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[G.R. No. 1458. March 29, 1906]

MAX L. FORNOW, PLAINTIFF AND APPELLANT, VS. J. C. HOFFMEISTER, DEFENDANT AND APPELLEE.

D E C I S I O N

ARELLANO, C.J.:

On the 27th of August, 1902, the plaintiff brought this action in the Court of First Instance of Manila to recover from the defendant for the breach of a certain contract, (*a*) the penalty of 10,000 marks provided for in said contract, or its equivalent in Mexican currency; (b) the legal interest due upon this sum from the time of the filing of the complaint until fully paid; (*c*) 363 pesos, Mexican currency, which was refunded to him at Singapore by Behn, Meyer & Co,, the said amount representing the cost of transportation from Singapore to Genoa; (*d*) 35 pesos paid to him for transportation from Genoa to Berlin; (*e*) 138.89 pesos paid to him for traveling expenses; and (*f*) the costs of the proceedings. The plaintiff attempts to recover the penalty of 10,000 marks on the ground that the defendant had agreed to render his personal services to the plaintiff and that upoA the termination or rescission of the contract he would not 'enter the service of any other firm in the Philippine Islands during the three years immediately thereafter, either as a clerk or as a partner, and that he would not engage in business for himself or conduct any business house or factory, and in case of any breach of this agreement to pay to the plaintiff the stipulated penalty of 10,000 marks, without prejudice to the right of the plaintiff to bring an action for damages against him. But the defendant, upon his arrival at Singapore on his return home, the plaintiff having paid his entire traveling expenses, secured a refund of the purchase price of his ticket and returned to this city under a new contract with another firm doing business in the city of Manila, and for which he was working at the time the complaint in this case was filed. The other amounts which the plaintiff seeks to recover, as above stated, and which make a total of 611.89 pesos, Mexican currency, are the sums delivered to him by the plaintiff for his trip to Europe—from Manila to Singapore, from Singapore to Genoa, and from thence to

Berlin—under the terms of the aforesaid contract, and on condition that the defendant should return to his country and not come back to the Islands for a period of three years.

The contract upon which the complaint is based, and which appears on pages 8, 9, and 10 of the bill of exceptions, contains at the bottom thereof the following statement: "This contract was executed in Manila on the 24th day of January, 1901, and signed in the presence of the German consul of this city, who certified as to the authenticity of the signatures in the presence of two witnesses."

The defendant filed his answer on the 20th of November, 1902, denying absolutely all the allegations contained in the complaint, except those which related to the execution of the contract and the penalty clause above referred to; but at the trial of this case on the 23d of June, 1903, he admitted each and all of the allegations of the complaint and the authenticity of the documents filed therewith. The plaintiff therefore waived his right to present further proof. (Page 4, bill of exceptions.) The statements made by counsel in open court, which appear on page 7 of the record, are as follows: "Present: Rafael Del-Pan, attorney for plaintiff and Joaquin R. Serra, attorney for defendant. Attorney Del-Pan insists upon the allegations of the complaint and offers to introduce evidence, parol as well as documentary, in support thereof. Attorney Serra states that the defendant admits all the allegations set out in the complaint. Attorney Del-Pan then stated to the court that if the defendant admitted all the allegations of the complaint, he would withhold the evidence which he intended to introduce at the trial, but that he wished to file the documents numbered 1, 2, 3, 4, 5, 6, 7, 8, and 9. Attorney Serra stated that he had no objection to the admission of these documents. The court then ordered that the said documents presented by counsel for the plaintiff be admitted in evidence. Attorney Serra then stated that the defendant did not admit that the contract in question could be enforced for the reason that it was not drawn in accordance with the labor laws."

This is all that appears of record.

The court below entered judgment in favor of the defendant, dismissing the complaint, with the costs of the proceedings.

The plaintiff was notified of this judgment on the 21st of the following July. On the same day, he excepted to the judgment and presented a motion for a new trial. The case has been submitted to this court, therefore, upon the said exception to the judgment.

The complaint was dismissed by the court below on the ground that at the time the contract

in question was entered into between the plaintiff and the defendant the contract-labor laws of the United States of America were in full force and effect in the Philippine Islands; that the said contract was void *ab initio* according to the said law, and that the plaintiff could not recover any damages for a breach thereof.

It is true that on the 6th of June, 1899, it was ordered that there be enforced in the Philippine Islands the laws then existing in the United States in regard to contract labor.

The plaintiff assigns as the first error the finding of the court below to the effect that "both parties agreed upon the following facts, to wit: That the plaintiff, a resident of the Philippines, and the defendant, *a resident of Europe, entered into a contract on the 1st day of July, 1900,* which was. subsequently ratified in Manila, Philippine Islands, on the 24th of July, 1901 * * *. "

The plaintiff in his brief says: "An examination of the record, that is to say, of the bill of exceptions, which contains all the essential facts of the case, will clearly show (a) that there was no such stipulation as to the facts between the parties; and (b) that the essential fact, which the court below presumes to have been agreed upon by the parties, is not true." The stipulation had between the parties appears on page 7 of the bill of exceptions with the stenographer's certificate attached thereto. That stipulation was merely that the defendant "admitted all the allegations of the complaint." And since it was alleged in paragraph 1 of the complaint, and was admitted in paragraph 1 of the answer, that the contract was executed in Manila, it is evident that the finding of the court below as to this point is erroneous.

We have been unable to find in the record brought to this court any evidence of such agreement between the parties. Nor have we been able to find any proof of the fact that the plaintiff, a resident of the Philippine Islands, and the defendant, a resident of Europe, had entered into a contract on the 1st of July, 1900, and subsequently ratified the same in Manila on the 24th day of January, 1901. All that we have been able to find is the contract executed on the 24th day of January, 1901, above referred to.

The conclusion which may be drawn from the terms of the contract executed on the 24th of January, 1901, is that the said contract was in full force and effect from the 1st of July, 1900, since it is so stated in paragraph 10 of the same, and because, under the sixth clause thereof, the defendant was to receive in payment for his services, beginning with the 1st day of July, 1900, the sum of 3,000 pesos, Philippine currency, per annum, and 5 per cent of the

net profits of the cigar factory “Helios” from the 1st of January, 1900.

It might be inferred, however, that the parties, in order to avoid the prohibition contained in the Contract Labor Law, entered into another contract prior to the 24th day of January, 1901, in Manila, under which the defendant could enter the Islands, but there is nothing in the record which would authorize a finding as to the existence of any other contract which may possibly have been entered into between the parties. They might have entered into such a contract prior to the 1st of July, 1900, at any time prior to that date.

There is nothing upon which to base a finding to the effect that prior to the date upon which the Alien Contract Labor Laws of the United States went into effect in the Philippine Islands the plaintiff and the defendant had made a contract on a certain and specific date and place and under certain specified circumstances, of which the one executed on the 24th of January, 1901, was a reproduction and a ratification.

Therefore it can not be held that the contract executed by the parties in Manila on the 24th day of January, 1901, and by them admitted to be true and genuine, should be considered as entered into in violation of the Act of Congress of January 23, 1885, the “Contract Labor Law,” which was extended to the Philippines on the 6th of June, 1899.

And if the contract in question is not defective, as alleged, it can not be declared null and void. On the contrary, it appears to be a perfect and valid contract. It contains all of the necessary elements required by law and could properly be admitted in evidence. The defendant did not question its authenticity, but admitted the same. in its entirety.

Therefore, the petition of the plaintiff which has for its object the enforcement of the penalty stipulated in the contract in case of the breach thereof should be granted.

The plaintiff, however, can not recover the money paid by him for the traveling expenses of the defendant under another clause of the contract. The defendant was entitled to this allowance without condition precedent or subsequent. The plaintiff voluntarily complied with this obligation imposed upon him by the terms of the contract. The plaintiff, when he parted with the money paid to the defendant for his expenses, did so irrevocably. It would amount to a revocation of such payment if the plaintiff were allowed to recover the money as unduly paid, particulary when it has not been proved why such payment was improperly made.

We are of the opinion, therefore, that the judgment appealed from should be reversed, and

that the defendant, Hoffmeister, should pay the stipulated penalty of 10,000 marks, or its equivalent in Philippine currency, with legal interest thereon from the date of the filing of the complaint until fully paid, with the costs of the first instance. The plaintiff, however, is not entitled to the additional 611 pesos, Mexican currency, or its equivalent in current money, which he seeks to recover. We make no special provision as to the costs of this instance. After the expiration of twenty days, let judgment be entered in accordance herewith. So ordered.

Torres, Mapa, Carson, Willard, and *Tracey, JJ.,* concur.

Johnson J., dissents.

Date created: April 29, 2014