

JOSE PINON AND CANDIDA MAÑALAC, PLAINTIFFS AND APPELLANTS, VS. DOLORES R. DE OSORIO, ADMINISTRATRIX OF THE INTESTATE ESTATE OF MARIA INFANTE, DEFENDANT AND APPELLEE.

G.R. No. 9741. March 25, 1915

Ponente: TORRES, J.

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TORRES, J.:

Appeal filed through bill of exceptions by counsel for the plaintiffs from the judgment of December 29, 1913, whereby the Honorable A. S. Crossfield, judge, dismissed the claim of Jose Pinon and Candida Manalac, approved by the committee of appraisal, against the intestate estate of the deceased Maria Infante.

On August 2, 1913, the committee of appraisal and claims appointed for the intestate estate of Maria Infante decided to allow the claim of P1,740 presented by Jose Piñon and his wife Candida Manalac; and, in view of the evidence submitted and the reply of the administratrix, it recommended to the court that the said amount should be paid; from this finding Dolores R. de Osorio, administratrix of the intestate estate of said Maria Infante, appealed to the Court of First Instance. The petitioners and appellants therein reiterated their claim and prayed that judgment be rendered against the said intestate estate, ordering payment of the said sum of P1,740 with legal interest from November 25, 1912, when the claim was presented to the committee of appraisal, with the costs.

This claim is based on the instrument Exhibit G, dated May 1, 1904, wherein the deceased Maria Infante, signing Herself "M.a Ynfante de Rosario," stated that she had received from the spouses Jose Piñon and Candida Manalac the sum of P1,500 as a deposit, without any interest or guarantee, and the depositary obligated herself to return said sum at any time, provided she were given fifteen days' notice. This sum, added to P240, which the plaintiffs claim as interest stipulated, according to the letter Exhibit B, makes a total of P1,740.

The defendant administratrix, in reply to the complaint, denied all the facts alleged therein and set up as a special defense that the alleged obligation or debt contracted by the deceased had already been extinguished, wherefore she prayed the court to absolve her from the complaint, with the costs against the plaintiffs.

After trial of the case, during which the plaintiff Jose Pinon testified in support of the authenticity of the documents Exhibits A to H inclusive, presented as evidence, and Leonardo Osorio testified on behalf of the intestate estate, the court rendered the decision set forth on the ground that the obligation contracted by the deceased Maria Infante had been paid and extinguished. The court further found that the receipt Exhibit G had no value whatsoever, for the reason that the figure "1" of the year 1901 had been changed and replaced by the "4," so that said document appears to have been executed on May 1, 1904, an alteration that destroys all the value and credit it might have had. The question to be decided is reduced to whether or not the debt claimed in the present suit really exists and whether the plaintiffs are entitled to collect it.

The only evidence adduced by the defendant consists in the testimony of the witness Osorio, who affirmed that

the entire amount which the deceased Maria Infante owed to Pinon had been paid, for his wife, the administratrix of this intestate estate, still preserves the receipts in which it appears that said debt was paid in monthly installments, adding that said receipts were in his wife's possession and that he did not know the numbers thereof or the amounts for which they were issued. Witness was instructed to exhibit in court the receipts to which he referred in his testimony, but when he appeared on the day set for exhibition thereof he said that he had not found them, thus contradicting his previous statement.

The alleged fact that the debt of P1,500, which the deceased owned the plaintiffs, had been paid and settled is not properly proven by such testimony, for by means of parol and documentary evidence, which was not duly refuted, the plaintiffs have established the certainty of the fact that the said debt still stands and has not yet been paid to them.

The transactions between the plaintiffs and Maria Infante de Rosario dated from the year 1903, and, in that year said Maria Infante had already begun to borrow money from the plaintiff spouses, for she assured them in her letter, Exhibit A, that her letters were sufficient evidence upon which to sue her in case she should fail to pay them. The sum of P1,500 which, according to the receipt Exhibit G, the said debtor borrowed, was received by her in amounts doled out slowly at intervals, commencing on October 23, 1903, when by the letter Exhibit B, addressed to Pinon, she asked him to lend her the sum of P300, offering to pay him interest at 2 per cent a month. On October 28 of the same year, Exhibit G, she asked him to lend her P500 more; and it is to be believed that these two sums were lent to her, for by the letter Exhibit D she again wrote to Pinon requesting him to lend her P200 more in order to make her debt P1,000.

By the letter Exhibit E, dated March 10, 1904, she again asked for P200 more, but it seems probable that the sums requested in the last two letters were not advanced to her, and that there was later another arrangement between the parties, for on April 29, 1904, by the letter Exhibit F the said Maria Infante requested Pinon to deliver to her nephew, the bearer of the letter, the 700 "for completion of the eight that are in my possession." These were her words and she told him to keep the letter to serve him as a receipt until a formal one was made out. At the end of this letter and before the signature of Maria Infante, Pinon wrote with his own hand the words "of the fifteen hundred pesos," so that the letter would serve as a receipt for this amount. Aside from the fact that Pinon, in his affidavit copied on page 17 of the bill of exceptions, explains what he did by saying that he wrote those words in the letter Exhibit F solely to serve him as a reminder, without the least intention of deceiving or injuring anybody, we do not (believe it necessary to enter upon an examination of the effect of their insertion in said letter, for this is merely corroborative evidence and the result of this does not depend upon the truth or falsity thereof.

As a consequence, therefore, of the debtor's desire to make out a receipt in due form, the plaintiff Pinon drew up the one marked Exhibit G, signed by M.a Ynfante de Rosario, evidencing that she had received from the Pinon couple the sum of P1,500 as a deposit, repayable in fifteen days after she should be called upon to do so. This instrument was dated in Manila on May 1, 1911, but the last two figures were changed and replaced by the figures "0" and "4," so that the receipt appears to have been executed on May 1, 1904; and the plaintiff explains this fact in his affidavit, page 17 of the bill of exceptions, by saying that this receipt was made out on May 1, 1904, in accordance with Maria Infante's desire to sign a formal receipt for the sum she had borrowed, as set forth in her letter, Exhibit F, dated April 29, 1904, and that when he made out this receipt he wrote by mistake May 1, 1911, but having noticed it before Maria Infante had signed he changed the last two figures "0" and "4" in her presence, inadvertently forgetting to make a note of said correction.

On account of such a plain change of the year 1911 to 1904 the court refused to attach any value whatever to the receipt Exhibit G. It is certainly strange that in making out the instrument in 1904 the plaintiff should have advanced the date to 1911. If, on the other hand, the said instrument was really executed in 1911, the alteration of

the number of the year made by Pinon in writing 1904 would only have been induced by the desire to collect interest at 2 per cent a month from the said year 1904 until the debt was settled, but this supposition cannot be admitted, since the plaintiff acknowledged before the committee of appraisal that he had received interest on the said sum of P1,500 until the month of March, 1911, inclusive, and that he renounced the collection of interest from the month of April of that year, 1911, up to the present, with the exception of the sum of P240, which, added to the principal, makes a total of P1,740, the subject matter of the present claim. Such procedure does not in any way injure the intestate estate of Maria Infante, and furthermore, the debt already existed in April, 1904, according to previous letters which were not questioned or impugned. As for the rest, since the legal effect of said receipt, Exhibit G, was not altered, nor was the other party injured or damaged by, the change of date mentioned, we are of the opinion that this change is immaterial, for it is duly proven by the other evidence submitted in the case that the debt of the deceased to the plaintiffs is yet unpaid and still subsists.

Ignoring for a moment the value Exhibit G may have, it is a fact that in the lifetime of Maria Infante the plaintiffs' attorney several times called upon her to pay her debt and that each time he called upon her she always asked for postponement, but that she never refused to pay her debt. Moreover, on April 18, 1911, Dolores de Osorio, daughter of the deceased Maria Infante and judicial administratrix of her intestate estate, wrote the letter Exhibit H to the plaintiff Pinon, saying that, as she was unable to continue paying the interest on her mother's debt, she would cede to him a fishpond, her mother's property, the income where-from was from eight to nine hundred pesos a year, so that the creditor would not lose anything. This letter implies therefore that in 1911 Maria Infante's debt to the plaintiffs was still unpaid, and, even though the witness Osorio asserts that said debt had already been paid and that his wife had the receipts in her possession, he was unable to exhibit to the court said receipts for payment, alleging that he had not found them.

The defendant who alleges that he has paid his debt must prove this allegation by presenting the receipts for the payments made (sec. 297, Code Civ. Pro.; Behn, Meyer & Co. vs. Rosatzin, 5 Phil. Rep., 660; Miller Sloss & Scott vs. Jones, 9 Phil. Rep., 648), for it has been several times held that the existence of an instrument of indebtedness, in possession of the creditor, is proof that the debt has not yet been paid. (Sec. 334, No. 8, Code Civ. Pro.; Bantug vs. Del Rosario, 11 Phil. Rep., 511; Ramos vs. Ledesma, 12 Phil. Rep., 656; Ormachea Tin-Congco vs. Trillana, 13 Phil. Rep., 194.)

By reason of the foregoing, and that the claim presented on November 25, 1912, by the spouses Jose Pinon and Candida Mafialac to the committee of appraisal of the intestate estate of the deceased Maria Infante for the collection of a true and lawful debt was duly substantiated, the decision appealed from must be reversed and the intestate estate of Maria Infante ordered, as we do order it, to pay to the plaintiffs the sum of P1,500, with P240 more as interest on that sum, and with legal interest on both sums since this claim was presented to the committee of appraisal ; without special finding as to costs in both instances.

Arellano, C. J., Carson, Trent, and Araullo, JJ., concur. So ordered.

MORELAND, J., concurring:

I regard the change in the document as really a correction, to make the instrument speak the truth.

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