

5 Phil. 357

[ G.R. No. 1696. November 27, 1905 ]

**VICENTA RODRIGUEZ, ADMINISTRATRIX OF THE ESTATE OF LORENZA RODRIGUEZ, PLAINTIFF AND APPELLEE, VS. MARIANO LASALA, DEFENDANT AND APPELLANT.**

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

**CARSON, J.:**

This is an action to recover the amount of a certain *pagare*, or promise to pay money, executed by the defendant in favor of one Vicenta Rodriguez, and by her indorsed over to Lorenza Rodriguez, of whose estate the plaintiff is administratrix.

The *pagare* was executed in the following terms :

“Number. \$6,000. I have in my possession the sum of six thousand pesos in cash, received of Da. Vicenta Rodriguez, which I will pay (*pagare*) to said lady or to her order, within two years from date, with interest at the rate of ten per centum per annum. Cebu, 22d of October, 1895. Mariano Lasala.”

The defendant admits the execution of this document and the receipt of the sum mentioned therein, and that neither the said sum nor any part thereof has been paid, and for his sole defense alleges that, when this action was instituted, the cause of action on the said *pagare* had prescribed under the provisions of article 950 of the Code of Commerce.

It is admitted by both parties that, if the *pagare* is in fact a commercial instrument as defined in the Code of Commerce, the right of action had prescribed at the time when this action was

instituted, whereas, if it is not such an instrument, it is a simple promise to pay, and the plaintiff is entitled to judgment thereon.

In order that a *pagare* may “*have the effect*” of a commercial instrument, it must appear that it had its origin in “*commercial transactions*,” (Art. 532 of the Commercial Code.)

It does not appear upon the face of the *pagare* in question that it had its origin in commercial operations, and therefore the burden of proof as to this point is on the defendant, who alleges that it is a commercial instrument.

The transaction represented by the *pagare* was a loan of the amount of money therein stated, and under the provisions of article 311 of the Commercial Code a loan is a “*commercial operation*” only when one or both of the parties are merchants, and when the money is loaned for the purpose and with the intention of using it in mercantile operations. (“*Si las cosas prestadas se destinaran a actos de comercio.*”)

We do not think that there is sufficient evidence in the record to establish that the money loaned in this case was loaned in accordance with this provision. The only evidence on this point are the statements of the defendant which tend to prove what the borrower’s intention and purpose were, but do not establish that the lender stipulated that the money should be put to such use, or in other words that she *destined* (*destino*) the loan for mercantile operations.

The defendant having failed to establish this point affirmatively, his contention that the *pagare* is a mercantile instrument can not be sustained, and plaintiff is entitled to judgment.

The judge of the trial court found that the *pagare* has not the effect of a “*commercial instrument*,” because he was of opinion that it fails to specify the place of payment and does not contain upon its face its specific title as a *pagare*, in accordance with the provisions of article 531 of the Code of Commerce. But while we agree with the conclusion of the trial court for the reasons heretofore stated, we do not accept the reasoning upon which this finding was based. We have held heretofore that where no place of payment is specified in a *pagare*, the place of execution is

presumed to be the place of payment, and that this omission does not affect the classification of the instrument as commercial or otherwise (Compania General de Tabacos vs. Molina,<sup>[1]</sup> No. 2091) and it would appear that the use of the word *pagare* in the body of the instrument is a sufficient compliance with the provisions of article 531 of the Commercial Code.

The judgment appealed from should be affirmed with the costs of this instance against the appellant, and after twenty days judgment will be entered in accordance herewith, and the case remanded to the court below for execution thereof. So ordered.

*Arellano, C.J., Torres, Mapa, and Johnson, JJ., concur.*

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<sup>[1]</sup> Page 142, *supra*.

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