

JUAN ALVAREZ, PLAINTIFF AND APPELLEE, VS. ANGEL VARGAS, DEFENDANT AND APPELLANT.

G.R. No. 10545. September 23, 1916

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of Iloilo for the sum of P1,000 with interest from the 5th day of March, 1914, at the rate of 12 per cent per annum until paid, and costs.

It appears that on the 16th of February, 1914, the appellee, through his clerk Ti Jiaco, delivered the following letter or order to the appellant:

"February 5, 1914.

"Mr. D. ANGEL VARGAS, Iloilo.

"DEAR UNCLE: Be poor enough to pay to the bearer, the Chinaman Juan Alvarez, one thousand pesos, Philippine currency, value received, twelve days after sight.

"I ask you to pay said sum on the day it is due and charge the same to my account.

"Your nephew,

"V. ALVAREZ."

The appellant, upon the request of said Ti Jiaco, indorsed the order as follows:

"Accepted this 16th day of February, 1914.

"ANGEL VARGAS."

The order was presented to the appellant for collection on the 5th of March, 1914. Payment was not made in accordance with the terms thereof, but the appellant wrote the following indorsement thereon:

"The acceptance of the foregoing mandatory letter is postponed until the 30th day of March, 1914, in view of the telegram of the drawer, Mr. Vicente Alvarez, asking for such postponement.

"Iloilo, 5th of March, 1914.

"ANGEL VARGAS."

"Note.—Without prejudice to the payment of the interest during the postponement at the rate of one peso a month on each hundred pesos.

"ANGEL VARGAS."

The appellant having refused to pay the order of the 5th of February, 1914, in accordance with his acceptance of the 16th of the same month, or in accordance with the postponement made on the 5th of March, 1914, this action

was begun for the recovery thereof.

The facts in the case are admitted, the only defense being that the order in question is not a negotiable instrument and that there was no consideration for the indorsement or acceptance sued on, and that, although the appellant agreed to make the payment, he is not legally bound to do so.

We are of the opinion that the judgment must be affirmed. We do not enter into a discussion of the question whether or not the order is a negotiable instrument. We base our decision upon the ground that, even though a lack of consideration would be a defense to the instrument, that defense has not been established. Every promise in writing to pay money is presumed to have been made for a valuable consideration until the contrary is proved. The appellant not only agreed to pay the sum stated in the so-called letter but having on the faith of his agreement to pay, obtained an extension of time within which the payment should have been made, and having made such agreement in writing, it was incumbent on him, if there was a lack of consideration, to establish that fact on the trial. All that the plaintiff had to do to establish his cause of action against the defendant was to put in evidence the written promise to pay and then show that the payment had not been made in accordance with the promise. The introduction of that evidence placed on the defendant, if he desired and was able to escape responsibility, the necessity of proving a lack of consideration for the promise made. If he failed to prove his allegations in that regard the plaintiff was entitled to a judgment.

An examination of the record shows not only that the plaintiff established his cause of action by putting in evidence the defendant's written promise to pay and by proving that the payment had not been made as agreed, but, in addition, defendant's counsel admitted that the order was presented to the defendant, that he accepted it and agreed to pay the amount specified therein, and that he had failed to pay it. On the other hand, the defendant failed to establish his defense of lack of consideration. Indeed, he did not attempt to establish it. He offered no evidence; nor was anything brought out on the cross-examination of plaintiff's witness which established or tended to establish the defense alleged. The only question asked by counsel for the defendant which even remotely refers to the defense of lack of consideration was one directed to the plaintiff's only witness Ti Jiaco. The question and answer are as follows:

"Q. What did Mr. Vargas get in exchange for that letter from you?—A. He did not get anything from me."

The evidence elicited by this question is very far from establishing a lack of consideration. The witness to whom the question was put was a clerk of the plaintiff and, as would be expected, was not concerned in the transaction. His statement that the defendant received nothing from him for signing the letter has, therefore, no significance in the case.

No objection having been made in this court to the form of the judgment, it is affirmed, with costs against the appellant. So ordered.

Torres, Johnson, Carson, Trent, and Araullo, JJ., concur.

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