

FAUSTINO LICHAUCO, FOR HIMSELF AND IN REPRESENTATION OF HIS COHEIRS, EUGENIA LICHAUCO ET AL., PLAINTIFFS AND APPELLANTS, VS. TEODORO LIMJUCO AND CATALINA GONZALO, DEFENDANTS AND...

G.R. No. 6189. March 11, 1911

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of the city of Manila, Hon. A. S. Crossfield presiding, dismissing plaintiffs' complaint on the merits after trial.

The judgment in this case must be set aside and the cause returned to the trial court in order that persons necessary to a complete determination of the action may be made parties.

The action is brought on the following instrument:

"By virtue hereof, we will pay, jointly and severally, in Manila, twelve months from the date hereof, to the order of Da. Cornelia Laochanco the sum of twenty-two hundred pesos in current money, value received in cash from her for commercial operations.

"Manila, 9th June, 1897.

(Signed) "TEODORO LIMJUCO.
"CATALINA GONZALO."

The action is brought by Faustino Lichauco for himself and as representative of Eugenia Lichauco, Clara Lichauco, Jttlita Lichauco, Luisa Lichauco,, Crisanto Lichauco, Zacarias Lichauco, Galo Lichauco and Timotea Lichauco. The complaint alleges that the plaintiff, Faustino Lichauco, together with his brothers and sisters, above-named, are the only heirs at law of Cornelia Laochanco, who died intestate, owning the promissory note which is the basis of this action, and that the said heirs are the owners of said note by virtue of such heirship.

There being no question of fact raised as to the ownership of said note, we will assume it to have come into the hands of said heirs by due process of administration. (Quison vs. Salud, 12 Phil. Rep., 109.)

Section 114 of the Code of Civil Procedure reads as follows:

"Parties to actions. - Every action must be prosecuted in the name of the real party in interest. But in the case of an assignment of a right of action, an action by the assignee shall be without prejudice to any set-off or other defense existing at the time of or before notice of the assignment; but this last provision shall not apply to a negotiable promissory note, or a draft or a bill of exchange, transferred in good faith and upon good consideration before maturity. And an executor or administrator or legal representative of a deceased person, or a trustee of an express trust, or a person expressly authorized by law so to do, or a lawfully appointed guardian of a person of unsound mind, or of a minor, may sue or be sued without joining with him the person

for whose benefit the action is prosecuted or defended.

"Otherwise than as provided in this section, all persons having an interest in the subject of the action and in obtaining the relief demanded shall be joined as plaintiffs.

"Any person should be made a defendant who, has or claims an interest in the controversy or the subject matter thereof adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the questions involved therein.

"If any person having an interest in the subject of the action, and in obtaining the relief demanded, refuses to, join as plaintiff with those having a like interest, he may be made a defendant, the fact of his interest and refusal to join being stated in the complaint."

Section 122 of the same code provides:

"Necessary parties. - The court may determine any controversy between parties before it, if it can be done without prejudice to the rights of others, or by preserving their rights for future action; but when a complete determination of the controversy can not be had without the presence of other parties,, the court must order them to be brought in, and to that end may order amended or supplemental pleadings, or a cross complaint, to be filed and summons therein to be duly issued and served."

In the case of *Rallonza vs. Evangelista* (15 Phil. Rep., 531), the court said:

"This is a suit for the recovery of land. It is said textually in the complaint, among other things, 'that both the plaintiffs and the defendants are so numerous that it is impossible for them to appear at the trial; that the said Pablo Rallonza and Teodoro Evangelista are sufficient to represent the interests of the rest of the plaintiffs and defendants, respectively.' And in accordance therewith the trial was continued in the name of the said Rallonza and Evangelista only, though they both represented, as it appears, all the other interested parties, who were very numerous, both plaintiffs and defendants, according to the statement contained in the complaint.

* * * * *

"In view of the premises established in the judgment, and which accord with the weight of the evidence and the allegation made in the complaint that the parties interested in the lands in litigation, both as plaintiffs and as defendants, are very numerous, it is evident that the suit was improperly prosecuted and decided in the name of all the aforesaid interested parties to whom reference is made, under the supposition that the latter were represented therein by Pablo Rallonza and Teodoro Evangelista, respectively, the only ones who personally appeared in their own right and in representation of the former at the trial."

The court then took up section 118 of the Code of Civil Procedure, which provides that where parties are very numerous an action may be brought by one on behalf of all, and after discussing the provisions of that section, said (pp. 533-534):

"Whatever be the real meaning of those provisions, under the different aspects in which they may be considered, we hold it to be certain and unquestionable that they ought not to and can not apply to actions instituted, as in the present case, for the recovery of property. This class of actions should always be promoted by the interested parties themselves and in the name of all and each one of them, in order that, as stated in section 114 of the aforementioned code of procedure, there may be a determination or complete settlement of the questions in litigation. He who considers himself entitled to a certain property can not be ignorant as to who are his co-owners, if he has any; and, knowing them, he can not neglect to make them parties to the suit under the pretext that they are numerous. This sole circumstance does not make their, summons and appearance impossible when they are personally known. In such a case, the reason or motive inspiring the provisions of section 118 would be lacking. The representation made by Pablo Rallonza, as plaintiff, and by Teodoro Evangelista, as defendant, can not bind their respective co-owners, as regards the results of the trial,

inasmuch as it is altogether illegal. The trial, considered from this point of view, was essentially null and void from the beginning.

"The judgment appealed from is set aside, and it is ordered that a new trial be held wherein those interested in the lands in question shall be made parties either as plaintiffs or as defendants. * * *"

In the case of *Araneta vs. Montelibano* (14 Phil. Rep., 117), the court said (pp. 124-126):

"A serious objection exists as to parties against the form' of the present action. The plaintiff alleges in his complaint that Aniceto Montelibano died on the 20th of December, 1898, intestate, leaving four minor children, called Bibiana, Maria, Rosario, and Raymundo. In the present action, however, the plaintiff made defendants Braulio Montelibano, as tutor of said minor children, Rosario, Raymundo, and Bibiana. The record does not show why Maria was not made a party defendant. Until the contrary is shown, each of these heirs has an equal interest in the property in question.

"It would seem clear that the present action could not be concluded without having all of the heirs in court.

* * * * *

"For the reason, therefore, that all of the heirs of the said Aniceto Montelibano were not made parties in the present action, the judgment of the lower court is hereby revoked and the cause is hereby remanded to the lower court, with permission on the part of the plaintiff to amend his complaint."

(See also *Sanidad vs. Cabotaje*, 5 Phil. Rep., 204; *Garcia de Lara vs. Gonzalez de Lara*, 2 Phil. Rep., 294.)

We can see little difference in principle between the cases above cited and the one at bar. The reasoning in those cases applies equally to this case. It would be idle for this court to decide the present case upon the merits. Its decision would be futile and ineffective. Any one of the heirs might, the day following the decision of this court, institute an action against the defendants upon the same promissory note and prosecute his action to final judgment, both on trial and on appeal. If in that final judgment he were denied a right to recover, another one of the heirs might, the next day, institute another action for exactly the same purposes; and so on until the defendants had been brought into court upon the same cause of action as many times as there were heirs who had an interest in the subject matter of the litigation. It is the uniform policy of the law to reduce litigation as far as possible. To this end it requires that every person who has an interest in the subject matter in litigation shall be made a party to the action, that all rights may be adjudicated at the same time.

The judgment must, therefore, be set aside, as aforesaid. We believe, however, that, for the information of the parties interested in the subject matter of this action and to the end that unnecessary litigation may be avoided, the opinion of the court should be given upon the facts presented in this case. Knowing what our opinion is upon these facts it is probable that the heirs will not care to pursue the litigation further unless, which is somewhat unlikely, they are able to present new facts. We, therefore, proceed to a consideration of the case upon the merits as presented by the record.

The defendants hope to succeed upon each one of two grounds, asserting (1) that the action has prescribed, and (2) that the said cause of action has been the subject matter of a prior final adjudication between the same parties.

We do not find it necessary to discuss or decide the second question presented by the appellees, inasmuch as the cause must be resolved in their favor upon the ground first stated.

That the instrument in question upon which this action is brought is a commercial instrument is indubitably established by this court in the case of *El Banco Espanol-Filipino vs. Tan-Tongco* (13 Phil. Rep., 628). In that case the promissory note read as follows:

"Three months from this date I hereby promise to pay, in Manila, to the order of D. Geronimo Jose, the sum of three thousand six hundred pesos, Mexican currency, value received in cash for commercial transactions."

In deciding that case the court said:

"Mercantile promissory notes. - Neither the literal reading of article 532 of the Code of Commerce, nor the principles governing the mercantile law now in force, require that a promissory note, payable to order, be made between merchants, in order that said note may be a mercantile one, as is required by said article 532 in connection with drafts.

"Id. - The law does not require that promissory notes, in order that they may be indorsed and that the indorsement may be valid, the same as that of a bill of exchange, must be made between merchants, especially if the said notes arise from a mercantile loan, in which case it is only required that one of the contractors be a merchant, according to article 311 (Code of Commerce).

"Id. - A promissory note arising from a mercantile loan, according to its literal reading and the principles of the Code" of Commerce, where the same is drawn to order, is perpetually negotiable, transferable, and strictly mercantile, no other expression being necessary for the purpose of showing that it arises from a commercial transaction within the meaning of article 532."

Section 38 of the Code of Civil Procedure reads as follows:

"To what this chapter does not apply. - This chapter shall not apply to actions already commenced, or to cases wherein the right of action has already accrued; but the statutes in force when the action or right of action accrued shall be applicable to such cases according to the subject of the action and without regard to the form; nor shall this chapter apply in the case of a continuing and subsisting trust/ nor to an action by the vendee of real property in possession thereof to obtain the conveyance of it: Provided, nevertheless, That all rights of action which have already accrued, except those named in the last preceding paragraph, must be vindicated by the commencement of an action or proceeding to enforce the same within ten years after this Act comes into effect."

This court has held in numerous cases that the prescription of a cause of action arising before the Code of Civil Procedure was operative is governed by the laws in force at the time the cause of action arose. (Falacio vs. Sudario, 7 Phil. Rep., 275; Tubucon vs. Dalisay, 7 Phil. Rep., 183; Magallanes vs. Caneta, 7 Phil. Rep., 161; Villaruz vs. Azarraga, 15 Phil. Rep., 108.) In the latter case we said (p. III):

"It has been held by this court that the rule of prescription to be applied where the right of action arose before the present code went into effect is that stated in the Civil Code or in the laws in force prior to the Civil Code. (Araneta vs. Garrido, 6 Phil. Rep., 137.)"

It is evident, therefore, that whether or not the action in the case at bar has prescribed depends not upon the provisions of the Code of Civil Procedure but upon the laws in force prior to the time said code became effective; and inasmuch as the instrument forming the basis of the present cause of action is a commercial instrument, it is governed by the provisions of the Commercial Code and not by those of the Civil Code.

Article 950 of the Commercial Code reads as follows:

"Actions arising from drafts shall extinguish three years after they have fallen due, should they have been protested or not.

"A similar rule shall be applied to drafts and promissory notes of commerce, to checks, stubs, and other instruments of draft or exchange, and to the dividends, coupons, and the amounts of the amortization of obligations issued in accordance with this code."

The instrument in question being dated the 9th of June, 1897, and payable twelve months after date, it would fall due on the 9th day of June, 1898. As a result the right to bring an action upon it prescribed on the 9th day of June, 1901. This action was commenced on the 1st day of December, 1908.

To avoid the results which would inevitably follow from these facts, the plaintiff alleges that the defendant has always recognized the debt in question as alive and in force and that he particularly did so in the year 1907 under the following circumstances: In that year the plaintiff in this case began an action against the defendant in this case for the recovery of the amount due upon the same promissory note which is the basis of the present action. During the progress of that action in court, and, as it appears from the record of that action introduced in evidence in this case, immediately after said action had been commenced, the defendant by a writing offered to secure the debt in question by turning over to the plaintiff in that action, also plaintiff' in this, certain lands belonging to him, with the right to repurchase within four years.

This act of the defendant is seized upon by the plaintiff as showing a recognition of the existence of the debt under article 1973 of the Civil Code, which provides that -

"Prescription of actions is interrupted by their institution before the courts, by extrajudicial claim of the creditor, and by any act of acknowledgment of the debt by the debtor."

And under article 944 of the Commercial Code, which provides that -

"The prescription shall be interrupted through suit or any judicial proceeding brought against the debtor, through the acknowledgment of the obligations, or through the renewal of the instrument on which the right of the creditor is based."

There might possibly be some legal basis for the contention of the plaintiff that the act of the defendant, above mentioned, during the pendency of the prior action, brought the case within the provisions of the above-named articles, if it did not conclusively appear in the record that such act of the defendant was for the purpose of settling and compromising said action. It clearly appearing that the said act was executed solely for the purpose of compromising a pending litigation, it is not an admission that anything was due and can not be used as evidence against the defendant. Section 346 of the Code of Civil Procedure provides:

"Offer of compromise. - An offer of compromise is not an admission that anything is due, and is not admissible in evidence."

In the case of *City of Manila vs. Del Rosario* (5 Phil. Rep., 227), the court said (pp. 229-230):

"He stated that he signed the second document because the president of the municipal board, Sr. Herrera, advised him to do so in order to avoid litigation with the city. His testimony in this respect was not contradicted. We accordingly hold that the provisions of section 346 of the Code of Civil Procedure are applicable to the case at bar in so far as they declare that an offer of compromise is not admissible in evidence."

While the evidence as to whether or not the document tendered by the defendant to the plaintiff as security for the payment of the debt in question was a recognition of the debt or an offer of compromise is somewhat conflicting, we have no hesitation in finding, upon the facts, that it was an offer of compromise. Testimony offered for the purpose of showing such a recognition of a debt that has been quieted by the statute of limitations as imports a new promise to pay, must be clear and explicit. In the case of *Bell vs. Morrison* (1 Peters, 351), Mr. Justice Story fully discussed the subject, and after dealing with the importance of giving the statute of limitations such support as to make it "what it was intended to be, emphatically, a statute of repose." and "not designed merely to raise a presumption of payment of a just debt from lapse of time;" and, repeating passages from the opinions in

Clementson vs, Williams (8 Cranch., 72) and Wetzell vs. Bussard (11 Wheat., 309), said (p. 362):

"We adhere to the doctrine thus stated, and think it the only exposition of the statute which is consistent with its true object and import. If the bar is sought to be removed by the proof of a new promise, that promise! as a new cause of action, ought to be proved in a clear and explicit manner, and be in its terms unequivocal and determinate; and if any conditions are annexed, they ought to be shown to be performed.

"If there be no express promise, but a promise is to be raised by implication of law from the acknowledgment of the party, such acknowledgment ought to contain an unqualified and direct admission of a previous, subsisting debt, which the party is liable and willing to pay. If there be the accompanying circumstances, which repel the presumption of a promise or intention to pay; if the expressions be equivocal, vague and indeterminate, leading to no certain conclusion, but at best to probable inferences, which may affect different minds in different ways, we think they ought not to go to a jury as evidence of a new promise to revive the cause of action. (Shepherd vs. Thompson, 122 U. S., 231, and cases there cited.)"

We find that it has not been proved by a fair preponderance of the evidence that the debt was revived.

The judgment appealed from is hereby set aside and the cause returned to the court whence it came, with directions, in case the above-named heirs, or any of them, desire to continue this litigation, to enter an order bringing in all interested heirs as parties plaintiff or defendant, and to require the necessary proceedings to make that order effective. No special finding as to costs. So ordered,

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

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