

GREGORIO FERNANDEZ, PLAINTIFF AND APPELLEE, VS. THE MANILA ELECTRIC RAILROAD AND LIGHT COMPANY, DEFENDANT AND APPELLANT.

G.R. No. 3865. October 16, 1909

Ponente: MORELAND, J.

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MORELAND, J.:

This is an action brought by the plaintiff to recover damages for personal injuries caused by being shocked and burned by coming in contact with a live electric light wire, negligently placed by the defendant in one of the streets of the city of Manila.

The defendant, answering, makes a general denial and sets up as a special defense and bar to the action a release executed by the plaintiff, wherein the plaintiff, in consideration of P20 paid as damages, absolved the defendant from all further liability by reason of the negligence referred to.

The plaintiff denies in his reply the execution of the release and declares the instrument to be "a false and fraudulent document."

The plaintiff recovered, in the court below, a judgment for damages to the amount of P6,000, and the payment to him by the defendant of the sum of P40 per month from the 1st day of July, 1906, until the time when said sum of P6,000 should be paid by the defendant.

The defendant duly excepted to the decision and thereafter made a motion for a new trial upon all of the grounds specified in section 497 of the Code of Procedure in Civil Actions. That motion was denied by the court, and to that denial, and the order entered thereupon, the defendant duly excepted and perfected its appeal to this court.

Herein are stated only those facts affecting the execution of the release above referred to:

Some time prior to the night of the 28th of January, 1906, the defendant company had strung some electric light wires in Calle Gagalangin in the city of Manila. The work was so negligently done that the end of a wire, heavily charged with electricity, loosely dangled in the street within reach of persons passing.

On the night in question the plaintiff was a policeman of the city of Manila on duty in that street. On the morning of the 29th aforesaid, between 2 and 3 o'clock, passing along the said street in the performance of his duties, he came in contact with said wire and sustained certain burns and shocks, which, he claims, rendered him temporarily unconscious. Regaining his senses shortly, he made his way to the police station and was from there sent to the Civil Hospital.

On the morning of the 29th above referred to, between the hours of 7 and 9, two persons, Lopez and Van Hoven, agents and employees of the defendant company, went to the Civil Hospital, where the plaintiff then was. After some conversation with him, lasting about twenty minutes, they, on behalf of the company, made a compromise settlement with him, in pursuance of which he, in consideration of P20 paid him at that time, executed a release,

in Spanish, of each and every one of his rights and claims to any further damages arising from such negligence.

The plaintiff seeks to avoid the effect of the release referred to by claiming that its execution was procured by the false and fraudulent representations of the defendant's agents, principally in that they represented to him that the paper which they presented to him for his signature was merely and simply a receipt showing that they had given him alms or a gratuity. He claims that he was at the time unable to read the Spanish language and that he did not read the document, and that he relied entirely upon the representations of defendant's agents as to the contents of the paper which he signed. On the other hand, the agents of the defendant company assert that while they did not read the instrument in full to the plaintiff, they explained to him, in substance, its nature and purport and informed him, in particular, that it was a release of all his rights to damages arising from the negligence of the company on the occasion referred to, and a complete renunciation of any further or other claim. They further allege and state that, after the paper was complete in every way except the signature, they delivered it into the possession of the plaintiff, who took it and glanced over it as if he were reading it. It nowhere appears in the evidence that the agents at that time knew that the plaintiff could not read the Spanish language.

The plaintiff bases his defense to the release solely upon the ground that, taking advantage of his inability to read, the agents of the defendant company perpetrated a fraud on him by false and fraudulent representations as to the contents of the paper in question.

Nowhere in the evidence is there any claim made on behalf of the plaintiff that he did not have mental capacity to understand the act which he performed. On the other hand, it is contended on his behalf that he thoroughly understood the nature of the act which he thought he was performing, namely, the signing of a receipt for alms. The claim made is that, admitting his mental capacity, the agents of the defendant company took advantage of his inability to read and foisted upon him a paper entirely different from the one which they stated to him they were presenting to him for his signature.

It nowhere appears that the plaintiff, at the time of the execution of the release in question, in any way indicated to the agents of the defendant company that he was in pain, or suffering convulsions, or that he was in such bodily condition as to be unable to conduct that kind of negotiation or perform that kind of a business act.

The defense made by the plaintiff to the release, namely, that of false and fraudulent representations, involves the necessity of charging the agents of the defendant company with a serious offense. The success of that defense, in effect, finds them guilty of the offense charged. It means that the agents, acting together, deliberately planned and executed an offense against the plaintiff which would exclude or ought to exclude them from the society of honest men. In fact, the act with which they are charged by the plaintiff constitutes a crime under article 535, subdivision 7, of the Penal Code, wherein it says that a man shall be guilty of a crime "who shall commit fraud by causing another to subscribe a document by the use of deceit."

That defense Requires also that it shall be found, as a fact, that the two agents committed perjury. They both testify directly that they, or one of them, explained to the plaintiff fully and fairly the contents of the paper. He testifies that they did not do so. They both swear that they gave the paper into the hands of the plaintiff, and that he looked it over as if he were reading it. He testifies that they did no such thing, and that he never had the paper in his hands at all and never saw it until it was laid on the table for him to sign. They both testify that he was told by them, or one of them, that it was a release and a renunciation of all his rights and claims against the company. He swears that they told him no such thing. He testifies, moreover, that they told him it was merely a receipt to show that they had given him alms. They testify that they told him no such thing. They assert that when they entered his room in the hospital he was sitting in a somewhat upright position in bed. He testifies that he was lying down in bed at the time. They both testify that he told them, upon their inquiry, that his injuries were slight. He

testifies that he never told them any such thing. Every important fact is distinctly stated by them, upon one side, and as distinctly denied by him, upon the other. There seems to be no possibility of reconciling the statements of the opposing parties.

The weight of the testimony, it seems to me, is strongly against the contention of the plaintiff:

First. The plaintiff's testimony is directly and flatly contradicted by the witnesses, Lopez and Van Hoven.

There seems to be no special reason for discrediting them.

(a) They were interested, to be sure, for their company, but their interest in the result of the litigation was certainly no more than that of the plaintiff.

(b) They were unimpeached by any of the circumstances surrounding the transaction or in any manner more direct.

(c) Their testimony appears to be much more in harmony with the circumstances and conditions existing at the time of the execution of the release than the testimony of the plaintiff.

Second. The circumstances are not in harmony with the plaintiff's contention:

(a) It appears from the evidence that neither of the agents was acquainted with the plaintiff at the time of the execution of the release, and that neither of them had ever seen him before. They could not, therefore, determine whether he was a man upon whom a fraud could be perpetrated or not.

(b) So far as the evidence goes, they did not know, at the time of the execution of the release, that he could not read the Spanish language. He did not tell them that he could not read. On the contrary, his actions indicated, so far as the testimony of the agents goes, that he was able to read. The absence of this knowledge would tend to rob the agents of the intention of overreaching him by reason of his illiteracy. They did not know but what he could easily detect at any time the falsity of their representations by simply reading the paper.

(c) They were informed before going to the hospital that the plaintiff was a policeman. It would naturally be presumed that, being a policeman, he was considerably above the ordinary, both in education and ability, and that he would be exceptionally well able to take care of himself and protect his own interests. An individual who is set up to protect the rights and the property of the public generally is presumed to have sufficient intelligence and ability to prevent a fraud being perpetrated against himself particularly a fraud so easy of detection as was the one which he alleges they perpetrated against him.

(d) There was no secrecy maintained by the agents in consummating the transaction. There were other beds containing patients in the same room and near to that of the plaintiff. The attendant was about the bed at various times and generally not far from the scene of the transaction. The doctor himself was there a part of the time.

(e) Calling in the policeman, Holmes, whom neither of the agents knew or had ever seen before, indicates that the agents were acting honestly and fairly and had no fear of being caught in the perpetration of a fraudulent act or the commission of a crime. Holmes was a brother-policeman of the plaintiff. They were doing duty on the same force. The duty of each and of both was, among other things, to prevent the perpetration of frauds, either upon themselves or upon others. Holmes was an American. He easily understood the nature of the transaction. There is no question but what he understood it thoroughly. He would doubtless have detected instantly any attempt on the part of the agents to defraud the plaintiff. All this the agents of the defendant well knew. Yet they did not hesitate to call him. It is hardly reasonable to assume that the two agents, engaged in the commission of a fraud against one policeman, would call in another policeman to assist them in the consummation of that fraud.

The calling in of Holmes induces, almost necessarily, the presumption that the transaction with the plaintiff was open and fair in every particular.

The policeman, Holmes, was called in by the agents, so says the plaintiff, for the purpose of explaining to the plaintiff that the money which was being given him was not a bribe. Evidently the policeman could not have known whether it was a bribe or not until he knew why or for what purpose it was given. It is equally evident that the policeman would not have been able to convince the plaintiff that it was not a bribe except he explained to him what it really was, or unless the plaintiff accepted Holmes' knowledge and judgment as his own. The policeman testifies that he saw the heading of the paper and recognized it is a renunciation, general and special. Van Hoven testifies that he told Holmes the nature of the whole transaction and that Holmes saw the paper. This is not disputed. With all this knowledge Holmes gave his explanation to the plaintiff. After the explanation so given, the plaintiff signed the paper. The plaintiff either himself knew the nature and purport of the paper fully or else he accepted the knowledge of the policeman Holmes in place of his own. That Holmes knew what the transaction was is undisputed. That Holmes made known to the plaintiff the nature of the transaction is almost an inevitable conclusion. At least, having accepted Holmes' knowledge in place of his own, a man perfectly fair and impartial between the parties to the transaction, his rights must be very clear if he now be permitted to repudiate the transaction by reason of lack of knowledge on the part of himself.

The plaintiff, then, in order to establish the fraud, must not only convince us that he himself was imposed upon and overreached, but that Holmes, also, was deceived, hoodwinked, and cheated. But from the undisputed testimony it appears that Holmes knew perfectly the nature and purpose of the transaction.

(f) The paper was headed in large letters "Renuncia General y Especial." The plaintiff uses the Spanish script in writing his name to the document and to the papers filed in the case. He also speaks Spanish. It would seem as if he ought to have recognized the words "Renuncia General y Especial" at the top of the paper and to have known their import sufficiently to have put him on his guard at least.

Third. The evidence of the plaintiff himself is contradictory in important particulars:

(a) The plaintiff claims that he signed the paper in question upon the request and the representations of the defendant's agents because he did not believe that the American would do him an injury. The good faith thus asserted in the agent of the company is entirely at variance with the previous refusal to accept the representations of the defendant's agents that the sum to be paid him was not a bribe.

(b) It is not at all reasonable to believe that the plaintiff could have regarded the sum of money paid him by the defendant as a pure gift or gratuity. He states in his testimony that he knew Lopez and Van Hoven to be the agents of the defendant company because they told him so, and that he took the money from them because they represented the company, and he would not have taken it if they had not represented the company. The defendant was either liable or not liable to the plaintiff in damages for the injuries he had sustained. If the company was liable to the plaintiff, then his remaining in the hospital and his loss of time, etc., would be at least a part of the damages which the defendant would be obliged to pay him. The plaintiff is presumed to know his legal rights. There is not the least evidence or claim that he did not know them. He knew he had been injured by the company; he knew these two men were the agents of the company; he knew that the company must pay him damages; and he knew that at least a part of those damages would be his stay in the hospital, his loss of time, etc. It is unreasonable to say that under these circumstances the plaintiff could have regarded the P20 as a charity or gratuity, for, if the defendant had paid the same as a gift, it would have been obliged later, at the suit of the plaintiff, to have paid it again as damages. At the time of this transaction at the hospital, in other words, the defendant owed the plaintiff a debt arising from injuries caused by its negligence. On that occasion it paid the

plaintiff money in connection with, and because of, that debt. It is not reasonable to believe that the plaintiff supposed that the payment so made, under those conditions, was a gift or gratuity. The plaintiff himself testifies that the money was paid by the company, and in connection with the injuries which the company had inflicted upon him.

(c) The plaintiff calls the payment a gift or charity, yet his description of it sets forth a thing quite different. In his testimony he describes an indemnity but calls it a limosna. He testifies concerning the payment of the P20 to him by the agents of the defendant as follows:

"We give you this as alms, because we are from the company, for the time you are here in the hospital.

"They said only that it was alms for being in the hospital.

"What they read in the hospital they did not tell me was a release but a kind of receipt.

"They told me it was a document saying that they had given me alms.

"They told me that that document was a receipt to prove that they had given me alms.

"They said to me 'we give you this sum [P10] as alms, because we are from the electric company, for the time you are in the hospital.' I would not take it and then they offered me P20, saying it was for the stay if I was twenty days in the hospital, in payment of vacation I should lose."

It is thus apparent, from the plaintiff's language, that the P20 was paid him in consideration of something which he describes as being his stay in the hospital and his loss of vacation, and so forth. It was, therefore, not a gift, and the transaction, according to plaintiff's own testimony, does not constitute a gift but a contract, with consideration passing between them.

In this connection it is of interest to note that the plaintiff refused the offer of P10 and finally accepted P20. It is very rare indeed that a pure gift is doubled in size after the donee refuses the gift because it is too small or is a bribe, or both.

If plaintiff's injuries were mentioned at all during the transaction in question, they were described as very slight, according to the testimony of the defendant's agents. No testimony is given anywhere in the case describing plaintiff's injuries at the time the transaction referred to took place. Doctor Cook mentions them in his testimony only incidentally, saying that the plaintiff came to the hospital suffering from burns caused by an electric-light wire. It was evidently not thought by anyone at that time that plaintiff's injuries, in themselves, were in any wise serious. The attendant said that he would be in the hospital only about four days. So far as it appears in the evidence, none of the burns was serious enough to be dressed except those on the right hand, and they were not bad enough to prevent his using that hand when he signed the document. If the testimony of the agents is to be believed, the plaintiff, when they arrived, was sitting up in bed, and when they asked him about his injuries, he replied that they were a very simple matter,

(d) The policeman, Holmes, understood what the paper was and what the P20 was for, and it is evident that he believed the plaintiff understood it also for Holmes testifies, and this is significant to note, that during his conversation with the plaintiff, he said to the plaintiff, "How much are you going to get?," and the plaintiff answered, "Twenty pesos." "Then," testifies the policeman, "I signed and he took the money."

This testimony is inconsistent with the theory that the P20 was a gift. It shows, rather, a transaction where the amount paid and received is as much within the control of the one as the other of the parties. That form of expression is one not usually employed where the transaction is a purely charitable one, especially in the presence of the parties to the charity. It is used rather in those cases where each one of the parties has something to say as

to how much or how little shall be paid.

(e) The plaintiff testifies that he signed the paper, without reading it, upon the representations of the agents because he did not believe the American would do him an injury. This statement from the plaintiff indicates forcibly that he was mentally acute, active, and vigilant. Nevertheless it also appears in plaintiff's testimony that up to that time he had steadily refused to have any confidence in what the American said upon the subject of the payment being a bribe.

Fourth. It is contended, and perhaps justly, that the great point in favor of plaintiff's contention is the apparent inadequacy of the consideration which he received for signing the release.

It must not be forgotten, however, that whether or not the consideration was adequate must be determined by the conditions existing at the time the release was made. At that time the damages to the plaintiff's person were, to all appearances, purely temporary and not at all serious;

(a) The attendant told Van Hoven that the plaintiff would not be in the hospital more than four days.

(b) Only one of his injuries, so far as the proof goes, was of sufficient consequence to require dressing, namely, that on the right hand, and this injury, dressing and all, was not sufficient to prevent the plaintiff from using that hand in signing the release.

(c) The injuries of the plaintiff were not of sufficient seriousness to induce him to comment upon them to the agents at the time, or to anybody else. Van Hoven testifies that the plaintiff said, in response to a question, that his injuries were only a little thing. So far as the proof goes, the plaintiff showed no signs of being in pain, or of being in a nervous or excited condition, and evidenced no lack of mental acumen or activity. On the contrary, he demonstrated that he was very capable of protecting himself by refusing to be drawn into any transaction where there might be the remotest possibility of his breaking any of the rules or regulations of the police department, or of disobeying any of the orders of his chief. In other words, he showed mental and physical power and persistence in refusing to do a thing that he did not want to do and in refusing also to do a thing which might affect adversely his personal interests.

In the case of *Morris vs. Talcott* (96 N. Y., 100), the court said (p. 107) :

"The fraud charged against the defendant herein is of the nature of a crime, and can not be presumed, but must be established by evidence. * * *

"A party, therefore, relying upon the establishment of a cause of action, or a right to a remedy against another, based upon the alleged commission of a fraud by such person, must show affirmatively facts and circumstances necessarily tending to establish a probability of guilt, in order to maintain his claim.

"The presumption that the written instrument was carefully and deliberately prepared and executed is indulged in all cases, and the plaintiff is entitled to relief on the ground of mistake only upon clear, strong, and convincing evidence, for the writing should be deemed the sole expositor of the intent of the parties until the contrary is established beyond reasonable controversy." (Am. & Eng. Ency. of Law, Vol. 21, p. 1101, and cases there cited.)

In the case of *the United States vs. The Iron Silver Mining Company* (128 U. S.(673), the court says (p. 676):

"Misrepresentation knowingly made as to these matters by the applicant for a patent will afterwards justify the government in proceeding to set it aside. The government has the same right to demand a cancellation of the conveyances of the United States when obtained by false and fraudulent representations as a private individual when a conveyance of his lands is obtained in like manner. In this respect, the United States, as a landed proprietor, stand upon the same footing with the private citizen. The burden of proof in such cases is upon the

government. The presumption attending the patent, even when directly assailed, that it was issued upon sufficient evidence that the law had been complied with by the officers of the government charged with the alienation of public lands, can only be overcome by clear and convincing proof."

In the Maxwell Land-Grant Case (121 U. S., 325, 379, 381), the court says:

"It thus appears that the title of the defendants rests upon the strongest presumptions of fact, which, although they may be rebutted, nevertheless, can be overthrown only by full proofs to the contrary, clear, convincing and unambiguous."

In the case of the Simmons Creek Coal Company vs. Boran (142 U. S., 417), the court says (p. 435):

"The jurisdiction of equity to reform written instruments, when there is a mutual mistake, or mistake on one side and fraud or inequitable conduct on the other is undoubted; but to justify such reformation the evidence must be sufficiently cogent to thoroughly satisfy the mind of the court." Griswold vs. Hazard (26 Fed. Rep., 135, 138).

"The validity and fulfillment of contracts can not be left to the will of one of the contracting parties." (Civil Code, art. 1256.)

Taylor vs. Fleckenstein (30 Fed. Rep., 99, 103); Grace vs. Adams, (97 Am. Dec. 117).

"The fact that the plaintiff may not have fully understood the legal effect of the document is no ground for setting it aside." (Arenal et al vs. Barnes et al., 8 Phil. Rep., 551, 552.)

"The mere fact that one has made a poor bargain is no ground for setting aside the agreement." (Christianson vs. Railway Co., 67 Minn., 94.)

We, therefore, decide that the release in question is an instrument binding upon the plaintiff and that he has no cause of action against the defendant to recover damages for causing the injuries mentioned therein.

The judgment of the lower court is hereby reversed and the plaintiff's complaint dismissed upon the merits. No finding as to costs. So ordered.

Arellano, C. J., Johnson, and Carson, JJ., concur.

DISSENTING

TORRES, J.,

The undersigned is of the opinion that the judgment appealed from should be affirmed with the costs against the appellant, provided, however, that the indemnity to be paid to the plaintiff should be reduced to the sum of P2,000, Philippine currency.

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