

JAMES J. PETERSON, PLAINTIFF AND APPELLEE, VS. RAFAEL AZADA, DEFENDANT AND APPELLANT.*G. R. No. 3734. August 26, 1907*

Ponente: TORRES, J.

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On the 6th of August, 1906, James J. Peterson, through his attorney, W. A. Kincaid, filed a complaint with the Court of First Instance of Manila, asking that judgment be entered against Rafael Azada sentencing him to pay 1,160 pesos and 55 centavos, with interest thereon at the rate of 1 per cent per month from the 10th of June of said year until the day of payment, with the costs and expenses of the proceedings. In support of the action the plaintiff alleged that the defendant had, on the 1st of May, 1906, issued a promissory note in favor of the plaintiff for the sum of 3,800 pesos received by him in the course of business, payable on or before the 10th of June. Several pieces of jewelry were pledged with the creditor as security, as stated at the foot of the document, and it was therein provided that if the debt were not paid on or before maturity, Peterson, the creditor, with the cooperation of Antonio G. Serrano, would be entitled to sell the jewelry at the best price obtainable on the market, the debtor binding himself to pay whatever balance might still be due. In case the proceeds of the sale exceeded the amount of the promissory note, however, it was agreed that the surplus would be handed over to the debtor. It was further agreed between the parties concerned that in case the debt was not paid (in full) on the day when it became due, the amount remaining unpaid should bear interest at the rate of 1 per cent per month until the same was entirely settled. The plaintiff also alleged that of the amount of the debt, including the proceeds of the sale of two rings and a hair comb (peineta), which amounted to 1,739 pesos and 45 centavos, the defendant only paid 2,639 pesos and 45 centavos, there remaining an unpaid balance of 1,160 pesos and 55 centavos, which is the amount now claimed.

The demurrer was overruled on the 28th of August, 1906, and the defendant, through his attorneys, Herrero & Caringal, filed his answer on the 3d of September, and, with the exception of paragraph 1 of the complaint, denied all and each of the allegations contained therein, and asked that the complaint be dismissed with costs against the plaintiff. He claimed that the attempted novation, on the 1st of May, 1906, of the obligation signed by the defendant on the 14th of March, 1905, should be declared null and void by reason of the error of the defendant inasmuch as, subsequent, to the sale of the jewelry, he had become exempt from further payment; that the document executed on the 14th of March, 1905, be considered as a loan contract secured by a pledge; that the sale of the jewelry was null because it was unlawful and that in consequence thereof no payment of any balance could be demanded; and that in case there was a real substitution of a new debt for an old one and the sale of the jewelry was valid, then that it should be held that the balance due could not be demanded nor be the subject of legal proceedings until the 10th of December, 1906.

In support of this contention the defendant alleged that on March 2, 1905, a promissory note was made by him in favor of the plaintiff for the sum of 500 pesos, payable within five months, and that he delivered to the creditor a diamond ring of equal value as security; that on the 14th of March, 1905, another promissory note for 3,000 pesos

was made in favor of the plaintiff, payable on the 15th of January, 1906; that these two obligations having become due, the debtor then made the promissory note dated May 1, 1906, wherein the sums stated in the two former notes and an additional sum of 300 pesos were included, the last-named note calling for 3,800 pesos payable on or about the 10th of June, 1906; that a few days later he noticed the mistake he had made in signing the last promissory note, and thus informed the plaintiff and Serrano, the agent, but that on account of the explanations given by the plaintiff, the defendant did not insist in his claim, having learned afterwards that the jewels had been sold, and that he still owed 1,160 pesos and 55 centavos; that if the plaintiff did not sell the jewels as his own property, but as that of the defendant, it was his duty to have followed the proper proceedings, a thing which he did not do, to the prejudice of the defendant; that if the plaintiff sold the jewelry as his own, then the defendant was not liable for the unpaid balance; that the plaintiff, being the sheriff for the city of Manila, was bound to comply with the provisions approved by the Civil Governor on the 17th of September, 1904, prohibiting, under penalty of dismissal, the loaning of money at exorbitant rates of interest, for which reason the interest claimed at 18 per cent per annum should not be paid, and that in any event the plaintiff was not entitled to more than 6 per cent per annum.

The case having come on for trial and the record being completed, the court entered judgment on the 16th of November, 1906, and sentenced the defendant, Azada, to pay Peterson, the plaintiff, the sum of 1,160 pesos and 55 centavos, Philippine currency, with interest thereon at the rate of 1 per cent per month from the 10th of June of the same year, the date at which the obligation became due, until full payment thereof is made, and to pay the costs, and overruling the petitions submitted by the defendant in his special defense. The defendant excepted to the above judgment and asked for a new trial on the ground that the decision was contrary to law and to the weight of evidence; the motion was, however, denied, and to this exception was also taken.

It is an undisputed fact that the obligation contained in the instrument annexed as "Exhibit A," dated May 1, 1906, was executed by the defendant. It does not appear that the proper execution of the document was specifically denied under oath or impugned in the answer to the complaint whereby the payment of the balance of the debt is claimed; it must therefore be deemed that its genuineness was admitted by the defendant. (Sec. 103, Code of Civil Procedure.)

The defendant in his answer having admitted that the two amounts of 500 and 3,000 pesos owing upon two promissory notes overdue, were included, with an addition of 300 pesos, in the said instrument of May 1, 1906, whereby the defendant bound himself to pay the 3,800 pesos on the 10th of June of the same year, it can not be doubted that by the latter obligation, which was a perfect novation of the former debts, their nature and conditions were modified, and both merged into a new obligation with an increase of the loan. The two former obligations can not legally exist at the same time as the latter, since they are incompatible, for the reason that the obligation arising from the promissory note of May 1 necessarily determines the notes of March 2, 1905, and of March 14, 1906, the two latter being thereby extinguished. (Arts. 1203 and 1204, Civil Code.)

It was not shown at the trial that the defendant, when he signed the promissory note of May 1, 1906, was not aware of its contents, nor that what was therein stated was not what had been agreed between the creditor and the debtor, in view of the fact that the two notes, of 500 and 3,000 pesos, respectively, had not been settled at maturity.

In his answer the defendant makes a statement of the agreement entered into between himself and the plaintiff with respect to the new obligation, in substitution of the two former notes already due and unpaid, and alleges that as the latter were perfectly valid, the new note should also be considered valid and efficient, no reason having been alleged or proven to nullify it.

The contract entered into between Peterson and Azada for the renewal in one sole instrument of the two promissory notes which the latter had not paid meets all the requirements of article 1261 of the Civil Code. No satisfactory evidence was produced to show that the debtor assented in error to the renewal; on the contrary he himself confesses that, prior to the signing of the said note of the 1st of May, 1906, he consented to the same being read to him, and voluntarily placed his signature thereto in the presence of the creditor and of the agent, Antonio Serrano.

For the reason above stated we are of the opinion that the judgment appealed from is in accordance with the law and with the weight of the evidence in the case, and that the allegation pleading that the defendant was a victim of deceit and error when he signed the promissory note of the 1st of May, 1906, is groundless and should not be considered. (Arts. 1265, 1266.)

Contracting parties may make any agreement and impose such terms and conditions as they may deem advisable, provided they are not contrary to law, to good morals, or to public order. Contracts are binding, whatever may be the form in which they have been executed, provided the essential conditions required for their validity exist. (Arts. 1255, 1278, Civil Code.)

It having been agreed by the parties that in case the promissory note of the 1st of May was not paid the creditor would be entitled to sell the jewelry pledged to him by the debtor, at the best price obtainable on the market and with the assistance of Antonio G. Serrano, the execution of the agreement by the creditor, in view of the insolvency of the defendant, can not be considered as contrary to the law or to the contract. The will of the parties as expressed in a contract is the law, and the conditions stipulated with regard to the jewelry in this case are not in contravention of law, of morals, or of public order. If Peterson, the creditor, had the unquestionable right to recover what was due him by Azada, the debtor, who in spite of the time elapsed was unable to meet the valid obligation contracted by him, he can not be denied the right to dispose of the pledged jewelry, as he did, with the knowledge and consent of the debtor, through a third person, Antonio Matute, in conformity with the agreement. The other allegations of the defense are not germane and are contrary to the stipulations in the contract.

As it was further provided in the agreement of May 1, 1906, that from the time when the debt became due interest would accrue at the rate of 1 per cent per month, this condition must be complied with as it is one which is binding on the contracting parties, in accordance with the provision of the code and the decisions of courts.

Aside from this, it is absurd and unreasonable to pretend that the term for the payment of the 1,160 pesos and 55 centavos, balance due on the promissory note of May 1, is not the one agreed to, but a different one fixed by the debtor without the consent of the creditor, as if the balance were not a portion of the whole indebtedness, and as if by reason of the debt not having been paid in full, the insolvent debtor had become entitled to an additional extension of the term, without the consent arid to the detriment of the creditor; this is manifestly contrary to law and to good morals.

The judgment appealed from is, in our opinion, in accordance with the law, and it should be affirmed, with costs against the appellant. So ordered.

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

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