7 Phil. 37

[G.R. No. 2644. November 24, 1906]

DENNIS J. DOUGHERTY, PLAINTIFF AND APPELLEE, VS. JOSE EVANGELISTA, DEFENDANT AND APPELLANT.

D E C I S I O N

TRACEY, J.:

In 1895 the defendant borrowed from the Roman Catholic bishop of the diocese of Nueva Segovia 2,000 pesos, for which he gave a receipt, not mentioning the bishop but reciting that the money was from the funds of the C of radio, de las Animas of the Cathedral of Vigan and providing that it should be repaid with 6 per cent interest. At the expiration of a year, the first installment of interest not being paid, the defendant signed a document acknowledging the further advance to him by the bishop of the amount thereof, 120 pesos, to be added to the preexisting loan from the funds of the *cofradia*. He now contests the right of the plaintiff, as the Roman Catholic bishop of the diocese, to recover the money loaned by his predecessor in office, claiming that the administration of the funds of a *cofradia* does not rest with the bishop. It is not necessary to discuss this precise question. The origin and general nature of the administration of Roman Catholic church property in these Islands has recently been lucidly considered in Barlin *vs*. Ramirez[1] (5 Off. Gaz., 130).

Whatever may have been his relation to the cofmdia, it is plain the bishop held this fund for its benefit as administrator, and as such made the loan. His functions as administrator passed to his successor in ecclesiastical office. We consider that it is not open to the defendant, when the day of payment has come, to challenge the right which he did not question at the time of borrowing. From the Roman Catholic bishop of Nueva Segovia he took the money, and to the Roman Catholic bishop of Nueva Segovia he must repay it, whatever may have been the title under which the latter held the funds of the *cofradia*.

The judgment appealed from was taken upon default of the defendant to serve his answer after his demurrer had been overruled. He neglected to except to the order overruling the

demurrer, of which he ivas notified on the 7th of January. Under rule 9 of the Courts of First Instance he was bound within five days thereafter to serve his answer, which, in fact, he duly made out and verified on January 12. Disregarding the rule, however, he did not attempt to serve it until the 2d day of March, when he deposited it in the post-office at Laoag, expecting it to be received at Vigan before the opening of the term of court on the 7th of that month. It Avas in some way delayed, reaching the clerk only on the 13th, and in the meantime judgment against him had been entered by default. He moved for a new trial under subsection 1 of section 145 of the Code of Civil Procedure on the ground of accident or surprise. This motion might have been granted had the delay in the post-office been the only cause of the nonarrival of the answer, but the defendant has offered no excuse for his long neglect to serve it for six weeks after the expiration of the legal time, and his laches bar him from relief.

The judge directed judgment for the plaintiff, without specifying Philippine or other currency. It is claimed by the defendant that evidence should have been received as to the value in Philippine money of the currency loaned, as provided in section 3 of Act No. 1045.

In view of the decision of this court in Gaspar *vs*. Molina[(1)] (3 Off. Gaz., 651), it would be unprofitable to determine whether soot ion 3 of Act No. 1045 applies to a contract not in terms expressly providing' for payment in any particular kind of currency. Accepting that decision without further discussion we must enforce the rule of *stare decisis*. It does not, however, follow that the trial judge in this case committed an error. By the word "pesos" in the judgment of the court below must be underwood "pesos" in the established currency of this country at the time when it was rendered. Moreover, the judgment is valid on its face and the defendant not having moved for a new trial, on the ground that it was against the weight of evidence, we must assume that the proofs were sufficient to justify it.

The judgment of the court below is affirmed with costs against the defendant. After expiration of twenty days lot judgment be entered in accordance herewith and ten days thereafter let the record be remanded to the court below for proper action. So ordered.

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

DISSENTING

CARSON, J.:

I dissent.

I agree with the foregoing decision, except in so far as it seems to hold that when a judgment is rendered in "pesos" it must in all cases and at all events be interpreted to mean pesos Philippine currency. While this may be tin1 general rule, it would appear that when the findings and judgment of the trial court clearly indicate that tlie pesos contemplated (set out) in the judgment are pesos of some other denomination—be it Mexican, Spanish, Brazilian, or Chinese—this court has no right to interpret the judgment so as to give it a wholly different meaning from that intended by the court which pronounced it.

In this case, long before the new Philippine currency came into existence, a large sum of money in *plata* (the then local currency) was loaned at (5 per cent interest. The decision of the trial court, after setting out this fact, concludes by giving judgment for the exact number of pesos loaned with 6 per cent interest. No evidence was taken to ascertain the relative value of pesos of the class loaned and pesos Philippine currency, and the trial court made no finding on this point, but it is of public and universal knowledge that since the introduction of the new Philippine currency this relative price has been continually fluctuating, and that at the date of the demand as well as at the date of judgment there was a marked difference in the market value of the pesos of the class loaned and pesos Philippine currency. Under these circumstances, I think that there can he no doubt that the pesos mentioned in the disposing part of the judgment of the trial court were of the same class as those mentioned in the decision and findings and the original contract, and not pesos Philippine currency.

I think the cause should he sent back for the taking of further evidence as to the relative value of the *pesos de plata* set out in the contract and pesos Philippine currency, with instructions to the lower court to render judgment accordingly.

---

[1] Page 41, post.

(1) 5 Phil. Rep., 197.

Date created: May 05, 2014