

RAMONN N. OROZCO, PLAINTIFF AND APPELLEE, VS. JUAN XAVIER, DEFENDANT AND APPELLANT.

G.R. No. 3763. September 18, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

The plaintiff, claiming to be the assignee of Manuel Avancenía and of Claro Jetorian, who were in turn assignees respectively of Aniceto Lacson and Eulalio Lacson, brought this action in the Court of First Instance of the Province of Iloilo to recover damages for a breach of two separate contracts made by the defendant, one with Aniceto Lacson and the other with Eulalio Lacson, by the terms of which the defendant, who lived in the Province of Antique, agreed to furnish to Aniceto Lacson 250 men to work upon his sugar estate in Negros from November, 1902, to May, 1903, and 100 men to Eulalio Lacson for the same purpose.

The court below found that the defendant had not fulfilled either of the contracts and ordered judgment against him for 10,000 pesos. From this judgment the defendant has appealed.

The first error assigned by the appellant is to the effect that the action should have been brought against Juan Xavier & Co., and not against Juan Xavier. This contention can not be sustained.

It appears from the receipt signed on the 15th day of July, 1902, by the agent of the defendant, that the only contracts made by Aniceto Lacson and Eulalio Lacson, were contracts made with the defendant personally. It is true that these receipts, for the purpose of determining the conditions of the contract refer to another document, which was received in evidence, and that in this document one of the contracting parties appears to be Xavier & Co., and not Xavier. But this document was not signed either by Aniceto Lacson or by Eulalio Lacson. It apparently is an agreement between members of a partnership organized in Antique for the purpose of furnishing laborers to the sugar planters of Negros, and its only purpose in this case was to make the conditions therein mentioned a part of the conditions of the contract between Aniceto Lacson and Eulalio Lacson, on one part, and Juan Xavier on the other.

By the terms of the contract between the parties, the sugar planters were to pay in advance 8 pesos for each workman in two installments of 4 pesos each. The first installment of 4 pesos was paid but the second installment was not, and the defendant claims that the Lacsons, not having complied with the contract on their part by paying the second installment, no recovery can be had in this case. The defendant himself, however, testified at the trial that, when the time came for the payment of the second installment, he did not demand it because he knew then that he could not furnish the laborers in accordance with his contract. The nonpayment of this installment, therefore, is no defense to the action.

The third assignment of error, however, must be sustained. It was alleged in the complaint that Aniceto Lacson had assigned all of his rights under his contract to Manuel Avanceña, and that Eulalio Lacson had assigned all of his rights under his contract to Claro Jetorian. It was further alleged that Manuel Avancenía and Claro Jetorian had assigned their rights to the plaintiff.

There was a general denial in the answer which put in issue these allegations of the complaint with reference to the assignments and it was, therefore, necessary for the plaintiff to prove them. He did prove the assignments to Manuel Avanceña and to Claro Jetorian. No proof, however, was offered of any assignment by those two last-named persons to the plaintiff. The plaintiff offered and there was received in evidence over the objection and exception of the defendant, a document dated on the 11th of May, 1903, between Manuel Avanceña and Claro Jetorian on the one part and the defendant on the other. This document is an agreement for the settlement of the claims here in controversy. By the terms thereof, Xavier promised to repay to Manuel Avancenía 1,000 pesos and to Claro Jetorian 400 pesos, to pay the additional sum of 1,712 pesos for the expenses of the steamer and lorch which were sent to Antique to get the workmen, and to pay the additional sum of 2,500 pesos, as fees for the plaintiff, who was the lawyer of Avanceña and Jetorian. The defendant was given forty days from the date of the contract in which to perform the terms thereof, and it was agreed that the criminal and civil actions which were then pending against Xavier in the Court of First Instance of the Province of Occidental Negros should be suspended, and if the defendant complied with the terms of the settlement that they should be dismissed. It was also provided that, if this sum of 5,612 pesos was not paid within forty days, the civil and criminal proceedings should continue. The time for the performance of this contract was afterwards extended to the 15th day of September, 1903. The defendant paid 1,000 pesos but did not in other respects comply with his agreement. At the foot of this document there is the following:

"I indorse this document in favor of Ramon Orozco, attorney at law, a resident of Iloilo.

"Talisay, February 1, 1905.

"M. AVANCEÑA.

"I indorse this document, as the widow of Claro Jetorian, in favor of Ramon Orozco, attorney at law, a resident of Iloilo.

"Silay, February 2, 1905.

"NATIVIDAD CONLU, Widow of Jetorian."

No evidence was offered to show any assignment of the original contracts between Aniceto and Eulalio Lacson on the one part and the defendant on the other.

Without stopping to consider whether the assignment of this agreement for settlement would amount to an assignment of the original contracts, it is sufficient to say that, even assuming that it would, there was no evidence to prove the signature of Avanceña or the widow of Jetorian to these indorsements. Moreover, there is nothing to show in what way the widow of Claro Jetorian acquired his right under the contract.

The plaintiff having failed to show that he is the owner of the cause of action stated in the complaint, the judgment in his favor can not be sustained. It is accordingly reversed, and a new trial ordered, without costs, to either party in this court. So ordered.

Arellano, C. J., Torres, Mapa, Carson, and Tracey, JJ., concur.

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