

BIBIANA ISAAC, MARIANO, EMETERIO AND CONCEPCION ABELLA E ISAAC AND LEOCADIO ABELLA E ISAAC, PLAINTIFFS AND APPELLANTS, VS. H. W. BRAY AND MANUEL PARDO, DEFENDANTS AND APPELLEES.

G.R. No. 8822. March 30, 1915

Ponente: ARAULLO, J.

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ARAULLO, J.:

The action instituted in this case by the plaintiffs is for the purpose of securing from the defendants payment of the sum of four thousand Spanish dollars (\$4,000), with interest thereon at twelve Spanish dollars (\$12) per hundred annually from March 30, 1896, until complete payment, a sum which, according to the complaint, the defendants owe the plaintiffs as the legitimate heirs by force of law, judicially recognized, of Manuel Abella, and which they have not yet paid.

The obligation incurred by the defendants, according to the plaintiffs, appears in a note (Exhibit A, folio 24) presented by the latter at the trial, signed by said defendants, which reads thus: "I promise to pay to the order of Don Manuel Abella on the 30th of March of next year, 1897, the sum of four thousand Spanish dollars (\$4,000) which on this date, by virtue of the instrument that I myself and Don Jose Gomez Maese have signed, I have taken over as a debt of the hacienda, contracted by said Gomez during the two years it was in his possession, for improvements thereon and on its buildings. Said payment was authorized by Don Ramon Feded in the third clause of the instrument rescinding the sale of the said hacienda on the 28th inst., and in taking over said debt for payment within the period of one year I have further undertaken to pay the interest of twelve per cent with preference over any other debt, whatever be its origin, guaranteed by the same hacienda and its products, which I have now purchased extrajudicially.—Nueva Caceres, March 30, 1896."

The defendant H. W. Bray, who was not in these Islands when the case was instituted and upon whom summons was served by advertisement, did not appear or reply to the complaint and was therefore declared to be in default. The other defendant, Manuel Pardo, in addition to denying all the facts set forth in the complaint, entered his exception and alleged that he and his codefendant were, before March 30, 1896, the date of the instrument quoted above, merchants engaged in the purchase and sale of goods and in other industrial enterprises; that even supposing that the note before mentioned were genuine and that he had signed it, the obligation had been already satisfied, and, moreover, the right of action had now prescribed. He therefore prayed that he be absolved from the complaint with the costs against the plaintiffs.

After trial and examination of the evidence, in which is the deposition of the defendant Bray taken in Singapore at the instance of his codefendant, the Court of First Instance of Ambos Camarines rendered judgment under date of January 9, 1913, holding that the obligation mentioned in said note had already been satisfied, and dismissed the complaint, without finding as to costs.

After denial of the new trial requested by the plaintiffs and after exception to said order of denial, they appealed,

filing with this higher tribunal the corresponding bill of exceptions.

After a careful examination of the evidence, we have reached the conclusion that the existence has been proven of the debt contracted by the defendants, as set forth in the said note (Exhibit A), quoted at the beginning, but that said debt has not been paid by any of them, for the statements of the defendants and of the witness Jose Panes contain nothing concrete and positive to demonstrate that by means of the goods, which, according to them, were delivered to the creditor Manuel Abella, predecessor in interest of the plaintiffs, the amount of the said obligation had been collected by him, which is what the defendants have tried to prove.

These statements are so vague that the value of each one of the classes of goods which, said witnesses say, were delivered to the creditor Abella, does not definitely appear, nor their total value. Both the defendant Pardo and the witness Panes who had been his employee, in referring to these points, have done nothing more than state said value according to their conjectures; and even though the other defendant, Bray, has intimated in a rather confused way that he entered into a contract of commercial partnership with Abella in connection with the Hacienda de Causip, referring perhaps to that which is mentioned in the note; that in August of 1896 he executed a power of attorney in favor of Abella so that the latter might represent him and adopt the necessary measures for suing one Ramon Feced for damages, delivering to him various goods and merchandise which he mentioned in his deposition, amounting in all to P24,000, there is nothing in the case which corroborates anything stated by said witness nor is there any explanation of the relation which this alleged delivery of goods might have had to the obligation at bar, or that such delivery was consummated. To all the foregoing there must be added that the note, the authenticity of which is proven, was in the possession of Abella and is now in the possession of the plaintiffs, and as this Supreme Court has held in the case of Chua Chienco vs. Vargas (11 Phil. Rep., 219): "The possession by the creditor of certain vales, issued by the debtor and by him acknowledged as genuine, is conclusive proof that the amounts stated in such vales are still due, and that the same have not yet been liquidated, unless the debtor shall demonstrate according to law, and particularly by means of other efficient documents that may invalidate or neutralize the effects of the vales held by the creditor, that payment, as alleged, was duly made."

The obligation incurred by these defendants is not a joint one, as the plaintiffs understand it, for it was not expressly determined in the note signed by them, as required by article 1137 of the Civil Code, that the obligation was so assumed by them; consequently it must be understood to be several and each of them must pay half of the amount thereof.

In order that a promissory note be considered commercial, whether the persons interested therein be merchants or not, it is necessary that it be based upon commercial transactions. This Supreme Court has repeatedly so held in various decisions, and the supreme court of Spain has also thus held in repeated cases which are cited in those decisions. This condition is not present in the note at bar, for it is clearly stated therein that the obligation set forth in the note arose from another obligation incurred by a certain Gomez in connection with an hacienda, which debt, according to the wording of the instrument itself, the defendants have assumed with the obligation of paying it to Manuel Abella; and it is neither stated nor proven that it was for commercial purposes, another condition which is also required to give a promissory note a commercial character, for, despite what the defendant Pardo has intimated to the contrary in his testimony, it appears from the instrument itself that the defendants acknowledged themselves to be debtors for the sum stated in said note and assumed another's debt to the same Abella, and therefore they could not have received any sum from Abella to be applied to operations or transactions of any kind.

Consequently, the right of action to require fulfillment of said obligation has not prescribed, because it is not subject to the provisions of the Code of Commerce but to those of the Civil Code, and the period of fifteen years fixed for the prescription of personal actions in article 1964 of the latter code did not elapse from March 30, 1897,

the date on which payment of the debt was demandable, until October 28, 1910, on which date the complaint was filed.

By virtue of the foregoing we reverse the judgment appealed from and sentence the defendants, H. W. Bray and Manuel Pardo, to pay severally—that is, each one of them a half—to the plaintiffs the sum of four thousand Spanish dollars (\$4,000), with interest at twelve dollars (\$12) per centum annually from March 30, 1896, until, said sum be entirely paid, said payment to be made in Philippine currency, the current money at the present time, after determination by the Court of First Instance, on hearing of the parties, of the ratio between the said currency and the Spanish dollar, and we likewise sentence each of said defendants to pay a half of the costs in first instance, with no special finding as to the costs in this instance. So ordered.

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

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