

JUAN AZARRAGA, PLAINTIFF AND APPELLEE, VS. JOSE RODRIGUEZ, DEFENDANT AND APPELLANT.*G.R. No. 3833. January 18, 1908*

Ponente: TORRES, J.

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Under date of June 19, 1905, Juan Azarraga filed a complaint against Jose Rodriguez with the Court of First Instance of Capiz asking that the judgment appealed from entered in his favor by the justice of the peace, whereby the defendant was sentenced to pay the sum of 400 pesos and 25 centimos and legal interest thereon, together with the costs of both instances, be affirmed, and alleged that on or about December 31, 1898, the defendant, Rodriguez, executed in favor of Regino Ramirez a document whereby he bound himself to pay the latter on the 15th of May, 1899, the above-named sum, which Fray Lesmes Perez owed the said Ramirez, who, in payment of a debt to the plaintiff, Azarraga, indorsed or assigned to the latter the said document from the defendant, Rodriguez, for the above-stated sum, for account of his indebtedness; said indorsement was made at Iloilo on the 15th of June, 1900, and the defendant, who consented thereto, was notified of the same; that some time in 1901 the plaintiff wrote a letter to the defendant informing him that the aforesaid document of indebtedness executed by him to Ramirez had been indorsed by the latter to him (the plaintiff), and that in consequence thereof he requested him to pay the said debt of 400 pesos and 25 centimos; in answer to said request the defendant wrote a letter acknowledging his indebtedness and obligation. and engaging to pay the same.

Since that time, however, and notwithstanding having been requested several times, it is further alleged that the defendant instead of making payment has sought to evade it, asking for extensions and further extensions, and for this reason the creditor was obliged to file a complaint against him in the court of the justice of the peace of the provincial capital, and that, as the result of such action, judgment was rendered therein sentencing the defendant, Rodriguez, to pay the amount due by him; from said judgment he appealed to the Court of First Instance before which the former complaint was reproduced.

Upon the overruling of the demurrer filed by the defendant, to which he excepted, he, in answer to the complaint, stated in writing, on the 30th of January, 1906, that as a matter of fact he had executed the document in question to the amount of 400 pesos and 25 centimos in favor of Regino Ramirez, but denied all and every one of the allegations contained in paragraphs 2, 3, and 4 of the complaint, and in his defense alleged that said document was executed by the defendant as security for the accounts which said Fray Lesmes Perez had with the aforesaid Ramirez, who indorsed them upon the agreed condition to return such moneys as should be collected from said Fray Lesmes on the 15th of May, 1899, or to return the accounts if uncollected in order to exchange them for the document in question signed by the defendant, which exchange was not carried out notwithstanding the fact that the accounts were not collected, on account of reasons for which he was not to blame; and that at the time when the supposed obligation was executed, and when it became due and was indorsed, both the plaintiff and the defendant were merchants, such as they are now, as is also the supposed original creditor, Regino Ramirez; that the aforesaid document was issued by reason of a mercantile transaction and intended for mercantile purposes

also; hence, that the subject thereof is a mercantile transaction, and that the right of the plaintiff, if any, had prescribed prior to the time when the original complaint was filed with the court of the justice of the peace; therefore, in conclusion he asked that the complaint be dismissed and the plaintiff sentenced to pay the costs, and prayed for such further relief as might be considered just and equitable.

Upon the trial of the case evidence was adduced by both parties, the documents exhibited were made of record, and on the 16th of November, 1906, judgment was entered sentencing Jose Rodriguez to pay Juan Azarraga the sum of 400 pesos and 25 centimos in local currency at the rate ruling on the day of payment, with legal interest thereon from May 15, 1899, and to pay the costs of the proceeding. To said judgment the defendant excepted and moved for a new trial on the ground that the findings of fact were openly and manifestly contrary to the weight of the evidence, and because the sentence was contrary to law; the motion being overruled, the petitioner excepted, and upon proper bill of exceptions having been presented, the case was submitted to this court on appeal.

The document marked "A," signed by the defendant, and which states the obligation contracted by him reads as follows:

"The undersigned hereby engages to pay Sr. Regino Ramirez, a merchant of this place, on the 15th day of May of the coming year 1899, the 400.25 pesos, four hundred peso's and twenty-five centimos, which Fr. Lesmes Perez appears to owe him under the document indorsed in my favor on this date. Capiz, December 31, 1898.—Jose Rodriguez." Rubricated.

On the back of the foregoing document appears a note which reads thus:

"I hereby indorse in favor of Sr. D. Juan Azarraga the above-stated amount. Iloilo, June 15, 1901.—Regino Ramirez." Rubricated.

The obligation constituted by the aforementioned document in favor of Regino Ramirez and transferred, according to the note indorsed thereon, to Juan Azarraga, is what the law classifies as due on a day certain, referred to in article 1125 of the Civil Code, which reads as follows:

"Obligations, the fulfillment of which has been fixed for a day certain, shall only be demandable when the proper day arrives.

"A day certain is understood to be one which must necessarily arrive, even though its date be unknown.

"If the uncertainty should consist in the arrival or nonarrival of the day, the obligation is conditional and shall be governed by the rules of the preceding Section."

At the time when the complaint was filed with the court of the justice of the peace, the date fixed for the fulfillment of the obligation, namely, the 15th of May, 1899, had long since passed without the obligated party, Rodriguez, having paid Azarraga, the transferee, the 400.25 pesos which, under the said document of indebtedness, he had engaged to pay, notwithstanding the fact that he was informed of the cession or transfer thereof, and demand had been made upon him therefor. And, furthermore, as alleged, after the defendant had been sentenced by the justice of the peace to pay the said amount, he, without legal reasons, and with excessive temerity, still ventured to appeal in a second and third instance, with the evident intent to evade the fulfillment of a valid obligation, the date for the payment of which was overdue and payment therefore demandable, inasmuch as the defendant can be compelled to pay the said amount.

Of the two exceptions taken by the defendant to the claim of the creditor the first consists in that, according to his own opinion, said obligation is a conditional one. Such an allegation can not be admitted under the law because in said document of indebtedness accepted by Rodriguez, no condition whatever is present, not even that which is pretended in the answer, and since the terms of the obligation due on a fixed date are clear, the plain meaning of

the wording of said document must be abided by, as it would not be lawful to consider as included therein things and conditions other than such as were intended by the parties concerned when executing the contract, and which appear therein. (Arts. 1281, 1283, Civil Code.)

Neither does the condition alleged by the defendant appear in the letter which the original creditor, Ramirez, addressed to the plaintiff, Inclosing the said document of indebtedness with his indorsement thereon; and upon the defendant debtor having been notified of the transfer by Ramirez, as advised by the latter in his letter to Azarraga, the transferee, and when the said debtor wrote to the latter stating his willingness to pay and acknowledging that, owing to the delay, the transferee was subjected to heavy loss, he makes no mention of any condition whatever as having been agreed to when the document of indebtedness was executed.

In the aforesaid document marked "A" reference is made to the documents exhibited by the defendant under Nos. 1, 2, 3, 4, 5, 6, 7, and 8, in the first of which there is a statement of the account of Fr. Lesmes Perez with Regino Ramirez, the creditor, where the total amount is the same as that stated in the document marked "A," and in which appears a note of "pay to the order of Rodriguez," the defendant, as he himself affirms in said document "A" executed by Rodriguez on the 31st of December, 1898, at which time the indorsement was drawn up on said account No. 1 by Ramirez, the creditor.

The transaction carried out is logical and perfectly legal; if by reason of the transfer Rodriguez became the owner of the credit of 400.25 pesos held by Ramirez against Fr. Lesmes, it is proper that he should in turn execute in favor of the assigning creditor a document whereby he bound himself to pay the amount transferred on a certain date; said credit was subsequently transferred to the plaintiff, a transfer of rights authorized by article 1112 of the Civil Code, and furthermore involving a novation of the original obligation, Rodriguez substituting the debtor, Fr. Lesmes Perez, and subrogating Azarraga to Ramirez, the original creditor. (Arts. 1203, 1205, 1212, Civil Code.)

The mere declaration of the defendant, lacking as it does the least justification, does not constitute any proof tending to show the existence of the alleged condition, nor can it lessen the value of the document of indebtedness signed by him in favor of Ramirez, whose indorsement or transfer to the plaintiff he was unable to deny; on the contrary, he had to admit it as a fact and that it was in accordance with the law.

If we were to seek for the reason why Rodriguez executed said obligation to pay the debt of Fr. Lesmes Perez, it will be seen that the same is explained in the document marked "D," signed by the defendant, Rodriguez; said document shows in a conclusive manner that accounts were pending between Pr. Lesmes Perez and Jose Rodriguez, or, as said document states, the latter owed the former 1,983.75 pesos, and on this supposition it is not strange that Rodriguez engaged to pay Ramirez what Fr. Lesmes owed him, in order to afterwards deduct whatever was paid to Ramirez from the larger claim which Fr. Lesmes Perez had against him.

The other exception of the defendant consists in that the document marked "A" is of a mercantile nature; therefore, that the action commenced by the plaintiff, based on the obligation stated therein, had prescribed even before the filing of the complaint for the enforcement thereof with the court of the justice of the peace of Capiz, because the transaction referred to in said document between the parties appearing in the same, who were merchants, was a mercantile transaction.

It has not been proved that the claim of Ramirez against Fr. Lesmes arose from mercantile operations, nor that the obligation contracted by Rodriguez, in favor of the first named, originated from an act of commerce and for mercantile purposes; neither does the said document appear as having been issued payable to order as required by articles 311 and 532 of the Code of Commerce; for said reason the document marked "A" is not of a mercantile character, and its nature and conditions are subject to the provisions of the Civil Code.

On this supposition, and touching the validity of the action brought for the enforcement of the obligation contracted by Rodriguez in said document, the law applicable to the question as to whether or not the same had prescribed is not article 950 of the Code of Commerce, which fixes the short term of three years, but article 1964 of the Civil Code, which grants the long period of fifteen years from the time when the obligation became due, which was on the 15th of May, 1899. And even though section 43 of the Code of Civil Procedure were applicable herein, the action taken by the plaintiff for the recovery of his credit could not be considered to have prescribed for the reason that ten years have not transpired.

As for the rest, the assignment or transfer of the credit in question, made by Ramirez, the creditor, is perfectly valid, and notwithstanding the fact that the cause or consideration for the transfer is not stated in the indorsement, it must be presumed that one exists and that it is a lawful one, unless the debtor should prove the contrary, which he has not done in this case. (Arts. 1274, 1277, Civil Code.)

With reference to the lack of a documentary stamp on the document of indebtedness, the decree of May 10, 1886, and the instructions for its application do not declare the nullity of any document unprovided with such stamp; it limits itself, by article 82 thereof, to imposing a fine on whoever should violate the decree by executing and issuing a document without a proper stamp.

In view of the foregoing, and adopting the conclusions stated in the judgment appealed from, it is our opinion that the same should be affirmed with costs against the appellant, provided, however, that the defendant, Jose Rodriguez, shall pay legal interest from the time when the complaint was filed with the court of the justice of the peace, and it is so ordered.

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

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