

ANTONIO MATUTE, PLAINTIFF AND APPELLEE, VS. SANTIAGO MATUTE, DEFENDANT AND APPELLANT.*G.R. No. 33446. November 19, 1930*

Ponente: VILLAMOR, J.

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body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; }

This is an action for the specific performance of the contract evidenced by Exhibit A, the genuineness and due execution of which the defendant has failed to deny under oath.

From this instrument it appears that upon the liquidation of accounts between the plaintiff and the defendant as his attorney-in-fact in the Province of Davao, the latter was found to be indebted to said plaintiff in the sum of P35,675.86, which the defendant agreed to pay within two years, with interest at 8 per centum per annum.

The defendant answered setting up several special defenses, and a counterclaim for unpaid salary in the amount of P6,556.63. He also filed a cross-complaint, later withdrawn with the approval of the court.

By agreement of the parties, they were permitted to present their evidence to a commissioner appointed for the purpose. After going over the evidence, the court rendered judgment for the plaintiff, and ordered the defendant to pay him the sum of P29,119.23 with interest at 8 per centum per annum from December 21, 1927, when the complaint was filed in this case, until full payment, plus P17,859.80, the amount of the accrued interest upon said sum of P29,119.23 from April 20, 1920, when Exhibit A was executed, until December 21, 1927; and legal interest upon said P17,859.80 from the latter date until fully paid, with the costs.

The defendant took exception to this judgment, moved for a new trial without assigning a legal course, in consequence of which the motion was denied on January 25, 1930, and notice thereof sent to him on the 28th; on February 3d he excepted and announced his intention to appeal.

In this instance the appellant assigns the following alleged errors as committed by the trial court: (1) In finding that Exhibit A was not procured by the plaintiff through false promises; (2) in not finding that Exhibit 1 has cancelled the obligation set forth in Exhibit A; (3) in denying the motion for a new trial filed by the defendant; and (4) in rendering judgment against the defendant for the sum claimed.

Inasmuch as the appellant did not file the motion for a new trial in accordance with the requirements of section 145, number 3, of the Code of Civil Procedure, to wit: on the ground that the judge had become convinced that excessive damages had been awarded, or that the evidence was not sufficient to justify the decision, or that the latter was contrary to law: this court cannot review the evidence, following repeated rulings on this point, and the only question to be decided is whether the findings of the court below support the decision. (Granados and

Granados vs. Bandelaria, 45 Phil., 505; Jalandoni vs. Carballo, 48 Phil., 857.)

The defendant alleges as special defenses: (a) That he never was indebted to the plaintiff for the sums mentioned in Exhibit A, and that the contract purporting to be evidenced thereby lacks the element of a valuable consideration; (a) that his consent to it was obtained by means of fraud and false promises; and (b) that on February 11, 1925, plaintiff and defendant entered into a compromise which settled all differences and claims between them.

The trial court stated the following with reference to these special defenses:

"By the first defense, the defendant contends that the instrument Exhibit A was executed without a cause or consideration. But the very first page of that instrument states that owing to the defendant's mismanagement, while acting as attorney-in-fact for the plaintiff in the Province of Davao, the latter's property and interests were damaged in the amount calculated by both of them at P35,675.86. It was incumbent upon the defendant to show that that cause was false, and he not only failed to do so, but did not even attempt it; and as a matter of common knowledge, the court must take into account only facts established at the hearing, and not the pleadings filed by the parties, especially when not expressly admitted in some way or other, as in the case at bar.

"By the second defense the defendant also contends that Exhibit A was executed by means of fraud and false promises made by the plaintiff. In proof of this, the defendant testified as follows:

" 'When I arrived in Spain, I was coldly received by my father. Day after day went by, and he never spoke a word to me. Then one day he called me to his room; there, after severely reprimanding me, calling me a worthless son, a thief, and other names, and after threatening to send me to jail, he produced this document and told me to sign it as an example to the other superiors. As I then had no money to pay him with, and if I refused to sign it, he would withdraw his aid and cut me off without a penny, I yielded to the paternal influence, in order to avoid more trouble, and signed the document believing candidly that he would help me out. After I had signed it, he locked it in a drawer, and immediately ordered me out of the house, though it was midnight, like a thief; and he did not give me a penny for my return trip, and I had to appeal to a friend for my fare back to the Philippines.'

"The testimony here quoted seems improbable. In the first place, because a father does not call his own son a thief, or threatens to put him in jail without a very good reason therefor. In the second place, if it were true that the document referred to was only drawn up as an example to the other superiors, the defendant would not have added: 'for I then had no money to pay him with.' By this statement the defendant showed that he knew he was bound to pay his father something. And, lastly, if everything that the defendant testified to were true, his father would not, after obtaining what he wanted have so ruthlessly ordered him out of the house at midnight, without at least giving him his fare back to the Philippines. And aside from the obvious improbability of the defendant's testimony, it finds no corroboration or support in the record.

"The document referred to by the defendant in his testimony quoted above is Exhibit 2, which is the very instrument which served as the basis for the deed Exhibit A, already mentioned.

"The defendant pretends that he, aged twenty-five, was afraid of his father, and for that and no other reason, under the circumstances stated in the special defenses, he signed said instrument. It must be noted that by said document, the defendant acknowledged, over his signature, that he mismanaged the property which his father, the plaintiff herein, had entrusted to him. But even supposing that said document was really executed under an undue 'paternal influence' as the defendant testified, what explanation is forthcoming why, on April 20, 1920, seven months after the plaintiff's alleged ill treatment of the defendant, the latter, being then in Davao, miles away from Spain and the plaintiff, agreed to sign the document in question, Exhibit A, which is, in effect, a ratification of Exhibit 2? It has already been said that outside of the defendant's testimony, the record contains

nothing to support the special defenses just mentioned.

"The third special defense set up by the defendant has not been proved.

"With regard to the defendant's cross-complaint, it must be stated that the same cannot now be considered because it was withdrawn by the interested party himself before the case was submitted. In regard to his counterclaim, as already stated, the plaintiff has recognized it in his complaint crediting the defendant with the sum claimed and, therefore, now insists upon collecting only P29,119.23 instead of P35,675.86."

Inasmuch, then, as the trial court has made the following findings: (1) That the defendant has not proved his contention that the contract Exhibit A is not supported by any consideration; (2) that the defendant has also failed to prove that the plaintiff resorted to fraud and false promises to procure the execution of said contract Exhibit A; (3) that as the defendant withdrew his cross-complaint before submitting the case, it cannot now be considered by the court; and (4) that considering that the plaintiff has credited the defendant with the sum of P6,859.80 which is the object of the counterclaim, the amount claimed was reduced to P29,119.23: this court is of opinion that these facts fully support the judgment appealed from.

And finding no error to be corrected in the appealed judgment, it must be, and is hereby, affirmed, with costs against the appellant. So ordered.

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

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