6 Phil. 667

[G.R. No. 3309. November 10, 1906]

THE INTERNATIONAL BANKING CORPORATION, PLAINTIFF AND APPELLEE, VS. A. A. MONTAGNE, DEFENDANT AND APPELLANT.

D E C I S I O N

JOHNSON, J.:

This was an action commenced in the Court of First Instance of the city of Manila on the 7th of October, 1904, by the plaintiff against the defendant to recover the sum of 1,200 pesos upon a promissory note. The plaintiff in its complaint alleges the following facts:

First. That it is a mercantile company duly organized under the laws of the State of Connecticut and inscribed in the mercantile register in the city of Manila, in accordance with the provisions of the laws of the Philippine Islands, and that it has an office in Manila and is doing business in said city.

Second. That on the 5th of December, 1903, in the city of Manila, the defendant executed and delivered, for value received, to the Casa Comisi6n de Martinez Gallegos y Compaflia a promissory note, promising to pay to the said Casa Comisi6n, or its order, the sum of 1,200 pesos, conant, on the 5th of April, 1904.

Third. That later the said Casa Comisi6n, for value received, indorsed said promissory note to the plaintiff, which at present is the owner of said promissory note.

Fourth. That said promissory note and its indorsements were in the words and figures following:

"No. 73.

"Manila, *5 de Diciembre de 1903.*

"Pagare en virtud del presente, en Manila, el dia cinco de Abril de 1904 proximo, a la orden de la Casa Comision la cantidad de pesos fuertes mil doscientos pesos conant valor recibido del mismo en efectivo para operaciones de comercio.

(Firmado) "A. A. MONTAGNE.

"$1,200.00, P. C.

"Hay un sello de 80 cent. de peso.

" (Endoso;) Casa Comisidn de Martinez Gallegos y Cia., Isla Romero, No. 2, Manila. P. P. de la Casa Comisi6n. (Firmado) Vicente G. Azaola."

Fifth. That said promissory note has not been paid, nor any part of the same, even though the payment has been duly demanded.

Sixth. That the defendant does not reside in the Philippine Islands and that the plaintiff believes and therefore alleges that the defendant is trying to dispose of his property with the intention to defraud his creditors; that he has no other guaranty sufficient to respond to this claim excepting the attachment asked for and that there does not exist in favor of the defendant any counterclaim against the plaintiff, and therefore prays the court—

(*a*) That he issue a writ of attachment upon the property of the defendant for the purpose of responding to the payment of any judgment which may be rendered against him.

(*b*) That the court render a judgment against the defendant and in favor of the plaintiff for the sum of 1,200 pesos, conant, with interest and costs.

To this complaint the defendant filed a demurrer which, and among other things, alleged that the said complaint did not contain facts sufficient to constitute a cause of action.

Upon a consideration of the demurrer, the court overruled the same, to which ruling of the court the defendant duly excepted; whereupon the defendant answered. The case then proceeded to trial, and after hearing the evidence adduced in said cause the court rendered judgment against the defendant and in favor of the plaintiff for the sum prayed for in said complaint, to which judgment of the court the defendant duly excepted and at the same time presented a motion for a new trial. The case is here on appeal.

The defendant assigns as error, among other things, the following:

That the court erred in overruling the demurrer of the defendant and appellant for the reason that the complaint of the plaintiff shows conclusively that the property in said promissory note had not been transferred to the plaintiff and appellee.

Under this assignment of error the defendant and appellant argues that under the form of indorsement of said promissory note set out in the complaint the ownership of said promissory note did not pass to the plaintiff under the provisions of the Commercial Code in force in the Philippine Islands, and that therefore the plaintiff and appellee can not bring an action in its own name upon said promissory note—in other words, that the plaintiff and appellee as it appears upon the face of the complaint is not the real party in interest.

Article 462 of the Commercial Code in relation to article 533 provides what the indorsements of negotiable instruments must contain in order that the ownership of such instruments may be transferred by an indorsement. Paragraph 4 of said article provides that an indorsement of such instruments must contain "the date on which it is drawn."

Article 463 of the same code provides:

"If the date is omitted in the indorsement, the ownership of the draft shall not be transferred; it shall be understood as simply a commission for collection."

An examination of the indorsement by the Casa Comision of said promissory note, as it appears in the complaint of the plaintiff, shows that the said indorsement contains no date; therefore, under the above-quoted provisions of the Commercial Code, the plaintiff and appellee did not become the owner of said promissory note under such indorsement, and under the allegations of said complaint is not entitled to bring such action, in its own name, as such owner. The facts, therefore, set out in the complaint are not sufficient to show that the plaintiff was entitled to bring action upon said promissory note as the owner of the same, and the demurrer should have been sustained.

The judgment of the lower court overruling said demurrer is hereby reversed and the ca,use is hereby ordered to be returned to the lower court, with permission on the part of the plaintiff to amend its complaint.

After the expiration of ten days let judgment be entered in accordance herewith and let the case be returned in due time to the lower court for proper procedure. So ordered.

Torres, Mapa, Carson, and *Traceyy JJ.,* concur.

Arellano, C.J., and *Willard, J.,* dissent.

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