

JORGE DOMALAGAN, PLAINTIFF AND APPELLEE, VS. CARLOS BOLIFER, DEFENDANT AND APPELLANT.

G.R. No. 8166. February 08, 1916

Ponente: JOHNSON, J.

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JOHNSON, J.:

This action was commenced in the Court of First Instance of the Province of Misamis, on the 17th of December, 1910. It was not presented to the Supreme Court until the 11th of January 1916. Its purpose was to recover of the defendant the sum of P516, together with damages estimated in the sum of P350 and interest, and costs.

In support of his claim the plaintiff alleged that, in the month of November, 1909, he and the defendant entered into a contract by virtue of the terms of which he was to pay to the defendant the sum of P500 upon the marriage of his son Cipriano Domalagan with the daughter of the defendant, Bonifacia Bolifer; that later, in the month of August, 1910, he completed his obligation under said contract by paying to the defendant the said sum of P500, together with the further sum of P16 "as hansom or token of future marriage," that, notwithstanding said agreement, the said Bonifacia Bolifer, in the month of August, 1910, was joined in lawful wedlock to Laureano Sisi; that immediately upon learning of the marriage of Bonifacia Bolifer he demanded of the defendant the return of the said sum of P516 together with the interest and damages; that the damages which he suffered resulted from the fact that he, in order to raise said sum of P500, was obliged to sell certain real property belonging to him, located in the Province of Bohol, at a great sacrifice.

To the complaint the defendant presented a general denial. He also alleged that the facts stated in the complaint do not constitute a cause of action. Upon the issue thus presented the cause was brought on for trial. After hearing the evidence the Honorable Vicente Nepomuceno, judge, in an extended opinion in which all of the evidence adduced during the trial of the cause is carefully analyzed reached the conclusion "of fact that plaintiff delivered to defendant the sum of P516 sued for and that Carlos Bolifer and Laureana Loquero received and did not return the said amount," and for the reason that the evidence did not sufficiently show that the plaintiff had suffered any additional damages, rendered a judgment in favor of the plaintiff and against the defendant in said sum of P516 together with the interest at the rate of 6 per cent from the 17th of December, 1910, and costs.

From that judgment the, defendant appealed to this court and made the following assignments of error:

"1. In holding to be proven the fact of the delivery by the plaintiff of the sum of P516 to the defendant, Carlos Bolifer; and

"2. In holding to be valid and effective the verbal contract entered into by the plaintiff and the defendant in regard to the delivery of the money by reason of a prospective marriage."

The first assignment of error presents a question of fact. The lower court found that a large preponderance of the evidence showed that the plaintiff had delivered to the defendant the sum of P516 in substantially the manner alleged in the complaint. Taking into consideration that the lower court saw and heard the witnesses, together with the further fact that there is an abundance of uncontradicted proof supporting the findings of the lower court, we

are not inclined to disturb its judgment for any of the reasons given by the appellant in support of his first assignment of error.

With reference to the second assignment of error, the appellant calls our attention to the provisions of paragraph 3 of section 335 of the Code of Procedure in Civil Actions. The appellant argues that by virtue of the provisions of said paragraph and by virtue of the fact that the agreement upon which the plaintiff relies and under which he paid to the defendant the sum of P516 had not been reduced to writing, he could therefore not recover. The appellant contends that a contract, such as the one relied upon by the plaintiff, in order to be valid, must be reduced to writing. We have examined the record in vain to find that the defendant during the trial of the cause objected to any proof or any part thereof, presented by the plaintiff, which showed or tended to show the existence of the alleged contract. That part of said section 335 which the appellant relies upon for relief provides:

"In the following cases an agreement hereafter made shall be unenforceable by action unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement can not be received without the writing or secondary evidence of its contents:

"1. * * *

"2. * * *

"3. An agreement made upon the consideration of marriage, other than a mutual promise to marry."

It will be noted, by reference to said section, that "evidence" of the agreement referred to "can not be received without the writing or secondary evidence of its contents." As was said above all of the "evidence" relating to said "agreement" was admitted without the slightest objection.

Said section (335) does not render oral contracts invalid. A contract may be valid and yet, by virtue of said section, the parties will be unable to prove it. Said section provides that the contract shall not be enforced by an action unless the same is evidenced by some note or memorandum. Said section simply provides the method by which the contracts mentioned therein may be proved. It does not declare that said contracts are invalid, which have not been reduced to writing, except perhaps those mentioned in paragraph 5 of said section (335). A contract may be a perfectly valid contract even though it is not clothed with the necessary form. If it is not made in conformity with said section of course it cannot be proved, if proper objection is made. But a failure to except to evidence presented in order to prove the contract, because it does not conform to the statute, is a waiver of the provisions of the law. If the parties to an action, during the trial of the cause, make no objection to the admissibility of oral evidence to support contracts like the one in question and permit the contract to be proved, by evidence other than a writing, it will be just as binding upon the parties as if it had been reduced to writing. (Anson on Contracts, p. 75; Conlu vs. Araneta and Guanko, 15 Phil. Rep., 387; Gallemit vs. Tabiliran, 20 Phil. Rep., 241, 246; Kuenzle & Streiff vs. Jiongco, 22 Phil. Rep., 110, 112; Gomez vs. Salcedo, 26 Phil. Rep., 485, 489.)

For the foregoing reasons we find nothing in the record justifying a reversal or modification of the judgment of the lower court based upon either assignment of error. Therefore the judgment of the lower court is hereby affirmed, with costs. So ordered.

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

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