

HENRY O'CONNELL, PLAINTIFF AND APPELLEE, VS. NARCISO MAYUGA, DEFENDANT AND APPELLANT.

G. R. No. 3510. August 24, 1907

Ponente: WILLARD, J.

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WILLARD, J.:

On the 15th of June, 1905, the plaintiff and one Esteban S. Monzon entered into a contract by the terms of which the plaintiff leased to Monzon a certain building in the city of Manila, To guarantee the performance of the contract by Monzon, the name of Lorenzo Mayuga was signed to this document as surety. The principal question in the case is whether or not the defendant, Narciso Mayuga, is the person who appeared before the notary public and executed the contract using the name Lorenzo Mayuga. The court below found that he did, and we think that; this finding is sustained by the evidence.

The clerk in the office of the notary public who took the acknowledgment of the contract testified that he drew the contract; that the defendant, Narciso Mayuga, came to the office twice for the purpose of executing it, and he positively identified the defendant as the person who signed the contract with the name of Lorenzo Mayuga. The agent who acted for the plaintiff, and who was present when the contract was executed, testified in the same way. This witness had known the defendant for some years.

A few months after the contract was made, Monzon not having paid the rent, the plaintiff brought an action before a justice of the peace of Manila to eject him from the premises and to recover damages. In this action there were named as defendants Esteban Monzon and Lorenzo Mayuga. A summons to Lorenzo Mayuga was issued by the justice of the peace and delivered to the sheriff of the Province of Rizal for service upon Lorenzo Mayuga in Paranaque, where the defendant, Narciso Mayuga, resided and still resides. The sheriff made the return that he had served the summons upon Lorenzo Mayuga, the service having in fact, been made upon the defendant, Narciso.

The only testimony to overcome this evidence of the plaintiff in regard to identity was the testimony of the defendant himself, who stated that he never signed the document, and the testimony of two witnesses who stated that upon the day when the contract was signed the defendant was in Parañaque. We do not think this evidence is sufficient to overcome the evidence for the plaintiff.

It is further claimed by the defendant and appellant that there exists a former judgment in his favor, which is a bar to this action. The judgment referred to is the judgment entered by the justice of the peace in the action above mentioned.

As has been said before, it appears that in response to the summons directed to Lorenzo Mayuga in that case, the defendant, Narciso Mayuga, appeared in the court of the justice of the peace. The judgment of the court below, after holding the defendant, Monzon, responsible for damages and costs, contains the following statement:

"The defendant, Narciso Mayuga, whose name has been confused with that of Lorenzo Mayuga, the party

signing the contract, is absolved, the complaint being dismissed in regard to the latter on the ground that summons were not served upon him."

As to the effect of a former judgment between the same parties, section 307 of the Code of Civil Procedure provides as follows:

"What is deemed to have been adjudged in a former judgment.—That only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto."

It is very apparent upon reading the judgment above quoted that the court never passed upon the question as to whether Narciso Mayuga and Lorenzo Mayuga were the same person or not. In fact, it affirmatively appears upon the face of the judgment that the justice of the peace considered that they were two persons and that while he acquitted Narciso Mayuga, he dismissed the action as to Lorenzo Mayuga because the latter had not been served with process.

The judgment of the court below is affirmed, with the costs of this instance against the appellant So ordered.

Arellano C. J., Torres, Johnson, and Tracey, JJ., concur.

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