

**FULGENCIO M. DEL CASTILLO, PLAINTIFF AND APPELLEE, VS.
RUPINO MADRILESA, AS ADMINISTRATOR OF THE ESTATE OF J.
PABLO GARCIA, DECEASED, DEFENDANT AND APPELLANT.**

G. R. No. 24788. December 17, 1926

Ponente: JOHNSON, J.

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JOHNSON, J.:

The purpose of this action was to recover the sum of P1,795.20 together with 47 cavans of palay or their equivalent in the sum of P5 per cavan, and costs. The said sum of P1,795.20, as alleged by the plaintiff, was the Amount due for merchandise sold by the plaintiff to J. Pablo Garcia and his wife during his lifetime together with certain sums of money loaned to them from time to time. The 47 cavans of palay was the balance of a larger number sold by the plaintiff to the defendant. The defendant interposed a general and special defense together with a counterclaim.

After hearing the evidence upon the issue presented by the petition and answer, the Honorable M. L. de la Rosa, auxiliary judge, denied the contention of the plaintiff in re said 47 cavans of palay and also the special defense and counterclaim of the defendant as well as a part of the claim of the plaintiff for the said sum of P1,795.20, and rendered a judgment in favor of the plaintiff and against the defendant for the sum of P1,774.55. From that judgment the defendant appealed, and presents several assignments of error.

From an examination of the record it appears that during the trial of the cause the plaintiff, in support of his contention that the defendant owed him the said sum of P1,795.20, presented a number of vales as proof of said indebtedness. Objection was made to the admissibility of said vales upon the ground that an internal revenue stamp, as required by paragraph (g), section 1449, in relation with section 1452 of the Administrative Code, had not been placed thereon in order to make them admissible in evidence. The lower court found that some of the chits and proof presented by the plaintiff did not sustain his contention, and refused to allow them as evidence of the claim of indebtedness against the defendant. After the elimination of said chits the lower court rendered a judgment in favor of the plaintiff against the defendant for the amount due upon "the vales admitted in evidence amounting to P1,774.55. The lower court further ordered that the plaintiff, in order to conform with the law, should place the revenue stamps Required by law upon the vales admitted in evidence, and that no execution should be issued upon the judgment rendered until the plaintiff had complied with that order. From that judgment the defendant appealed.

In his first assignment of error the appellant alleges that the lower court committed an error in admitting said vales as evidence, without the same having been stamped with the internal revenue stamps in accordance with paragraph (g) of section 1449 in relation with section 1452 of the Administrative Code. An examination of said vales will show that they are in fact promises to pay money; that they are signed by the defendant; that said vales contain all of the elements required by the Negotiable Instruments Law for promissory notes and therefore must be stamped in accordance with the provisions of the law. By reference to sections 40 and 41 of the revised rules

relating to documentary stamps, it will be seen by section 41 that all vales containing the necessary elements of a promissory note must be stamped with the internal revenue stamps. That being true, the lower court committed an error in admitting said vales as evidence until they were stamped in accordance with the provisions of the law.

That error, however, of the lower court was cured by his refusal to allow an execution upon the judgment rendered until said vales had been stamped. The rule requiring said vales to be stamped does not contain any provision as to the time when they shall be stamped. The result is, therefore, that they may be stamped at the time they are executed and delivered or at the time they are presented in evidence. The lower court evidently recognized that fact and admitted them in evidence without being stamped, erroneously, but gave the plaintiff an opportunity to stamp them in order to obtain an execution upon his judgment. Section 1459 provides that the tax shall be paid by the person making said vales, by the person signing them, by the person issuing them, or by the person accepting them or transferring them, and shall be paid at the time such act is done or transaction had. However, the rule is well established that this tax may be said at any time either before or at the time said documents are presented in evidence. The lower court committed no error, therefore, by requiring the plaintiff, in order to secure an execution of his judgment, to place the necessary stamps upon said vales.

Attention is called, however, to the provisions of section 2721 of the Administrative Code, as amended by section 16 of Act No. 2835, which provides a penalty for the failure to affix the necessary stamps. Said section 16 of Act No. 2835 provides: "Any person who fails to affix and cancel the requisite stamp or stamps to any document at the time required by law shall be subject to a fine of not more than three hundred pesos."

The appellant further contends that the lower court committed an error in admitting a large number of said vales in evidence, for the reason that they had either, been changed or altered without the consent of the appellant. With reference to the said assignment of error, an examination of the evidence adduced during the trial of the cause clearly sustains the conclusions of the lower court. The appellant further contends in his fifth assignment of error that the lower court should have admitted his counterclaim. An examination of the record in relation with said assignment of error clearly justifies the conclusion of the lower court in denying said counterclaim.

From all of the foregoing, and after a careful examination of the record, we find no reason for changing or modifying the judgment of the lower court. The same is therefore hereby affirmed, with costs. So ordered.

Avanceña, C. J., Street, Malcolm, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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