

H. J. ANDREWS, PLAINTIFF AND APPELLEE, VS. JUAN MORENTE ROSARIO ET AL., DEFENDANTS AND APPELLANTS.*G.R.No. 4036. January 17, 1908*

Ponente: WILLARD, J.

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The plaintiff, as the assignee of Jose Maria Torres, brought this action on the 22d of June, 1906, in the Court of First Instance of the city of Manila to recover of the defendants the first two installments, amounting to 5,000, due by virtue of a certain contract made between them and the said Jose Maria Torres on the 14th of March, 1906, for the sale by said Torres to the defendants of 700 shares of stock in the Compañia Explotadora Mercantil Filipina. Judgment was rendered in the court below in favor of the plaintiff and against the three defendants, Juan Morente Rosario, Justo Porcuna, and Felizarda J. Martinez Magadier de Porcuna, by the terms of which each of the three defendants was ordered to pay to the plaintiff 1,016.66, with interest. From that judgment the defendants have appealed.

In addition to the three defendants mentioned, Juan Morente Loreño was named as a defendant, but the summons was never served upon him and an examination of the contract in question shows that he never signed it.

It also appears from the evidence that the defendant Justo Porcuna did not sign the contract so as to become obligated thereby. His appearance and signature were merely for the purpose of expressing his consent that his wife, the other defendant, should make the contract. However, no assignment of error is made by the appellants relating to this point, and the question is not mentioned by them in their brief. We therefore can not regard it.

The assignments of error which are contained in the brief are two. The first relates to the order of the court refusing to continue this case until a decision was rendered in another case brought by these defendants against the said Torres for the rescission of the contract in question. It is not open to the defendants here to discuss that question because they did not except to the order of the court refusing to continue the case.

The second assignment of error is based upon the proposition that there had been a novation of the contract and that the defendants had thereby been released from their liability upon the document set forth in the complaint.

It appears that the 700 shares mentioned in the document are the entire capital stock of the company therein named. It also appears that the only property which the company owned was a launch called the San Jose II. The contract in question contained the following clause:

"Sixth. This sale is made on condition that Jose Maria Torres will be liable for those damages which may exist at present, and which may be pointed out by the boiler inspector at the time the delivery to the party of the second part takes effect, but he will not answer for such damages as may afterwards be discovered or pointed out by said inspector."

The launch was delivered to the defendants after certain repairs had been made thereon at the expense of the vendor, Jose Maria Torres. The defendants made two coastwise voyages with it, when it was condemned by the

port authorities and repairs ordered thereon. Testimony was offered by the defendants to show that these repairs would cost a very large sum of money. The argument in the brief, however, is limited to the discussion of what took place between the parties on the 19th day of May, 1906. That was the date upon which the contract was assigned to the plaintiff. On the same day the assignor, Jose Maria Torres, executed an obligation in favor of Juan Morente Rosario and Felizarda, two of the defendants, for the sum of 4,000, the value of 140 shares of the stock of this company. The court below held that there had been a resale by the defendants to said Torres of 140 shares, or a fifth part of the stock, and consequently that the obligation of the defendants had been reduced to that extent. We have some doubt as to whether the proper construction was given to this obligation signed by the said Torres on the 19th of May. It is in its terms conditional and seems to indicate that no obligation should rest upon Torres until the defendants had paid his assignee, Andrews, 16,000. However, this error, if it was error, was committed against the plaintiff, who has not appealed.

There is nothing in this contract to show, nor did the evidence introduced in any way indicate, that the defendants had been released from their obligations upon the original contract, except to the extent of P4,000. It is apparent from the entire evidence in the case that they remained liable upon that contract in accordance with the terms thereof, at least to the extent of P16,000. The court below having limited the recovery in this action to a proportionate part of the 16,000, no error was committed by it prejudicial to the defendants.

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

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

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