

BEHN, MEYER & CO., PLAINTIFF AND APPELLEE, VS. IRA L. DAVIS AND FRANCISCO GONZALEZ, DEFENDANTS. FRANCISCO GONZALEZ, APPELLANT.*G.R. No. 11354. January 19, 1918*

Ponente: STREET, J.

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During the years 1911 and 1912, the plaintiff, Behn, Meyer & Co., delivered to Ira L. Davis, of Rosales, Province of Pangasinan, on consignment to him as agent, candles and petroleum of the value of P25,556.86. Of this amount said Davis has failed to account for the sum of P3,097.23 which is still due, with interest. On or before the inception of business relations between these parties, the defendant, Francisco Gonzalez, entered into a written contract with the plaintiff whereby he became responsible to the plaintiff, as guarantor, for the payment of the value of the effects received by said Davis as agent and consignee. This contract was evidenced by a joint and several bond, in the sum of P5,000, signed by both Davis and Gonzalez the same having been duly delivered by Davis to the plaintiff and accepted by the latter.

This action was instituted upon said bond by the plaintiff against both Davis and Gonzalez to recover the balance alleged to be due from Davis upon account. There is no dispute over the amount due to the plaintiff from Davis; and judgment was given by the Court of First Instance against both Davis and Gonzalez. From this judgment only the latter party has appealed.

The liability of the appellant Gonzalez arises exclusively from his written contract of guaranty, or "bond," as it is called in the agreed statement of facts. This document was not introduced in evidence at the trial, as it had apparently been lost; and no formal secondary evidence of its contents was introduced by the plaintiff, as is required by section 335 of the Code of Civil Procedure. It is accordingly insisted for the appellant that the obligation upon which the appellant's liability is supposed to be based has not been proved. The reply to this is that in the agreed statement of facts, the execution and delivery of the bond in question is admitted. This of course dispenses with the necessity of any proof as to the execution and delivery of the bond; and the only question which can arise is whether the admissions as to the character of the contract in the agreed statement of facts is sufficient to show the existence of the liability alleged to have been created thereby.

So far as is here material to be noted the statement in question is in the following words: "Previous to beginning business between the plaintiff Behn, Meyer & Co., Ltd., and the defendant Ira L. Davis, the defendant, Ira L. Davis, delivered to the plaintiff a joint and several bond, in the sum of P5,000, signed by Francisco Gonzalez and himself."

This statement is dangerously vague and incomplete, considered as the foundation of the liability of the appellant Gonzalez as guarantor for the debt of the defendant Davis. Nevertheless, we are of the opinion that judgment was properly rendered against both. The admission contained in this agreed statement must be construed in connection with the allegation in the complaint that before the inception of the business Gonzalez had agreed in writing to

guarantee the account of Davis and be responsible for the value of the effects received by the latter. That the bond was a written document, and as such formally sufficient, under section 335 (2) of the Code of Civil Procedure, to bind Gonzalez to answer for the debt or default of Davis must be obvious from the nature of the admission contained in the agreed statement; for the acts of signing and delivering the bond necessarily import that it was in writing. It is no less obvious from the execution and delivery of the bond by Gonzalez and its acceptance by the plaintiff that the parties intended to enter into contractual relations with each other, and that Gonzalez became bound as guarantor in the manner alleged in the complaint.

The agreed statement of facts does not definitely show what was the cause, or consideration, of the contract on the part of Gonzalez, though it is evidently to be collected from the circumstances of the case that Gonzalez agreed to be responsible in consideration of the goods delivered, or to be delivered, by the plaintiff to Davis. The statement of the cause, or consideration, of the contract is, however, unnecessary; as under article 1277 of the Civil Code the existence of a licit cause is presumed, until the debtor proves the contrary. Similarly, under subsection 35 of section 334 of the Code of Civil Procedure, a consideration is presumed from the fact that the contract was reduced to writing. This presumption is supported by other evidence of record, since it is stated in the testimony of Davis that the guaranty was executed in favor of the plaintiff for the monies received by Davis, as agent. We are, therefore, of the opinion that the liability of the appellant is fully made out.

Section 4 of the English Statute of Frauds, from which section 335 of our Code of Civil Procedure is ultimately derived, contains the following words: "No action shall be brought * * * whereby to charge the defendant upon any special promise to answer for the debt, default, or miscarriage of another person; * * * unless the agreement upon which such action shall be brought, or some memorandum, or note thereof, shall be in writing, etc." A question much debated in the English and American courts has arisen upon this provision, which is this: Is the word "agreement" as here used, to be understood as comprehending all the elements necessary to make a valid contract? In other words, must the writing or memorandum of the agreement show the consideration for the contract as well as the promise? In the leading English case of *Wain vs. Warlters* (102 Eng. Rep., 973; 5 East, 10), it was held that the writing must contain evidence not only of the promise but of the consideration which makes it valid. This decision of the English court has had very inconvenient results, and the conclusion therein reached has been rejected by the majority of the American courts. (*D'Wolf vs. Rabaud*, 1 Pet. [U.S.], 476; *Sage vs. Wilcox*, 6 Conn., 81.) In England itself the rule stated in *Wain vs. Warlters*, supra, was found to be too rigorous and was relaxed by statute so as to dispense with the requirement of a statement of the consideration in this class of cases. In many American States the question has been set at rest by a more careful wording of the statute, which removes the necessity for a statement of the consideration. As already shown, this difficulty cannot arise in this jurisdiction as by the provisions of the Civil Code and Code of Civil Procedure, above cited, there is a presumption that the contract was supported by a sufficient consideration.

From what has been said it follows that the judgment entered in the lower court for the sum of P3,097.23, with interest from March 17, 1914, in favor of Behn, Meyer & Co., must be affirmed with costs of this instance against the appellant. So ordered.

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

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