

FELIX VELASCO, PLAINTIFF AND APPELLANT, VS. MARTIN MASA, DEFENDANT AND APPELLEE.*G.R. No. 3717. March 05, 1908*

Ponente: TORRES, J.

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On the 2d of December, 1902, Felix Velasco filed a complaint against Martin Masa asking that, without prejudice to the criminal action which he might bring, judgment be entered ordering the defendant to pay 2,804 pesos, with interest thereon at the rate of 12 per cent per annum from the 1st of July, 1899, until the full payment of the principal, losses and damages, and the costs of the proceedings. He alleged that on the 1st of July, 1898, Martin Masa received from him as a loan, in the pueblo of San Remigio, the said amount, payable on the same day in July the following year. The debt, he alleged, was set forth in a private document signed by the debtor, but that the defendant, Masa, taking advantage of the conditions then prevailing on account of the late revolution, and by means of coercion and trickeries exercised with respect to his wife, managed to obtain possession of the document of indebtedness while the plaintiff was detained as a prisoner in the jail at the capital of Antique; that one year and some months after the condition of things had become normal, he filed his claim before the provost court for the robbery of the said document, but, as said court considered that it had no jurisdiction in the premises, the plaintiff presented an information to the Court of First Instance, a certified copy of whose decision is annexed; and that between the plaintiff and the defendant interest at the rate of 12 per cent had been agreed upon, which was to be added to the principal at the end of the year if the defendant was unable to pay the same.

The defendant in his answer denied all the main points of the complaint, inasmuch as the aforesaid document, which was the subject of the same, had been voluntarily handed over to him through Luis Ocseña; that said document did not call for 2,804 pesos but for 1,000 pesos, with interest at the rate of 20 per cent per annum, and was signed, not in the year cited in the complaint but in 1889; that he admitted the third paragraph of the complaint regarding the claim presented, not to the provost court but to the then provincial governor, and subsequently to the Court of First Instance, charging the defendant with the robbery, by means of threats, of the said document of indebtedness for 2,804 pesos, from which charge the defendant was acquitted for the reason that it was proven that the same had been delivered to the latter for reasons of gratitude, as stated in the judgment, a copy of which is attached to the complaint; the defendant therefore asked that the complaint be dismissed with costs against the plaintiff.

After the foregoing answer was presented the defendant demurred to the complaint and asked that his motion be granted, and that the complaint be dismissed with costs against the plaintiff, alleging that the judgment rendered by the court on the 7th of March, 1902, was, in the form of a certified copy, attached to the complaint as a part thereof; that the said judgment being of executory character was not subject to appeal, for which reason the defendant believed that neither the court nor any other tribunal had jurisdiction over the defendant in connection with the document referred to in the complaint wherein no facts are alleged which might constitute a cause of action. On the 13th of July, 1903, the said demurrer was overruled by the court, to which the defendant excepted.

Upon evidence being adduced by both parties and their exhibits attached to the record, the court, on the 4th of November, 1905, entered judgment dismissing the complaint against Martin Masa without any special ruling as to costs, to which judgment the plaintiff excepted and moved for a new trial on the ground that the conclusions stated in the decision were openly and manifestly contrary to the weight of the evidence; this motion was overruled by the court, and the plaintiff excepted thereto. Another motion made by the defendant, asking that the bill of exceptions presented by the plaintiff be disallowed, was likewise overruled, the defendant also excepting thereto.

If it is true that a document was executed by the defendant, Martin Masa, on the 1st of July, 1898, wherein was set forth the loan of 2,804 pesos payable on the same date in the following year and which the plaintiff, Felix Velasco, had granted him, it is also true that, after the outbreak of the insurrection against Spain in the Province of Antique, a sequel to that in Manila, and on a certain day in the month of December of said year 1898, if not by order of the plaintiff, yet with his approval, the said document of indebtedness was voluntarily returned to the defendant by the wife of the creditor, renouncing the debt and waiving, for reasons of gratitude toward the debtor, the right to collect the same.

The fact that the aforesaid document was spontaneously returned was considered by the judge as duly substantiated by the preponderance of the evidence offered by the defendant, inasmuch as no satisfactory proof had been submitted by the plaintiff to show that the defendant had obtained the document by means of coercion and trickery exercised with respect to his wife at a time when he was confined in the jail at the capital of Antique.

Under section 273 of the Code of Civil Procedure, the court or tribunal may, in determining the preponderance or superior weight of evidence on the issues, consider all the facts and circumstances of the case, the witnesses' manner of testifying, their means and opportunities of knowing the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility, and the number of witnesses, though the preponderance of proof may not necessarily rest with the greater number.

The record contains no reason or legal cause showing that, when this litigation was decided, the Court of First Instance ignored or failed to bear in mind the provisions of the section of the Code of Procedure cited above, because the conclusions arrived at by the said court, deduced from facts considered by it as duly proven, are, according to the rules of sound criticism and good sense, adjusted to the law and to the merits of the case.

While in the criminal proceedings it could not be proved that Martin Masa had obtained possession of said document through violence or intimidation, and for such reason he was acquitted of the charge of robbery, so also in the present action, whereby it is pretended to collect the amount stated in the document, it has not been proved that the defendant, Masa, managed to obtain delivery thereof from the wife of the plaintiff by means of coercion or trickery as alleged.

The conclusion stated by the judge in the judgment appealed from, that the return of the document made by the wife of the plaintiff to the defendant debtor, through Luis Ocseña, was voluntary, and that she did it by orders from the plaintiff creditor, according to the testimony of the defendant's witnesses, appears to be founded upon and properly sustained by the evidence and other merits of the case, and it is not possible to hold that the said conclusion is openly and manifestly contrary to the weight and preponderance of the evidence, nor that the court erred when arriving at such conclusion, inasmuch as such an affirmation would find no basis or support in the proofs offered by the plaintiff nor in the other data furnished by the record. Therefore, there is no reasonable ground to reject the conclusion of the court in the judgment appealed from.

Assuming that the document of indebtedness was voluntarily returned to the debtor, the question at issue would be, Whether the debt was legally renounced, and if the creditor has thereby waived his right to recover the

amount from the defendant debtor?

The first paragraph of article 1187 of the Civil Code [and articles 1188 and 1189] provide that—

"A remission may be made either expressly or by implication.

"ART. 1188. The surrender, made voluntarily by a creditor to his debtor, of a private instrument proving a credit, implies the renunciation of the action which the former had against the latter.

"If in order to invalidate this renunciation, it should be claimed that it is illegal, the debtor and his heirs may support it by proving that the delivery of the instrument was made by virtue of the payment of the debt.

"ART. 1189. Whenever the private instrument from which the debt appears should be in the possession of the debtor, it shall be presumed that the creditor delivered it of his own will, unless the contrary is proven."

It is an unquestionable fact, duly proven at the trial, that the instrument proving the debt now claimed passed to the possession of the debtor and for this reason, unless the contrary be proven, it must be presumed, in accordance with the provisions of law, that the delivery of the instrument was voluntarily made, and that this fact implies a renunciation of the action which the creditor had for the recovery of his credit. It should be noted that the document returned to the debtor is of a private nature, the only case subject to the provisions of the above quoted articles of the Civil Code, so that a tacit renunciation of the debt may be presumed, in the absence of proof that the document was delivered for some other reason than a gratuitous waiver of the debt and the complete extinction of the obligation to pay.

The doctrine established by the supreme court of Spain, when applying the above mentioned articles of the Civil Code, confirms the rule laid down. Among others, the court in the decision of the 19th of October, 1897, states that—

"In order that the presumption *juris tantum* established by this article (1189) may be applicable, it is necessary, as the preceding one (1188) provides, that the delivery of the private document proving the credit, made by the creditor to the debtor, be a voluntary act of the former."

It has already been said that, according to article 1189 of the code, the possession by the debtor of a private document proving a debt supposes and creates the presumption that the creditor delivered it voluntarily, unless the contrary is proven, and no such proof has been offered by the plaintiff upon whom the burden rests to destroy the said presumption.

Article 1250 of the Civil Code provides:

"Presumptions established by law exempt those favored thereby from producing any further proof."

And article 1251 of the same code reads:

"Presumptions established by law may be destroyed by proof to the contrary, except in the cases in which it is expressly prohibited."

Therefore, considering that the delivery of the document, made by the plaintiff's wife to the defendant Masa, through Luis Ocsena, was approved, though tacitly, by the said plaintiff creditor, for the reasons stated in the judgment appealed from, and no proof appearing in the record that the delivery of the document was not voluntarily made, it appears from the whole of the foregoing that the debt now claimed was remitted for reasons of gratitude and in acknowledgment of the services rendered by the debtor to the plaintiff creditor, and that the latter has implicitly waived its recovery, and if thereafter he filed a complaint against the defendant it was evidently due to some trouble which subsequently arose between them, thus putting an end to a long friendship

which existed between them.

In view of the foregoing, and accepting the conclusions of the judgment appealed from, it is our opinion that the same should be affirmed, with the costs of this instance against the appellant. So ordered.

Arellano, C. J., Mapa, Johnson, Carson, Willard, and Tracey, JJ.; concur.

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