

IN RE GUARDIANSHIP OF THE MINORS FELIPE AND ANTONIO TAMBOCO, TAN ENG AND TAN LINJO. DONATO CHUATONGCO, APPELLANT.

G.R. No. 10900. October 08, 1917

Ponente: STREET, J.

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STREET, J.:

Upon January 1, 1910, Justina Plaza of Surigao, Surigao, widow of Tamboco, in the exercise of her functions as guardian of the person and property of the minor children of her deceased husband, delivered to the mercantile firm of Quian Sieng & Co., the sum of P2,241.32, belonging to said minors. For the sum of money so delivered, the appellant Donato Chuatongco, as manager of said firm, executed and delivered to Justina Plaza a receipt of the following tenor:

"I hereby certify that the mercantile firm Quian Sieng & Co. has received from Justina Plaza, widow of Tamboco, in her capacity of guardian of the persons and property of the minor children of said Tamboco, the sum of two thousand, two hundred and forty-one pesos and thirty-two centavos owing to the said estate, of which sum said firm will render an account to the interested party [Justina Plaza] as soon as she so requires.

"Surigao, January 1, 1910.

(Sgd.) "DONATO CHUATONGCO."

Upon November 7, 1914, the judge of the Court of First Instance of the Province of Surigao, in the exercise of the jurisdiction of that court over the guardianship of said minors, made an order requiring Donato Chuatongco to pay the money which he had received from Justina Plaza into the Postal Savings Bank or the Agricultural Bank in the name of the minors referred to, and also requiring him, in case of the impossibility of making such payment, to provide security for the payment thereof by giving a duly registered and approved mortgage upon real property of the value of not less than P3,000.

Chuatongco seems to have been unable either to find or furnish the security required of him, and he therefore did not obey the order of the court. Accordingly after a certain period of indulgence, the court made an order upon March 27, 1915, to the effect that the said Chuatongco should be arrested and committed to jail until he should comply with said order, or until he should be put at liberty according to law. The accused excepted to said order, gave bail pending appeal to this court, and now assigns error to the action of the lower court in making the order in question.

We are of the opinion that the order appealed from was unauthorized. It is true that section 611 of the Code of Civil Procedure gives a court exercising probate jurisdiction the power to commit a person to jail for failure to obey its order, sentence, or decree; but it is declared in the proviso to the same section that nothing therein shall be construed to authorize imprisonment for ordinary debt.

It is evident that the receipt executed by Donato Chuatongco in favor of Justina Plaza is a mere acknowledgment

of indebtedness, and that the delivery of the money to him constituted a loan. The transaction in question therefore created an ordinary debt, such as is contemplated in the proviso to section 611 of the Code of Civil Procedure. That the transaction in question does not constitute a technical deposit is also apparent from the circumstance that it was agreed between the parties that the firm of Quian Sieng & Co. should pay interest at the rate of P100 per annum; from which it is manifest that the firm had the right to utilize the money in its business, as was in fact done. This constitutes a loan. (*Garcia Gavieres vs. Pardo de Tavera*, 1 Phil. Rep., 71; *Baretto vs. Reyes*, 10 Phil. Rep., 489.) The agreement for the payment of interest in this case was not expressed in the receipt, but this is not material. Furthermore, if the money was used by the firm with the consent of Justina Plaza, as appears to have been the case, the obligation was converted into a loan under article 1768 of the Civil Code even supposing that it had originally been a deposit.

It follows from the foregoing opinion that the order of the court below, dated March 27, 1915, committing the appellant, Donato Chuatongco, to jail for failure to comply with its prior order dated November 7, 1914, was improper and should be vacated, with costs of this instance de officio. So ordered.

Arellano, C. J., Johnson, Carson, Araullo, and Malcolm, JJ., concur.

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