

LEVY HERMANOS, PLAINTIFFS AND APPELLEES, VS. PEDRO A. PATERNO, DEFENDANT AND APPELLANT.

G.R. No. 5515. February 01, 1911

Ponente: MAPA, J.

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MAPA, J.:

The defendant, on March 28, 1906, executed in favor of the plaintiffs the following document:

"Vale for the sum of P6,177.35 in favor of Messrs. Levy Brothers, as the balance of my account with them to date, payable in partial payments."

The defendant made several partial payments and later claimed the right to establish, as a fixed rate for future payments, the installment of P30 a month. The plaintiffs, disagreeing with such a claim, brought suit against the defendant and asked that the latter be sentenced to pay them the sum of P5,862.35, the unpaid balance, or that a period be specified within which he should pay the same, in case the court should deem such manner of payment more equitable. Moreover, the plaintiffs demand in their complaint the sum of P355, which they claim the defendant owes them upon a debt.

The defendant alleged in his answer, and as a principal defense, that the debt contracted by him had not yet matured ; that this was shown by the terms of the instrument itself, inasmuch as it appears therein stipulated that the payment of the debt shall be made in installments; and that, in conformity with this stipulation, on various dates, prior to the filing of the complaint, he had made several partial payments aggregating the sum of P315, and subsequently deposited and still continued to deposit with the clerk of the court, at the plaintiffs' disposal, the sum of P30 a month, which deposits he had so made since the month of March, 1908, in view of the fact that the plaintiffs had refused to receive such money as partial payments. During the trial it was agreed by the parties that the sum which the defendant owed the plaintiffs on March 28, 1906, the date of the aforementioned document, was P5,317.35.

In view of the evidence adduced at the trial, the court found that a monthly payment of P200 would be a reasonable compliance with the agreement to pay the debt in installments, and, in consequence of such finding, sentenced the defendant to pay to the plaintiffs the sum of P6,317.35 and ordered him to make payment thereof at the rate of P200 a month, on or before the 15th of each month, commencing with the 15th of April, 1909. Against this judgment the defendant appealed.

The defendant having bound himself to pay his debt to the plaintiffs in partial payments, as set forth in the note in question, it is seen that the obligation is one of payment by installments, since its fulfillment can not be required immediately nor does its existence depend upon the happening of any particular event. But, though the obligation is one of payment by installments, nevertheless no fixed day was specified for its fulfillment, so that the period for payment is undetermined or was not fixed by the parties when they executed the contract. Besides, it is evident that the term for payment was granted for the exclusive benefit of the defendant and for his own convenience, as by the language of the document, the plaintiffs gained nothing by the fact that the debt was not immediately

demandable. Nor was any interest stipulated on the debt during the time that it should remain unpaid by the defendant. For the foregoing reasons, and in whatever manner this case be considered, it is unquestionable that it falls within the provisions of article 1128 of the Civil Code which is as follows:

"Should the obligation not fix a period, but it can be inferred from its nature and circumstances that there was an intention to grant it to the debtor, the courts shall fix the duration of the same.

"The courts shall also fix the duration of the period when it may have been left to the will of the debtor."

The obligation being manifestly defective with regard to the duration of the period granted to the debtor, that is, to the defendant, that defect must be cured by the courts through judicial decision which shall determine the said duration, under the power expressly granted them for such purpose by the legal provisions just above transcribed.

The trial court, therefore, acted in accordance with the law in exercising the said power in the present case, by fixing the duration of the period on the basis that the payment of the debt should be made at the rate of P200 a month; and we see no abuse of judicial discretion in fixing such a rate, considering the importance of the obligation and the absence of any stipulation of interest in favor of the creditors.

The appellant, grounding his argument on the fact of his having made three partial payments, in three different months, at the rate of P30 each, maintains that he can not be compelled to pay a greater amount monthly, for the reason, he says, that such payments, made and accepted without controversy between the parties, were a fulfillment and an explanation which, by their mutual accord, became agreed upon by them, of the words "in partial payments" contained in the document in question. This claim is in all respects untenable. The appellant made several other payments of different sums (of P25, P50, and P100), and even hypothetically admitting his argument, there could be no reason for saying that the sum of P30 a month was agreed upon, and not the amounts just above-mentioned, or any of them, as the regular rate for the partial payments of the debt, since all the sums mentioned were received, without any protest whatever, by the plaintiffs. The very diversity of the amounts of the various payments made by the defendant clearly shows that there was no agreement, either express or implied, that such payments were to be effected at the rate of exactly P30 a month. The mere fact of the plaintiffs having accepted and received the said payments, is not and can not in any manner be considered as an expression or proof of such an agreement, especially because, as the plaintiffs' manager stated in his testimony, "on seeing that Mr. Paterno insisted on paying only P30 a month, we refused to accept it."

The amount due by the defendant on March 28, 1906, was that of P5,317.35, according to agreement of the parties during the trial. The evidence clearly shows that the defendant paid on account of the said debt the following sums: June 6, 1906, P100; September 4, 1906, P50; January 8, 1907, P25; April 1, 1907, P50; August 3, 1907, P30; September 3, 1907, P30; and October 3, 1907, P30; which amounts aggregate the sum of P315. This sum should be deducted from the said debt and the balance, P5,002.35, remaining against the defendant, is the amount which he should be sentenced, as we hereby sentence him, to pay to the plaintiffs, and not that of P5,317.35, set forth in the judgment appealed from.

With this sole modification, we affirm the said judgment, without express finding as to the costs of this instance. So ordered.

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

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