

## **PEDRO GAMBOA, PLAINTIFF AND APPELLEE, VS. FELIX RONSALEZ, DEFENDANT AND APPELLANT.**

*G.R. No. 5810. November 23, 1910*

Ponente: TORRES, J.

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### **TORRES, J.:**

On April 29, 1909, Pedro Gamboa filed a written complaint, which was amended on the 5th of August following, in the Court of First Instance of Iloilo, alleging as a cause of action that the defendant, Felix Ronsalez, executed on November 26, 1904, in favor of Juan Icamina, the instrument written in Visayan which, literally translated, reads as follows:

"In the pueblo of Jordan, November 26, 1904, - I, Felix Ronsalez, a resident of this pueblo, married, of legal age, and by occupation a laborer, execute this extra judicial instrument in favor of Juan Icamina, also a resident of this pueblo, on account of us having come to an agreement in accordance with the following conditions: (1) Mr. Felix Ronsalez, the owner of a lot situated in Aguilay, of the district of this pueblo, planted in coconut, mango, canaespina, nanca, bonga, cacao, and other useful trees, containing nipa groves, of an area sufficient for sowing eight cavanos of seed, and bounded on the north by the land of Sra. Petra de Chavez, on the south by that of Sra. Custodia de Chavez and Calle Real, which leads to the pueblo named Progreso, on the east by the land of the deceased Juan Galientes and the heirs of Hipolito Vilches, and on the west by that of the said Petra de Chavez and Calle Progreso, mortgages the said lot to Mr. Juan Icamina for the sum of three hundred pesos (\$300) Mexican currency, which were received by him on a previous date. (2) This mortgage is made only to secure the amount mentioned for a period of three years counting from this date, and if at the expiration of the said term Mr. Ronsalez should be unable to effect the redemption, Mr. Icamina may dispose of the land, unless before the term of the mortgage expires a new contract should be made or the land should be sold at an increased price under such terms of agreement as may be acceptable to both of us. (3) The land shall for the present be under the control of Mr. Ronsalez and he shall pay to Mr. Icamina yearly three pesos and fifty cents a month as rental or as interest on the principal loaned. (4) If Mr. Ronsalez perchance should be able to pay off the mortgage he may do so, even before the termination of the three-year period, to Mr. Icamina, who shall receipt therefor; but he shall always pay the interest of three pesos and fifty centimos a month until complete payment shall have been made. (5) I certify that the Aguilay land, according to the exact assessed valuation, is worth one thousand pesos; this is a reasonable valuation. In witness of this instrument, which for the purpose of greater security has been made in duplicate, one copy thereof to be kept by each, we, the contracting parties, hereunto affix our signatures, before the witnesses present, in the pueblo of Jordan, on the date ut supra. - (Signed) Felix Ronsalez, Rufino Ramos, Juan Icamina, Aurelio Zambarrano."

That the said Juan Icamina transferred to the plaintiff all his rights of action acquired by virtue of the said instrument, which transfer is of the following tenor:

"I hereby cede, transfer, and alienate in favor of D. Pedro Gamboa, a resident of this municipality of Iloilo, Province of Iloilo, Philippine Islands, all the rights and rights of action which I have in the preceding instrument, and Mr. Gamboa may exercise his rights in such manner as may be proper, in accordance with law. In witness whereof, I hereunto affix my signature, in Iloilo, this 19th day of April, 1909, A. D. - (Signed) Juan

Icamina. - (Signed) in the presence of Hugo de Chavez and Miguel Gargollo. - Heading and title. - In the municipality of Iloilo of the province mentioned, on this 19th day of April, 1909, personally appeared before me Mr. Juan Icamina, whom I certify that I know to be the same person who executed and subscribed the preceding instrument and ratified it as an act of his own free will. The interested party did not exhibit to me his certificate of registration, as he was exempt from the said tax on account of his being over 61 years of age. Before me (Signed) S. Lizarraga, notary public. My appointment expires December 31, 1910." - There is affixed a 20-centavo documentary stamp.

That, at the expiration of the term of three years from the date of the execution of the instrument, the defendant did not redeem the land in accordance with the obligation he assumed, as set forth in paragraph 2 of the instrument referred to, nor, prior to the expiration of the period for redemption, was the contract renewed, nor any final instrument of sale executed.

That the defendant has at no time paid to Juan Icamina nor to the undersigned the sum of P3.50, which he bound himself to pay monthly.

That the defendant was requested by Juan Icamina, and by me after the transfer of the instrument, either to pay the sum of P300 and the P3.50 as rent which he was obliged to pay monthly, or to execute a definitive, public, and legal instrument in favor of the plaintiff as the transferee of Juan Icamina; and that the said defendant refused and still refuses to pay the said amounts or to execute the said instrument. Wherefore the plaintiff prays that judgment be rendered by sentencing the defendant to the payment of the sum of P300, and the rental of the land at the rate of P3.50 from the date of the execution of the instrument, together with the interest on these amounts, or to execute an absolute legal deed in favor of the plaintiff, and to pay the costs.

The defendant, Felix Ronsalez, in answer to the new amended complaint, alleged: That he admitted the facts set forth in the said amended complaint, except such of them as were specifically denied in his present answer; that the defendant had not refused and did not then refuse to pay what he was owing to the plaintiff transferee, and did in fact offer him payment thereof in a formal letter to the plaintiff before the filing of this suit, and that he was then and always willing to pay his debt to the plaintiff, except the interest demanded by the latter on the said sum. As a defense or special counterclaim, the defendant alleged that the interest then demanded of him had been remitted by Juan Icamina, long before the transfer of the latter's rights to the plaintiff transferee, by virtue of which transfer the plaintiff had no right of action to claim the said interest. The defendant therefore prayed that the complaint be dismissed, with the costs against the plaintiff. The case came to trial on August 18, 1909, when oral evidence was introduced by both sides and the documents exhibited were attached to the records. Among such exhibits was a letter of the date of May 14, 1909, which reads as follows:

"Messrs. Pedro Gamboa and Juan Icamina, present. - Dear Sirs: In conformity with the extension of time granted me by Mr. Juan Icamina for the payment during the present month of the sum of P300, which I am owing him, I hereby place at your disposal the said amount of P300 in payment of the said debt. This sum will be delivered to you on the execution of the instrument of cancellation. - Yours very respectfully, Felix Ronsalez."

The letter written in the Visayan dialect and translated into Spanish, found on page 2 of the record, is of the following<sup>1</sup> purport:

"Mr. Felix Ronsalez. - My dear compadre: I write to you because the term agreed upon by us for the redemption of the land which you mortgaged has already expired. Your comadre is displeased, for there is some one to whom we have to pay the amount. I therefore wish, compadre, that you would redeem the property, as we need the money to give it to Catalbas to pay for our land which was sold at auction and we are counting on it to make that payment. You well knew that I relied on you to redeem it soon, and by your answer

I shall know the result, for I am in a strait; never mind the interest, but only the P300. - Very respectfully.  
(Signed) Juan Icamina. - July 20, 1908."

This last part of the translation being impugned by the plaintiff's counsel and submitted to the court, it was agreed that the controverted part relative to the interest on the debt should be translated in the following manner: "So I rely on you to redeem it soon and by your answer I shall know about your success in the matter, for I am in need, not the interest, only the P300." (P. 4 of the record.) The court, in view of the evidence, on August 27 of the year aforesaid, rendered judgment wherein it found that the defendant owed the plaintiff the sum of P300, as principal, and P186 as interest accumulated to date, and ordered the defendant to pay to the court the said sum on or before the first day of its next session, and, in case of insolvency, that a writ of execution issue for the sale of the land situated in Aguilay, barrio of Jordan, municipality of Buenavista, Iloilo, the area of which is that required for the sowing of 8 cavanese of seed, and that he pay the costs. From this judgment the defendant's counsel took exception and in a written motion prayed for a reopening of the case, on the ground that the evidence was insufficient to sustain the Judgment. The motion was denied, and an exception to the ruling was taken by the appellant, who duly presented the proper bill of exceptions, which was approved, certified, and forwarded to this court.

We sustain at once the opinion of the trial court relative to the contract contained in the document inserted in the amended complaint, being one for the loan of P300 the payment of which, within a term of three years from the 26th of November, 1904, was secured by the lot mentioned therein. We also agree with the finding that the offer to remit the interest stipulated in the said contract at the rate of P3.50 a month, under condition that the debt be paid, was not accepted by the debtor, the defendant, inasmuch as, on account of a judicial demand having been made for the collection of the debt with its interest, the defendant is not entitled to put forward the said compromise in order to elude the payment of the interest stipulated.

The defendant, in his amended answer, states that he has never refused and has always been willing to pay his debt and did in fact offer to pay it to the plaintiff before the filing of the complaint, with exception of the interest, which is also demanded of him, for the reason that it was remitted by the transferred Juan Icamina, long before the granting of the said credit.

The alleged remission of the interest due is not clearly expressed in the letter alluded to of July 20, 1908, addressed by the creditor to the debtor Ronsalez; but even concluding, as did the judge of the lower court, that at the most an offer was made in it to remit the interest under the condition of the immediate payment of the principal, the fact is that the offer was not accepted, for the debt is still unpaid and a judicial demand is made for the collection of the interest.

Article 1262 of the Civil Code provides:

"Consent is shown by the concurrence of the offer and the acceptance of the thing and the cause which are to constitute the contract.

"An acceptance made by letter does not bind the person making the offer but from the time it came to his knowledge. The contract in such case is presumed as executed at the place where the offer was made."

The judgment of the lower court is, therefore, in consonance with the law and the evidence shown by the record, in its conclusion that the defendant owes<sup>1</sup> the plaintiff the sum of P300 as principal and P186 as accumulated interest up to August 23, 1909, the date of the said judgment.

With respect to the other findings of the judgment, it is to be noted that the credit concerned in this suit is not of the nature of a mortgage, inasmuch as the debt and the security given therefor are recorded in a private document, and not in a public instrument, and consequently are not entered in the registry of property, without which

requirement the mortgage can not be considered as validly constituted. It is not sufficient that the contracting parties in any instrument desire the mortgage and so state, but it is necessary that they comply with the provisions established by article 1875 of the Civil Code, which provides:

"Besides the requisites mentioned in article 1857, it is indispensable, in order that the mortgage may be validly constituted, that the instrument in which it is created be entered in the registry of property."

Although the credit claimed is not secured by mortgage, it is unquestionable that suit may be brought for its collection by the institution of an ordinary action, such as is prosecuted in this case; and the procedure therein being identical with that followed in a mortgage action up to the time of rendering judgment in the Courts of First Instance, as seen by the provisions of sections 89 et seq. and 254 et seq. of the Code of Civil Procedure, no legal ground nor well-founded reason is shown for not sustaining, in the first part of the judgment appealed from, the proceedings had in the present case, bearing in mind the provisions contained in section 2 of the said Code of Civil Procedure.

For the reasons above set forth, it is proper, in our opinion, that setting aside or reversing the findings of the judgment appealed from relative to the execution of the mortgage, the payment of the debt on or before the first day of the next session of the court, and the sale of the lot, we should sentence, and we hereby do sentence, the defendant, Felix Ronsalez, to the payment of P300 and the interest stipulated thereon at the rate of P3.50 a month from the date of the contract of November 26, 1904, until the date of payment, and to pay the costs of both instances, and in this sense the said judgment is affirmed.

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

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