6 Phil. 299

**[ G.R. No. 2726. June 01, 1906 ]**

**JUAN SANZ Y SANZ, PLAINTIFF AND APPELLANT, VS. VICENTE LAVIN AND BROTHERS, DEFENDANTS AND APPELLEES.**

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

**ARELLANO, C.J.:**

The complaint prays for a judgment for the sum of 33,768.50 pesos, Mexican currency, but the appellant in his brief says that "in this sum, by mistake in making the liquidation, we included the stipulated interest at ten per cent per annum by capitalizing them, and thus it was attempted to collect interest upon interest, which was not lawful, although usual in the business community, consequently in the written argument presented to the trial court, the amount demanded was reduced to eighteen thousand seventy-six pesos and fifty-five centavos (18,076.55)" (P. 4).

In the facts set forth in the complaint no statement is made of any other basis for the indebtedness than the notarial instrument dated March 31, 1885, by which Paulino Lavin, the ancestor, acknowledges the indebtedness as a result of an accounting with the late Vicente Milla, under whom the plaintiff claims the sum of 18,000 pesos which Lavin undertook to pay at the rate of 2,000 pesos per annum, commencing from that date, "undertaking in case of breach of contract to indemnify the creditors for the damages which might be suffered by reason of failure in the payment, with interest at the rate of ten per cent per annum from the date of the breach of the contract.

But the appellant contends that, in addition to this source of indebtedness, which in the course of the trial, and in the judgment, was referred to as "the old account" there is another, arising from accounts-current which subsequent to March 31, 1885, were continued between the plaintiff and Lavin, as shown by the correspondence which took place and which was presented as documentary evidence, this claim being designated as the "new account," and whatever may be the amount of this "new account" none of the parties

have undertaken to fix or determine. There has been neither liquidation nor allegations in support of it, nor any concrete proof. No reference was made to it in the complaint with a view to distinguish one amount from the other, or to fix the respective balances due upon each, nor for the purpose of determining what is the amount demanded as principle and what is the stipulated interest.

The court below in its decision deals solely with the so-called "old account," the debt evidenced by the public instrument of March 31,1885. He disregards entirely that part of the evidence which refers to the so-called "new account," and has rendered his decision solely with respect to the indebtedness of the 18,000 pesos secured by a mortgage of real property, and to determining whether or not this amount had been paid. His decision was that it had been more than paid, and, therefore, he dismissed plaintiff's complaint and directed that the mortgage and the registration of same in the Registry of Deeds be canceled.

Although the demand has been reduced from 33,000 to 18,000 pesos, it appears that the appellant in his brief still insists that the former sum included both accounts. He says that on account of interest alone, since 1890, when the stipulated yearly payments ceased, more than 10,000 pesos is due, which, added to the amount acknowledged in a letter from Paulino Lavin to be due, makes a sum total greater than the entire amount demanded.

We consider that it was both reasonable and in conformity with good pleading for the judge to have limited his decision to the allegations of the complaint, which rests entirely upon the mortgage deed of March 31, 1885. The judgment, therefore, was of necessity, limited to the question presented by the complaint, viz, whether the 18,000 pesos mentioned in that instrument had or had not been paid.

The conclusion laid down in the decision, in harmony with the answer of the defendants, to the effect that the 2,000 pesos corresponding to the first yearly payment have been paid, is not acceptable. The evidence presented by the defendants shows payment of 1,807.95 pesos. Payments are not to be supposed or inferred but must be proved as facts. Consequently the commentary contained in the decision as to the plaintiff's first letter is superfluous. The same is true as to the statement in the decision concerning the letter of March 10, 1886, by virtue of which it is contended as an inference that a large part of the payment corresponding to 1886 had been made. The only payment shown to have been made is that which appears from the. evidence introduced by the defendants, viz, 1,346.35 pesos. With respect to the annual payment due in 1887, the court credits the application of

payment made by the defendant in his letter of October 4 of that year, but this correction is improper, for against this application of payment no objection was made by Paulino Lavin, and such acquiescence is equivalent to an agreement and has the force and efficacy of a contract. (Art. 1172 of the Civil Code.) The payments shown to have been made during this year, according to the evidence presented by the defendants, amount to 1,679.46 pesos.

As regards the year 1888, the finding of the payments made is correct, the amount being 2,048.78 pesos. The finding is also correct as to the year 1889, in which the payments made were 2,200 pesos.

All these payments make a total of 9,082.54 pesos, so that at the end of that year the indebtedness was reduced to 8,917.46 pesos.

The appellant in his brief says; "Since the 31st of December, 1889, no more than $601 had been paid on account of the mortgage debt * * * " (p. 3). This sum should be deducted from the amount of 8,917.46 pesos above referred to, as also should that of 2,734.44 pesos accepted by the plaintiff, without any special statement made to the defendants as to the application of the same, as appears from his testimony at the trial. As a rule, as among various demandable debts, it is to be presumed that the payment is to be applied to the one which is most onerous, according to article .1174 of the Civil Code. These payments made by Lavin from December 29, 1891, to July 1, 1894, to the amount above stated, and accepted by the plaintiff, should be applied to the satisfaction of the mortgage debt of his father as being the more burdensome as compared with the indebtedness arising from his current accounts.

It appears that one of the mortgaged properties was sold by agreement with the plaintiff at public auction by the family counsel of the Lavin minors, on August 14,1893, for the sum of 5,500 pesos to Miguel Ortis, who, by a notarial document dated February 27, 1894, sold it for the same amount to Servillo Robles, representative of Juan Sanz y Sanz (defendants' Exhibits A, B, and D); therefore, the amount obtained from this sale, which the plaintiff accepts as applied to the payment of the mortgage deed (par. 10 of the complaint), is not, as therein stated, the sum of 3,500 pesos, but the sum of 5,500 pesos, as appears from the notarial document above cited. This, under the provisions of section 285 of the Code of Civil Procedure, is the sole evidence to be accepted. We discover nothing in the letters to which the appellant refers which can be considered as any admission or statement the effect of which would be to vitiate, modify, or in any way affect the explicit terms of that document. Consequently, this sum must also be deducted from the balance due upon the indebtedness

in 1889.

We consider that the following payments have been proved by documentary evidence and by admissions of the parties:

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|---|---|---|
| (1) | By Paulino Lavin…… | $9,683.54 |
| (2) | By minors of Lavin …… | 5,500.00 |
| (3) | By Vicente Lavin…… | 2,737.44 |
| | Making a total of…… | 17,920.98 |

which deducted from 18,000 pesos leaves a balance of only 79.02 pesos.

This amount we can not consider as a debt to be paid by the defendants, for in the evidence presented by the plaintiff himself we find a letter from Vicente Lavin dated the 31st of December, 1895 (Exhibits A, B, No. 10), which contains the following paragraph: "While in your city I delivered to your aunt, Sra. Tia Doña Dominica, $300 and subsequently $100; I said nothing to you, believing that she would inform you of this so that you might enter this payment in the book * * *." Dominica Sanz was, according to the deed of settlement (plaintiff's Exhibits A, B, No. 15), the widow of Vicente Milla, whose estate was the owner of this claim, and in that deed it is stated as a fact that this lady had "received money paid on account of the claim against Paulino Lavin."

Appellant's third, fourth, and fifth assignments of error having thus been disposed of, it remains for us to examine the first two.

The second assignment concerns the document designated as "Exhibits A, B, No. 17," which is not in the record, and consequently this assignment can not be considered. The first assignment refers to Exhibit A, B, No. 11, which is the document acknowledging the receipt by Paulino Lavin of 2,0.00 pesos in cash on the 16th day of June, 1883, prior to the execution of the notarial instrument of March 31, 1885, upon which, as we have already pointed out, the entire complaint rests.

This document was not admitted in evidence by the trial court. As to the claim, although it was prior to the notarial instrument referred to, reference is made to, it in two letters of Vicente Lavin presented as evidence by the plaintiff. In one of them dated June 29, 1894, he says: "I hope that the $2,000 covered by the receipt which my father left as security for the debt, as you told me, will not be included by you in the account or in the percentage, for, as you are aware, your aunt said that I would not have to pay that * * *." (Exhibits A, B, No. 8).

In another letter dated February 26, 1895: "I beg you not to forget to send me a statement of what we owe your aunt, and to let me know whether I can count upon the $2,000 which you told me you would not put in the account. I should be obliged to you if you do not include same nor the interest, in accordance with your promise to me from the beginning * * *" (Exhibits A, B, No. 9).

At all events this account is entirely foreign to the mortgage debt, no connection between the two having been shown and the court committed no error in refusing to admit the receipt (Exhibit No. 11). This, of course, is without prejudice to its materiality in an independent suit, as to which we make no decision in this case.

It appears evident from numerous statements of the appellant that in the amount sued for is included, although without determining the exact amount of the principle, stipulated interest in addition to the legal interest from the date of the complaint. Upon this point, with the exception of what Vicente Lavin says in the letters cited, we find the statements in the eleventh paragraph of the complaint to the effect that the plaintiff waived his right to collect interest from the heirs of Paulino Lavin from 1885 to March, 1894. It must also be borne in mind that in the second clause of the statement of March 31, 1885, so frequently referred to, it is expressly provided "that the principle due shall not draw interest." It was, however, agreed, as stated, that the debtor "should undertake, in case of a breach of contract—that is, to pay the $2,000 per annum—to indemnify the creditor for any damage which the delay in payment *might cause* him, by the payment of interest at the rate of 10 per cent per annum * * * " It appears, therefore, that the interest stipulated was not intended as a compensatory interest or even as interest payable upon default, but that this clause must be considered as constituting the penalty for the damages which might be suffered by the creditor in case of default in payment. There does not appear to have been any *mora ex re*, and although it is true there does appear to have been demands for payment on the part of the creditor, there appear to have been demands made after the extension of the time requested by the debtors and accepted by the creditor. But however that may be, the unbroken line of the decisions, both before and after the promulgation of the Civil Code, has established the. "doctrine constantly recognized and declared by the supreme court (of Spain) that every judgment for damages, whether arising from a breach of contract or whether the result of some provision of the law, must rest upon satisfactory proof of the existence in reality of the damages alleged to have been suffered." (Judgments of the supreme court of Spain of the 13th and 26th of November, 1895, December 7, 1896, and September 30, 1898.) Such proof has not been made in this case.

For the reasons stated we affirm the judgment appealed from in so far as it absolves the defendants from the complaint and order the cancellation of the mortgage and the inscription made in the Registry of Property in consequence thereof, the appellant to pay the costs of both instances. After the expiration of twenty days judgment will be entered in accordance with this decision, and ten days thereafter the cause will be returned to the trial court for execution. So ordered.

*Torres, Mapa, Carson,* and *Willard, JJ.,* concur.

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Date created: April 30, 2014