

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, PLAINTIFF AND APPELLEE, VS. ALFREDO JEANJAQUET, DEFENDANT AND APPELLANT.

G.R. No. L-4603. December 05, 1908

Ponente: TORRES, J.

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TORRES, J.:

On the 29th of August, 1900, the representative of the Compañia General de Tabacos de Filipinas in Iloilo presented a written complaint against Alfredo Jeanjaquet, alleging that, according to the statement of accounts made up on August 3, 1906, the latter was indebted to the said company in the sum of P55,829.15, lawful currency, the recovery of which had not been effected notwithstanding the demands made therefor; that on the 25th of February, 1904, the defendant executed a mortgage in due form in favor of the plaintiff company, for the purpose of securing his indebtedness at that time and the interest thereupon by the following property: (1) the leasehold of the hacienda named "Providencia," situated in Palampas, town of San Carlos, Occidental Negros, owned by Maria Gomez under the guardianship of Gregorio Gamboa, the area and boundaries of which are described in the complaint, with the notice that the annual rental thereof was P800, and that its duration, for the effects of the mortgage, ran from the aforesaid date of its execution until the month of August, 1908, prorogable for a further period of three years; (2) the farmhouse, warehouses, machinery, furnaces, tramway, sugar, growing sugar cane, and cattle upon the said hacienda; (3) everything that existed within the area of the said hacienda at the time when the public instrument was executed; (4) all the works and improvements which the defendant debtor may have carried out within the area thereof; and (5) particularly specifying his personal property; that the sum of P3,000 was allowed by the defendant and assigned in the instrument for expenses, costs, and lawyer's fees in case the recovery of the debt had to be enforced by means of judicial proceedings; that the defendant was about to dispose of his property with intent to defraud his creditor, the plaintiff, for which reason the plaintiff prayed that judgment be entered in his favor for the amount mentioned, with the agreed interest thereon until full payment should be made, and in case of insolvency that the mortgage be foreclosed in accordance with the law; that the defendant be further sentenced to pay the P3,000 which he voluntarily bound himself to pay; and that the temporary attachment of the property of the defendant be ordered under the provisions of section 424 of the Code of Civil Procedure.

By another petition of the 5th of September of the same year the plaintiff sought the court's permission to amend paragraph 7 of his original complaint so as to read: that the defendant has transferred and is about to transfer his property with intent to defraud his creditor, the plaintiff, and in order to defraud him the said defendant has concealed and placed his property in the name of another person.

The defendant being summoned, demurred to the preceding complaint, alleging that it is therein asserted that the defendant is indebted to the plaintiff, but that the date on which the obligation was demandable was not set forth, for which reason the complaint is defective and the facts therein stated do not constitute a cause of action.

By a writing dated October 2, 1906, the plaintiff sought the court's permission to amend paragraph 4 of his complaint so as to read: That the defendant's obligation became due on the 30th of June, 1906, on which date the debtor was under obligation to settle his debt, but that he has not done so in spite of the demands which the plaintiff has made upon him. On the 27th of November the prayer was granted by the court below, the amended complaint was forthwith admitted and made of record, to which the defendant excepted. On the 1st of December of the said year the defendant demurred to the complaint on the ground that it was not prepared in accordance with the provisions of section 90 of the Code of Civil Procedure, and because the facts alleged therein do not constitute a cause of fiction. The court below overruled the demurrer on the 1st of December, and ordered the defendant to answer to the complaint within the time prescribed by the rules of the court; to this decision the defendant excepted.

On the 3d of December of said year, the defendant made a written answer to the complaint denying each and every allegation made by the plaintiff, and asking that the complaint be dismissed with costs.

At the trial of the case evidence was adduced by the plaintiff, and his exhibits were made of record. The court below rendered judgment on the 20th of September, 1907, in favor of the plaintiff, sentencing the defendant to pay the sum of P55,829.15, and interest as stipulated, until full payment was made, and further adjudicated to the plaintiff the sum of P2,500 for costs and expenses of the litigation, ordering the defendant to pay to the clerk of the court the said amounts during or before the next session of court, and, in case of default, that the property mortgaged by the defendant as shown by the document marked Exhibit A, be sold.

The defendant, upon being informed of the above decision, moved for a new trial; his motion being overruled by the court below, he excepted in writing to the said judgment and to the overruling of the motion for a new trial, and presented the corresponding bill of exceptions, which was approved.

The plaintiff demands payment of P55,829.15 with interest, together with the sum stipulated to cover the amount of costs and expenses of litigation; the defendant limits himself to denying every thing alleged by the plaintiff, and prays for the dismissal of the complaint, with costs to the adverse party.

The certitude and legality of the indebtedness is incontrovertible, because the greater portion of it, that is, the sum of P48,974, is set out in the public instrument which the contracting parties executed on the 25th of February, 1904, and the difference between that amount and P55,829.15, that is, P7,855.15, is entered in the accounts of which abstracts were exhibited by the plaintiff under letters C and E, with the particularity that the defendant debtor expressed his conformity with the balance outstanding in the first account marked C; and with respect to the second account marked E, the debtor has agreed that the debit balance of his account with the Compañía General de Tabacos in future be converted into Philippine currency at par. This statement was contained in his letter of October 11, 1904, and was admitted by him to be in answer to the letter that was addressed to him on the 28th of August previous, in which was inclosed the original copy or an extract of his account of August 1, 1907, the duplicate of which appears as Exhibit E, and conclusively proves the certainty and legality of the balance appearing therein, and which, with the interest due thereon, is the amount claimed in the complaint.

Notwithstanding the unreasonable and unfounded denial of the defendant, the reality and existence of his debt is fully proven. The defendant has not even attempted to impugn the balances which appear against him in the two aforesaid accounts marked as Exhibits C and E; and there can be no question therefore as to the right of the creditor to demand the settlement of the considerable amount due him.

The fact that the obligation was not recorded in the registry of property, for the reason stated by the registrar at the foot of the document, is no cause for its nullity, nor does it deprive it of the efficiency of an instrument executed in legal form by the contracting parties before a notary public. The credit may not be hypothecary, but there is no

question as to its being invested with the character of a public instrument and as such it is per se sufficient to prove everything therein stipulated between the contracting parties, and particularly the debt, to the payment of which the debtor is unquestionably bound, so long as he does not furnish proof that he has liquidated it.

Certain it is that, in order that the mortgage may be validly constituted, article 1875 of the Civil Code exacts as an indispensable requisite that the document wherein it is set forth shall be recorded in the registry of property, but there is no legal provision holding that through the lack of such registration, and because the mortgage agreed upon between the contracting parties is not constituted in due form, the validity or efficiency of the principal obligation is thereby affected, and that the payment of the debt actually and legally contracted can not be claimed because the credit was unsupported by the security offered by the debtor or exacted by the holder of the credit, and that therefore, it could not be enforced under the provisions of sections 254 to 201 of the Code of Civil Procedure, although the creditor could rightfully have claimed the payment of his credit in an ordinary action under the provisions of section 80 and others of the said code.

The proceedings followed in consequence of the complaint by the Compañia General de Tabacos against Alfredo Jeanjaquet were similar to those of an ordinary action; written complaint and an answer thereto were presented; petitions for the amendment of certain paragraphs of the complaint and demurrers were decided; evidence was adduced at a public hearing, and final judgment, which was appealed from, was rendered ordering the payment of the sum claimed, with the stipulated interest thereon, together with the sum of P2,500 for costs and expenses of litigation as agreed between the parties, and to which the debtor bound himself in the said instrument; and, although the latter part of said judgment, ordering payment of the amounts sued for and the sale of the property offered on mortgage, but not actually mortgaged under the law, can not be sustained, it does not render such judgment null and void; the execution and enforcement of the judgment shall be effected in accordance with the proceedings established by law for the execution, por la via, de apremio, of judgments rendered in ordinary actions.

As to the amendments made by the plaintiff with authority of the court, to certain paragraphs of his complaint, and the overruling by the latter of the exceptions of the defendant, they are in accordance with the law, inasmuch as the said amendments do not affect the soundness of the whole of the complaint, but only of certain paragraphs thereof; and furthermore they are not opposed to the law of procedure.

With respect to the fifth alleged error, relative to the fact that the court below admitted the documents exhibited by the plaintiff to prove the debt which is the subject of the complaint, without any of them being provided with the stamp required by the Internal Revenue Law, and that for this reason, according to the petitioner, if the receipts and accounts presented by the plaintiff and unlawfully admitted by the court are discarded, there remains nothing in the record to prove that the defendant was indebted to the Compañia General de Tabacos on the date on which judgment for the amount therein stated was rendered, it should be noted that the total indebtedness of the defendant is, as has already been stated, demonstrated by the public instrument marked Exhibit A, and by the abstracts of accounts from the books of the Compañia General de Tabacos, offered in evidence as Exhibits C and E; and that the said Internal Revenue Law of July 2, 1904, Act No. 1189, in so far as the affixing of stamps is concerned, went into force on the 1st of January, 1905, and does not require merchants to affix stamps to their books, or to letters and copies of accounts taken from such books; for this reason the court below did not err in admitting without internal-revenue stamps, the instrument executed prior to the enforcement of the said law, nor the two extracts of accounts C and E taken from the books, together with the letters marked B and D which the debtor has acknowledged.

The fact that the debtor, Jeanjaquet, did not affix the necessary stamps to the vales marked F, G, H, I, J, K, L, M, N, O, P, Q, and R, in no way affects the legality of the credit at bar, nor the validity of the judgment, for the

reason before set forth, that the certainty of the indebtedness is proven by the instrument .and the extracts of accounts above referred to.

In view of the foregoing considerations, it is our opinion that the judgment appealed from should be affirmed with costs against the appellant, provided, however, that the part of the judgment ordering the payment of the amounts during or before the next session of the court below, and in case of default therein, that the property said to be mortgaged under the instrument Exhibit A be sold, shall be set aside. So ordered.

Arellano, C. J., Mapa, Carson, Willard, and Tracey, JJ., concur.

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