

7 Phil. 733

[G.R. No. 3262. March 11, 1907]

**SATURNINA BAUTISTA, PLAINTIFF AND APPELLEE, VS. SANTIAGO CALIXTO,
DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

In October, 1904, the defendant executed a written obligation whereby he promised to pay to the order of the plaintiff, six months after date, P9,000. This obligation was given in consideration of the surrender by the plaintiff to the defendant of another obligation for P10,000, dated the 6th of August, 1904, and signed by Marcaida & Co. The defendant was a partner in this firm. No part of this P9,000 has been paid.

The foregoing facts are established by a preponderance of evidence. Such evidence shows that the obligation for P9,000, although it bears the date of the 4th of January, 1898, was executed in October, 1904. In view of these facts, the two defenses made by the appellant, namely, want of consideration and the statute of limitations can not be sustained.

The court below, however, did not limit itself to the obligation for P9,000, but ordered judgment against the defendant for the interest on P10,000 for a part of the time after January 4, 1898. The court found that in 1894 the plaintiff delivered P10,000 to the defendant for safe-keeping for five or six days; that she was induced to make such deposit by the statements made by the defendant and others that the money was liable to be stolen if she kept it in her house; that when she asked for the return of the money, within five or six days, the defendant told her that he had invested it in the firm of Marcaida & Co., and gave her the obligation for P10,000 above referred to; that she could not read, and knew nothing about Marcaida & Co., and did not understand that they were her debtors, but always understood and believed that the defendant himself was her debtor. The testimony of the plaintiff supported those findings. When the defendant testified as a witness in his own behalf, he was asked by his counsel to state the facts in connection with the original delivery

of the P10,000 to him. This evidence was ruled out by the court on the ground that it was immaterial and he was not permitted by that court to give his version of the transaction. Under these circumstances the judgment of the court below in its entirety can not, in any event, be sustained. Before the defendant can be made liable for the original indebtedness of P10,000 he must have an opportunity to testify as to what that transaction really was. The ruling of the court below deprived him of that opportunity, and notwithstanding the court's view that the testimony was immaterial, it afterwards found the facts as testified to by the plaintiff, which facts the defendant was given no opportunity to contradict.

The allowance by the court of interest on P10,000 from January 4, 1898, was based on the theory that the defendant was liable for the original loan made to Marcaida & Co.

If these errors committed by the court below relating to the admission of testimony were prejudicial, a new trial must be had.

We are satisfied, however, from an examination of the whole case, that all of the transactions which took place prior to October, 1904, were immaterial, except for the purpose of showing a consideration for the obligation executed at that time by the defendant. This is the view which seems to be taken by the appellee in his brief in this court. The evidence shows that whatever obligation rested upon the defendant by virtue of the original delivery to him of the P10,000 was merged in the new obligation of P9,000, and that, after the execution of the latter, it expressed the only liability which rested upon him in favor of the plaintiff.

That liability must be limited by the terms of that document, considering that it was executed in October, 1904. It does not bear interest by its terms. Interest can be recovered, then, only from the commencement of the action, there being no evidence in the case of any demand for payment made prior to that time.

The judgment of the court below is reversed, and judgment is entered for the plaintiff for the sum of P9,000, Philippine currency, with interest thereon at 6 per cent per annum from the 9th day of October, 1905, and the costs of the Court of First Instance. No costs will be allowed to either party in this court. After the expiration of twenty days let judgment be entered in accordance herewith and ten days thereafter the record be remanded to the court from whence it came for proper action. So ordered.

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

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