

E.B. MERCHANT, PLAINTIFF AND APPELLEE, VS. THE INTERNATIONAL BANKING CORPORATION, DEFENDANT AND APPELLANT.

G.R. No. 3866. January 11, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

The plaintiff brought this action in the Court of First Instance of Manila to recover the principal and certain interest upon the following document:

"MANILA, P. I., January 5, 1904.

"For value received in the purchase of a boat named Oregon we bind ourselves to pay to E. B. Merchant or order, within two years from date, the sum of seven thousand five hundred dollars (\$7,500), United States currency, with interest at the rate of 10 per cent per annum, payable semiannually; the city of Manila, Philippine Islands, being designated as the place for the payment of both the principal and interest.

"P. P. DE LA CASA COMISION,
"VICENTE G. AZAOLA. [SEAL.]

"We hereby guarantee the payment of the above obligation, for the sum of seven thousand five hundred dollars (7,500), United States currency, with interest at the rate therein specified.

"For the International Banking Corporation,

"R. W. BROWN."

In its amended answer, the defendant denied all the allegations of the complaint, denied that it ever executed the instrument in question, alleged that the guaranty was an accommodation one, and set forth two additional defenses as follows:

"5. As a separate and distinct defense, the defendant alleges that the International Banking Corporation can not and could not, during any of the periods mentioned in the complaint, under its charter, enter into an accommodation guaranty nor any such contract of guaranty as referred to in paragraphs 4 and 5 of the said complaint.

"6. As a separate and distinct defense, the defendant alleges that neither R. W. Brown nor any other person or persons, was or were, at any time, authorized by this defendant to enter into such a contract of guaranty as mentioned in the complaint, or into any accommodation guaranty."

This answer was sworn to. At the trial the defendant offered no evidence, and judgment was entered in favor of the plaintiff for \$8,937, United States currency, with interest from the date of the filing of the complaint, and the costs. From this judgment the defendant has appealed.

The first two assignments of error are to the effect that the court below erred in holding that the defendant, by its

charter, was authorized to make the guaranty in question, and that that court also erred in holding that R. W. Brown had authority under his power of attorney to execute the document sued upon. The appellee insists that a discussion of these questions is not now open to the appellant, because they have already been passed upon and decided by this court in another action between the same parties, brought upon the same obligation.

The decision of this court in the former action is reported in Volume VI, Philippine Reports, page 314. That action was brought to recover the first installment of interest due upon the note in question, although that fact does not appear from the report of the case. In its answer in that case the defendant, after denying generally the allegations of the complaint, set forth the following defenses:

"Second. That, as a separate and distinct defense, the defendant, the International Banking Corporation, could not and can not, under its charter, enter into the contract of guaranty alleged in the complaint.

"Third. As a second separate and distinct defense, that no agent or officer of the defendant was or is authorized to enter into the contract of guaranty alleged in the complaint.

"Fourth. As a third separate and distinct defense, that I. W. Brown was not authorized to enter into, on behalf of the International Banking Corporation, defendant, the contract of guaranty alleged in the complaint."

A comparison of that answer with the answer presented in this case shows that the defenses which are the subject of the two assignments of error above mentioned are identical with the defenses presented in the other case.

It is not denied by the appellant that if the Court of First Instance and this court had, in the first action, examined the merits of these defenses, and after such an examination decided that the bank did under its charter have authority to make the contract, and that Brown, by virtue of his power of attorney, was authorized to sign it in the name of the bank, the decision in that first case would be conclusive against the appellant in this case, and that it would not here, be allowed to retry the questions decided. But it says that there never was any examination of these defenses upon their merits; that judgment was entered in the first action in the court below in favor of the plaintiff upon the sole ground that the defendant, by failing to year to its answer in that case, had admitted not only the genuineness of the signature of Brown but also his authority to sign the contract in behalf of the defendant and the power of the defendant itself to make such a contract. That this was the basis of the decision in the first case clearly appears from the opinion of this court, above referred to, and the question is whether or not in such a case anything is conclusively adjudicated.

The second suit was not brought upon the same cause of action which was the basis of the first suit. The judgment in the latter is, therefore, not an adjudication of everything that might have been decided in the first suit, but only of that which appears upon its face to have been so adjudged, or which was actually or necessarily included therein, or necessary thereto. (*Cromwell vs. Sac County*, 94 U. S., 357.) This rule is declared in section 307 of the Code of Civil Procedure, which is as follows:

"That only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually or necessarily included therein, or necessary thereto."

What, then, was necessarily included in the former judgment? Neither that judgment nor any other judgment could have been rendered against the defendant bank if that bank had no power under its charter to enter into the contract in question, or if Brown, who signed the contract in the name of the defendant, had no authority from the defendant so to do. When the court below, therefore declared that the defendant was responsible for the payment of this debt, it necessarily declared that the bank had, by its charter, authority to make such a contract and that Brown was authorized to sign it in the name of the defendant. The defenses relating to these matters set up both in the answer in the first suit and in the answer in this suit were, therefore, necessarily decided against the defendant.

Upon the principal question discussed by the appellant, which relates to the manner in which the court below in the first action arrived at the conclusion that the bank had authority to make this contract, and Brown power to sign it, we consider the case of the Last Chance Mining Company vs. Tyler (157 U. S., 683), as a controlling authority against the defendant. The court in that case said, at page 691:

"It is said that the defendants did not contest; that they withdrew their answer, and that there was only a judgment by default. But a judgment by default is just as conclusive an adjudication between the parties of whatever is essential to support the judgment as one rendered after answer and contest.

"The essence of estoppel by judgment is that there has been a judicial determination of a fact, and the question always is, Has there been such determination? and not upon what evidence or by what means was it reached. A failure to answer is taken as an admission of the truth of the facts stated in the complaint, and the court may properly base its determination on such admission. Suppose the defendant files a denial, and on the trial the only evidence is the testimony of a witness to an admission made by the defendant out of court, and upon such testimony the judgment is rendered. Is it any the less a judicial determination because resting simply upon proof of the defendant's admission, and yet in principle what distinguishes that case from this? In each the judgment is resting upon an admission of the party against whom the judgment is rendered, and does it make any difference in what form that admission is presented to the judge?

* * * * *

"The withdrawal by defendants of their answer may have prevented any judicial determination as to the special facts set up therein in defense or avoidance of plaintiff's claim. (Finnegan vs. Campbell, 74 Iowa, 158.) But such withdrawal was not operative to take out of the case the complaint", or the allegations of fact therein contained, or to prevent a judicial determination of those facts."

The appellant in his argument in this court referred to the case of O'Connell vs. Mayuga (8 Phil. Rep., 422), claiming it as an authority for the reversal of the judgment. In that case judgment was entered for the defendant. It is seen that a judgment for the defendant may be rendered upon any one of a great number of grounds. In order that such judgment be rendered it is not necessary that any particular fact out of many be determined, but when a judgment is rendered for the plaintiff it is absolutely necessary that the court pass upon and determine such facts as make the defendant legally responsible. In the case of O'Connell vs. Mayuga the question was whether Narciso Mayuga had signed the contract in question under the name of Lorenzo Mayuga. No such question was presented in the first action. Narciso Mayuga was not a party to that suit. A summons intended for Lorenzo Mayuga was delivered to him and it is evident that the court in deciding the first suit never took into consideration the question whether Narciso Mayuga and Lorenzo Mayuga might be the same person, for it dismissed the case against Lorenzo Mayuga on the ground that he had never been served with the summons.

The third and fourth assignments of error are to the effect that there was no proof of any demand upon the Casa Comision, the principal debtor; no proof that it had not paid, and, no proof of its insolvency. It is true that the only evidence in the case on these points was the presentation at the trial by the plaintiff of the note in question.

The guaranty in this case was a guaranty of payment. In all respects it is the same as the guaranty considered in the case of Pyle vs. Johnson[1] (5 Off. Gaz., 1121). In that case we held that in order to charge the sureties it was not necessary that any demand be made upon the principal debtor, nor that the note be protested, and that it was sufficient to show that it had never been paid by the principal debtor.

It was therefore necessary in this case only to present evidence that the note had not been paid. So far as payment by the defendant itself is concerned, the burden of showing it rested upon the defendant, and it was not necessary for the plaintiff to present any evidence. (Behn, Meyer & Co. vs. Rosatzin, 5 Phil. Rep., 660.)

So far as the payment by the principal debtor is concerned, we hold that the possession of the note by the plaintiff and its production at the trial by him constituted prima facie evidence that it had not been paid either by the principal debtor or by anyone else.

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

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

[1] Page 249, *supra*.

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