

44 Phil. 688

[ G.R. No. 19996. March 12, 1923 ]

**THE BANK OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLANT, VS. LAGUNA COCOANUT OIL COMPANY AND FIDELITY AND SURETY COMPANY OF THE PHILIPPINE ISLANDS, DEFENDANTS AND APPELLEES.**

**D E C I S I O N**

**OSTRAND, J.:**

This is an appeal from an order sustaining a demurrer to the amended complaint. Paragraph 3 of the complaint alleges that the defendant Fidelity and Surety Co. of the Philippine Islands “*se obligo a pagar a cualquier tenedor de dicho pagare el importe del mismo, en el caso de que Laguna Cocoanut Oil Co. no lo satisficiera*” and the only question to be resolved is whether the expression “*se obligo*” is a conclusion of law or whether it is an allegation of a fact.

The word “obligar” as here used is usually translated into English as “to bind” and in jurisdictions where the rules of good pleading are more thoroughly understood by the Bar than is the case here, a statement that a person “bound himself” to do a certain thing would probably be held by the courts to be a mere conclusion of law; indeed, the books abound in cases where even stricter criteria have been applied. (For illustrations, *see Cyc.*, pp. 52-65.)

The majority of this court is, however, of the opinion that under the conditions here prevailing a more liberal rule should be followed and that the obligation in question should be considered sufficiently well pleaded.

It must be conceded that strong reasons may be advanced in support of this view. Not only is great liberality in construing the remedial law enjoined upon the courts by our Code of Civil Procedure, but in this particular case it is also to be observed that in Spanish dictionaries the expression “obligarse”

seems to be regarded as synonymous with “comprometerse,” thus implying an obligation based upon a promise or agreement. When, therefore, it is alleged in the complaint that the defendant Fidelity and Surety Co. “se obligo a pagar,” it may, perhaps, be considered as equivalent to an allegation that the company “promised” or “agreed” to pay, which would be a statement of fact.

The order appealed from is reversed, the demurrer to the amended complaint is overruled and the case is remanded to the court below for further proceedings. No costs will be allowed in this instance. So ordered.

*Araullo, C.J.,*

*Street, Malcolm, Avanceña, Johns, and Romualdez, JJ., concur.*

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