

MANUEL RIOBO, PLAINTIFF AND APPELLANT, VS. RAMON HONTIVEROS ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 6452. December 12, 1911*

Ponente: TRENT, J.

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The basis of the plaintiff's cause of action in this case is a public notarial document executed by the defendants in Capiz, Province of Capiz, on the 18th day of March, 1897. In this document (Exhibit A), which was signed by Agustina Consolacion and Norberta Consolacion, assisted by her husband Ramon Hontiveros, the two sisters Agustina and Norberta acknowledged themselves indebted to the plaintiff, Manuel Riobo, in the sum of P9,190, and agreed to pay this amount in two equal installments, the first on July 1, 1898, and the second on July 1, 1899. To guarantee the payment of these amounts at the times specified, the sisters mortgaged several parcels of land. A complete description of the lands thus mortgaged is set forth in Exhibit A and in the complaint.

The plaintiff asked judgment for the sum of P14,519.58, being the amount of the original debt together with interest up to the time of the filing of the complaint, and for interest at the rate of 6 per cent from the commencement of this action until said payment be fully made. The plaintiff further prayed the court to order the sale at public auction of the mortgaged property to satisfy this debt, with interest and costs, in case the defendants failed to pay the same within the time fixed by law.

The defendants, after denying all the allegations in the complaint, alleged as a special defense that the public document (Exhibit A, upon which the plaintiff relies) is null and void for lack of consideration; that the plaintiff secured their signatures to this document by means of force and intimidation; and that notwithstanding the fact that they, the sisters, never at any time received one cent from the plaintiff, they paid the first installment of P4,595. The defendant Ramon Hontiveros further alleged that he and the plaintiff, before the execution of Exhibit A, had been engaged as partners in the purchase and sale of palay and other products of the country, and that plaintiff by reason of these transactions was justly indebted to him in the sum of P1,324.50. The defendants by way of counter-claim asked judgment against the plaintiff for the sum of P5,919.50 (this sum being the P4,995, amount claimed to have been paid by the sisters, and the P1,324.50 which Hontiveros alleges is due him from the plaintiff), together with the interest and the costs of the cause.

The trial court, Hon. Jose C. Abreu presiding, after due trial, found;

"1. That the defendants Agustina and Norberta Consolacion recognized by means of the public document (Exhibit A) a debt of P9,190 in favor of the plaintiff.

"2. That the defendants had paid on this debt the sum of P3,995.

"3. That as there was no agreement in Exhibit A that the defendants were to pay interest and that as plaintiff had not made a demand upon the defendants for the payment of the balance due, he, the plaintiff, was only entitled to interest from the date of the filing of this complaint.

"4. That the public document does not constitute a mortgage on the real property described therein for the reason that said document had not been inscribed in the property register.

"5. That the defendants were not entitled to recover on their counterclaims."

As a consequence, judgment was entered in favor of the plaintiff for the sum of P5,195, with interest from the commencement of this action and the costs of the cause.

From this judgment both parties appealed and have presented separate bills of exceptions.

Counsel for the plaintiff now insist that the court erred:

"1. In finding that the defendants had paid P3,995 on the debt.

"2. In finding that the plaintiff was not entitled to interest from the date the debt fell due.

"3. In failing to find that the public document signed by the defendants was a duly recorded mortgage."

The only question raised in this court by counsel for defendants relates to the validity of the judgment against the defendant Agustina Consolacion. It is contended that the public document (Exhibit A) is null and void as to this defendant for the reason that when she signed said document she was neither assisted by her husband nor had his consent. All other questions raised by the defendants in the court below and which were decided against them have been, in effect, abandoned on appeal.

The plaintiff alleged and so testified that the defendants had not only failed and refused to pay any part of the principal obligation but had also failed to pay all of the interest on the same except the sum of P600. The trial court found that the defendants had in fact paid to the plaintiff the sum of P3,995. We can not say that this finding of fact is against the weight of the testimony, but on the contrary it is supported by the testimony of Anatalio Hontiveros, brother of the defendant Ramon Hontiveros, who testified that by order of his brother Ramon he went to Iloilo from Capiz in 1898 and turned over to the plaintiff P3,995, and received a receipt therefor. This witness further testified that he gave this receipt to his brother in the presence of one Jorge Pardo. Jorge Pardo corroborated the testimony of Anatalio Hontiveros with reference to the turning over of the receipt to the defendant Ramon. Roque Hontiveros, a cousin of the defendant Ramon, testified that Ramon borrowed from him P1,000 to be applied on the debt due the plaintiff; that he turned over this P1,000 to Anatalio Hontiveros; that he accompanied the latter to the house of the plaintiff and witnessed the payment to the plaintiff of P3,995; and that the plaintiff made and signed a receipt for this amount and turned the same over to Anatalio Hontiveros. The defendant Ramon Hontiveros testified that this amount was paid to the plaintiff and that the plaintiff receipted for the same. The receipt mentioned by these witnesses was not presented during the trial for the reason, as explained by the defendant Ramon Hontiveros, that it had been destroyed during an attack on his troops by the American forces. In 1901, shortly after that attack, this defendant went before the local authorities in Capiz and stated that he had lost a number of valuable papers in said attack. This manifestation appears in a document executed by the said authorities of that date.

It is urged that the plaintiff is entitled to recover interest at the rate of 6 per cent on the P9,190 from the dates that the two payments of said amount became due. The trial court found against the plaintiff on this point. We think the court did not err in so finding. There was nothing said about interest in the contract (Exhibit A), and before the plaintiff could recover any interest on said amount before the filing of this complaint, it was incumbent upon him to show that he had made a demand either judicially or extra judicially upon the defendants for the payment of this sum. (*Bowler vs. Alcazar*, 13 Phil. Rep., 282; *Veloso vs. Fontanosa*, 13 Phil. Rep., 79.) The only thing in the record which tends to show that the plaintiff had made a demand upon the defendants for the payment of this amount is his answer to one question wherein he stated that he had written Ramon Hontiveros on various

occasions to pay all or part of the debt, but he does not show when such letters were written. The dates on which these letters were written are not stated. Such proof does not show a sufficient compliance with the law as to entitle the plaintiff to a judgment for accrued interest for any period of time prior to the institution of this action.

After judgment had been entered in this case in the court below, the plaintiff through his attorney presented a motion asking the court to grant a new trial upon the ground that new and material evidence had been discovered. This motion was accompanied by an affidavit in which the deponent stated that the document accompanying the motion for a new trial was the first copy of the original mortgage executed by the defendants in this case and that said document shows upon its face that the same had been inscribed in the property register. The trial court held that this affidavit was not sufficient to show that the plaintiff could not have discovered and presented the said document during the trial and the motion was therefore denied. The plaintiff in this instance does not assign as an error this ruling of the court, neither are we asked to grant a new trial upon this ground, but counsel ask this court to examine said document for the purpose of determining, whether or not the same had been duly inscribed. This document is not a part of the record and we are not at liberty to take it into consideration for the determination of this question. This document had never been presented and admitted in the court below, and the defendants have never had an opportunity to examine the same and question its validity. We cannot examine documents unless they have been properly presented. We must confine ourselves to the record as made in the court below.

The only testimony presented in reference to the question whether or not Exhibit A was duly inscribed, during the trial in the first instance, is the following question which was asked the plaintiff and his answer:

"Q. Was the mortgage executed by Ramon Hontiveros, Norberta and Agustina Consolacion, in your favor, inscribed in the property register? - A. The mortgage in my favor was inscribed in the property register."

This testimony stands uncontradicted. It is a positive statement that the mortgage was duly registered. The trial court failed to give this testimony due consideration. It is true that the certified copy (Exhibit A) does not show on its face that the original had been registered. This copy (Exhibit A) was taken from the original document, and the original document would not necessarily show that it had been inscribed, but the first copy would necessarily show this fact, as the original was not the document taken to the register of deeds, the first copy issued by the notary public being the one presented for registration. We think the plaintiff's third assignment of error is well founded; that the mortgage was duly registered; and that the land described therein must be sold to satisfy this judgment in the plaintiff's favor if the defendants do not pay the same within the time specified by law.

Counsel for the defendants say that the court erred in rendering judgment against the defendant Agustina Consolacion for the payment of one-half of the unpaid balance of the original debt. This contention is based upon the proposition that this defendant's husband did not consent or assist her in the execution of Exhibit A and that this being true, said exhibit is absolutely null and void as to this defendant, as she could not have entered into a contract without the assistance or consent of her husband. As to whether or not a married woman can enter into any contracts without her husband's assistance or consent, we find it unnecessary to decide. It is sufficient to say that in this case the defendant Agustina is not the proper person to raise this question. She received the plaintiff's money and executed the document mortgaging part of her lands to guarantee the payment and she can not now claim that said document is without effect as to herself. Article 55 of the Law of Civil Marriage of June 18, 1870, provides that "Only the husband and his heirs may enforce the nullity of the acts executed by his wife without proper permission or authorization." According to the plain provisions of this article, the wife cannot raise this question.

So much of the judgment appealed from which holds that the document executed by the defendants was not duly inscribed in the property registry and has all of the effects of a duly constituted mortgage is reversed, and in all

other respects the same is hereby affirmed, without costs.

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

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