

C. C. PYLE, PLAINTIFF AND APPELLEE, VS. ROY W. JOHNSON ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 3755. November 23, 1907

Ponente: WILLARD, J.

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WILLARD, J.:

The plaintiff brought this action in the Court of First Instance of the Province of Pangasinan upon the following document:

"I hereby promise to pay to the order of Mr. C. O. Pyle, of Dagupan, on or before the 1st day of April, 1900, the sum of two thousand eight hundred and ninety-eight pesos (P2,898), value received, for business purposes.

"Dagupan, P. I., the 16th day of January, 1906.

"Roy W. Johnson.

"We guarantee payment:

"Manuel Corpus.

"Mariano Padilla."

Judgment was entered in that court to the effect that the plaintiff recover of the defendant Johnson the amount named in the note, with interest thereon and costs, and that the defendants Manuel Corpus and Mariano Padilla each pay to the plaintiff one-half of any amount which Roy W. Johnson should fail to pay, with interest and costs, and that execution be issued. From this judgment the defendants Manuel Corpus and Mariano Padilla have appealed.

The principal defense is that the appellants never signed the document in question. There is attached to it a certificate by a notary public to the effect that the three defendants appeared before him and acknowledged that the signatures attached thereto were their genuine signatures. As to the appellant Manuel Corpus, in addition to the evidence of the notary public who received his acknowledgment, there is the testimony of the plaintiff to the effect that this appellant and Johnson personally delivered the note to him after its execution. There is other testimony to the effect that this appellant on several occasions after the date of the note admitted his liability thereon.

The evidence is not so strong against the appellant Mariano Padilla, but after an examination of it we can not say that it preponderates against the finding of the court below. The signature of Padilla on the note is very similar to his genuine signature as it appears upon his personal cedula of the year 1905. The testimony of the notary was positive to the effect that he went to Padilla's office with the note and asked him if his signature thereon was genuine, to which Padilla answered that it was. The notary public who protested the note testified that he sent by mail a notification of the protest to Padilla, but did not send him a copy of the protest. Padilla testified that he never received any copy of the protest, but he did not testify that he did not receive any notification of the protest, and there is a presumption that the notice then sent by mail arrived at its destination. (Sec. 334, Code of Civil

Procedure, par. 22.) Padilla never made any claim that he did not sign the note until after suit was brought thereon. Practically the only evidence in his favor is his own statement. This ought not to prevail against the disinterested evidence of the notary public and the other proof in the case.

The claim of the appellants that there was no consideration for their guaranty can not be sustained. The consideration which supports the obligation as to the principal debtor is a sufficient consideration to support the obligation of the sureties. It is not necessary to prove any consideration as between them and the creditor.

Whether the protest was sufficient or not is immaterial. If the document is not a mercantile one, and is, therefore, governed by the provisions of the Civil Code, no protest was necessary; nor, if it be a mercantile instrument, was it necessary to protest it as against the defendant Johnson. (Arts. 459, 460, 483, and 517, Code of Commerce.) If it was not necessary to protest the note as against the maker, it was not necessary to protest it as against his sureties. (Art 487, Code of Commerce.)

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

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

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