

5 Phil. 27

[G.R. No. 2028. September 16, 1905]

**C. HEINSZEN & CO., PLAINTIFFS AND APPELLEES, VS. HENRY M. JONES,
DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

The answer in this case is as follows:

“Comparece el demandado y “

1. Niega todas las alegaciones de la demanda y cada una de ellas.

“2. Contestando de una manera especial, expone:

“A.

Que no puede recordar el asunto de que se trata en la demanda y no cree que otorgara el pagare sobre el cual la misma versa por cuyas razones niega específicamente bajo juramento haberlo otorgado por si o por otra persona apoderada por el para hacerlo.

“B. Si por acaso

hubiera otorgado dicho pagare olvidando despues, entonces lo ha pagado por completo y no esta en deber al demandante ni un centimo.

“C.

Si resultara ser acto suyo, de este demandado, el otorgamiento de dicho pagare que se le ha olvidado, sin haberlo pagado entonces, es por haberlo hecho para acomodar al que el mismo va pagadero y nunca se le ha ingresado nada de valor por dicho acto por lo cual no debo nada tampoco al demandante porque este no desembolso nada de valor al adquirirlo, la nuda propiedad habiendosele traspasado para que

presentara la citada demanda, reteniendo la util Laeisz y Compania.

“A. D. Gibbs,
“W. A. KINOID,
“*Abogados del demandado.*

“ISLAS FILIPINAS, *Ciudad de Manila:*

“Comparece ante mi la autoridad infrascrita el demandado Enrique M. Jones y previo juramento prestado declara que los hechos expuestos en el subparrafo ‘A’ de la demanda *supra* son ciertos y verdaderos.

“HENRY M. JONES.

“Suscrito y jurado ante mi por Enrique M. Jones hoyde Enero de 1902.

“[SELLO.]

“GENARO HEREDIA, *Notary Public*”

On motion of the plaintiffs the court below struck this answer out as sham, under the provisions of section 107 of the Code of Civil Procedure, and afterwards entered judgment for the plaintiffs. The defendant excepted to this judgment and also to the order striking out the answer, and has brought the case here by bill of exceptions.

As said by the appellees in its brief in this court, the material allegations of the complaint are (1) the due execution of the note, (2) the indorsement thereof of plaintiffs, and (3) the nonpayment thereof. The second of these, viz, the indorsement of the note to the plaintiffs, was covered by the general denial contained in the answer. At the hearing of the motion the plaintiffs presented no evidence to show that this allegation of the complaint was true. It was therefore error for the court below to strike out the answer as an entirety.

It is claimed by the appellees that section 103 of the Code of Civil Procedure applies not only to the note itself but also to the indorsement thereon, and inasmuch as the indorsement was not denied by

the defendant under oath, its genuineness is admitted. We can not agree with this contention. The instrument upon which this action was brought is the promissory note. The action was not brought upon the indorsement. That imposed no liability upon the defendant, and while it was the duty of the latter to deny execution of the note under oath, it was not his duty to do this with reference to the indorsement. The reason for this is plain. The defendant is supposed to know whether he signed the note or not, but in a great majority of cases there is no reason for saying that he is supposed to know whether the payee has or has not indorsed the note to a third person. The order striking out the answer as sham will have to be reversed.

In view of further proceedings in this case we will say that the answer did not deny under oath the execution of the note. The simple reading of subdivision (a) of paragraph 2 of the answer is sufficient to show that to hold that such an answer was a compliance with the provisions of section 103 would be to repeal that section.

The judgment of the court below and the order striking out the answer as sham are reversed, and the case is remanded to the court below for further proceedings in accordance with the law. No costs will be allowed to either party in this court, and after the expiration of twenty days judgment should be entered in accordance herewith. So ordered.

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