5 Phil. 319

[G.R. No. 1465. November 17, 1905]

ALFREDO CHANCO, ADMINISTRATOR OF THE ESTATE OF MAXIMO MADRILEJOS ET AL., PLAINTIFF AND APPELLANT, VS. ANACLETA MADRILEJOS ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

CARSON, J.:

The judgment of the trial court in this case rests upon a finding that a certain document described in the record as Exhibit No, 3 is a genuine instrument, and that it is what it purports to be—a receipt executed by one Maximo Madrilejos at Azagara, in the Philippine Islands, on the 1st day of March, 1875.

After the case had come to this court on appeal and upon motion for the introduction of newly discovered evidence, the United States consular representative at Barcelona, Spain, was appointed a commissioner to take evidence touching the date of manufacture of the paper upon which the alleged receipt is written. In pursuance of this authority the commissioner examined one Joaquin Samurac, manager of the paper factory known as "La Hispana Americana," whose sworn answers to the interrogatories propounded by the plaintiff and defendant are a part of the record in this case.

It appears from the evidence of this witness that the paper in question was not manufactured until long after the 1st day of March, 1875, the date on which it is alleged the receipt was executed. The water marks of the paper on which it is written, which may be seen by holding the document to the light, consist of a crown, together with the words "*Papel Catalan*" and the letters "F. D. E.," and these marks were and are used exclusively by the paper factory of which

the witness is manager. This factory did not begin to manufacture Catalan paper of any kind for some time after the year 1875 and did not use the above-described mark until the year 1880, and its first shipment of this class of paper to the Philippines was made to Tuason & Co., of Manila, on the 28th day of May, 1881.

At the trial of the case there was evidence introduced which tended to prove that the paper on which the alleged receipt is written had been treated with chemicals to give it an appearance of age; that the signature of Maximo Madrilejos thereto attached is a skillful forgery; and that the alleged transfer of property evidenced by the alleged receipt never had any existence in fact; and this evidence, together with the newly discovered evidence introduced on appeal, establishes the fraudulent character of the instrument in question, beyond a reasonable doubt.

The learned judge of the court below did not have before him the evidence as to the date of the manufacture of the paper and found that the document in question was a genuine instrument; but that he did so reluctantly and that he was forcibly impressed with the weight of the evidence and argument of counsel to the contrary is clear from his remarks in denying a motion for a new trial, from which we quote as follows:

> "The paper, although it was presented under suspicious circumstances, was testified to by one of the subscribing witnesses as a genuine paper. He testified to his having signed it at about the time of its date, and his seeing the other parties sign it. All the other circumstances about the signing of it were drawn out on cross-examination, the place and time, etc., and those that were present, and the witness Silvestre was not particularly shaken by cross examination. Anacleta herself also testified to the execution of the paper, so that there was the testimony of two witnesses to its execution, and there was testimony introduced which tended to show that the signature of Maximo upon the paper was a genuine signature, and made by his hand. The paper had substantially the same appearance that

it now has, maybe a little more worn at the present time. The defendant, Anacleta, testified that it had been kept by her in her trunk so that it had been removed from the light all the years since it had been executed."

"Now, finding the paper to be a forgery involved finding all that testimony to be false. If the paper was a forgery, Silvestre testified to a deliberate falsehood, and one that was made up for him by some one. If the paper was a forgery Anacleta testified also falsely, and was guilty no doubt as a participant in the making up of the paper itself. Finding that the paper was false and a forgery would involve' finding quite necessarily that the testimony that referred to the handwriting of Maximo upon the paper must have been false, or very greatly mistaken, if the signature was riot his genuine signature. The inconsistencies that were pointed out in the argument if the paper was genuine I can not tell so much about because I do not know so well the habits and the business characteristics of the people here. The conduct of Anacleta subsequent to the time she said she paid this money to Maximo was absolutely inconsistent to educated people, but I can not tell, and no one can tell, how inconsistent it would be with people of their class and the people of their understanding. The claims that she made at the time of the commencement of this suit, when she filed this paper that was said to be a demurrer, she could not be so much responsible for as her lawyer or legal adviser, and how full an explanation of her case she gave to him or how full a one he required could not appear, and my experience has been that very frequently the best lawyers who speak Spanish are entirely misled by what their clients tell them and make a claim that is inconsistent with the claim that really their clients wanted to put before the court. I could reconcile the evidence that was given by these witnesses upon the basis that these inconsistencies took place, because all these inconsistent things that were pointed out in the argument might still have taken place and it have been true that that paper was made in 1875, when it purported to have been made. On the contrary, finding the other way would have involved the forgery and combination that I have mentioned. I felt the force of the

> circumstances that Mr. Ney has spoken of in his argument, and considered them. I considered also the rule that is usual in the construction of testimony, that it is the duty of the court to reconcile it upon the theory that men are innocent of crime, if it can be consistently done, and think in this case it could reasonably be done, and while I was not completely satisfied that my finding was not wrong, I thought upon all the testimony, with that rule of construction, that it was my duty to find as I did. In my meditation about the circumstances the very impressions that Mr. Ney has spoken of, about the effect of a false paper of that kind being successful in court, were taken into consideration, and on the contrary it was considered how it would be if the paper supported by the evidence of all the witnesses who saw it made was rejected upon some claim of inconsistency. This had to be taken into consideration. I attempted to balance all the things and did balance them, according to my best judgment and capacity. It resulted in finding that the paper was genuine, and the paper being genuine Mr. Ney does not now contend that the main finding was not right. Now I am extremely conscious that I am liable to be mistaken. I am entirely willing that my judgment should be reviewed, and be reviewed by an authority that stands above me altogether, and I think that under the matter as it now rests the motion will have to be overruled."

The right of the defendants to the possession and control of the property mentioned in the complaint can not be sustained and the plaintiff administrator is clearly entitled to an order putting him in possession thereof and to the further relief prayed for in his complaint.

The judgment appealed from should be reversed and the cause sent back to the trial court, wherein judgment will be rendered in accordance herewith, and such necessary orders entered as may be proper to secure an accounting and distribution of the property under administration, as prayed in the complaint, together with such other relief as may be just and proper.

After twenty days judgment will be entered in accordance herewith, with the costs of both instances against the defendants, and the cause remanded to the court wherein it originated. So ordered.

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

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