

**THE BANK OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE,
VS. LAGUNA COCOANUT OIL COMPANY AND FIDELITY & SURETY
COMPANY OF THE PHILIPPINE ISLANDS, DEFENDANTS.
FIDELITY & SURET...**

G.R. No. 23252. September 24, 1925

Ponente: OSTRAND, J.

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OSTRAND, J.:

On April 26, 1920, the Laguna Coconut Oil Company executed the following promissory note in favor of the Philippine Vegetable Oil Company:

"P50,000.00

"One month after date we promise to pay to the Philippine Vegetable Oil Company, Inc., or order at City of Manila, Philippine Islands, the sum of fifty thousand pesos (P50,000), Philippine currency; value received.

"In case of non-payment of this note at maturity, we are to pay interest at the rate of nine per cent (9%) per annum on the said amount and the further sum of P5,000 in full, without any deduction as and for costs, expenses and attorneys' fees for collection whether actually incurred or not.

"Manila, Philippine Islands, April 26, 1920.

"LAGUNA COCOANUT OIL CO.

"By BALDOMERO COSME

"President"

On May 3 of the same year, the defendant and appellant Fidelity & Surety Company of the Philippine Islands made the following notation on the note:

"For value received, we hereby obligate ourselves to hold the Laguna Coconut Oil Co. harmless against loss for having discounted the foregoing note at the value stated therein."

On May 4 the payee of the note, the Philippine Vegetable Oil Company, endorsed it in blank and delivered it to the plaintiff, who paid the Philippine Vegetable Oil Company the sum of P50,000 therefor. After maturity of the note, demand for its payment was made on the Laguna Coconut Oil Company, the Philippine Vegetable Oil Company and the Fidelity & Surety Company of the Philippine Islands, all of whom refused to pay, the Laguna Coconut Oil Company being admittedly insolvent.

On August 25, 1922, the Bank of the Philippine Islands brought the present action against the Laguna Coconut

Oil Company and the Fidelity & Surety Company of the Philippine Islands for the recovery of the amount of the note. In the original complaint the plaintiff pleaded the note with its indorsements by copy and alleged that the Fidelity & Surety Company of the Philippine Islands by having undertaken to hold the Laguna Cocomanut Oil Company harmless for having discounted the note, contracted the obligation to pay said note on behalf of the Laguna Cocomanut Oil Company and to be surety for the latter. A demurrer to the complaint was sustained and the plaintiff thereupon filed an amended complaint which in translation reads as follows:

"Comes now the plaintiff through the undersigned attorneys and files complaint against said defendants, and for cause of action, alleges:

"First. That the plaintiff, as well as the defendants, is a corporation duly organized and operating under the laws of these Islands, the former engaged in banking business, while the first of the defendants is engaged in the manufacture of oil, and the second in the suretyship business, all of them with central office in the City of Manila: the first on Plaza de Cervantes; the Laguna Cocomanut Oil Co. in Filipinas Building, office of Mr. Mauricio Cruz; and the Fidelity & Surety Co. of the Philippine Islands in the Monte de Piedad Building, Plaza Goiti.

"Second. That on April 26, 1920, the Laguna Cocomanut Oil Co., duly represented by its president Baldomero Cosme, executed a note in favor of the Philippine Vegetable Oil Co., Inc., for the sum of P50,000 payable one month after the date of said note, binding itself in case of non-payment of said note at its maturity, to pay interest at the rate of 9 per cent per annum upon said sum, and, in addition, the sum of P5,000, as costs, expenses and attorneys' fees, whether or not they may have really been incurred; and that on or before May 26, 1920, said note was discounted by the Philippine Vegetable Oil Co., Inc., and endorsed in blank to plaintiff, through its treasurer Chas. A. Ayton duly authorized to that effect, in consideration of the sum of P50,000 which was paid him by the plaintiff.

"Third. That the Fidelity & Surety Co. of the Philippine Islands bound itself to pay to any holder of said note its value, in case the Laguna Cocomanut Oil Co. should fail to do so.

"Fourth. That notwithstanding the demands made upon the Laguna Cocomanut Oil Co., as well as on the Fidelity & Surety Co. of the Philippine Islands, for the payment of said note with interest thereon at the rate of 9 per cent from May 26, 1920, none of them has paid any amount whatsoever on account of either the interest or the principal of said note.

"Wherefore, the plaintiff prays the court that judgment be rendered, sentencing the Laguna Cocomanut Oil Co. to pay the P50,000 value of said note, with interest thereon at the rate of 9 per cent per annum from May 26, 1920, with legal interest upon the interest due from the filing of this complaint until full payment of said interests and principal, and, in addition, the sum of P5,000 for costs, expenses and attorneys' fees; and in case the Laguna Cocomanut Oil Co. should fail to pay the amounts claimed, that the Fidelity & Surety Co. of the Philippine Islands be sentenced to pay them. The plaintiff prays, furthermore, for any such other relief as may be just and equitable."

The amended complaint was demurred to by the defendant, the Fidelity & Surety Company. The demurrer was sustained by the court below, but on appeal to this court the decision was reversed and the case remanded for trial upon the merits.[1] The Fidelity & Surety Company thereupon filed an answer admitting the corporate existence of the parties and the due execution of the note, and that it was unpaid, but denied all other allegations in the complaint. The Laguna Cocomanut Oil Company made no defense. At the trial, the case was submitted to the court upon the following stipulation of facts:

"First. That on April 26, 1920, the Laguna Cocomanut Oil Co., a corporation organized and existing under the laws of these Islands, thru its president Baldomero Cosme duly authorized to that effect, executed a note in favor of the Philippine Vegetable Oil Company, another corporation established and doing business in

accordance with the laws of these Islands, a promissory note in words and figures following:

(Here follows copy of the note.)

"Second. That the Fidelity & Surety Co. of the Philippine Islands is a surety corporation organized and operating under the laws of these Islands, duly represented by its vice-president J. Elmer Delaney and its secretary-treasurer A. D. Tanner, stated the following at the bottom of said note:

(Copy of the notation of the Fidelity & Surety Company's guarantee as hereinbefore quoted.)

"Third. That on or about May 4, 1920, the Philippine Vegetable Oil Company duly represented by its treasurer Charles D. Ayton, endorsed said note in blank to the plaintiff, another corporation organized and operating under the laws of these Islands, in consideration of the sum of P50,000 which was paid it by the plaintiff, signing on the back of said note as follows: 'PHILIPPINE VEGETABLE OIL CO., INC. BY CHAS. D. AYTON, Treasurer:

"Fourth. That neither the Philippine Vegetable Oil Co., nor the Laguna Coconut Oil Company nor the Fidelity and Surety Company of the Philippine Islands has paid any part of the principal or interest of said note, notwithstanding the demand made on them for its payment.

"Fifth. That the Laguna Coconut Oil Co. has no property to make payment of said note."

Upon the pleadings and the agreed statement of facts, the trial court rendered judgment against the Fidelity & Surety Company of the Philippine Islands for the full amount of the note, with interest at the rate of 9 per cent per annum from the 26th day of May, 1920, until complete payment, and for the sum of P5,000, as costs, expenses and attorney's fees. From this judgment the Fidelity & Surety Company appeals and makes the following assignments of error:

"I. The trial court erred in holding that in the instrument Exhibit A the words 'the Bank of the Philippine Islands' should be substituted for the words 'the Laguna Coconut Oil Company.'

"II. The trial court erred in giving judgment to plaintiff against the defendant Fidelity & Surety Company of the Philippine Islands for the sum of fifty thousand pesos (P50,000), with interest at the rate of nine per cent per annum from the 26th day of May, 1920, with five thousand pesos (P5,000) as attorneys' fees.

"III. The trial court erred in overruling defendant's motion for a new trial."

In our opinion the assignments of error are well taken. The trial court based its decision on the finding of fact that a mistake had been made in the undertaking of the Fidelity & Surety Company appearing on the note, and held that the instrument should be read in part: "We hereby obligate ourselves to hold the Bank of the Philippine Islands harmless against loss" instead of: "We hereby obligate ourselves to hold the Laguna Coconut Oil Company harmless against loss." The court further said:

"It matters little that the complaint contains no allegation of the error. If by the context itself of the obligation of suretyship subscribed by the Fidelity & Surety Co. of the Philippine Islands and other facts and circumstances appearing in the stipulation of facts, such an error is shown and the true intention of the parties can be ascertained, the court cannot ignore such error and the intention of the parties, and it is its duty to enforce the obligation contracted by the Fidelity & Surety Co. of the Philippine Islands, as it may appear, after said error is corrected and the true intention of the parties ascertained. The obligation subscribed by the Fidelity & Surety Co. of the Philippine Islands having been set forth in the stipulation of facts, the court taking into account all the facts appearing in said stipulation has jurisdiction to find the true intention of the parties and give effect to the obligation according to said intention.

"In the amended complaint it was alleged that the Fidelity & Surety Co. of the Philippine Islands secured the

payment of the note to any holder thereof. This allegation undoubtedly includes the one that said corporation secured the Bank of the Philippine Islands against any loss it may suffer, in subscribing the obligation of suretyship; and if there were any variance between said allegation and the facts established by the evidence that the Fidelity & Surety Co. of the Philippine Islands, by subscribing said obligation of suretyship, secured the Bank of the Philippine Islands against any loss the latter may suffer for having discounted the note, the plaintiff may under section 109 of the Code of Civil Procedure amend that allegation to make it conform with the finding of fact made by the court."

It is evident that the court below underestimated the importance of pleading the supposed mistake in the complaint. The judgment as it stands clearly involves a reformation of the contract of guaranty and it is elementary that the facts upon which relief by reformation is sought must be put in issue by the pleadings. Ruling Case Law states the rule as follows:

"A court of equity cannot reform an instrument except on allegations which make out a case for the equitable remedy asked. The allegations must show that the instrument sought to be reformed fails to express the real agreement or transaction between the parties by reason of their mutual mistake or on account of fraud of one of them or fraud or inequitable condition on one side and mistake on the other. * * *" (23 Ruling Case Law, page 360.) And section 109 of the Code of Civil Procedure does not alter this rule. In the case of Ramirez vs. Orientalist Co. and Fernandez, (38 Phil., 634, 646), this court said:

"It is true that it is declared in section 109 of the Code of Civil Procedure that immaterial variances between the allegations of a pleading and the proof shall be disregarded and the facts shall be found according to the evidence. The same section, however, recognizes the necessity for an amendment of the pleadings, in all cases where the variance is substantial, to bring them into conformity with the facts proved. That section has, in our opinion, by no means abrogated the general and fundamental principle that relief can only be granted upon matters which are put in issue by the pleadings. A judgment must be in conformity with the case made in the pleadings and established by the proof, and relief cannot be granted that is substantially inconsistent with either. A party can no more succeed upon a case proved but not alleged than upon a case alleged but not proved. This rule, of course, operates with like effect upon both parties, and applies equally to the defendant's special defense as to the plaintiff's cause of action."

It is true, as asserted by counsel for the appellee, that there are cases where courts have proceeded as a mere matter of construction of a contract to substitute the real name of a party for that of a party erroneously written, but in all of these cases it will be found that the contracts themselves left no possible doubt as to who the real parties were and as to the real intent of the document. Perhaps the best example of this class of cases and the most favorable to the appellee's contention is that of Richmond vs. Woodward (32 Vt., 833), cited in the appellee's brief. In that case the defendant, Woodward, as principal, and the other defendants as sureties, executed to the plaintiff, described therein as Sheriff of Windsor County, a bond, in the penal sum of ten thousand dollars, with the following condition: " 'The condition of the above obligation is such that, whereas, the above bounden Harvey H. Woodward, has been appointed by Lorenzo Richmond, sheriff as aforesaid, a deputy sheriff within and for the county of Windsor, and has taken a deputation to that effect. Now if the said Minot Wheeler shall at all times, save the said Lorenzo Richmond, sheriff as aforesaid, harmless from all damages, risk, liabilities, or causes of liability, in consequence of neglect, misconduct, malfeasance, or misfeasance, in the matters appertaining to the said office of sheriff, then the above obligation is void and of no effect, otherwise in full force and effect.' The name 'Minot Wheeler' occurred nowhere else in the instrument. Held that the bond should be construed the same as if the name 'Harvey H. Woodward' had been originally written therein in place of 'Minot Wheeler.'"

It will be noted that it appeared in the bond that Woodward was the deputy sheriff, that he gave the bond and that the name of the "said Minot Wheeler" did not appear elsewhere in the bond. The error was clearly a clerical one and the intent of the document could not possibly be in doubt.

Such is not the case here. The writing upon which the action is brought does not in terms show any obligation in favor of the plaintiff and the action can only be maintained upon the theory that the writing does not express the true intent of the parties. We may surmise that the guarantee in question was intended for the benefit of the party who subsequently discounted the note, but we cannot be certain. The note may have been merely an accommodation note and the guarantee may have been intended for the protection of the maker in the event of the discounting of the note or its transfer to a third party. The appellee contends that this hypothesis is negated by the fact that the words "value received" appear in the note as quoted in the stipulation of facts. But that proves nothing definitely or conclusively. Unless otherwise stated in the instrument, a negotiable promissory note implies prima facie valuable consideration moving to the maker whether the words "value received" appear in it or not. (Negotiable Instruments Law, section 24; 3 R. C. L., 927.)

An accommodation note showing on its face in express terms that it had been issued for no consideration would be of little or no use to the payee, and for that reason, if for no other, practically all accommodation notes are so drawn as to either express or imply a valuable consideration prima facie. There is therefore nothing in the note here in question to distinguish it from an ordinary accommodation note. This being so and the guarantee of the Fidelity & Surety Company by its terms being in favor of the maker of the note, there is at least a possibility that the defendant, if called upon to do so, might have been able to prove that the note was given as an accommodation to the Vegetable Oil Company. This possibility existing, the court was not justified in virtually reforming the document by mere construction without proper pleadings. In this connection it should be borne in mind that contracts of suretyship and guarantee are strictly construed in favor of the surety or guarantor.

Section 285 of the Code of Civil Procedure provides that "a mistake or imperfection of the writing or its failure to express the true intent and agreement of the parties" must be put in issue by the pleadings in order to render evidence other than the writing itself admissible. This is an old and useful rule and its observance should be insisted upon. The defendant-appellant in the present case had the right to be timely apprised by the pleadings of the plaintiff's contention that the writing containing the contract of "guaranty was imperfect and did not show the true agreement and he should have been given the opportunity to prove, if he could, that no mistake had been made or, if one was made, to produce other defenses which might have been available. The failure to give him that opportunity is not merely a technical error; it goes to the merits and is a reversible error.

In view of the fact that the case has been pending for several years, that it has been before this court once before, and that the plaintiff has had ample opportunity to remedy the defect in its pleadings, we would be warranted in definitely absolving the appellant from the complaint, but the majority of the court is of the opinion that the plaintiff should be given another opportunity to prosecute its claim.

The judgment appealed from is reversed and the action is dismissed without prejudice to the bringing of another action upon the same cause. No costs will be allowed. So ordered.

Avanceña, C. J., Street, Romualdez, and Villa-Real, JJ., concur.
Johnson, J., dissents.

Malcolm and Johns, JJ., concurring and dissenting: The plaintiff neither pleaded nor proved mistake in the contract, although given repeated opportunities to amend its complaint and to offer its evidence. Accordingly, the defendant should not be further molested. In our judgment, the complaint should be definitely dismissed, without reservation. That is our vote.

Villamor, J., dissenting: In my opinion the judgment appealed from should be affirmed.

[1] 44 Phil., 618.

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