

**MILLER, SLOSS & SCOTT, PLAINTIFFS AND APPELLEES, VS.
HENRY M. JONES, ALIAS ENRIQUE M. JONES, DEFENDANT AND
APPELLANT.**

G.R. No. 3940. January 20, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

The plaintiffs brought this action in the Court of First Instance of the city of Manila to recover the amount claimed to be due upon four written obligations to pay money, all dated in Retalhulen, Guatemala, on November 8, 1896, signed by Enrique M. Jones. The court below held that one of these obligations had been paid and rendered judgment against the defendant for the principal sum due upon the other three obligations, with interest, costs, and attorney's fees. From this judgment the defendant has appealed.

The assignments of error may be divided into two groups, the first relating to the attachment levied upon the personal property of the defendant at the time the action was commenced, and the second relating to the decision of the case upon its merits.

(1) The defenses upon which the defendant relied are payment and the statute of limitations.

In regard to the payment of the obligations the defendant testified that he left Guatemala about two years after these notes were signed; that when he left he turned over some property to be used for the payment of his debts, and that whether this particular debt had been paid or not he did not know. The only other witness presented by him was his attorney in fact, who remained in Guatemala after the departure of the defendant. This witness testified that he had never paid this debt.

The burden of showing the payment was on the defendant. (Behn, Meyer & Co. vs. Rosatzin, 5 Phil. Rep., 660). The possession of the notes by the plaintiffs, and their production in court was prima facie evidence that they had never been paid. (Merchant vs. International Banking Corporation.[1]) The evidence in the case clearly shows that, with the exception of the note on which the court below rendered judgment for the defendant, this debt has not been paid.

The statute of limitations upon which the defendant relies is found in article 950 of the Code of Commerce. In order to make that section applicable it is necessary to show that the documents here in question are mercantile documents. They were all in the same form and one of them is as follows:

"No. 2763.

"I hereby acknowledge that I am indebted to Messrs.

Miller, Sloss & Scott of San Francisco, Cal., in the sum of one thousand dollars (\$1,000), United States gold currency, for an equal amount received to my satisfaction. This amount I will pay upon their order or indorsement in this city, in gold or silver currency, exclusive of all paper money issued or to be issued even

though it be legal or compulsory tender, and in case payment be made in silver currency, the premium ruling on gold at the time when this obligation becomes due shall be admitted. The date whereon I bind myself to pay to the creditors the said sum is the fifteenth day of January of the coming year, and if by reason of any event I fail to pay at the stipulated date, interest at the rate of one per cent per month during such default, together with all collection and judicial expenses, will be acknowledged by me, all without prejudice to proceedings for the enforcement hereof. To the fulfillment of this obligation I pledge my present and future property, waiving my status and domicile, and I do subject myself to answer a complaint filed with any court of competent jurisdiction to which Messrs. Miller, Sloss & Scott may apply.

"Retalhulen, November 8, 1896.

"ENRIQUE M. JONES.

"I hereby certify, as a notary public, that the foregoing signature which reads 'Enrique M. Jones,' and the items contained in the promissory note whereon the same is attached are genuine, the same having been drawn up and signed in my presence and in that of witnesses M. J. Jaramillo and L. Salinas, competent therefor and to me known as well as the subscriber, Mr. Jones.

"Retalhulen, November 8, 1896.

"M. J. JARAMILLO.

"L. SALINAS.

"Before me—

"ADOLFO ALTAMIRANO." [SEAL]

Without discussing other objections which might be urged to the claim of the defendant that this document is a mercantile obligation, it is sufficient to say that it nowhere appears that it arose from mercantile transactions as required in article 550[1] of the Code of Commerce. (Noel vs. Lasala, 5 Phil. Rep., 260.) Nor does the evidence introduced at the trial show that fact. (Rodriguez vs. Lasala, 5 Phil. Rep., 357.) The mere purchase of personal property even by one merchant of another does not make the transaction a mercantile one. (Arts. 325, 326, Code of Commerce.) Article 950 of the Code of Commerce not being applicable to these obligations, the rule of prescription which governs them is that of the Civil Code, and it is admitted that in accordance with such provision the notes are not barred.

(2) At the time the action was brought a writ of attachment was issued and levied upon the personal property of the defendant. The court below in its order denying the motion to dissolve the attachment stated that the affidavit upon which it was granted in substance showed :

"That the defendant was at Retalhulen, Republic of Guatemala, and purchased from the plaintiffs, in the name of Enrique M. Jones, certain goods and executed the notes sued on in this case signed 'Enrique M. Jones;' that he left Guatemala without notice to the plaintiffs that he was going to depart from Guatemala, and that he located in Manila and never notified the plaintiffs of his location or whereabouts and that he is now doing business in Manila in the name of and is known in Manila as 'Henry M. Jones,' and that eight years after the execution of the notes the plaintiffs accidentally discovered the defendant's location, and that Henry M. Jones is the identical man who executed the notes in the name of Enrique M. Jones."

The only ground upon which this attachment can rest, and it is the ground relied upon by the court below, is the fourth one mentioned in section 412 of the Code of Civil Procedure, which is as follows:

"When the defendant has been guilty of a fraud in contracting¹ the debt or incurring the obligation upon which the action is brought; or in concealing or disposing of the property for the taking, detention, or conversion of

which the action is brought."

The defendant made a motion to dissolve the attachment, one of the grounds of said motion being that the affidavit upon which it was granted was false. At the hearing upon this motion he presented in evidence the deposition of A. L. Scott, the manager of the plaintiffs. The court below rejected this evidence against the objection and exception of the defendant. This ruling of the court was erroneous. The defendant having expressly based his motion upon the ground that the affidavit of the plaintiff was false, had a right to introduce evidence upon that point.

But even without any evidence, it is apparent that the judge below should have vacated the attachment on the ground that the affidavit was insufficient. There is nothing in it to show that the defendant was guilty of fraud in contracting the debt. The mere fact that the defendant left Guatemala without notifying the plaintiffs of his intention to do so, and that he did not notify them that he had settled in Manila, furnished no ground for saying that he had any fraudulent intention in contracting the debt. Neither is such intention proved by the fact that in a Spanish-speaking country he signed his name as "Enrique M. Jones" instead of "Henry M. Jones."

The final judgment of the court below is affirmed. The order of the court below refusing to vacate the attachment is reversed and the attachment is vacated and set aside.

This annulment of the attachment will not prevent the immediate execution of the judgment. No costs will be allowed to either party in this court. So ordered.

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

[1] Page 554, *supra*.

[1] Article 532.

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