

JOSE LASERNA TUPAZ, PLAINTIFF AND APPELLANT, VS. RAFAEL LOZADA, DEFENDANT AND APPELLEE.

G.R. No. 2894. August 05, 1909

Ponente: JOHNSON, J.

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JOHNSON, J.:

It appears from the record that on the 6th day of January, 1887, Fausto Lozada executed and delivered to Jose Laserna Tupaz a contract promising to pay the sum of 162 pesos and 40 centavos. The payment of said contract was to be made upon the 6th day of January, 1888. Said contract was as follows:

"On the 6th of next January, 1888, I hereby agree to pay to the order of Don Jose Laserna the sum of one hundred and sixty-two pesos, four reals (\$162.-4-) value received in specie from said gentleman on the same date.

"Capiz, January 6, 1887."

It appears that upon the 22d day of July, 1890, the said Fausto Lozada made the following indorsement upon said contract, thereby recognizing his liability upon the same:

"I acknowledge my indebtedness to Don Jose Laserna in the amount of one hundred and sixty-two pesos, four reals (\$162.-4-), value received in specie as a deposit and without interest as mentioned in the former note (pagare), and promise to pay said amount on such day as I may be able to sell my land Lilao.

"Capiz, July 22, 1890.

(Signed) "FAUSTO LOZADA."

Fausto Lozada died in 1891. It does not appear of record that an administrator had been appointed for the purpose of settling his estate.

It appears that, some years after the death of Fausto Lozada, probably in the month of October, 1902, Jose Laserna Tupaz made demands upon the son of Fausto Lozada, the defendant herein, for the payment of said contract. In the month of February the defendant wrote the following letter to Jose Laserna:

"CAPIZ, February 27, 1903.

"Sr. D. JOSE LASERNA.

"DEAR UNCLE: I received your letter of yesterday and have noted contents of same and do not think that it is possible for me to accede to your request, for should I execute such a document it would be equivalent to assuming the account which I by no means care to do, as I am in no way responsible for said account; if I have made a payment to you on account of said indebtedness it was not because I felt obliged to do so, but because I wanted to, all of which I bring to your attention in order that you may become cognizant of the legal value of your document.

"Your loving nephew and servant,

(Signed) "RAFAEL LOZADA."

On the 9th day of March, 1903, the plaintiff commenced an action against the defendant in the court of the justice of the peace of the municipality of Capiz; on the 27th day of April, 1903, the justice of the peace rendered a judgment in favor of the plaintiff and against the defendant for the balance due on said contract. From this judgment of the justice of the peace the defendant appealed to the Court of First Instance of said province. After many months of delay the appellee in the Court of First Instance presented a motion to dismiss the said appeal, for the reason that the defendant and appellant had not prosecuted his appeal and for the reason also that he had not paid the clerk's fees in the Court of First Instance. The Court of First Instance properly denied this motion. When the appeal from the judgment of the justice of the peace was perfected under the law existing at the time of the appeal, the judgment in the court of the justice of the peace was vacated and the cause stood for trial in the Court of First Instance de novo. A dismissal of the case in the Court of First Instance would, therefore, have been an absolute dismissal of the cause. The plaintiff would have been without any judgment to execute. So far as the judgment in the court of the justice of the peace was concerned, after the appeal had been perfected, it was vacated; that is to say, it was annulled so far as any execution was concerned. (*Bautista vs. Johnson*, 2 Phil. Rep., 230; *Du-Yungco vs. Barrera*, 5 Phil. Rep., 125; *Cornelios vs. Guaranty Trust Co.* (not reported), decided Nov. 27, 1906; *Reyes vs. Alburo*, 7 Phil. Rep., 398; and *Bartolome vs. Mandac*, 8 Phil. Rep., 263.)

After the court refused to dismiss the appeal from the justice of the peace the plaintiff and appellee paid the clerk's fees and filed his complaint. To this complaint the defendant filed his answer, presenting many defenses, together with a general denial and the statute of prescription. After hearing the evidence adduced during the trial of the cause, the lower court found that the plaintiff had no right to recover on said contract against the defendant, and dismissed the said cause, with costs against the plaintiff. From this judgment the plaintiff appealed, and in this court makes two assignments of error, each of which relates to the sufficiency of the proof to sustain plaintiff's demand. The plaintiff alleges that the proof was sufficient to show his right to recover upon said contract as against the defendant. During the trial in the Court of First Instance but four witnesses were examined—the plaintiff Jose Laserna Tupaz, his son Marcos Laserna, Macario Alegre, and the defendant. Jose Laserna Tupaz testified that the father of the defendant, Fausto Lozada, had executed and delivered the original contract and had made or signed the indorsement thereon upon the 22d day of July, 1890; that Fausto Lozada had made no payments upon said contract during his lifetime; that the defendant had paid 40 pesos upon said original contract. Marcos Laserna testified that he had made at least three demands upon the defendant for the payment of said contract; that the defendant had paid a part of said original indebtedness and promised to pay the balance. Rafael Lozada, the defendant, testified that the son of the plaintiff had made three demands upon him for the payment of said contract; that he had paid on said contract the sum of 60 pesos; that he had paid the said sum of 60 pesos in order to avoid a lawsuit; that he never promised to pay the amount of said obligation.

There was no proof whatever that the father of the defendant at the time of his death left any assets whatever, nor that the defendant had inherited any property from his father. The defendant contends that he never made any promise obligating himself to pay the said contract. On or about the 26th day of February, 1903, the plaintiff herein wrote a letter to the defendant (the letter does not appear in evidence) requesting the defendant to execute and deliver to him a contract for the payment of said indebtedness existing between his father (Fausto Lozada) and himself. The defendant herein, on the 27th day of February, 1903, answered said letter, which appears above and is marked "Exhibit B." The plaintiff introduced in evidence this Exhibit B. The plaintiff claims that this letter (Exhibit B) was an acknowledgment of said contract and a promise to pay the same. A careful reading of this letter, however, clearly shows the contrary. The defendant expressly renounces any intention to pay the same and

denies that the same is any obligation against him, and alleges that the payments which he had made upon the same were purely voluntary payments and were not made with any idea that he was responsible upon said contract.

The defendant admits that he paid to the plaintiff on different occasions the sum of 60 pesos but that the payments were not made upon the theory that he regarded himself responsible in any way for the payment of the indebtedness which his father owed to the plaintiff. He asserts that the payments were made in order to avoid the embarrassment of a lawsuit upon said contract which the plaintiff threatened to bring against him. The defendant denies that he ever made any promise whatever or that he had obligated himself in any manner for the payment of said contract. The mere payment of a part of said contract or debt, under the circumstances of this case, can not be regarded as a promise to pay said debt. The record does not show that the defendant had inherited any property from his father. He could not be liable, therefore, upon the theory that he had taken possession of property of his ancestor, thereby impliedly promising to pay his ancestor's debt. Therefore he can not be held liable upon the contract in question unless he had by some valid new contract, entered into by himself upon a sufficient consideration, promised or obligated himself to pay the said indebtedness. In our opinion the evidence does not show that such a contract was entered into by the defendant and he is, therefore, not liable to pay the said indebtedness. Upon the foregoing considerations, and without discussing the; other questions presented, we are of the opinion, and so hold, that the judgment of the lower court should be affirmed, with costs.

Arellano, C. J., Torres, Carson, and Moreland, JJ., concur.

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