

FELIX ULLMAN, PLAINTIFF AND APPELLEE, VS. VICENTE HERNAEZ, DEFENDANT AND APPELLANT.

G.R. No. 9816. March 10, 1915

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

The complaint has for its object the collection of a debt contracted by Vicente Hernaez in favor of Felix Ullman on April 5, 1900, amounting to 3,525 pesos Mexican currency, to be paid, says Hernaez, "as soon as I receive the portion that as an heir must come to me from the estate of Juana Espinosa, widow of Hernaez; without prejudice to paying on it, during the time that may elapse until I get possession of said property, interests at six per cent a year, but not, however, compound interest."

On June 2, 1913, Ullman filed suit against Vicente Hernaez, alleging therein, as the fifth fact:

"That the defendant did on January 5, 1913, cede, alienate, and convey to Rosendo Hernaez for the sum of twenty- five thousand pesos (P25,000) Philippine currency, all his rights and rights of action in the property left by the deceased Juana Espinosa."

This fact was expressly admitted by the defendant in the agreement of facts. Moreover, the instrument of indebtedness was inserted in the complaint and has not been denied under oath in the reply.

The Court of First Instance of Occidental Negros decided the case by sentencing the defendant to pay to the plaintiff P3,525, with interest at 6 per cent a year from April 5, 1913. But on a rehearing requested by the plaintiff the court again rendered judgment, amending the portion relating to the interest, and sentenced the defendant to pay interest on the debt on the basis of 6 per cent a year from April 5, 1900, and the costs. Defendant has appealed to this higher court, but has not brought up the parol evidence, only the documentary.

The first assignment of error cannot be sustained. True it is that the defendant lacked three months and fifteen days when he executed the note for the sum stated, the price of some jewelry he had bought from the plaintiff; but he attained his majority on July 20 of the same year 1900, and he did not then nor in the four years following attempt to enforce the nullity that he now assigns as a ground of error.

"The right of action for nullity shall only last four years. * * * When it refers to contracts executed by minors or incompetents, from the date when they were released from guardianship." (Civil Code, art. 1301.)

Neither can the second assignment of error be sustained. It consists in that the trial court overlooked the prescription of the right of action alleged as one of the defendant's defenses in his reply, since the right of action was not exercised from April 5, 1905, until June 2, 1913, nor was any move made during this time. But a right of action that has not yet arisen cannot prescribe. In time obligations, as that at bar, to pay "as soon as I receive the portion that as an heir must come to me from the estate of Juana Espinosa," the right of action only arises when the date fixed has arrived; the obligation is enforceable only when the day comes. (Civil Code, art. 1125.) This day arrived on January 25, 1913, when the defendant sold to Rosendo Hernaez his right to inherit from Juana Espinosa

and received from him P25,000, just as if he had received same from that estate.

The judgment appealed from is affirmed, with the costs in this instance against the appellant. So ordered.

Torres, Johnson, Carson, Moreland, Trent, and Aravillo, JJ., concur.

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