

ILDEFONSO DORONILA, PLAINTIFF AND APPELLEE, VS. GRACIANO GONZAGA, DEFENDANT AND APPELLANT.

G.R. No. 4045. August 23, 1909

Ponente: JOHNSON, J.

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JOHNSON, J.:

It appears from the record that some time prior to the commencement of this action the plaintiff herein had been tutor of the minor heirs of one Pablo Ledesma (see *Doronila vs. Lopez*, 3 Phil. Rep., 360; *Jalbuena vs. Ledesma*, 8 Phil. Rep., 601; *Ledesma vs. Doronila*, 9 Phil. Rep., 119); that, after Doronila had administered the property of said minor heirs for a number of years, a settlement was made between him and the said minor heirs, which was acceded to and accepted by the family council, by which agreement he (Doronila) became obligated to pay to the said minor heirs a certain sum covering all of his obligation to the said minor heirs, by virtue of his management of their estate; that, by virtue of this agreement, Doronila became the owner of all the accounts uncollected in favor of the estate of the said Pablo Ledesma.

It appears that among the accounts of which the said Doronila became the owner by virtue of his settlement with the said minor heirs, was the account upon which the present action is based. This action was brought in the month of May, 1905.

After hearing the evidence adduced during the trial of the cause, the lower court rendered a judgment in favor of the plaintiff and against the defendant for the sum of P5,117.55 and costs. From this judgment the defendant duly excepted and presented a motion for a new trial in the lower court, which was denied; to which ruling the defendant also excepted.

The defendant presents three assignments of error in this court. They are as follows;

"1. The court below erred in considering that the plaintiff had legal capacity to bring the present action against the defendant.

"2. The court below erred in holding that the defendant is indebted to the plaintiff in the sum of P3,208.50 as capital.

"3. The court below erred in sentencing the defendant to pay the legal interest on the capital of P3,208.50 from January 1, 1897."

While the defendant presented a motion for a new trial in the lower court, he has not brought the proof to this court. In our conclusions, therefore, we are governed by the facts stated in the decision of the lower court, for the reason that the defendant filed, among his other defenses, a general denial.

The lower court in its decision made the following findings :

"In view of all the evidence offered in this case I find that, at the time of the death of Ledesma, the sum of P3,208.50 was due his estate. This balance has never been paid, and was due the estate together with interest

thereon at the rate of 6 per cent from the 1st of January, 1897, making a grand total of P5,117.55 on December 1, 1900.

"Inasmuch as the papers were lost by the plaintiff in the manner mentioned above, he was required to account for the property received by him as guardian of the heirs. Extensive litigation followed before the superior provost court under the military government of the United States in these Islands, which practically resulted in a settlement of the claim of the estate against the plaintiff herein, as shown by Exhibit 1 which is attached to the record. Under the conditions of said settlement the plaintiff agreed to pay to said estate the sum of P16,000 in order to extinguish his liability. Said agreement was made by the president of the family council who, in accordance with the Spanish regulations, had charge of the settlement. It was subsequently approved by the superior provost court, and since the inauguration of the civil government has been ratified in a suit in connection with said Exhibit 1 which resulted in a judgment in favor of the said estate for the amount stipulated in said agreement, together with interest thereon.

"At the trial of the case the defendant alleged that the plaintiff had no legal capacity to bring this action, because the said president of the family council had no authority to enter into such an agreement, but I believe that the actions of the representatives of the estate have repeatedly ratified the said agreement, even though the president of the family council had no authority to make it, and that this defendant is so connected with the events that he is not entitled to question the legal capacity of this plaintiff to maintain an action against him."

With reference to the first assignment of error to wit, that the court committed an error in deciding that the plaintiff was the proper person to bring the present action-it appears that the lower court held that the agreement above referred to, by which the plaintiff became the owner of the account upon which the present action was based, was agreed to and accepted not only by the heirs of Pablo Ledesma, but also by the family council. By this agreement the account was transferred to and became the property of the plaintiff herein, he having settled his responsibility to the heirs by paying an amount agreed upon. He being the owner, therefore, by reason of this agreement, he certainly was entitled to maintain an action to cover the said account. The lower court, therefore, committed no error in holding that the plaintiff was the proper party to maintain the present action.

With reference to the second assignment of error-to wit, that the lower court committed an error in deciding that the defendant was indebted to the plaintiff in the sum of P3,208.50-the lower court made an express finding upon this question in the first paragraph of the decision above quoted. The appellant not having brought the evidence to this court, we are bound by this finding of fact.

With reference to the third assignment of error-to wit, that the lower court committed an error in rendering a judgment against the defendant for the payment of interest upon the said amount of P3,208.50, from the 1st of January, 1897-we are of the opinion, and so hold, that there are no facts in the decision to justify this conclusion. Under the provisions of the Civil Code, the contract itself containing no provision for the payment of interest, no interest could be collected upon the same until after a judicial or extra-judicial demand had been made for the payment of the same. (Arts. 1755 and 1100, Civil Code; Manresa's Commentaries on the Civil Code, vol. 8, page 56; *La Compañia General de Tabacos de Filipinas vs. Araza*, 7 Phil. Rep., 455.)

In the present case it does not appear that the account bore interest; neither does it appear that there was any judicial or extrajudicial demand made for the payment of the same until the commencement of the present action, which was in the month of May, 1905. Therefore the plaintiff is not entitled to interest for any period prior to the demand made by the commencement of the present action. (*Bautista vs. Calixto*, 7 Phil. Rep., 733.)

The facts set out by the judge in his decision are not sufficient, therefore, to justify his conclusion that the plaintiff was entitled to interest upon the said amount of P3,208.50, from the 1st of January, 1897.

The judgment of the lower court is, therefore, hereby modified, and it is hereby directed that a judgment be

entered in favor of the plaintiff and against the defendant for the sum of P3,208.50, with interest at the rate of 6 per cent per annum, from the 31st day of May, 1905, and costs.

Arellano, C J., Torres, Carson, and Moreland, JJ., concur.

[1] 13 Phil. Rep., 624

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