

GUILLERMO BOWLER, PLAINTIFF AND APPELLEE, VS. PASTOR ALCAZAR, ADMINISTRATOR OF THE ESTATE OF MATEA ALVAREZ Y RUBIO; DEFENDANT AND APPELLANT.

G.R. No. 5045. March 23, 1909

Ponente: WILLARD, J.

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WILLARD, J.:

The plaintiff and appellee presented a claim before the commissioners appointed in the matter of the estate of Doña Matea Alvarez y Rubio based upon a written document executed by the deceased on the 10th day of January, 1896, which is as follows:

"I hereby acknowledge to be indebted to Don Guillermo Bowler in the sum of 13,915 pesos, received by me from him as a loan without interest, and I bind myself, with all my present and future property, to return the said amount within the period of two years from this date, that is, on January 10, 1898. And, in order that he may prove his rights in due time, I deliver to him this instrument, the execution of which has been witnessed by Don Marcos Arcenas, Don Antonio Laserna, and Don Rafael Rodriguez, all residents of this town. Capiz, January 10, 1896.-(Signed) Matea Alvarez."

The commissioners held that the plaintiff was entitled to the amount due on the obligation, together with interest thereon at the rate of 10 per cent, and allowed this claim for the sum of P23,971.08. The administrator appealed to the Court of First Instance. In that court he admitted that the estate was liable for the balance due on the note, without interest, that is to say for P10,794.49, but claimed that it was not liable for interest thereon. The court over-ruled this claim, held that the defendant was liable for the interest at the rate of 10 per cent and ordered judgment for P27,072.25, with interest thereon from the 10th day of September, 1908, the date of the judgment, at 10 per cent per annum.

The only question in the case is whether the estate is liable or not for interest. The appellee devotes a large part of his brief to a discussion of the question as to whether parol evidence was admissible to show an agreement made in 1896 in the effect that the debtor should pay interest at the rate of 10 per cent per annum until the obligation was discharged, and he claims that such evidence was admissible. This discussion is entirely beside the case, as will be seen by an examination of the evidence. That evidence shows that no parol agreement of that kind was made. The only evidence in the case relating to what took place at the time the document was executed was the evidence of the debtor's bookkeeper, who testified that, although the note was for the sum of 13,915 pesos, yet Doña Matea, as a matter of fact, received only 11,500 pesos, and that the difference, between the amount of cash received and the amount stated in the note was the interest computed in advance for two years and included in the note. This witness did not testify that there was any verbal agreement on the part of Doña Matea to pay interest nor any verbal agreement of any kind between her and the creditor. The appellee himself was a witness and he testified to no such conversation or agreement. The court below apparently held that the mere fact that interest was computed in advance for the two years during which the note was to run and was included in the note was evidence of an agreement on the part of the debtor to pay interest after the maturity of the note. We do not think

that this theory can be sustained. All that such evidence shows is that the creditor was to receive interest for the two years from 1896 to 1898, but it does not tend to prove any agreement as to what should be done with reference to the matter of interest after the note became due provided it was not paid, and there is nothing in the case to show that the parties did not contemplate the immediate payment of the note at its maturity. In fact, as the appellee himself says in his brief:

"In the second place, all the rules of evidence oblige us to presume that each one of the contracting parties expected that the debtor, or Doña Matea Alvarez, should exactly fulfill her obligation at its maturity. * * * The promissory note does not state anything as to interest after its maturity, for the very reason that the nonpayment of the same at the proper time was not anticipated by either party."

If the prepayment of the interest for two years had the effect of eliminating the words "without interest" found in the note, it would leave the obligation without any clause expressly providing for the payment of interest, and under such circumstances interest can not be collected. (Art. 1755 Civil Code.)

It is well settled that where no agreement as to interest is made interest does not commence to run on loans not mercantile until some demand for payment is made.

The evidence, therefore, shows no obligation on the part of Doña Matea to pay interest after the maturity of the note, to wit, the 10th day of January, 1898. She died on the 26th day of May, 1897. After her death and on the 5th day of March, 1899, Marcos Arcenas signed the following document:.

"The undersigned, in his own name and as attorney in fact of the heirs of Doña Maria Geronima Rubio, acknowledging the obligation of payment contracted by Doña Matea Alvarez y Rubio on January 10, 1896, in favor of Don Guillermo Bowler, as a true and lawful obligation, and to which this document refers, shall pay to the said Don Guillermo Bowler, on the 10th day of January, 1900, the sum of 13,915 pesos, and, as interest thereon, ten per cent upon that amount from January 10, 1898, until the date of its payment, with the understanding that, in case of insolvency, Don Guillermo Bowler will be entitled to exercise his rights against the intestate estate of said Doña Matea Alvarez for the sum aforesaid. The payment of the above principal and interest I will make at the city of Iloilo to the order of Don Guillermo Bowler or of the person authorized to this effect by the same Don Guillermo Bowler.- Capiz, March 5, 1899.-(Signed) Marcos Arcenas."

It is not necessary to consider in this case the legal effect of this document. It is not necessary to consider whether it made the heirs of the deceased personally liable for the payment of this debt. The acceptance of the estate by the heirs without the benefit of an inventory might make them liable personally for the debts of the deceased existing at the time of her death as was held in the case of *Ortiz vs. Aramburo* (8 Phil. Rep., 98). Whether they would be liable for obligations incurred after the death of the deceased we have no occasion to consider here. The question to be considered is, what class of demands should be presented to the commissioners appointed to hear claims against the estate, and had the commissioners any authority to allow a claim for interest which claim did not exist at the time of the death of the deceased, but arose from dealings between the heirs and the creditor which took place after such death. This question has already been considered and decided in the case of the *Philippine Trading Company vs. Crossfield* (5 Phil. Rep., 400). It was there held, speaking of the powers of the commissioners and of section 686 of the Code of Civil Procedure (p. 401):

"This section means that their jurisdiction is limited to claims which existed prior to the death of the deceased and which survived him, and that they have no jurisdiction over any claim which did not arise during his lifetime. Causes of action which arise after a person's death are not proper claims for presentation to such committee."

This claim for interest not existing prior to the death of the deceased, and the cause of action therefor having arisen after the death of Doña Matea, the commissioners erred in allowing it.

The appellee makes the point in his brief that we can not consider the evidence because it is not expressly made a part of the bill of exceptions. The testimony of the witnesses was attached to the bill of exceptions, was duly certified by the official stenographer, and was sent here with the bill of exceptions, but it is true that there is no statement in the bill of exceptions that it is made a part thereof. This however was a mere formal defect which, under the provisions of section 500 of the Code of Civil Procedure, could be corrected by an amendment to the bill of exceptions, and the bill of exceptions in this case will be considered as amended by inserting a clause therein to the effect that the evidence is made a part of the bill of exceptions.

The appellee also says that not all of the evidence has been brought here and specifies certain books of account which were presented as proof and which have not been sent to this court. But an examination of the record shows that the evidence contained in those books is entirely immaterial because the facts which they tended to prove were proved by other evidence in the case and relates to matters about which there was no dispute, namely that Doña Matea Alvarez received only 11,500 pesos when the note was made, and that certain payments were made after her death by the heirs.

The judgment of the court below is reversed and the case is remanded with instructions to enter judgment allowing the claim of the plaintiff in the sum of 10,794.49 pesos, Mexican currency, reduced to Philippine currency at the rate named in the decision of the court below, with interest thereon at the rate of 6 per cent per annum from the date of the presentation of the claim by the plaintiff to the commissioners. No costs will be allowed to either party in this court. So ordered.

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

Johnson, J., concurs in the result.

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