

W. W. ROBINSON, PLAINTIFF AND APPELLEE, VS. MARCELINO VILLAFUERTE Y RAÑOLA, DEFENDANT AND APPELLANT.*G.R. No. 5346. January 03, 1911*

Ponente: TORRES, J.

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On April 30, 1908, W. W. Robinson entered suit in the Court of First Instance of Tayabas against Mareelino Villafuerte y Rafiola, alleging as a first cause of action: That the plaintiff was engaged, in the city of Manila and at the time specified further on, in the importation and sale of flour and other products from abroad, with an office in the city of Manila, a business which he still continued, through the agency of Castle Brothers, Wolf & Sons, established therein; that the defendant, a resident of Lucena, Tayabas, by an instrument duly executed on October 19, 1906, by his attorney in fact and legal representative, Vicente Marcelo Concepcion, who was fully empowered and authorized for the purpose, and ratified on the same date before the notary public of Manila, D. R. Williams, acknowledged and confessed that he owed the plaintiff the net sum of P3,852.50; that by the said instrument duly executed the defendant bound and pledged himself to pay to the plaintiff the said sum of P3,852.50 in four monthly installments from that date, at the rate of P1,000 for each of the first three installments and P852.50 for the last one, and likewise the interest thereon at the rate of 8 per cent per annum, to be adjusted and paid at the time of paying each of the installments fixed; that in the said instrument the defendant moreover bound himself to pay to the plaintiff the sum of P500 for costs and expenses, in case the latter should recur to judicial process for the collection of the aforementioned debt; and that, as security for the payment of the said debt, of the interest thereon and of the amount for costs and expenses, the defendant voluntarily executed, by means of the said instrument and in favor of the plaintiff, a special mortgage upon the properties of his absolute ownership and control, which are:

A., p. 72, back. A rural estate, No. 433, consisting of land planted in coconut trees, in the barrio of Dumacaa of the municipality of Lucena, and containing an area of 2 hectares, 57 ares, and 73 centares.

B., p. 73. A rural estate, No. 434, consisting of coconut land in the barrio of Canlorang Mayao, Lucena, 2 hectares, 4 ares, and 78 centares in area.

C., p. 73. A rural estate, No. 435, consisting of unirrigated land containing 1,200 coconut trees, in the same barrio of Lucena, and with an area of 7 hectares, 81 ares, and 4 centares.

D., p. 74. A rural estate, No. 436, consisting of coconut land containing 700 coconut trees, in the barrio of Silangan Mayao, Lucena, with an area of 1 hectare and 84 centares.

E., p. 74, back. A rural estate, No. 438, consisting of land planted with 300 coconut trees, in the barrio of Cotta, Lucena, and measuring 52 ares and 66 centares in area.

F. p. 75. A rural estate, No. 439, consisting of coconut land containing 1 500 coconut trees, in the same barrio and pueblo, with an area of 98 ares and 66 centares.

G., p. 75, back. A rural estate, No. 440, consisting of coconut land containing 800 coconut trees, in the same barrio and pueblo, with an area of 36 ares and 5 centares.

H., p. 75, back. A rural estate, No. 441, consisting of coconut land containing 300 coconut trees, in the same barrio and pueblo, measuring 50 ares and 73 centares.

I., p. 73. A rural estate, No. 914, consisting of improved land, planted with 1,000 coconut trees and situated in the barrio of Dumacaa, Lucena, of 7 hectares, 12 ares, and 60 centares in area.

J., p. 76. A rural estate, No. 915, consisting of improved land, planted with 100 coconut trees and situated in the barrio of Cotta, Lucena, of 93 ares and 22 centares in area.

K., p. 79. A rural estate, No. 916, consisting of improved land, planted with 200 coconut trees and situated in the same barrio and pueblo, of 13 ares and 4 centares in area.

The respective boundaries of each one of the estates above enumerated were set forth in the said instrument of mortgage, which was duly inscribed in the property registry of Tayabas, This deed does not appear to have been canceled, and constitutes an encumbrance on the properties described in favor of the plaintiff. It was stated in the instrument referred to, that the liability of the property mortgaged was distributed in the following manner:

The estate described under letter A responded for P800 of the debt and for the sum of P5 as costs.....

P875.00

Estate letter B, liability P200, costs P40.....

240.00

Estate letter C, liability P160, costs P40.....

200.00

Estate letter D, liability P130, costs P40.....

170.00

Estate letter E, liability P92.50, costs P30.....

122.50

Estate letter F, liability P150, costs P40.....

190.00

Estate letter G, liability P280, costs P40.....

320.00

Estate letter H, liability P250, costs P40.....

290.00

Estate letter I, liability P1,400, costs P75.....

1,475.00

Estate letter J, liability P260, costs P40.....

300.00

Estate letter K, liability P130, costs P40.....

170,00

Total.....

4,352.50

It was stated further, as an express condition, that default of payment of any of the installments specified in the fourth preceding paragraph would cause the entire obligation to mature and would entitle the plaintiff (it says "defendant") to require the payment of the same in its totality and forthwith to institute foreclosure proceedings against any and all of the mortgaged properties.

The complaint further alleged, as a first cause of action, that, notwithstanding the repeated demands made upon the defendant, the latter had not paid his debt nor the interest thereon, excepting the sum of P550, paid on different dates on account of the debt and interest due, wherefore the defendant owed the plaintiff the sum of P3,302.50, the remainder of his debt and besides P385.57 as interest due from December 6, 1906, to the date of the filing of the complaint; that the plaintiff was then the legal owner of the mortgage, and that he had not been paid the whole nor any part of the sum expressed in the preceding paragraph.

As a second cause of action against the defendant, the complaint alleged, among other things: That the defendant, by means of an instrument duly executed on December 21, 1906, by his attorney in fact and legal representative, Vicente Marcelo Concepcion, who was fully empowered and authorized - an instrument ratified on the same date before the notary Daniel R. Williams - and in consideration of the credit which the plaintiff agreed to allow the said defendant up to the sum of P3,560, executed a special voluntary mortgage of the properties of his absolute ownership and control which are described as follows:

No. 1, p. 72. Estate No. 432, first inscription, volume 28, general register; coconut land containing 1,000 coconut trees, 26 hectares, 56 ares, and 87 centares in area, situated in the barrio of Dumacaa, Lucena. A part of this land is planted with coconut and nipa palm trees and the rest is arable.

No. 2, p. 72, back. Estate No. 433, first inscription of the same volume; coconut land containing 1,000 coconut trees, 2 hectares, 57 ares, and 73 centares in area, situated in the same barrio and pueblo.

No. 3, p. 71, back. Estate No. 431, first inscription of the same volume; coconut land containing 1,500 coconut trees, 16 hectares, 2 ares, and 27 centares in area, situated in the same barrio and pueblo.

No. 4, p. 73. Estate No. 434, first inscription of the same volume; coconut land containing 1,000 coconut trees, 2 hectares, 4 ares, and 78 centares in area, situated in the barrio of Canlorang Mayao, Lucena.

No. 5, p. 73, back. Estate No. 435, first inscription of the same volume; coconut land containing 1,200 coconut trees, 7 hectares, 81 ares, and 4 centares in area, in the same barrio and pueblo.

No. 6, p. 74. Estate No. 436, first inscription of the same volume; coconut land containing 7,000 coconut trees, 1 hectare, 88 ares, and 54 centares in area, situated in the barrio of Silangan Mayao, Lucena.

No. 7, p. 74, back. Estate No. 438, first inscription of the volume aforesaid; coconut land, 52 ares and 66 centares in area, containing 300 coconut trees and situated in the barrio of Cotta, Lucena.

No. 8, p. 75. Estate No. 439, first inscription of the same volume; coconut land, 98 ares and 66 centares in area,

containing 500 coconut trees and situated in the same barrio and pueblo.

No. 9, p. 75, back. Estate No. 440, first inscription of the volume mentioned; coconut land, 36 ares and 5 centares in area, containing 500 coconut trees and also located in the same barrio and pueblo.

No. 10, p. 75, back. Estate No. 441, first inscription of the said volume; coconut land, 50 ares and 73 centares in area, containing 300 coconut trees and located in the same barrio and pueblo.

No. 11, p. 73. Estate No. 914, consisting of improved land planted with of Dumacaa, Lucena, with an area of 7 hectares, 12 ares, and 60 centares.

No. 12, p. 76. Estate No. 915, volume 106 general register; an improved piece of land, 93 ares and 22 centares in area, containing 1 800 coconut trees and situated in the barrio of Cotta, Lucena.

No. 13, p. 79. Estate No. 916, volume 106 general register; an improved piece of land, 13 ares and 4 centares in area, containing 200 coconut trees and located in the same barrio and pueblo.

No. 14, p. 127. Estate No. 932, volume 106, general register; an improved piece of coconut land, 2 hectares, 79 ares, and 49 centares in area, containing 2,000 coconut trees and located in the barrio of Dumacaa, Lucena.

The respective boundaries of each of the estates above enumerated were set forth in the said instrument of mortgage, which was duly inscribed in the property registry of Tayabas, and does not appear to have been canceled, and constitutes an encumbrance on the properties described, in favor of the plaintiff. It was stated, in the instrument referred to, that the liability of the property mortgaged was distributed in the following manner:

The estate described under letter A responded for P800 of the debt and for the sum of P90 as costs.....

P890.00

Estate No. 2, liability P420, costs P40.....

460.00

Estate No. 3, liability P420, costs P40.....

460.00

Estate No. 4, liability P120, costs P40.....

160.00

Estate No. 5, liability P100, costs P30.....

130.00

Estate No. 6, liability P100, costs P30.....

130.00

Estate No. 7, liability P120, costs P40

160.00

Estate No. 8, liability P110, costs P40.....

150.00

Estate No. 9, liability P110, costs P40.....	150.00
Estate No. 10, liability P110, costs P40.....	150.00
Estate No. 11, liability P80, costs P25.....	105.00
Estate No. 12, liability P80, costs P25.....	105.00
Estate No. 13, liability P90, costs P30.....	120.00
Estate No. 14, liability P900, costs P90.....	990.00
Total	4,160.00

That the aforementioned mortgage was executed as security for the payment to the plaintiff of the sum or sums which the defendant might owe him by reason of the said credit, which was granted under the following terms and conditions:

- That the said credit should not exceed the sum of P3,560 and was granted for the period of six months from the 20th of November, 1906, and the defendant was to make use of it in taking flour from the plaintiff's warehouses, at current prices, by means of written duebills or orders signed by the defendant or by his attorney in fact.
- That the said written duebills or orders should be paid within thirty days from their date, and it was stipulated that the amount or value of each one of them should bear an annual interest of 8 per cent from the date of their maturity, if not paid before.
- That the total amount of what the defendant might be owing, by reason of the said credit, should be settled and entirely paid, together with the interest thereon, by the 20th of May, 1907, on which date all the orders or duebills issued by the defendant against the said credit should be considered as matured, even though the extension above mentioned should not have expired.
- That it should be optional on the part of the plaintiff to honor the duebills or orders which the defendant Marcelino Villafuerte might issue against the said credit, in the event that the latter should fail to pay the amount of his previous duebills or orders at the time they should respectively fall due, or should fail to comply with and observe any of the conditions and stipulations contained in the said instrument of October 19, 1906, ratified before notary Williams; that the defendant should be bound to pay to the plaintiff P600, in case of litigation, and also to pay all the expenses that might be occasioned by the execution of the said instrument of December 21, 1906, those of its inscription in the registry, cancellation, and release, as well as the expenses incurred by the plaintiff on account of the instrument of October 19, 1906, referred to in the first cause of action, together with those of its inscription in the registry; provided, moreover, that the aforementioned instrument of December 21, 1906, should be retroactive in its effect from the 20th of November of the same year, and that the flour which the

said defendant, through his attorney in fact, Vicente Marcelo Concepcion, had withdrawn from the plaintiff's warehouses since the 20th of November, 1906, should be included in the credit opened; that the estates described under the Nos. 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13, bore a first mortgage in favor of the plaintiff executed as security for the obligation, the fulfillment of which is demanded in the first cause of action; that, by clause 14 of the said instrument of December 21, 1906, it was stipulated that in case W. W. Robinson, the plaintiff, should have to institute foreclosure proceedings against the property above described, either by reason of the mortgage hereby placed on the same, or of the obligation affecting the said property, in his favor, by virtue of the said instrument of October 19 of the present year, Robinson should be entitled to take charge of the management of all or any of the said realties until they should be sold, and to collect their revenues, rentals, fruits, and products for the purpose of applying the same to the payment of the judgment; that, by clause 15 of the said instrument of December 21, 1906, it was also stipulated that it was expressly covenanted that, in case Robinson should have to proceed judicially against the property therein mentioned in order to collect any amount to the payment of which they were subject, all the orders or due bills issued on account of the credit granted in the said instrument should be considered as matured and payable, and Robinson should be entitled forthwith to demand the payment of any balance found to be due him by Marcelino Villafuerte y Rañola, with the privilege of levying upon all or any of the realties comprised within the mortgage mentioned in the said instrument; that the amount credited for the expenses referred to in No. 7 of the fifth paragraph of this cause of action reached P174.95; that the defendant, availing himself of the credit granted in the aforementioned instrument of December 21, 1906, took and withdrew from the plaintiff's warehouses, on different dates between the 20th of November and the 19th of December, 1906, inclusive, various quantities of flour, the total value of which amounted to P5,588.15; that the defendant had not paid any part of this amount, except the sum of P375, and was owing a balance of P5,213.15; that at the time of the complaint the said defendant owed the plaintiff the sums of P174.95 and P5,213.15, in addition to P503.79 as interest due up to the date of the complaint; that the plaintiff was then the legal owner of the mortgage above referred to, and that none of the sums mentioned nor any part thereof had been paid to him: wherefore the plaintiff asked that judgment be rendered in his favor against the defendant, for the following amounts: (1) For the sum of P3,302.50, the principal demanded in the first cause of action, and interest thereon at 8 per cent per annum from date until its payment; (2) for the sum of P385.57, as interest due on the principal mentioned in the preceding paragraph and remaining unpaid, and, in addition, the interest on this sum at the rate of 6 per cent per annum from the date of the complaint until paid; (3) for the sum of P5,213.15, the amount of the debt claimed in the second cause of action, together with the interest thereon at the rate of 8 per cent per annum from date until its payment; (4) for the sum of P503.79, the interest due on the principal mentioned in the preceding paragraph, with interest thereon at 6 per cent per annum from date until payment; (5) for the sum of P174.95, claimed in paragraph 9 of the second cause of action, with interest thereon at 6 per cent per annum from the date of the complaint until payment; and, (6) for the sum of P1,000 for costs and attorney's fees.

The plaintiff further prayed that an order be issued directing the delivery to the plaintiff of the properties described in the complaint, in order that he might administer them during the course of this suit and until they should ultimately be sold, and authorizing him to collect and receive the revenues, rentals, fruits, and other products of the said estates and to retain them in his possession in order to satisfy the judgment that would be rendered in this case, and that in case the said judgment be not satisfied thereby, the sale of the said properties be ordered and the proceeds thereof be applied to the purpose.

The defendant, in his answer, made a general and specific denial of each and all of the allegations of the plaintiff for each and all of the actions instituted by him in each and all of the paragraphs of the complaint, and as a special defense, and in his crosscomplaint, alleged: That the defendant did not execute, consent to, nor authorize the execution of a power of attorney of any kind whatsoever in favor of Vicente Marcelo Concepcion, empowering

the latter to mortgage, pledge, or otherwise dispose of, to the plaintiff or to any person whatever, any of the properties mentioned in the complaint, nor to accept from and open with the plaintiff any credit nor establish with him any business in flour; nor execute any power of attorney nor grant any authority whatever in favor of the said Concepcion so that the latter might represent him and accept in his name credit, or moneys whatsoever from any person; nor dispose of, mortgage, or encumber any of the properties described in the complaint; that the defendant received no sum whatever from the plaintiff nor was he in the latter's debt for the amount claimed in the complaint, nor for any other sum of money; that he did not give his consent to all or to any one of the mortgages alleged in the complaint, and that all the said mortgages on the properties therein mentioned were founded on a supposed power of attorney said to have been executed by the defendant in favor of Vicente Marcelo Concepcion, which power of attorney was fictitious, false, fraudulent, null and void, that it was not executed by the defendant, nor did the latter intervene there in and that the said power of attorney had no true reason for existence; wherefore the defendant asked that judgment be rendered absolving him from the complaint with the costs against the plaintiff, by annulling each and all of the mortgages alleged in the complaint and the inscription of each of them in the office of the register of property of Tayabas, and by ordering the cancellation of all the inscriptions of the said mortgages and encumbrances on the aforementioned properties.

The plaintiff, in answer to the countercomplaint, set up a general and specific denial of each and all of the allegations of the defendant with respect to each and all of the actions brought by him in each and all of the paragraphs of the countercomplaint, and prayed that judgment be pronounced in his favor, and against the defendant, in conformity with the petitions made in his complaint.

The case came up for hearing on November 30, 1908, and after the presentation of oral evidence by both parties, the documentary evidence being attached to the record, the court, on December 15 of the same year, rendered judgment whereby it directed that the plaintiff should recover from the defendant the sum specified in the first instrument of mortgage, P3,302.50, as principal, the additional sum of P385.57 as interest up to April 30, 1908, besides the interest on the said principal, at the rate of 8 per cent per annum from the date just above mentioned until its complete payment, also the P500 stipulated in the said instrument as payable by the defendant as costs and expenses in case of litigation; and the sum mentioned in the second instrument of mortgage, P5,213.15 as principal, besides P503.79, as interest up to the 30th day of April, 1908, in addition to the interest on the said principal at the rate of 8 per cent per annum, from the date just above mentioned until its complete payment, and the sum of P174.95, as expenses for the execution of the instrument, for its inscription, cancellation, and acquittance, as provided for in clause 17 of the said instrument, and the additional sum of P600, which it was stipulated in the second instrument the defendant should pay for costs and expenses in case of litigation. The judgment further ordered that the defendant should pay the several amounts above mentioned, with the interest and costs, on or before the first day of the sitting of the court in April, 1909, and that, in case such order should not be complied with, the mortgages should be foreclosed and a final writ should be issued directing that all the properties before described be sold, the proceeds of the sale to pay the principal, interest, and costs. The defendant, when notified of this judgment, took exception thereto, announced that he would file a bill of exceptions, and moved for a new trial on the ground that the evidence was insufficient to warrant the judgment rendered and that the latter was contrary to law. This motion was denied and exception was taken by the appellant, who filed the proper bill of exceptions, which was certified to, approved, and forwarded to the clerk of this court. By an order of March 1, 1909, it was provided that the execution of the aforesaid judgment should not be suspended pending the appeal, unless the defendant, for the reasons stated in the said order, should give a bond for P10,000.

The purpose of the suit filed by the plaintiff, W. W. Robinson, is the collection of various sums owed by the defendant, Marcelino Villafuerte y Rañola, the payment of which is secured by a mortgage on the real properties

set out in the two notarial documents evidencing the debt, exhibited under letters A and B, and inscribed in the property registry of the Province of Tayabas.

The mortgage action brought by the creditor, based upon the two aforementioned notarial documents is proper, inasmuch as it is sought to collect certain sums specified in the said instruments on account of their not having been paid within the periods therein stipulated, and consequently the real properties offered as security for the solvency of the debts contracted by the debtor are duly liable for the satisfaction of the same; and although the credit of P3,852.50, the value of the flour furnished to Camilo C. Gomez, in account with the defendant, and referred to in the instrument lettered A, was to have been paid in four installments from October 19, 1906, at the rate of P1,000 in each one of the three first months and P852.50 in the fourth and last month, yet since the debtor, notwithstanding, the demands made upon him, did not comply with his obligation nor pay his debt in conformity with the tenor of the said instrument, letter A, for he only paid the creditor the sum of P550 delivered partially on different dates, the default of payment of any of the installments agreed upon produces the effect that all of these must be deemed to have matured and entitles the creditor to demand the payment of his entire credit and to proceed against the mortgaged properties for the purpose of collecting his credit, which amounts to P3,302.50, after the deduction of the said P550 from the principal, with the interest due from the 6th of December, 1906, amounting to P385.57.

With respect to the credit mentioned in the instrument, Exhibit B, and granted by the plaintiff to the defendant Villafuerte under agreement that the latter should make use of the said credit by taking flour from the creditor's warehouse by means of written duebills or orders signed by the debtor, or his attorney in fact, under condition that the value or amount of the said duebills should be paid within thirty days from their date and that these acknowledgments of debt should bear interest of 8 per cent per annum from the date of their maturity, it was also a condition that the aforesaid instrument should be deemed to be retroactive in its effect, from November 20, 1906, that the quantities of flour which were taken from the plaintiff's warehouse since the said November 20, 1906, should be considered as included, and that the total amount of whatever the defendant might owe, by reason of the credit mentioned, together with the interest thereon, should be settled and entirely paid on May 20, 1907, on which date all the orders or duebills issued against the said credit should be deemed to have matured, even though the thirty days' delay stipulated should not have expired.

In view of the fact that the defendant succeeded in withdrawing flour to the value of P5,078.15, without his having paid the amount due therefor, except P375, it can not be denied that there still remains a balance to be paid of P4,703.15 (pp. 5 and 88 of the record).

In the account, Exhibit E, there appears a statement of the sacks of flour which were taken on account of the said credit by means of the nine duebills, Exhibit F, attached to the aforementioned account, in which it also appears that the value of the said sacks of flour was P4,703.15, after the deduction of P375.

The complaint which gave rise to the present suit is in accordance with the provisions of section 255 of the Code of Civil Procedure, and the mortgages constituted in the two instruments aforementioned fulfill the conditions and requirements prescribed in articles 1857, 1874, and 1875 of the Civil Code; wherefore judgment should be rendered favorable to the mortgage creditor, in accordance with section 256, and following, of the Code of Civil Procedure.

The defendant debtor denied the existence of the obligations contained in the said instruments; he asserted that the latter, and the powers of attorney executed in favor of Vicente Marcelo Concepcion were false, and likewise denied that he owed the plaintiff any of the amounts claimed in the complaint, or that he had authorized the said Concepcion to mortgage the realties described in the said complaint, and in asking for his release, he prayed that

the aforementioned mortgages and the inscriptions of the same in the property registry be declared null and void.

If it is true, as it appears to be, that the defendant Marcelino Villafuerte y Rañola executed, on July 11 and October 29, 1906, in this city, the powers of attorney, Exhibits C and D, in favor of Vicente Marcelo Concepcion, before the notaries Eugenio de Lara and Daniel R. Williams, respectively, it not having been proved at trial that the said powers of attorney were false or null and void, the mortgages upon the real properties, executed by the attorney in fact, duly authorized for the purpose, in the instruments designated under letters A and B, the first of them ratified in the notarial record, letter G, by the debtor before the same notary, Williams, must be accepted as valid and in force, inasmuch as the said mortgage deeds appear to have been ratified in due form by the contracting or interested parties before the said notary in Manila, it not having been proven at trial that they contained any flaw or defect which might operate to annul them.

The evidence adduced by the defendant in his attempt to prove that, on the two dates before mentioned, when the said two powers of attorney appear to have been executed, he was in Lucena, Tayabas, and not in this city of Manila, has not resulted in defeating the validity, authenticity, and force of the said powers of attorney, for the truth of their contents as well as their ratification by the person executing them was certified to by the notaries before whom they were exhibited respectively in the presence of two witnesses; the oral testimony presented by the defendant was insufficient to prove that the notaries Lara and Williams untruthfully certified that Marcelino Villafuerte, whom they attested under oath that they knew, personally appeared before them and ratified in its totality the contents of the aforementioned document, declaring that he had executed it freely and voluntarily and exhibited for the purpose his cedula, No. 453963, issued in Lucena, Tayabas, on January 15, 1906.

In order to establish the conclusion, as the logical result of the evidence, that the said two notaries, falsely, and entirely irrespective of the truth, issued the certificates which appear under their respective signatures and seals at the foot of the powers of attorney, letters C and D, it is not sufficient to prove, by means of the testimony of witnesses, (mostly relatives) and by unauthenticated documents, that on the dates of the execution of the powers of attorney the person executing them was not here in Manila, where the instruments were certified to, but in Lucena, Tayabas; clear, strong, and irrefutable proof must be adduced to prove that the said notaries could not have averred that the said person was actually in their presence, that they heard him ratify the contents of the respective documents, and could not have certified to the number of his cedula, the only one exhibited to both notaries, without having ostensibly perverted the truth. The defendant himself, who averred that he was in Lucena on July 11, 1906, the date of the first power of attorney, said that he was not sure whether on October 29 of the same year, the date of the second, he was in the said pueblo or in this city of Manila.

Public instruments authenticated by a notary or by a competent public official, with the formalities required by law, are evidence, even against a third person, of the fact which gives rise to their execution and of the date of the latter. They shall also be evidence against the contracting parties and their legal representatives with regard to the declarations the former may have made therein. (Arts. 1216 and 1218, Civil Code.)

"The force of proof of depositions of witnesses shall be weighed by the courts in accordance with the provisions of the law of civil procedure, taking care to avoid that, by the simple coincidence of some depositions, unless their truthfulness be evident, the affairs may be finally decided in which instruments, private documents, or any basis of written evidence are usually made use of." (Art. 1248, Civil Code.)

The defendant debtor having been requested by letter, in the beginning of the year 1907, to pay his debt, were it true that he had not contracted the obligations contained in the instruments lettered A and B, nor executed in favor of Vicente Marcelo the powers of attorney lettered C and D, would have at that time made the proper investigations and taken the necessary steps for the annulment or invalidation of the said instruments. The defendant did not even attempt to do anything of the kind, and we do not find any just reason nor any legal ground

whatever to warrant a discussion of the conclusion arrived at by the lower court from his appreciation of the whole of the evidence presented in this suit,

Were it true that on the dates of the 11th of July and the 29th of October, 1906, the defendant Villafuerte was in Lucena, Tayabas, and not in Manila, it is not understood how two notaries who attested that they personally knew him could have certified that, on the respective dates aforementioned, the said defendant appeared in person before them, ratified the instrument of power of attorney which he had executed, and, to identify his personality, exhibited to the said notaries his certificate of registration, the only one and the same one which he presented at each of his appearances on the said dates. Without proof, nor rational, acceptable explanation, it is impossible to believe that the personal certificate of registration, which identifies a citizen, was for some four months in the possession of another person residing in a distant place. It was not proved in a satisfactory manner at the trial how or why the said cedula, or registration certificate, came to remain for so long a time in the possession of the Chinaman Sy Chuy Chim or of Vicente Marcelo, as averred by the defendant or his counsel, and under this supposition, so strange, anomalous, and out of the ordinary rule that every citizen should necessarily keep his certificate of identification in his possession, no explanation whatever was given by the defendant's counsel as to the purpose for which the defendant parted with his cedula and sent it to either the said Chinaman or Marcelo. The Chinaman was not examined in this litigation and the attorney in fact, Marcelo, denied that he had received the said cedula sent by his constituent. So that for the reasons hereinbefore stated, it is evident that the defendant Villafuerte personally exhibited the said cedula to the two aforementioned notaries, on his ratification of the respective instrument of power of attorney before each one of them, and it is not permissible to conclude that the instruments of power of attorney executed by the defendant, as well as the certifications subscribed by the notaries Lara and Williams, are false, because of the absolute absence of proof as a foundation for such a charge; for a notarial document, guaranteed by public attestation in accordance with the law, must be sustained in full force and effect so long as he who impugns it shall not have presented strong, complete, and conclusive proof of its falsity or nullity on account of some flaw or defect provided against by law.

Although the documents exhibited by the defendant's counsel could not, for lack of proof of their authenticity, destroy or impair the value and force of the notarial documents or instruments on which the plaintiff's claim is based, it is, however, to be noted that Pedro Cantero, whose signature appears attached to the papers found on pages 159, 162, and 170, of the record, was not examined either, even for the purpose of identifying his signature, he being a Spaniard and an attorney it is not possible to believe that he wrote the aforementioned documents in the form and style in which they appear to have been drawn up; wherefore, on account of these circumstances, it is reasonable to presume that the documents of pages 159 and 170, and the note of page 162, of the record, were not authentic.

It is also to be observed, in the document or letter found on page 136 of the record, and which also was unauthenticated, that the aforementioned dates of the 11th of July, 1906, appear therein with a correction, made in the proper place, of the figures 11 and 6 of the first date, a repetition and details which induce the presumption that the said letter was written on a different date.

By the foregoing it has been duly shown that the fourth, fifth, sixth, and seventh errors attributed to the judgment are devoid of reason and legal foundation. With respect to the third error alleged we hold that the admission of the documents designated by the letters L and M was proper for the purpose for which they were presented, because that of letter L is an original and one of the triplicates drawn up for a single purpose, as stated therein, and that of letter M is also an original ratified before a notary, in the certificate of which, dated July 13, 1906, there certainly appears an annotation of the same number 453963 of the cedula of the defendant Villafuerte which he exhibited to the notaries who authenticated the powers of attorney, Exhibits C and D.

With regard to the first two alleged errors, relative to Jose Moreno Lacalle being permitted to address questions to some of the witnesses during the hearing of the case, notwithstanding the presence of Attorney Agustin Alvarez, who represented the plaintiff, it is unquestionable that the intervention of the said law clerk and employee of Messrs. Haussermann, Cohn & Williams, the plaintiff's attorneys in this suit, was improperly admitted; it was not authorized by any law, for the reason that the said Lacalle did not have the capacity and qualifications of a lawyer admitted under oath to practice his profession before the courts of these Islands, and therefore, on objection being made to his presence at the hearing of the case, the judge should have sustained such objection and should have excluded Lacalle and not permitted him to address questions to the plaintiff's witnesses, notwithstanding the fact that Attorney Agustin Alvarez, designated in substitution of the said Haussermann, Cohn & Williams as the plaintiff's representative in the Court of First Instance of Tayabas, was present.

Notwithstanding this, the acts performed in the course of some of the proceedings under the direction of Jose Moreno Lacalle are not subject to annulment, as no positive detriment was caused to the defendant, although such intervention is in no manner permitted by the law of procedure.

However, even though the questions addressed by Lacalle to the plaintiff's witnesses and the presentation of documents of various kinds exhibited at the trial be stricken out for the reason that they were made by a person who was neither a party to the suit nor counsel for the plaintiff, yet we do not find any reason, based upon any positive prohibition of the law, to authorize the striking out of the answers given by the witnesses interrogated by Lacalle, even though the said answers may have been evoked by questions addressed by a person not authorized by law, and there is much less reason for rejecting the cross-questions addressed to the same witnesses by the defendant's attorney, and the answers thereto.

Although the presentation of the documents which support the claims of the plaintiff party be deemed to be improper, on account of their having been made by a person who had not the qualifications of a practicing attorney it is nevertheless true that their presentation was authorized by the attorney Alvarez and the documents exhibited continued to be united to the record and were not stricken out therefrom on motion by the other side, but, on the contrary, the attorney for the defendant or his counsel discussed the authenticity and validity of the said documents, made allegations against the same and concluded by asking that these documents, and also the inscription of those designated under letters A and B, be declared null and void.

From the preceding statements it is concluded that the intervention of Jose Moreno Lacalle in the present suit has in no manner prejudiced the rights and interests of the defendant and that, if judgment was rendered against him and in favor of the plaintiff, it was in consequence of the merits of the evidence adduced by the plaintiff and of the inefficacy and worthlessness of the testimony given by the defendant.

If the defendant Marcelino Villafuerte had presented substantial, strong and convincing evidence of the falsity of the two powers of attorney executed in favor of Vicente Marcelo Concepcion, the plaintiff's documentary evidence would have been totally invalidated and annulled, and this suit would have had a different ending.

For the foregoing reasons, it is proper, in our opinion, to affirm the judgment appealed from, as we hereby do, with the costs against the appellant, and in consequence thereof we acquit the plaintiff from the cross complaint relative to the declaration of nullity of the mortgages and inscriptions, as requested by the defendant. The first day of the term of court immediately following the date on which the fulfilment of this judgment is ordered shall be set for the payment of the amounts due and the foreclosure of the said mortgages. So ordered.

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

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