

PLACIDO LOZANO, PLAINTIFF AND APPELLANT, VS. IGNACIO ALVARADO TAN SUICO, DEFENDANT AND APPELLEE.

G.R. No. 7454. August 16, 1912

Ponente: JOHNSON, J.

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JOHNSON, J.:

The purpose of the present action, commenced in the Court of First Instance of the Province of Cagayan, (Island of Luzon) was to recover the sum of P740. The plaintiff alleged in his complaint, in effect, that the defendant had borrowed from him the sum of P340, on the 3d of October, 1906, under a promise to repay the same within a period Of two months. The plaintiff further alleged that the defendant had guaranteed to pay an indebtedness of Doña Maria Ifurung, of the sum of P400. The plaintiff alleged that to secure the payment of these two sums of money, the defendant had executed and delivered to him, on the 3d of October, 1906, a certain mortgage, upon certain property, particularly described in paragraph 2 of said alleged mortgage. (Exhibit A.)

The defendant answered by denying generally and specifically all of the allegations of the complaint, admitting, however, that he had borrowed from the plaintiff the sum of P340 on the 3d of October, 1906, but declared that the same had been paid on the 2d of December of the same year.

Upon the issues thus formed, the Honorable Carter D. Johnston, judge, after hearing the evidence, found that the defendant owed the plaintiff nothing, and ordered, adjudged and decreed that the case be dismissed, with costs against the plaintiff, with the right on the part of the plaintiff to file another proceeding for the P400 due him by said Maria Ifurung, if said amount of P400 is not or shall not be paid by the said Maria Ifurung or by her guarantor.

From that judgment the plaintiff appealed and made several assignments of error in this court, all of which relate to the sufficiency of the proof adduced during the trial of the cause.

The plaintiff made the alleged mortgage, dated October 3d, 1906, a part of his complaint. Its due execution was not denied under oath by the defendant. Its genuineness and due execution were therefore admitted. (Sec, 103 of Act No. 190.) This document can not be considered as a mortgage. While it was executed before a notary public, it has not been recorded. There is no proof in the record that the same had been registered. (Art. 1875, Civil Code.) The action, therefore, brought upon said document can in no sense be regarded as an action to foreclose a mortgage. The action is one upon a contract to pay money simply.

The only proof adduced during the trial by the plaintiff in the first instance was proof showing the due execution and delivery of said alleged mortgage. The defendant admitted the execution of the document, but proved that the P340 which he had borrowed from the plaintiff had been paid, and presented a receipt (Exhibit No. 1) in support of that allegation. Later the plaintiff took the witness stand in his own behalf and admitted that the defendant had

paid him the said sum of P340. The only question then remaining is as to whether or not the defendant was indebted to the plaintiff in the other sum of P400. The defendant attempted to show that the indebtedness of Maria Ifurung was an indebtedness in favor of one Gabriel Famosa. The defendant admitted that he had acted as a witness in some way or other and had assisted Maria Ifurung in some way in relation to the said P400. This explanation, however, of the defendant, with reference to the origin of said indebtedness (P400) could not be admitted for the purpose of disputing the contents of the written document (Exhibit A). (Sec. 285, Code of Civil Procedure; *Pastor vs. Gaspar*, 2 Phil. Rep., 592.)

Even admitting, however, that the defendant had guaranteed the payment of the said P400 to the plaintiff, in accordance with the facts found in said document (Exhibit A), nevertheless it does not appear that the original indebtedness was due nor that Maria Ifurung had not paid the same. From an examination of said document it will appear that the defendant only made himself liable for the payment of the said P400, upon the condition that the said sum may not have been paid before the maturity of said contract. There is not a word of proof in the record showing that Maria Ifurung was in default of the payment of the said sum of money. We find nothing in the record upon which we can base a judgment in favor of the plaintiff even for the P400. Therefore the judgment of the lower court is hereby affirmed, without prejudice to the right of the plaintiff to bring another action to recover the said sum of P400. It is so ordered, with costs against the plaintiff.

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

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