

**AGUSTINA FAELNAR ET AL., PLAINTIFFS AND APPELLEES, VS.
JACINTA ESCAFTO, DEFENDANT AND APPELLANT.***G.R. No. 4141. August 15, 1908*

Ponente: WILLARD, J.

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The plaintiffs brought this action in the Court of First Instance of Leyte to recover the sum of P10,900 and interest due upon a certain promissory note dated on the 10th day of May, 1901, and purporting to be signed by the defendant. Judgment was rendered in the court below as prayed for in the complaint, the defendant moved for a new trial on the ground that the evidence did not justify the decision, and excepted to the order denying her motion. As to the first error assigned in her brief in this court, it is sufficient to say that it nowhere appears in the bill of exceptions that the amended complaint was not filed within the time fixed by the court in its order sustaining the demurrer. The only allegation which the bill of exceptions contains with reference to that matter, is an allegation that the defendant was not notified that the complaint had been amended until long after the time therefor had elapsed, but this falls far short of the statement that the amendment was not, in fact, made within the time.

The second assignment of error reaches the merits of the case. The defendant testified that she never placed her mark upon the document in question and never authorized anyone to sign it for her. Upon this point the evidence is overwhelmingly in favor of the plaintiffs. It is true that Guillermo Gorgollo, whose name appears as a witness upon the document, stated that he remembered nothing about the transaction. His testimony was taken by deposition, from which it appears that the document was not presented to him, and he himself stated that he could not tell whether his signature thereto was genuine without seeing the instrument. The alleged difference in the color of the ink used in the document itself and that used in the signatures is sufficiently explained by the testimony of witnesses who say that the instrument was written by a clerk at one table and then was taken to another table, where it was signed. The testimony of the defendant's witnesses tended to show that the P10,900 was not paid to the defendant herself, but to her daughter, and it is stated in the defendant's brief that the daughter spent the money herself. This statement is not borne out by the evidence, because while the daughter testified that she received the money from the plaintiffs, she also testified that she immediately delivered it to her mother, the defendant. It is to be observed, moreover, that the complaint contained a copy of the note in question, and there was in the answer no denial of its execution, under oath, as required by section 103 of the Code of Civil Procedure.

The third error assigned relates to the protest of the note. In order to keep alive the obligation of the defendant, it was not necessary that this instrument should be protested. (*Pyle vs. Johnson*, 9 Phil. Rep., 249.)

The claim that the instrument is a commercial document can not be sustained. The following statement occurs therein: "Value received from said gentlemen in cash to my entire satisfaction and as a loan to meet my requirements."

The evidence shows that the parties thereto were not merchants and there was no evidence that the money was actually used in commercial operations. (Arts. 311 and 532 of the Code of Commerce; Noel vs. Lasala, 5 Phil. Rep., 260; Rodriguez vs. Lasala, 5 Phil. Rep., 357; Miller vs. Jones, 9 Phil. Rep., 648.)

After the plaintiffs had closed their testimony, and during the presentation by the defendant of her proofs, she asked leave to present a counterclaim, which had no connection with the instrument sued on. This motion was denied by the court below on the ground that it came too late. In this ruling of the court there was no error. The judgment of the court below is affirmed, with the costs of this instance, against the appellant. So ordered.

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

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