

VICENTE VILLAGRACIA, PLAINTIFF AND APPELLANT, VS. TELESFORO ULIBARE, DEFENDANT AND APPELLEE.

G.R. No. 7190. February 25, 1913

Ponente: TORRES, J.

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TORRES, J.:

This appeal, through a bill of exceptions, was raised by counsel for the plaintiff from the judgment rendered on January 20, 1911, by the Honorable Jose C. Abreu, judge, whereby he absolved the defendant from the complaint, with the costs against the plaintiff, and ordered that the record of this case, together with all the documents and papers thereto pertaining, be transmitted to the provincial fiscal for investigation whether any crime had been committed by any person or persons, so that he might file the corresponding complaint.

On July 13, 1910, counsel for the plaintiff presented a written complaint in the Court of First Instance of Capiz, alleging that, on or about July 10, 1909, the defendant, Telesforo Ulibare, borrowed and received from the plaintiff the sum of P300, Philippine currency, for which he promised to deliver to the latter, at the end of November of that year, 200 cavans of paddy at the rate of P1.50 per cavan; wherefore the defendant executed and signed an instrument, written in Bisayan, the translation of which is as follows:

"IWISAN, July 10, 1909.

"I, Telesforo Ulibare, resident of the municipality of Iwisan, Province of Capiz, P. I., with certificate of registration No. 385917, do execute this instrument in behalf of D. Vicente Villagracia, in testimony that on this date I have received from him the sum of three hundred pesos (P300), Philippine currency, which he has lent me on the condition that I repay the same to him in paddy at the rate of P1.50 per cavan, making a total of two hundred cavans, which repayment I will make to him at the end of the month of November of the present year, and I bind myself to deliver the paddy to his house. The measure for such rice shall be the ganta customarily used in the market. As security for this sum I pledge my property, both present and future, which shall be subject to attachment in case I am unable to pay what we have stipulated in this instrument.—In witness whereof I sign this instrument, together with the witnesses here present.—Date ut supra.

"[SEAL.]

(Sgd.) "TELESFORO ULIBARE.

"Signed in the presence of:

(Sgd.) "E. VIDAL.

(Sgd.) "CALIXTO QUIACHON.

(Sgd.) "DONATO ARBIS."

That the defendant, upon whom demand had repeatedly been made for the payment of the said 200 cavans of rice, refused and continued to refuse to effect the same, there by causing damages to the plaintiff; that the price of paddy was then P3 a cavan with a tendency to rise; and that the defendant was about to dispose of his property,

with the manifest intention of defrauding the plaintiff; wherefore his counsel asked for judgment sentencing the defendant to pay to the plaintiff the 200 cavans of paddy, or the equivalent thereof in cash at the price of P3 Philippine currency a cavan, together with legal interest on the amount due and the costs of the trial; with a temporary attachment against the defendant's property to guarantee fulfillment of any judgment rendered, or that the defendant himself be put under arrest.

Counsel for the latter, by a written amended answer, specifically denied under oath each and all of the allegations in each and all of the paragraphs of the complaint, and prayed that his amended complaint be admitted.

The case came to trial, evidence was introduced by both parties, the document Exhibit A was attached to the record, and the court, on January 20, 1911, rendered the above-mentioned judgment, exception to which was taken by the plaintiff, who filed a written motion for a new trial on the ground that said judgment was contrary to law and manifestly contrary to the weight of the evidence. This motion was overruled by an order of the 23d of the same month of January, exception thereto was entered by the plaintiff, and the proper bill of exceptions was presented, approved, and forwarded to the clerk of this court. It is to be noted that, upon the appellant's petition and in obedience to an order issued by the judge to the clerk of the Court of First Instance of Capi, the plaintiff's Exhibit A was transmitted to the clerk of the Supreme Court.

The purpose of this litigation is the collection of a debt for 200 cavans of paddy, or, in default thereof, their value in cash at the price of P3 per cavan, with legal interest, in accordance with the original document, Exhibit A, attached to the record and translated on page 2 of the bill of exceptions, which document is signed by the defendant, Telesforo Ulibare, and by the witnesses E. Vidal, Calixto Quiachon, and Donato Arbis.

The defendant admitted that the signature appearing at the bottom of said instrument was his, but denied having contracted the debt set forth therein in favor of the plaintiff, Vicente Villagracia, and to explain why he had signed it, stated that he had affixed his signature on the blank third page of a folded sheet of paper, on the first leaf and two pages whereof was made out a lease of certain land belonging to Calixto Quiachon and his wife, executed by Eleuterio Ursos; and that he did so when Quiachon presented the said document to him in his house and had him sign it as one of the owners of the adjoining lands. The defendant added that he wrote his signature on the upper part of the second leaf, inner side, of the sheet of paper, for the reason that the two pages or sides of the first leaf of the sheet were already covered with writing, and that he signed the document in his house about noon one day in the month of May, 1909, in the presence of two witnesses, named Onofre Undajare and Leona Villagracia, who corroborated these statements and testified that they were informed of the contents of the document by Calixto Quiachon, and by the defendant, who read it aloud before he signed it. Calixto Quiachon denied having obtained the signature of the defendant to an instrument of lease, in the latter's house, but asserted that Eleuterio Ursos had leased from him a piece of land, though the lessee executed no instrument whatever therefor.

The evidence adduced by the plaintiff, Vicente Villagracia, tended to prove that, on the afternoon of July 10, 1909, the defendant signed the instrument, Exhibit A, in the presence of the said three witnesses whose names appear at the foot thereof, which instrument, it is alleged, was drawn up and written by Eutiquio Vidal in accordance with conditions stipulated between the plaintiff and the defendant.

The honorable judge of the lower court, after analysis and careful study of the evidence introduced at trial by both parties, reached the following conclusions in his judgment:

"A close and detailed examination of the signatures affixed to Exhibit A, and of the paper on which the said promissory note was written, reveals the following irregularities:

"1. At first sight it is observed that the ink used in writing the signature of Telesforo Ulibare is of a different color from that employed in writing, not only the rest of the document, but also the signatures of E. Vidal and

Calixto Quiachon.

"2. The signature of Donato Arbis appears also to have been written with different ink from that of the signatures of E. Vidal and Calixto Quiachon.

"3. The paper on which the instrument was written has been cut on its right edge with scissors, to such an extent that some of the words written near this edge have also been cut.

"If it is true that Ulibare, Quiachon, and Arbis did sign the instrument at the same time, each in the other's presence, with the same ink and with the same pen, I find no explanation to account for the difference in the ink, as observed by comparing Ulibare's signature with those of E. Vidal and Quiachon. Ulibare's signature must have been written with other ink, and therefore the testimony given by the plaintiff's- witnesses is false, to wit, that Ulibare signed the instrument, Exhibit A, together with them and at the same time that they did, in Villagracia's house.

"Upon examining the edges of the paper on which the instrument is written, it is discovered that the left edge of its first page must have been the outside edge of the front of a sheet of rough-edged paper, and that the right edge has been cut with scissors. It is, therefore, evident that the writing was commenced on the fourth or the second page of a sheet of Catalan paper, and that the reason for cutting the right edge was to make believe that this edge was the outside one, for, had it not been cut, it would have appeared rough and uneven like the inside edge of a leaf of paper made by tearing the sheet into halves. There was a purpose in the cutting, for the usual and natural way is to begin a document on the first page of a sheet of paper, in which case, upon dividing the sheet into two, the irregular inner edge would be on the left side, but, on the document in question, the left side is really the even outer edge.

"As the writing of the document was begun on the fourth or the second page of a sheet of Catalan paper divided into halves, the defendant's assertion that he signed on the third page, which was blank, is reasonably credible and finds its most complete corroboration in the fact that the ink with which his name is written is different from that used in writing the rest of the instrument.

"In view of these circumstances, the court has not the least doubt that the said instrument is in all respects false and fraudulent. Telesforo Ulibare took no part whatsoever in its execution, nor was he present when it was written. The witnesses Vidal, Quiachon, and Arbis did not see Telesforo "Ulibare sign this instrument which was fabricated for the purpose of injuring Ulibare, who, as was proved at the trial, had had some disagreement with and grudge against Vicente Villagracia because the latter had requested Ulibare's vote in the election for municipal president, held in Iwisan, and yet Ulibare had refused to vote for him. The plaintiff and his witnesses scandalously perverted the truth, notwithstanding their oath, by testifying that Telesforo Ulibare signed this instrument in their presence, and it is unquestionable that they took advantage of the circumstance that Telesforo Ulibare had affixed his signature to an instrument held by Calixto Quiachon, which signature Ulibare had written on a blank page, and that they merely tore off the half-sheet which bore Ulibare's signature, turned it over and commenced writing on the back, and afterwards cut one of the edges of the paper for the purpose of falsely giving it the appearance of being the original outer edge.

"The plaintiff's claim is, therefore, founded on an instrument which is entirely false, and consequently cannot be cause or ground to produce any obligation in favor of Vicente Villagracia for any sum whatever, since the defendant contracted no lawful or true obligation of any kind toward the said Villagracia."

Furthermore, upon examining the instrument Exhibit A, by holding it to the light, there can be plainly seen the half of a watermark stamped by the factory whence came the paper on which the instrument was written. This half of the watermark is visible on the right edge of the paper, looking at the front or face of the sheet as regards the writing, and on the left edge, as seen from the reverse side. The position of this watermark virtually corroborates the theory advanced by the defendant in his defense, to wit, that he affixed his signature, after a few lines, to the

upper part of the inner face of the second leaf of the sheet or document which had been presented to him in his house by Quiachon to sign, since the manufacturer's watermark is customarily stamped in the center of the sheet in such wise that it marks both leaves thereof, and the mere fact of the half of this watermark appearing on the right edge or side of the instrument, Exhibit A, viewed from the front where the writing begins, proves that after separating and cutting the said leaf, containing the defendant's signature on its inner face, from the other to which it was united, he who afterwards wrote the instrument commenced the writing on the outer side of the separated leaf and finished it on the inner side thereof, above the defendant's signature which had been written on this inner side of the leaf when the same was blank, and so, in order to conceal the edge of separation of the instrument, Exhibit A, from the first leaf of the sheet, the very side where the said watermark is visible was cut with scissors, one-half of which mark remained with the other leaf from which the leaf containing the instrument Exhibit A was cut and separated.

These considerations and those set forth by the trial court in his judgment tend to demonstrate in a decisive and conclusive manner, that the defendant, Ulibare, is not under obligation to comply with the engagement contained in the instrument Exhibit A, inasmuch as it was not duly proved that the contract from which proceeds the obligation therein stipulated, was executed, for, according to article 1261 of the Civil Code, there is no contract unless the following requisites, among others, exist: The consent of the contracting parties, and the consideration of the obligation established thereby. The record does not show that the defendant consented to contract the engagement contained in the instrument Exhibit A, nor does the latter show the cause or consideration for which the defendant, as alleged, bound himself to deliver at the end of November, 1909, 200 cavans of rice or to pay the price thereof, amounting to P300, at the rate of P1.50 per cavan.

Therefore, the errors assigned to the judgment appealed from have been refuted and the said judgment should be, as it is hereby, affirmed, with the costs against the appellant.

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

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