for damages. The decision upon this point is, furthermore, correct.

Upon the supposition that the recovery of the plaintiff should not exceed 200 Mexican pesos, owing to the inconsiderable number of times he acted as interpreter, it is evident that the contract thus implicitly entered into was not required to be in writing and that therefore it does not fall within article 1280 of the Civil Code; nor is it included Within the provisions of section 335 of the Code of Civil Procedure, as this innominate contract is not covered by that section. The contract of lease of services is not included in any of the. cases expressly designated by that section of the procedural law, as affirmed by the appellant. The interpretation of the other articles of the Code alleged to have been infringed has also been stated fully in this opinion.

For the reasons stated, we are of the opinion that judgment should be rendered against Don Eugenio Pomar for the payment to the plaintiff of the sum of 200 Mexican pesos, from which will be deducted the sum of 50 pesos due the defendant by the plaintiff. No special declaration is made as to the costs of this instance. The judgment below is accordingly affirmed in so far as it agrees with this opinion, and reversed in so far as it may be in conflict therewith. Judgment will be entered accordingly twenty days after this decision is filed.

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

**MCDONOUGH, J.,** with whom concurs **COOPER, J.,** dissenting:

I dissent from the opinion of the majority. In my opinion there is no legal evidence in the case from which the court may conclude that the recovery should be 200 Mexican pesos. I am therefore in favor of affirming the judgment.

*Johnson, J.,* did not sit in this case.

---

Date created: April 15, 2014