

SABINA REYES ET AL., PLAINTIFFS AND APPELLEES, VS. E. C. WELLS AS ADMINISTRATOR OF THE ESTATE OF JOHN NORTH-COTT, DECEASED, ET AL., DEFENDANTS. E. C. WELLS, APPELLANT.

G.R. No. 30587. December 04, 1929

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

On June 7, 1923, the plaintiffs filed their original complaint against John E. Rader and John Northcott, the original defendants in this cause.

Several demurrers were interposed, and in consequence the complaint was amended several times. The seventh amended complaint was filed on June 11, 1925, and was admitted by the trial court in August the same year. In the meantime the defendants Rader and Northcott died, and in said seventh complaint they have been substituted by their respective administrators, E. C. Wells, administrator of the estate of John Northcott, and Alberto Suguitan, administrator of the estate of John E. Rader.

The complaint prays that the promissory notes and deeds executed by the plaintiffs in favor of said Rader and Northcott, as well as their record in the registry of deeds of Ilocos Norte, be cancelled, and that the defendants, as administrators, be ordered to pay the damages set forth in paragraph 7 of the complaint, with costs.

It is alleged in the complaint: (1) That said J. E. Rader and J. Northcott had installed a maguey stripping machine in the municipality of Burgos, Ilocos Norte, and an International truck in a shed on a lot; that J. E. Rader told plaintiff Saturnino R. Guerrero that he had purchased said articles from Macleod & Co., for the sum of P23,600, and offered to sell them to said plaintiff for P23,000 payable in installments, but that Guerrero replied that he could not do so for lack of money to operate the machine; (2) that said J. E. Rader promised to furnish said plaintiff with the amount of P12,000 for that purpose, and delivered to the latter P400 "in advance" to commence the exploitation of said machine; (3) that after said sum was delivered, the same plaintiff was required to make out two promissory notes; one for P7,000 and the other for P5,000 in favor of said Rader "guaranteed by a mortgage on certain property sufficient to cover said sum of P12,000;" that said mortgage shall be endorsed to some business houses in the City of Manila; that Saturnino Guerrero executed two mortgage deeds, attached to the complaint, signed by Saturnino R. Guerrero, his mother and his brothers, coowners pro indiviso of the real property mortgaged; that said mortgage deeds were recorded in the registry of deeds of this province (Ilocos Norte); (4) that J. E. Rader and Saturnino R. Guerrero went to J. Northcott, and on June 29, 1922 the former endorsed the mortgage deed for the amount of P5,000; (5) that neither said amount of P5,000 nor any part thereof was delivered to Saturnino R. Guerrero or to any of his coplaintiffs; and the aforementioned Rader and Northcott promised to pay when the latter (Northcott) received some money he had asked for from a certain firm in San Francisco, California; and in consideration of said promise, Saturnino R. Guerrero "obligated himself to pay to Macleod & Co. in installments, the price of said property, machinery, truck, shed, and lot where they are installed," the aforesaid Rader having stated that he had not yet paid Macleod & Co. for said property; (6) that in

the month of October, 1922, Saturnino R. Guerrero demanded payment of said sum of P5,000 from J. E. Rader, because the periods stipulated by Maeleod & Co. fell due, and both of them again repaired to the aforesaid Northcott to discuss the P12,000 secured by the two mortgage deeds; the latter told them that he had not yet received the agreed amount; and he again promised, for the second time, that he would pay it "as soon as he received the amount owed, from the West Coast Life Insurance Co.;" and at the same time, he asked that Saturnino R. Guerrero, in his own behalf and in behalf of his mother and brothers, renew the other mortgage, deed for P7,000 executed in favor of said Northcott, which the plaintiff Guerrero "blindly" did, whereupon Northcott gave him a check for P98 wherewith to pay the land tax; and (7) that due to the failure of J. E. Rader and J. Northcott to pay said amount of P12,000, the plaintiff sustained damages in the amount of P23,600, which is the value of the machinery and other property "attached by Maeleod & Co." for default in the payment of the installments due, besides P10,000 which is the market value of the property of Saturnino R. Guerrero attached by a writ of the Court of First Instance of Manila in the cause instituted by said Maeleod & Co. for, foreclosure of mortgage; and the amount of P2,000 "for filing and prosecuting the complaint."

The administrator of the estate of the deceased J. E. Rader filed an answer denying generally and specifically each and every allegation of the complaint.

The other defendant, E. C. Wells, administrator of J. Northcott's intestate estate, generally and specifically denies the allegations contained in paragraphs 2 to 8 of said complaint, and by way of special defense sets up as a counterclaim and cross-complaint that: (a) The mortgage executed in favor of J. Northcott, deceased, on October 23, 1922, made a part of the last amended complaint, for P7,000 has fallen due and none of the plaintiff-mortgagors has paid said amount, in whole or in part, nor the interest stipulated in the mortgage deed, "nor the additional sum equal to 20 per cent of the total due as attorney's fees in case of litigation;" (6) that by the violation of the terms and conditions contained in the mortgage deed, which is also a part of the aforesaid complaint for the sum of P5,000, executed by said plaintiffs on June 14, 1922 in favor of J. E. Rader, and by the latter assigned on June 29, 1922, the mortgage has fallen due and the mortgagors therein have failed to pay the amount or any part thereof and the interest thereon; (c) that in said mortgage of June 14, 1922, the mortgagors bound themselves to pay to said J. Northcott, deceased, an additional sum equal to 20 per cent of the amount due as attorney's fees in case of litigation, and the conditions of the mortgage deed not having been complied with, the mortgage should be foreclosed.

Evidence having been adduced by both parties, the trial court, after a careful examination thereof reached the conclusion that the two sums of P5,000 and P7,000 were never delivered to the plaintiffs by J. E. Rader or J. Northcott either before or after their death, and therefore held that the two realty mortgage deeds, one of which was assigned by J. E. Rader to J. Northcott, must be cancelled, being null and void, and, in consequence, the counterclaim and cross-complaint set up by administrator Wells are untenable and must be dismissed.

Wherefore, the trial court ordered the cancellation in the registry of deeds of the mortgage credit of P5,000 on the real property assigned by J. E. Rader in favor of Northcott, and the cancellation of the other mortgage deed for P7,000 executed by the plaintiffs in favor of J. Northcott.

And the court dismissed the claim for damages against the defendants, as well as the counterclaim and cross-complaint of the administrator of J. Northcott's intestate estate. From this judgment, administrator E. C. Wells appealed.

We find from the record that Dr. John E. Rader, deceased; was a resident of the municipality of Laoag, Ilocos Norte, about the year 1922, and owned in the municipality of Burgos, of said province, a maguey stripping machine, an International truck, a shed, and a lot. In order to get rid of them, he persuaded the plaintiffs,

particularly Saturnino R. Guerrero, to buy them; and as the latter pretended that he had no money with which to purchase it and to exploit the business, the former proposed to lend him P12,000 with the understanding that Guerrero would execute two promissory notes for P5,000 and P7,000 in his favor, securing said notes by two other mortgage deeds upon real property. In view of this proposal, the plaintiffs subscribed a promissory note for P5,000, dated June 14, 1922, and another in the amount of P7,000 also dated June 14, 1922.

These two promissory notes were guaranteed by two mortgage deeds exhibited herein as X, both drawn in favor of John E. Rader. These two mortgage deeds were recorded in the registry of deeds of the Province of Ilocos Norte.

After the execution of these two mortgages, it appears that John E. Rader was only able to deliver P400 to Saturnino Guerrero, saying that they could obtain the remainder as a loan from John Northcott. For this purpose, they came to Manila in the month of June, 1922, to solicit the money and also to arrange for the purchase of the machine from Macleod & Co. Saturnino Guerrero was presented by Rader to the manager of Macleod & Co. as the purchaser of the machine in question, and to this end Guerrero signed a promissory note for P20,000 payable according to the periods and conditions set forth therein.

Putting aside for the moment Saturnino Guerrero's contract with Macleod & Co. for the purchase of the machine in question, it appears that Rader and Guerrero went to the office of the West Coast Life Insurance Company in order to ask Northcott for the money promised by Rader. But Northcott could not deliver to Guerrero more than P98 with which to pay the land tax, promising that as soon as he received the money he had asked for from San Francisco, California, he would deliver to Guerrero the P12,000 covered by the first two promissory notes subscribed by Guerrero and secured by the two above-mentioned mortgages. The plaintiffs allege that with the exception of the two amounts of P400 and P98 already mentioned, the sums in question in the promissory notes secured with mortgages have not been paid either by Rader or by Northcott, and therefore pray for the cancellation of the promissory notes and mortgage deeds executed by the plaintiffs in favor of said Rader and Northcott, and of their record in the registry of deeds of Hocos Norte.

The main contention of the appellant in this case is that the plaintiff-appellees' allegation that the promissory notes in question have not been paid, is not supported by the evidence, inasmuch as the only witness who testified upon this point, that is, Saturnino Guerrero, is incompetent to testify upon transactions had between himself and the deceased John E. Rader and John Northcott, in accordance with section 383 of the Code of Civil Procedure.

It is true that Saturnino Guerrero, as an interested party in the case, is incompetent to testify upon transactions had between himself and the deceased Rader and Northcott but the record shows that there is another witness, Eduardo Bustamante, who has no interest in this case, and who testified that he witnessed and heard the conversations between Guerrero and Rader, and Northcott, respecting the delivery of the money represented by the promissory notes in question, and his testimony appears to be corroborated, in so far as it refers to the conversations between Guerrero and Rader, by Marcelino Benito and Apolinar Pasion. The testimony of said witness Eduardo Bustamante is admissible to prove that the defendants never delivered the money which was the consideration of said promissory notes.

In 28 R. C. L., 499, it is stated: "By the weight of authority statutes rendering a party to or person interested in the event of an action against the estate of a decedent or a lunatic, incompetent to testify concerning a personal transaction had with the latter, do not disqualify such party or person from testifying to communications or transactions between a deceased and a third person had in his presence or within his hearing, if he took no active part therein himself. Unless the transactions or communications are personal, and had with the deceased by the witness, either literally or in practical effect, as by participating in or influencing them, they do not fall under the

prohibition of the statute."

In *Mallow vs. Walker* (115 Iowa, 238), the court said: "Code, section 4604, declares that no party to an action nor one interested in the event shall be examined as a witness as to any transaction between him and one deceased against the executor, administrator, heir, next of kin, assignee, legatee, devisee, or survivor. Held, that the statute does not prevent a witness from testifying as to a conversation between deceased and another in the presence of the witness, in which the witness took no part"

And in *Mollison vs. Rittgers* (140 Iowa, 365), the same court said: "The interest which disqualifies a witness from testifying to a transaction with a decedent is that which relates to the event of the particular suit and not merely to the subject of the controversy."

Section 4604 of the Code of Iowa provides: "No party to any action or proceeding, nor any person interested in the event thereof, nor any person from, through or under whom any such party or interested person derives any interest or title by assignment or otherwise, and no husband or wife of any said party or person, shall be examined as a witness in regard to any personal transaction or communication between such witness and a person at the commencement of such examination deceased, insane or lunatic, against the executor, administrator, heir at law, next of kin, assignee, legatee, devisee or survivor of such deceased person, or the assignee or guardian of such insane person or lunatic. But this prohibition shall not extend to any transaction or communication as to which any such executor, administrator, heir at law, next of kin, assignee, legatee, devisee, survivor or guardian shall be examined on his own behalf, or as to which the testimony of such deceased or insane person or lunatic shall be given in evidence."

The prohibition contained in said law against a witness' testifying upon any transaction or communication between himself and a deceased person, is substantially the same as that contained in section 383, No. 7, of our Code of Civil Procedure, as amended by Act No. 2P52. And therefore, we believe that the construction placed upon it by the court in the cases cited is applicable to the case at bar.

Among the evidence adduced by the plaintiffs to prove that the two sums of P5,000 and P7,000 promised have not been received by said plaintiffs, is Exhibit F, signed with the name of John E. Rader, reading as follows:

"MANILA P. I., May 20, 1928

"MR. SATURNINO GUERRERO

"Laoag, Ilocos Norte, P.I.

"DEAR SIR: I acknowledge the receipt of your letter dated the tenth instant. I immediately showed it to Mr. Northcott and he told me that you please wait for a short time as the money he borrow from the West Coast Life, Insurance Co. in San Francisco, California, is now on its way according to the cablegram received by him recently.

"After we receive it, therefore, we shall send you the sum of P12,000 so as to cover the two mortgage debts of P5,000 and P7,000 due you which, hitherto, remain unpaid.

"I went to Macleod & Co. and asked for the withdrawal of the complaint against you inasmuch as you will soon have sufficient amount to pay the Co. in the sum of P4,000 corresponding to that which is due on November, 1922, after receiving the P12,000. I was told that Mr. Forst will see to it that the complaint shall be dropped.

"Yours truly,

(Sgd.) "JOHN E. RADER

"En/s"

The parties discussed the genuineness of this letter, Exhibit F, at great length, each presenting the report of its handwriting expert, the one employed by the plaintiffs maintaining that the signature on said letter is the genuine signature of the deceased John E. Rader, while that of the defendants contends the opposite.

The trial court, in turn, after examining the undisputed signatures of John E. Rader contained on Exhibits G and H of the plaintiffs and the other Exhibits 1 to 6 of the defendants, found dissimilarities between the signature on Exhibit F and that of said exhibits of both parties, as there are in those not disputed and that of Exhibit 6, which is acknowledged to be genuine by the defendants; and the court concluded with the statement "that it is difficult to make sure that the disputed signature, Exhibit F, was not written by John E. Rader, and considering that said exhibit is a reply-1 written in Manila to a letter of Saturnino Guerrero's as to the straits in which the latter was, and his frequent insistence that the money promised by the writer said letter and John Northcott be delivered, it is more than likely that the letter, Exhibit F, was written and signed by John E. Rader."

We have carefully examined the signature Exhibit F, comparing it with the genuine signatures admitted by both parties, and we have found dissimilarities between the signature Exhibit F and the genuine signatures, Exhibits G and H, and between said signature and the genuine signatures, Exhibits 1 to 6. But one pages 30 and 59 of his brief, the appellant, after denying that the signature Exhibit F was written by John E. Rader, suggests that the signatures on Exhibits 15, 16 and 17 indicate the probability that the signature on Exhibit F was written, not by the deceased John E. Rader, but by John E. Rader, jr. We are inclined to accept the conclusion reached by, the court below; but admitting the probability suggested by the appellant that said signature Exhibit F was written by John E. Rader, jr., we believe that if John E. Rader, jr., really signed said letter in question, he must have done it with the knowledge of his father, the deceased John E. Rader in which case the contents of said letter must be given the same effect as if it had been written by the said John E. Rader. Aside from this, the record contains something which, we believe, strongly upholds the plaintiffs' contention that the money promised by John E. Rader and John Northcott, Which was the consideration of the aforementioned promissory notes has not been delivered by them to Saturnino R. Guerrero, except the P400 and P98 already mentioned; the mortgage, signed by Saturnino R. Guerrero in favor of Macleod & Co. to secure the payment of the maguey stripping machine, was foreclosed by Macleod & Co. by virtue of a writ of execution issued by the Court of First Instance of Manila on October 11, 1923, as a result of the complaint filed by Macleod & Co., Inc., against Saturnino R. Guerrero on March 10, 1923, for default in the payment of the first installment of said promissory note. The attached property of Saturnino R. Guerrero, valued at P47,430, was sold at public auction for only P3,862.84. We believe that Saturnino R. Guerrero, in the ordinary course of business, would not have abandoned the execution of his property for an amount relatively small, had he at that time the money which he expected to receive from Rader or Northcott.

But the appellant insists that during his lifetime, the deceased Northcott delivered to John E. Rader the sum of P5,000, on account of the P5,000 promissory note, secured by Guerrero's mortgage. To prove this, the appellant presented Exhibit 14, and the testimony of R. P. Flood and S. H. Deebel. Flood testified that on June 30, 1922, he lent Northcott P2,000 which was paid directly to Rader by means of a check, upon the former's request. On the other hand witness S. H. Deebel, on direct examination, testified: "On or about June 1, 1922, Mr. Northcott called me and told me that he knew somebody who would borrow money from me. Mr. Northcott told me that he had to wait until Mr. Rader arrived, because Mr. Rader was the one who would receive the mortgage money. Mr. Rader then came to Manila between June 25, and July 1, 1922, and I met him at Mr. Northcott's office in Manila. I made out a check for two thousand seven hundred pesos in favor of Mr. Northcott. Mr. Northcott wished me to deliver said money to Mr. Rader with interest at twelve per centum, but I told him I would rather give it to him at ten per

centum, and that he could charge Mr. Rader twelve per centum * * * Mr. Rader was present, and when Mr. Northcott got the check, he told Mr. Rader: 'Here is the check,' and gave him the check" But on cross-examination, this witness said: "* * * I gave the check to Mr. Northcott who told Mr. Rader: 'Here is Deebel's check for the money'. I don't know what Mr. Northcott did with the check, but as it was in Mr. Northcott's name, it was he who had to cash it. I don't know whether Mr. Northcott endorsed the check to Mr. Rader, and whether Mr. Rader cashed it or not, or whether Mr. Northcott cashed it."

Exhibit 14 is an unsigned document, apparently a statement of account between Rader and Northcott, which mentions the names Guerrero, Flood and Deebel.

In view of the evidence adduced by the defendants, the trial court held that "it is probable that John Northcott gave John Rader the sum of P2,000 in July, 1922, loaned by R. P. Flood for the P5,000 promissory note given to the former; and we do not know whether the other sum of P2,700 was given to J. E. Rader. And it held, furthermore, that John Northcott could not legally give Rader the sum of P2,000 on account of the P5,000 requested of him, because said sum of P2,000 was owed to the plaintiffs on account of the P5,000 promissory note given and executed with the understanding that the money would be given after the execution."

We are of the opinion that these conclusions reached by the court below are supported by the evidence, and we are equally of the opinion that supposing John Northcott gave Rader the P2,000 loaned to the latter by Flood, the delivery of said amount to Rader did not destroy Guerrero's right to claim the delivery of the money which is the consideration of the P5,000 promissory note endorsed by Rader to Northcott, for the reason that when Rader endorsed said note to Northcott on June 29 1922, the latter knew positively that the money represented by the endorsed note had not been actually delivered to Guerrero. His personal knowledge that the money of said note had not been delivered to Guerrero is sufficient to destroy the presumptions of section 334, Nos. 17, 19 and 36, of the Code of Civil Procedure, invoked by the appellant.

The same may be said of the P7,000 promissory note.

The appellant does not maintain that the deceased Northcott delivered to Guerrero the money of this note, but only argues that, as Guerrero executed the mortgage deed securing the payment of P7,000 in favor of Northcott on October 20, 1922, it is presumed that there was sufficient consideration.

It is to be noted that this mortgage was originally executed on June 14, 1922 in favor of Rader, but that on October 23, 1922 the latter asked the registrar of deeds of Ilocos Norte to cancel said mortgage, saying that he had received from Guerrero the amount guaranteed, which seems strange, because in such cases, it is not the mortgagee but the mortgagor who is interested in asking that the record of the mortgage be cancelled once the debt is paid. It is hard to conceive how Guerrero could consent to pay Rader the P7,000 of the promissory note, when he complains that he never received said sum. And it is observed that the cancellation of the mortgage by Rader is prior to the alleged mortgage in favor of Northcott. On the other hand, what good would it have done Guerrero to receive the P7,000 from Northcott in order to give it to Rader, when he himself wanted to use the money represented by the promissory note and secured by the mortgage? What advantage would Guerrero have derived from a change of mortgage creditors? All of which indicates that the execution of the mortgage deed in favor of Northcott was probably suggested to Rader as a part of the plan to unite in Northcott the rights, if any, arising from his agreements with Guerrero.

Wherefore, the judgment appealed from must be, as it is hereby, affirmed, with costs against the appellant. So ordered.

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

DISSENTING

JOHNSON, J., with whom concurs JOHNS, J.:

This action was commenced on June 7, 1923, in the Court of First Instance of Ilocos Norte against John Northcott and John E. Rader as original defendants. After much delay caused by demurrers, amended complaints, motions, etc., and said Northcott and Rader having died in the meantime, the action was prosecuted against the above-named administrators of their estate. The record does not disclose the date when Northcott and Rader died. The last amended complaint was filed against said administrators on June 11, 1925. Upon demurrer of E. C. Wells, Rufino R. Guerrero was included as plaintiff.

The purpose of the action was to secure the cancellation of two promissory notes and the two mortgages given as security, executed by the plaintiffs in favor of said Rader and Northcott, for the sums of P5,000 and P7,000. The plaintiffs alleged that they did not receive the value of said promissory notes and the consideration named in the said mortgages, except the sum of P400, which they received from Rader and the sum of P98 from Northcott. They prayed for the cancellation of said notes and mortgages, and for damages in the sum of P35,600, and costs. Said notes and mortgages were attached to, and made a part of the complaint.

The defendant Alberto Suguitan answered, denying generally each and every allegation of the complaint.

The defendant C. Wells answered, denying generally and specifically each and every allegation of the complaint. As a special defense this defendant alleged (1) that the deceased John Northcott had paid the sum of P5,000 to John E. Rader in consideration of the assignment to him by the latter of the mortgage for P5,000 executed in favor of said Rader by the plaintiffs; that the claim for damages not having been presented before the committee on claims and appraisals of the estate of Northcott, the plaintiffs did not have any right to recover them in this action.

The defendant E. C. Wells also presented a counterclaim and cross-complaint, alleging (1) that the mortgage for the sum of P7,000 executed by the plaintiffs in favor of John Northcott was long due and unpaid; (2) that the mortgage for P5,000 which had been assigned by John E. Rader to John Northcott was also overdue and unpaid; and (3) that the terms and conditions of said mortgages had been violated by the plaintiffs for their failure to pay the amounts thereof at the time stipulated. Said defendant prayed that he be absolved from all liability under the complaint, and that a judgment be rendered in his favor and against the plaintiffs, ordering them to pay to him jointly and severally the following amounts of said mortgages:

- (a) Seven thousand pesos, with 12 per cent interest from October 20, 1922, until paid;
- (b) Five thousand pesos with 12 per cent interest from June 14, 1922, until paid;
- (c) Twenty per cent of said amounts as attorney's fees; and (d) And costs.

Upon the issue thus presented, the cause was brought on for trial. After hearing the evidence adduced by both parties, and on May 25, 1928, the Honorable Fermin Mariano, judge, arrived at the following conclusions: (1) That the plaintiffs had not received the value of the promissory notes and the consideration of the mortgages in question; (2) that John E. Rader having made an assignment to John Northcott of the mortgage for P5,000, every juridical relation between him and the plaintiffs had ceased; (3) that the promissory note and mortgage for P7,000 originally executed by the plaintiffs in favor of John E. Rader having been cancelled, and said instruments having been later executed by the plaintiffs in favor of John Northcott, every juridical relation between John E. Rader and the plaintiffs as to said note and mortgage had also ceased; and (4) that the plaintiffs not having presented their

claim for damages before the committee on claims and appraisal of the estate of John Northcott, their right to recover the same had prescribed.

In harmony with the foregoing conclusions, a judgment was rendered in favor of the plaintiffs and against the defendant E. C. Wells, as administrator of the estate of John Northcott, ordering the cancellation of the mortgages in question. Plaintiffs' claim for damages was dismissed, as well as the counterclaim and cross-complaint of the defendant E. C. Wells. Each party to pay one-half part of the costs. From that judgment the defendant E. C. Wells appealed.

The appellant now makes nineteen assignments of error relating to questions of both fact and law. However, only a few of said alleged errors are material in this appeal, and the same may be condensed as follows:

The lower court erred:

"1. In admitting certain testimony of one of the plaintiffs over the objection of the defendant-appellant, contrary to the provisions of section 383, paragraph 7 of Act No. 190;

"2. In finding that there was no consideration for the two promissory notes and mortgages of P5,000 and P7,000, and in ordering the cancellation of said mortgages;

"3. In dismissing the counterclaim and cross-complaint of the appellant;

"4. In not rendering a judgment in favor of the defendant-appellant and against the plaintiffs for the payment of P5,000 and P7,000, the value and consideration of the promissory notes and mortgages, with interest and attorney's fees, as stipulated in said notes and mortgages; and

"5. In finding that the signature 'John E. Rader' appearing at the bottom of Exhibit F, is the true and genuine signature of said John E. Rader."

A careful examination of the evidence shows the following undisputed facts:

(1) On the 14th day of June, 1922, the plaintiff s, with the exception of Rufino R. Guerrero, executed two promissory notes in favor of John E. Rader for the sums of P5,000 and P7,000, secured by two mortgages of the same date on several parcels of land situated in Ilocos Norte. Said promissory notes were payable within one year from the date thereof, or not later than June 14, 1923, with interest at 12 per cent, and also 20 per cent as attorney's- fees in case of plaintiffs' failure to pay the same at maturity. (Exhibit X.) The note for P5,000 reads as follows: "P5,000.00.

"LAOAG, I. F., junio 14, 1922

"En o antes del dia 14 de junio de 1923, por valor recibido nos comprometemos a pagar a la orden del Dr. John E. Rader la suma de cinco mil pesos (P5,000), moneda filipina, con intereses sobre dicha suma en igual moneda, desde esta fecha hasta que se pague, a raz6n de doce por ciento (12%) anual.

"Este pagare esta garantizado por una hipoteca, a favor del Dr. John E. Rader, sobre bienes inmuebles en Dingras, Ilocos Norte, I. Filipinas.

"Se estipula ademas, que en caso cle falta de pago del capital o de los intereses de este pagare, como y cuando venza y sea pagadero, una suma adicional igual al veinte por ciento (20%) de la suma total que entonces sea pagadera sobre el mismo, se pagara al tenedor o a los tenedores de este pagare para honorarios de abogados y de cobro." (Exhibit 9.) .

The promissory note for P7,000 contains the same terms and conditions. (Exhibit X.)

(2) On the 29th day of June, 1922, John E. Rader, with the conformity of the plaintiffs, assigned to John

Northcott the mortgage for P5,000, "in consideration of the sum of five thousand pesos Philippine currency to him in hand paid by John Northcott" (Exhibit X). The corresponding promissory note for P5,000 was on the same date (June 29, 1922) indorsed by John E. Rader to John Northcott. (Exhibit 9.)

(3) On October 21, 1922, John E. Rader addressed a letter to the register of deeds of Ilocos Norte, asking for the cancellation of the mortgage of P7,000 executed in his favor by the plaintiffs, with the exception of Rufino R. Guerrero, on June 14, 1922, as above stated. In said letter John E. Rader stated that he had received from the plaintiffs the sum of P7,000, the consideration of said mortgage. The register of deeds made an entry of said cancellation on November 17, 1922. (Exhibit X.)

(4) On October 20, 1922, the plaintiffs executed a promissory note for P7,000 in favor of John Northcott, payable on or before June 14, 1923, secured by a mortgage of the same date, executed by the plaintiffs in favor of said John Northcott. (Exhibits 10 and 11.)

The foregoing statement of facts clearly shows that all the rights and obligations between John E. Rader and the plaintiffs arising from the two promissory notes and mortgages had ceased (a) by virtue of the assignment of the mortgage for P5,000 to John Northcott, and (b) by virtue of the cancellation of the mortgage for P7,000.

Therefore, the questions for determination in this appeal are:

- (1) What rights and obligations exist between the plaintiffs and John Northcott, arising from the assignment of the mortgage of P5,000 made by John E. Rader to Northcott?
- (2) What rights and obligations exist between the plaintiffs and John Northcott, arising from the promissory note and mortgage for P7,000, executed by the former in favor of the latter on October 20, 1922?

With reference to the first question, it may be said that John Northcott, as assignee of the mortgage and holder, by indorsement, of the note for P5,000, is entitled under the terms and conditions of said mortgage to recover from the plaintiffs, with the exception of Rufino R. Guerrero, the amount thereof together with interest and attorney's fees as expressly stipulated in said note and mortgage. The assignment was made with the written conformity of the plaintiffs. John Northcott paid to his assignor John E. Rader the sum of P5,000, as expressly stated in the deed of assignment (Exhibit 13). This payment is corroborated by the testimony of Raymon P. Flood and Samuel H. Deebel, from whom Northcott borrowed the money which he paid to Rader. Northcott paid the consideration of the mortgage and the value of the note, and his rights as such mortgagee and holder of the note for value, should be enforced in accordance with the law and the terms and conditions of said mortgage.

Said note and mortgage for P5,000 fell due on June 14, 1923. The appellant E. C. Wells, as administrator of the estate of John Northcott, is entitled to receive from the plaintiffs, with the exception of Rufino R. Guerrero, the amount thereof, together with interest at 12 per cent and attorney's fees equal to 20 per cent of the full amount due. The appellant's counterclaim and cross-complaint for this amount should have been sustained by the lower court.

The second question, as above stated, relates to the rights and obligations existing between the plaintiffs and John Northcott, arising from the promissory note and mortgage for P7,000 executed by them in his favor on October 20, 1922. We agree with the lower court in its conclusion that the plaintiffs have not received the value and consideration of said note and mortgage. A preponderance of the evidence shows that the value of said note and the consideration named in the mortgage were not delivered to the plaintiffs; that Northcott promised to pay them the value of said note (P7,000) as soon as he had raised the required amount; that the note and mortgage were delivered to him with that understanding, and that up to the time of his death he had been unable to pay said note, with the exception of the sum of P98 which he paid to the plaintiffs at or about the time of its execution. There is sufficient proof to overcome the presumption that Northcott became the holder of said note for value and that he

paid to the plaintiffs the consideration named in the mortgage. In arriving at this conclusion we have disregarded the testimony of the plaintiff Saturnino R. Guerrero because he is prohibited by law from testifying as to any matter of fact occurring before the death of Northcott and Rader. (Sec. 383, par. 7, C. C. P.) We have also disregarded Exhibit F, because it is irrelevant and because the signature appearing thereon is not that of John E. Rader.

Therefore, the consideration in the sum of P7,000 of said mortgage not having been delivered to the plaintiffs, the lower court committed no error in ordering its cancellation.

The foregoing discussion of fact and law answers all of the assignments of error above noted and also disposes of the two questions presented in this appeal.

In harmony with all of the foregoing the judgment appealed from should be modified. The promissory note and mortgage for P5,000 in favor of John Northcott should be held valid and subsisting; and the plaintiffs, with the exception of Rufino R. Guerrero, should be ordered to pay jointly and severally said sum to the defendant-appellant E. C. Wells, as administrator of the estate of John Northcott, together with interest and attorney's fees; and in case of their failure to pay said amount within three months from the date hereof, the lands given in security should be ordered sold and the proceeds applied to the payment of said mortgage. The plaintiffs should also be ordered to pay to the defendant-appellant the sum of P98 which was paid to them by Northcott sometime after the execution of the note and, mortgage for P7,000.

That part of the judgment of the lower court ordering the cancellation of the mortgage for P7,000 should be affirmed. As modified in accordance herewith, the judgment appealed from should be affirmed, with one-half of the costs against each party.

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