

JOSE ROGERS, PLAINTIFF AND APPELLANT, VS. SMITH, BELL & CO., DEFENDANTS AND APPELLEES.

G.R. No. 4347. March 09, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

The plaintiff brought this action in the Court of First Instance of the city of Manila upon the following document :

"No. 1418.

\$12,000.

"The sum of pesos twelve thousand has been deposited with us, received from Mr. Jose Rogers, which sum we will pay on the last day of the six months after the presentation of this document, to the order of Mr. Jose Rogers.

"Manila, February 17, 1876.

"SMITH, BELL & Co.

"The said sum of twelve thousand pesos shall bear interest at the rate of eight per centum (8%) per annum from this date, February 17, 1876.

"SMITH, BELL & Co."

When this document was delivered by the defendants to the plaintiff the former delivered to the latter the following letter:

"MANILA, 17 February, 1876.

"JOSE ROGERS, ESQ., Present.

"DEAR SIR: We have this day signed a receipt (quedan No. 1418) in your favor for twelve thousand dollars, deposited in our hands, at interest of 8% per annum, commencing from today.

"This interest will be paid to your order every three months, either in Manila or in London, as you may wish.

"If at any time you should desire to receive said deposit of twelve thousand dollars in London it will be paid to you, or your order, by Messrs. Smith, Wood & Co., of that place, after two months' notice, and on presentation of said receipt or quedan No. 1418.

"We are, dear sir, yours, truly,

"SMITH, BELL & Co."

The only question in the case is, whether upon these documents the plaintiff is entitled to recover 12,000 pesos or 24,000 pesos. The court below held that he was entitled to recover only 12,000 pesos, and the defendants having

deposited that amount in court, judgment was ordered in their favor, from which judgment the plaintiff has appealed.

The facts in the case are undisputed. When this document was delivered 12,000 pesos in silver were worth more than 12,000 pesos in gold. The plaintiff delivered to the defendants in consideration of the execution of the document 12,000 pesos in gold. Soon thereafter the plaintiff removed to Barcelona and has since resided there. The defendants remitted the interest to him every three months at the rate of 8 per cent per annum until the 30th day of January, 1888, when they notified him that thereafter the interest would be 6 per cent. The plaintiff accepted this reduction and interest at that rate was remitted to him by the defendants until the 10th of February, 1904. This interest was remitted in silver; that is to say, every three months the defendants took 180 pesos in silver and with it bought exchange on Barcelona or other European point converted into pesetas. The plaintiff received these payments in silver without any protest whatever until the 10th day of February, 1904. He then, in his letter of that date, called the attention of the defendants to the fact that by the new American law in force in the Philippines the gold standard had been introduced and that by reason thereof he was entitled to receive his interest in gold, in view of the fact that when he delivered the money to the defendants in 1876 he delivered it in gold coin. In another letter of the 15th of December, 1904, he expressly refers to the act of Congress of March 2, 1903, and to the subsequent proclamations of the Governor-General relating to coinage. These are practically all the facts, in the case, and the claim of the plaintiff is that, having paid to the defendants 12,000 pesos in gold coin, he is now entitled to receive from them the value of 12,000 pesos in gold coin; that is to say, 24,000 pesos in silver.

It is necessary to determine in the first place the nature of the contract evidenced by the document of the 17th of February, 1876.

The important, and to our minds decisive, question in the case is, whether or not this document is evidence of an ordinary loan which created between the plaintiff and the defendants the simple relation of debtor and creditor. The appellant in his brief repeatedly calls it a deposit, but we do not understand that he claims that it is or ever was a deposit in the technical sense of the term; that is, that the ownership of the particular coin which was delivered by him to Smith, Bell & Co. did not pass to Smith, Bell & Co. but remained in him and that Smith, Bell & Co. was bound to return to him the identical coin which they had received. It is apparent that no such claim could be maintained in view of that part of the instrument which provides for the payment of interest.

It is claimed, however, by the appellant, that while not a deposit in the strict sense of the word, the document evidences what is known as an "irregular deposit." The parties agree that the case must be decided in this respect in view of the legislation in force prior to the adoption of the Civil Code, and the appellant says that the definition of an irregular deposit is found in Law II, Title III of the Fifth Partida. Manresa, in his Commentaries on the Civil Code (vol. 11, p. 064), states that there are three points of difference between a loan and an irregular deposit. The first difference which he points out consists in the fact that in an irregular deposit the only benefit is that which accrues to the depositor, while in a loan the essential cause for the transaction is the necessity of the borrower. The contract in question does not fulfill this requirement of an irregular deposit. It is very apparent that it was not for the sole benefit of Rogers. It, like any other loan of money, was for the benefit of both parties. The benefit which Smith, Bell & Co. received was the use of the money; the benefit which Rogers received, was the interest on his money. In the letter in which Smith, Bell & Co. on the 30th of June, 1888, notified the plaintiff of the reduction of the interest, they said: "We call your attention to this matter in order that you may if you think best employ your money in some other place."

Nor does the contract in question fulfill the third requisite indicated by Manresa, which is, that in an irregular deposit, the depositor can demand the return of the article at any time, while a lender is bound by the provisions of the contract and can not seek restitution until the time for payment, as provided in the contract, has arisen. It is

apparent from the terms of this document that the plaintiff could not demand his money at any time. He was bound to give notice of his desire for its return and then to wait for six months before he could insist upon payment.

The second difference which exists, according to Manresa, between an irregular deposit and a loan lies in the fact that in an irregular deposit the depositor has a preference over other creditors in the distribution of the debtor's property. That this preference may exist and the transaction be still a loan, appears from the decision of the supreme court of Spain of the 8th of April, 1881. The court there said:

"Whereas, although the irregular deposit is considered as mutual, with respect to the repayment between the depositor and the depositary, notwithstanding this, the latter retains the original status of personal creditor and is simply privileged, in concurrence with other creditors against the former, and he must be paid after the mortgage creditors and before the creditors whose right appears only by written instruments, in accordance with Law XII, Title XIV, Fifth Partida.

It is apparent, therefore, that this document does not state those requisites which are essential to an irregular deposit.

But even if it did, it seems that the appellant's contention could not be sustained. He claims that in accordance with said Law II, Title III, Fifth Partida, the defendants are bound to return to him the same kind of money which was received. That law is in part as follows:

"And the ownership of the thing given in deposit is not transferred to the one who receives the same; but, should the thing be one of those which can be counted, weighed, or measured, if, when receiving it, the same were given by count, weight, or measure, then the ownership would be transferred to him. Yet he would be obliged to return the same thing, or the same quantity, or another similar to the one received, to him who gave it to him in deposit."

An examination, however, of Law II, Title I, of the Fifth Partida, which relates to loans, will show that the obligation of the borrower in such case is stated in almost exactly the same words. That law is in part as follows:

"A man may loan to another any of the things mentioned in the last law which are susceptible of being counted, weighed, or measured. And this is understood with regard to things belonging to him who lends them, or which are loaned by another by authority of his principal; provided, however, that once the thing is in the possession of him who secures the loan, he may dispose of it as though it were his own. But he must return to the owner of the thing an equal amount of the same kind and quality, although the creditor should not specify either of the conditions."

The supreme court of Spain in the judgment of the 27th of October, 1868, speaking of the obligation of the borrower in such case, says:

"Whereas the principle established in Laws I and II of Title I of the Fifth Partida, according to which the borrower acquires ownership of the thing and is bound to return an equal amount of the same kind and quality, have special application to cases relating to loans of money or its equivalent; whereas the thing loaned not being in such cases what properly constitutes the material or the object of deposit, as happens with other perishable things, but rather the value that the coins or the paper money represents, the obligation of the depositary in this kind of contracts is to return the sum or amount therein expressed, whatever may have been the increase or depreciation suffered by the specific kind of coin or paper, unless the contrary be stipulated."

It seems clear from these citations that the document in question is evidence of an ordinary loan and created between the plaintiff and defendants the relation of debtor and creditor. The two judgments of the supreme court of Spain cited by the appellant in his brief have no bearing upon the question. In that of the 9th of July, 1889, it

appeared that the Bank of Havana returned to the plaintiff the same kind of money which it had received from him. The other judgment, of the 7th of February, 1891, simply held that a servant who had left her money with her master and had taken a written obligation from him to pay the same was not, in the distribution of his property, entitled to preference over other creditors on the ground that her debt was for personal labor.

It having been determined that the contract between the parties created the common relation of debtor and creditor, the case is easily resolved. Section 3 of the act of Congress of March 2, 1903, entitled "An act to establish a standard of value and to provide for a coinage system in the Philippine Islands," is as follows:

"That the silver Philippine peso authorized by this act shall be legal tender in the Philippine Islands for all debts, public and private, unless otherwise specifically provided by contract: Provided, That debts contracted prior to the thirty-first day of December, nineteen hundred and three, may be paid in the legal-tender currency of said Islands existing at the time of the making of said contracts, unless otherwise expressly provided by contract."

That this case falls within the terms of this section is very clear. The debt in question is a private debt, calling for the payment of 12,000 pesos. This section authorizes the payment of that debt in the Philippine pesos authorized by the act. That the act applies as well to debts created prior to its passage as to those created after, appears from the proviso. The effect of that proviso is to give the debtor and not the creditor the option as to the kind of money with which the debt shall be paid.

The only possible way to avoid the application of this section to the case at bar is by saying that Congress had no power to pass the act and that as to debts created prior to its passage it is therefore null and void. That the act can not be declared void on this ground is well settled by the decisions of the Supreme Court of the United States. (Legal Tender Cases, 12 Wall., 457; Dooley vs. Smith, 13 Wall., 604; Railroad Company vs. Johnson, 15 Wall., 195; Maryland vs. Railroad Company, 22 Wall., 105; and Juilliard vs. Greenman, 110 U. S., 421.) In the first four of those cases it was held that debts created when the only legal-tender money was gold and silver could be paid in paper money issued by the Government and which had no intrinsic value.

The appellant in his brief discusses at length the meaning of the word "dollars." We do not see how such a discussion is material. The contract provides for the payment of "pesos," not "dollars." It is very evident that the contract was not changed nor intended to be changed by the use of the word "dollars" in the letter of February 17, 1876. That in English houses especially the word "dollars" was, until very recently, used to indicate pesos of local currency, whether Mexican, Spanish, or Hongkong, is well known.

In conclusion it may be said that the plaintiff, in 1876, delivered to the defendants the cheapest kind of money then in use. If he had desired to be repaid in the same money which he delivered, he should have so provided ex-pressly in the contract. He had a perfect right to do so, and if he had done so he could now, by reason of the provisions of the said act of Congress, demand payment in gold.

That the plaintiff's protest of 1904 was based entirely upon his construction of this act of Congress admits of no doubt; that he believe that by the terms of the contract, without the act of Congress, Smith, Bell & Co. had the right to pay him in silver is beyond question. This belief is shown not only by his letters of protest which expressly refer to the act of Congress as the basis of his claim but also by his conduct during more than twenty-five years in receiving interest in silver without a sign of protest. That he would have received the principal also in silver had the defendants tendered it to him at any time prior to 1903 is also free from doubt. In making his protest in 1904 he evidently believed that the act of Congress required the payment of the 12,000 pesos in gold and that he thereby had acquired additional rights. His construction of the act is, as we have seen, wrong.

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

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

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