

ISIDORO SANTOS, PLAINTIFF AND APPELLEE, VS. MODESTO REYES ET AL., DEFENDANTS AND APPELLANTS.*G.R.No. 4193. February 11, 1908*

Ponente: TRACEY, J.

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The two defendants, Reyes, being indebted to the defendant Victoria Arnedo Cruz in the sum of P2,000, offered to assume payment of a debt of that amount which she owed the plaintiff and an agreement of novation was made and signed on the 12th of January, 1905, by the three defendants, substituting the Reyes as principal debtors with Señora Arnedo as surety. This agreement was not satisfactory to the plaintiff, who asked for a joint and several undertaking on the part of all the defendants. Three copies of it were executed and left with the defendant Arnedo, one of which passed into the possession of the plaintiff and was produced by him on the trial. He testified that at first he refused to accept it and thereafter the defendant Señora Arnedo alone signed a supplemental agreement, whereby she professed to bind herself for the payment of the money, jointly and severally with the Reyes, and it is to be inferred from the testimony that thereupon the plaintiff accepted and held both agreements. The Reyes appear to have known nothing of the second instrument for a considerable time, until informed of its existence by the son of the plaintiff, and thereafter one of them went from Manila to San Fernando to examine it.

Shortly before the expiration of the year when it was to become due they received a letter from the plaintiff demanding payment, to which they claim not to have replied, but the plaintiff insists that one of them saw him and asked for an extension of time of one year additional.

The claim of the defendant Reyes is that the original instrument as drawn was never accepted by the plaintiff, that the supplemental agreement essentially varied its terms in substituting a joint and several liability as principal on the part of Señora Arnedo in the place of her undertaking as surety; that they never assented to this substitution; that it was a material change in the terms of the agreement between whose execution and acceptance by the plaintiff it was interposed and that it materially prejudiced them, because, on learning of its existence and supposing the first agreement abrogated, they had paid to Señora Arnedo the sum of P1,700, but whether on this claim or other claims they have not made clear. They maintain that it is a well-settled principle of law where the minds of the parties have failed to meet, no binding contract exists. In the present case it is clear that the Reyes never assented to the second agreement, unless by force of their request for an extension of time, a fact which they deny. They insist that the stipulations which the parties have thought proper to insert in the contract form a part of the consideration for their undertaking and must be accepted; while, on the other hand, they can not, without their consent and in defiance of their express refusal, be obliged to assume the relation of joint and several debtors with one whom they had agreed to accept as their surety only.

From the viewpoint of American law this defense would prevail unless it be said that the first agreement was complete and went into operation independently by itself, notwithstanding its acceptance by the creditor only after the execution of the second and in conjunction with it, on the theory that the latter was a mere outside matter with which the debtors had no concern, because it could not affect their liability.

As viewed by the civil law all the elements of a contract were present, the consent, the object and the cause, the consent of the obligors manifested by their signatures, and that of the obligee by his retention and production of the instrument. The object is unmistakable, while the cause that influenced the appellants and constituted their inducement to contract was the assumption of the debt by means of which their own obligation was extended for a year, rather than the release of their creditor from her original obligation. Nor was the first contract extinguished by the instrument which she afterwards executed, as the two were not altogether incompatible (art. 1204, Civil Code), and there was no effective novation. If the second instrument, had any effect, it respected only the undertaking of Senora Arnedo, not modifying that of the Señorew Reyes, Their obligation remained the same or was not increased through the joint and several relation supposed to have been assumed by their old creditor. If thereby they obtained any advantage under the second agreement, that furnished them no cause for complaint. The rights and liabilities of the defendant Sefiora Arnedo are not before us for the reason that she did not appeal from the judgment.

This case is one of the many instances in which the "consideration" of the American law and the causa of the civil law, although somewhat different in theory, work out equivalent effects in practical jurisprudence.

The judgment of the Court of First Instance is affirmed, with the costs of this action. So ordered.

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

Willard, J., dissents.

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