

FRANCISCA JOSE, PLAINTIFF AND APPELLEE, VS. WENCESLAUA DAMIAN, DEFENDANT AND APPELLANT.*G.R. No. 5273. September 09, 1909*

Ponente: TORRES, J.

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On the 2d of June, 1908, Francisca Jose brought suit against Wenceslaua Damian on the ground that the latter, being duly authorized by her husband, Teodoro Patiño, had barrowed from the plaintiff the sum of P1,394, under a written contract executed before a notary on the 19th of September, 1906, and that by virtue thereof the defendant bound herself to refund the amount loaned to her by monthly installments of P20 to be paid to the plaintiff at her residence; that from September, 1906, to the 15th of May, 1907, the debtor had paid on account the sum of P160, which deducted from the amount loaned the defendant leaves P1,234 still owing to the plaintiff; and that since the 16th of June, 1907, Wenceslaua Damian, in violation of the contract, had failed to pay the balance of her indebtedness, notwithstanding the many friendly demands made therefor; for said reason the plaintiff prayed the court to enter judgment in her favor ordering that the said contract be canceled through noncompliance on the part of the defendant; that the latter be sentenced to pay to the plaintiff the sum of P1,234 with interest thereon from the 16th of June aforesaid, until full payment is made, and that she be also sentenced to pay the costs.

The defendant's demurrer was overruled. She excepted to the overruling and in answer to the complaint set forth; that by reason of the continued absence of her husband, Teodoro Patiño, since the month of June, 1908, she presented her answer without his assistance; that she still maintained and again set forth her exception to the order overruling the demurrer because she had not been notified of the hearing thereon; that she denied the first part because she was a resident of the municipality of San Roque, Cavite, at the time when the summons were served on her; that she denied paragraphs 2, 4, and 5 of the complaint for the reason that the amount claimed was more than sufficiently covered by the value of several pieces of jewelry set with diamonds which her creditor had received for sale on commission, the proceeds to apply toward the payment of the sum of P1,394, in addition to the amounts paid in by the defendant on account of said debt which were more than the amount stated in paragraph 4 of the complaint, without having violated the obligation contracted by her; and that as special defense she alleged that the plaintiff received several pieces of jewelry from her which are described and valued at P3,000 for the aforesaid purpose, the balance of the value thereof to be returned to the defendant, but that the plaintiff had not even rendered an accounting for the sale of said jewels nor for the total value of the same as had been agreed upon between them; that as alleged in paragraph 3 of the complaint the amount loaned should be gradually paid by monthly installments of P20, for which reason the subject of the complaint could only be the amount due and not paid from the 16th of June, 1907, to May, 1908, when the complaint was filed, which, according to the statement of the plaintiff herself, should be P240; that in view of the terms of the contract an action brought to rescind the same did not lie; that as a counterclaim the defendant claimed from the plaintiff the sum of P2,000, balance of the proceeds of the said jewelry with the legal interest thereon, and finally prayed that judgment be entered absolving her of the complaint, and sentencing the plaintiff to pay the amount demanded in the counterclaim with legal interest thereon and costs.

In reply to the foregoing answer the plaintiff set forth that paragraphs 1 and 2 of said answer should be stricken out as incompetent and immaterial, and denied each and every one of the statements made in said answer, special defense, and counterclaim with the exception of such as are admitted in the following special defense, wherein she states that on or about the 6th of July, 1904, the defendants delivered to the plaintiff a bill of sale, for the sum of \$4,000, Mexican currency, with pacto de retro for one year from date, and witnessed by a notary, for three houses of light material and several pieces of jewelry described in the defendant's answer; that on or about the 10th of October, 1905, after a liquidation was made of the debt of the defendant, Wenceslawa Damian, being duly authorized by her husband, Teodoro Patiño, as she was unable to fulfill the agreement contained in the said deed, executed and delivered to the plaintiff a new bill of sale, ratified before the same notary, for two houses of light material and the same jewelry for the sum of P2,404, with pacto de retro, from the said 10th of October, 1905, for the term of one year with the right to extend it for another year; that on the 19th of February, 1906, the defendants duly authorized the creditor to sell the jewelry which she held as security for the debt; that on the 26th of July, 1906, the plaintiff declared before a notary that all the jewelry mentioned had a market value of P875, and at that price sold them with the acquiescence of the defendant debtor, and in like manner acknowledged to have received from the defendant the sum of P135, for which reason the sum paid on account of the debt amounted to P1,010, which, being deducted from the P2,404 mentioned above, left a balance of P1,394 in favor of the plaintiff, which balance has been acknowledged by the parties in litigation by means of another instrument dated September 19, 1906, which is cited in the complaint. In view of all of the foregoing the plaintiff prays the court to render judgment in accordance with what she had previously requested in her complaint, and that she be absolved of the counterclaim interposed by the defendant.

The case came up for trial and the testimony and documents offered in evidence were made of record; the trial court in view of the result entered judgment on the 26th of December, 1908, holding that the plaintiff was entitled to recover from the defendant the sum of P250, with interest thereon at the rate of 6 per cent per annum from the 2d of June, 1908, with costs, without prejudice to an action to recover such other installments as might become due upon maturity under the provisions of the document on which the complaint is based. The defendant excepted to the foregoing judgment and by a writing dated the same day, December 29, 1908, prayed that the same be vacated and a new trial held for the reason that the said judgment was contrary to the weight of the evidence and to the law, as there is no legal provision in force which provides for the amendment of said decision; the motion was overruled on the 22d of January of this year, to which the petitioner excepted and presented the corresponding bill of exceptions which, notwithstanding the opposition of the appellee, was approved and forwarded to the clerk of this court.

The controversy in the present action refers on the one hand to the annulment of the contract set forth in the document marked Exhibit A, and the recovery of P1,234, with legal interest thereon from the 16th of June, 1907, as claimed by the plaintiff from the defendant who owes the same; and on the other to the payment of P2,000 which the latter claims the plaintiff should pay as a counterclaim.

The spouses Teodoro Patiño and Wenceslawa Damian were indebted to Francisca Jose since July, 1904, in the sum of P4,000, which appears from the document marked "B" to be the result of the sale of three houses of light material situated in Sampaloc and of a quantity of jewelry described therein, payable by installments within the period of one year. By means of payments made the debt was subsequently reduced to P2,404 and this amount is the result of another sale with pacto de retro of two houses of light material situated in San Roque, Cavite, and of several pieces of jewelry described in the document marked "C" by the terms of which the defendant, as the seller, duly authorized by her husband, bound herself to settle the said amount in the manner and under the terms agreed upon in the aforesaid document executed on the 10th of October, 1905.

Both documents appear to have been ratified before a notary who signed a note dated October 10, 1905, at the foot of the first one marked "B" to the effect that from said date the said document or instrument marked "B" was null and void.

In July, 1906, the creditor, for the purpose of effecting a payment on account, by realizing on the jewelry pledged by the debtor, after obtaining the latter's consent and with her husband's authority sold said jewelry for P875, which amount added to the P135 received on account made a total of P1,010, and deducting said sum from the P2,404, the amount of the indebtedness shown by the document marked "C," there resulted a balance of P1,394 in favor of the plaintiff.

On the 19th of September, 1906, after the sale of said jewelry, the defendant debtor, authorized by her husband, executed in favor of the plaintiff creditor the instrument marked "A" which was ratified before the same notary, wherein among other things appears the following:

"That I, Doña Wenceslawa Damian, have settled with the other party here present, Doña Francisca Jose, the balance of the amount in which I am indebted to her, with the result that, by reason of several payments made by me aggregating P1,010 Conant, I still owe Doña Francisca Jose the sum of P1,394 Conant; that by mutual agreement between both parties herein, I, the debtor, bind myself to pay to Doña Francisca Jose the sum of P20 Conant until the whole of my indebtedness, amounting to P1,394 Conant, is paid, said payment of P20 Conant, to be made at the end of each month at the residence of Doña Francisca Jose, No. 25, Calle Ricafort, Tondo, and said monthly payments shall be witnessed by receipts signed by Doña Francisca Jose."

It is stated in the complaint that the defendant has paid on account of her debt of P1,394, installments of P20 for the eight and a half months from September, 1906, to May 15, 1907, that is to say, the sum of P170 and not P160 as appears therein; and deducting said amount from the total indebtedness we find that at the time when the complaint was filed, May 4, 1908, the defendant still owed P1,224.

The existence and correctness of the indebtedness is unquestionable for the reason that it is fully proven by documentary evidence which has not been properly impugned or contradicted; and the contention for release from payment which the defendant endeavored to establish in her brief completely fails of justification and appears to be overthrown by the notarial document and other authentic papers of a private character offered in evidence by the plaintiff during the trial of the case.

Several months before the document Exhibit C was executed by the defendant Damian on October 10, 1905, her husband, Teodoro Patiño, by means of a notarial instrument dated August 29, of said year, granted her ample power and authority to enter into all kinds of contracts, to administer the property of the conjugal copartnership and to appear before the courts in order to exercise and maintain their rights and interests; therefore, the defendant had legal capacity to contract and to execute the documents marked "A" and "C," and also to act as defendant in this litigation apart from the fact that although her husband had been duly summoned to appear in these proceedings he decided not to do so, and being well aware of his rights and duties left the matter of the present litigation completely in the hands of his wife; therefore, the two errors assigned to the judgment appealed from are unfounded and inadmissible.

The record does not show that any legal or just reason exists or was therein provided which would call for the cancellation of the contract contained in the document or instrument marked "A," and for that reason the matter does not fall within any of the provisions referred to in articles 1290 to 1297 of the Civil Code.

As to the manner stipulated between the contracting parties, in which the debt was to be paid, as provided in said instrument marked "A," that the debtor, in order to extinguish the indebtedness, would pay P20 at the expiration of each month, beginning in September when the document was dated, no legal reason exists to prevent the slow

payment agreed to. Contracting parties may establish such covenants clauses, and conditions as they may deem fit, as long as they are not contrary to law, to morals, or to public order. (Art 1255, Civil Code.)

The complaint was filed claiming payment of the whole debt in view of the failure of the debtor to pay the installments agreed upon, and as the said instrument of indebtedness does not state that the failure to pay any of the installments would entitle the creditor to recover the total amount of the debt, and it not appearing that a subsequent agreement providing therefor had been entered into, the decision in the present controversy must be governed by the agreement entered into between the parties, it being the only law governing the matter, as provided by section 285 of the Code of Civil Procedure, and the trial Judge held in conformity with the doctrine repeatedly established in jurisprudence, that when a debt is payable in installments, according to agreement between the parties, partial amounts remaining unpaid at the time of the filing of the complaint can alone be claimed unless there should exist a stipulation to the contrary. (Decisions Nos. 3019, 7 Phil. Rep., 455;¹ 3584, 8 Phil. Rep., 677; ² 4123, 9 Phil. Rep., 210,³ and others cited in the judgment appealed from.)

From the 16th of May, 1907, to the 2d of June, 1908, twelve months and a half have elapsed, without counting the days of June, that is, twelve and a half installments at the rate of P20 each, and therefore, according to the agreement in the above-mentioned document A, the conditions of which are sanctioned by law and the established rules of courts, the plaintiff was only entitled to recover and receive the P250 due for the twelve and a half months when her complaint was filed.

With respect to the interest on said amount, article 1755 of the Civil Code provides that no interest shall accrue except when the same has been expressly agreed to; and in view of the fact that it does not appear from the said document that it was agreed between the parties that the said sum would earn interest, and on the other hand as it has not been proven that the creditor had ever demanded extra-judicially from the debtor the settlement of her indebtedness in order that it might be considered as having become delinquent according to article 1100 of said code, there can be no question that the obligation to pay the legal interest on account of the debt as an indemnity for loss and damage shall count from the month of June at which time the complaint was filed. (Arts. 1108 and 1109 of said code.)

For the reason above set forth it is our opinion that the judgment appealed from should be affirmed, with the costs against the appellant. So ordered.

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

[1] *Compañia General de Tabacos vs. Araza*.

[2] *Artadi & Co. vs. Chu Baco*.

[3] *La Yebana Co. vs. Sevilla et al*.

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