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[G.R. No. 2242. December 01, 1906]

HOUSTON B. PAROT, PLAINTIFF AND APPELLEE, VS. CARLOS GEMORA, DEFENDANT AND APPELLANT.

D E C I S I O N

JOHNSON, J.:

The plaintiff, as indorsee, brought this action in the Court of First Instance of the Province of Iloilo, against the defendant as one of the makers of the following promissory note:

"CABANCALAN, NEGROS OCCIDENTAL,
"April 1, 1899.

> "Pagaremos juntos o separadamente en el pueblo de Cabancalan & la Sra. Tomasa Gemora, viuda de Perez, pop si y como adininistradora judicial de los bienes de sus hijos mayores Sr. Isidro, Sras. Felisa, Concepcion, Pilar y Josefina P6rez y Gemora, y tambien como tutora legal de los menores Vicente, Carmen, Santiago y Maria Perez y Gemora, la cantidad de cinco mil ochocientos cincuenta y siete pesos, el dia treinta y uno de Marzo del año mil novecientos tres, en monedas de plata española o mejicana en cuya forma la recibimos en calidad de prestamo gratuito y sin interns de ningun genero del Sr. Manuel Perez y Fernandez hoy difunto, esposo y padre respectivamente de la Sra. Tomasa y de sus hijos mencionados. Y para que asi conste donde convenga formalizamos este documento que formamos en Cabancalan a primero de Abril de mil ochocientos noventa y nueve.—Sobre raspado: o—vale. (Firmados) Carlos Gemora—Asuncion Aguilar.—Y al margen se lee: Son $5,857."

The plaintiff alleges in his complaint that the said Asuncion Aguilar, one of the comakers, died in the month of February, 1901, which fact was admitted by the defendant in his

answer.

The plaintiff also alleges that the said Tomasa Gemora, on the 20th day of February, 1901, sold and delivered, by proper indorsement, the said promissory note to the Lizarraga Hermanos.

The complaint further alleges that on the 16th day of January, 1903, the Lizarraga Hermanos sold and delivered, by proper indorsement, the said promissory note to the plaintiff herein.

The defendant, in his answer, admitted the execution and delivery of the said promissory note and alleged that he had paid the same.

Two assessors, Manuel S. Locsin and Numeriano Villalobos, assisted the judge in the trial of the said cause. At the close of the trial, after hearing the evidence and the arguments of the attorneys, the judge of the Court of First Instance of the Province of Iloilo, with the concurrence of the assessors, found the following facts to be true:

First. That the said note had been executed and delivered in the manner and form alleged by the plaintiff in his complaint.

Second. That the said note had been indorsed by the original payee to the Lizarraga Hermanos and by the latter to the plaintiff herein.

Third. That the said promissory note had not been paid as alleged by the defendant.

Fourth. That there was due to the plaintiff from the defendant on the said promissory note, on the 31st day of March, 1903, the sum of 5,857 pesos, Mexican currency, with interest at the rate of 6 per cent from the 31st day of March, 1903.

Fifth. That one peso, Philippine currency, was equal to one peso and six cents, Mexican currency. The lower court after calculating the interest and allowing for the rate of exchange between Mexican and Philippine currency, rendered a judgment in favor of the plaintiff and against the defendant for the sum of 5,845.30 pesos, Philippine currency, with costs. To this judgment the defendant duly excepted. There was no motion for a new trial in the court below.

The appellant makes three assignments of error in this court, as follows:

First. That the judge committed. an error in rendering judgment against the defendant, Carlos Gemora, for the payment of the full amount of the debt of himself and his wife Asuncion Aguilar, the makers of the said promissory note.

Second. The court committed an error in declaring that "Exhibit 1" of the defendant was a false document.

Third. The court committed an error in declaring that Carlos Gemora had not paid Tomasa Gemora the debt evidenced by the said promissory note.

The second and third assignments of error present questions of fact. Inasmuch as the defendant presented no motion for a new trial in the Court of First Instance, this court can not examine the evidence presented during the trial for the purpose of ascertaining whether or not the findings of the judge upon these questions were supported thereby. (See Case No. 3242, Daniel Tanchoco vs. Simplicio Suarez,[1] 4 Off. Gaz., 652, and cases cited; also paragraph 3 of section 497 of the Code of Procedure in Civil Actions.)

With reference to the first assignment of error, the appellant claims that the inferior court committed an error in rendering a judgment against the defendant for the full amount of the said promissory note. The appellant claims that the phrase juntos o separadamente, used in the said promissory note, did not render each of the original makers of the said promissory note liable for the full amount thereof. The Civil Code provides that where two or more persons are obligated in a single contract, they shall be liable only pro rata, unless the contract by express terms makes them severally liable for the full amount of the obligation. (Articles 1137 and 1138 of the Civil Code.) We are of the opinion, and so hold, that the phrase juntos o separadamente used in this promissory note, is an express statement, making each of the persons who signed it individually liable for the payment of the full amount of the obligation contained therein. (Case No. 3242, Daniel Tanchoco vs. Simplicio Suarez.)

The phrase "juntos o separadamente" used in a contract creates the same obligation as the phrase "mancomun o insolidum." The words "separadaanente" and "msolidum" used in a contract in connection with the nature of the liability of the parties are sufficient to create an individual liability.

In the State of Louisiana where there exist statutes similar to the above-quoted provisions of the Civil Code, the Supreme Court held that where a promissory note read "We promise to pay," etc., signed by two or more persons, without the use of any other words to designate

the character of the liability, that the signers of such promissory note were liable pro rata only. The same court held that where a promissory note contained the provision “I promise to pay,” etc., signed by two or m,ore persons, that they were individually liable for the payment of the full amount of the obligation. (Bank of Louisiana vs. Sterling et al., 2 La. Rep., 60.)

We find that the facts contained in the judgment of the lower court are sufficient to justify his conclusion. The judgment of the lower court is therefore affirmed, with interest at the rate of 6 per cent from the 18th of March, 1904, and costs.

After the expiration of ten days let judgment be entered in accordance herewith, and ten days thereafter the case be returned to the lower court for execution. So ordered.

Arellano, C. J., Torres, Carson, Willard, and *Tracey, JJ.,* concur.

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[1] 6 Phil. Rep., 491.

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