

[G.R. No. 43. September 23, 1901]

**SERVILIO ROBLES, PLAINTIFF AND APPELLANT, VS. JUAN SANZ, DEFENDANT
AND APPELLEE.**

D E C I S I O N

LADD, J.:

This is an incident respecting nullity of proceedings, and comes up on appeal from an *auto* of the Court of First Instance of Intramuros (Manila) sustaining the validity of the proceedings drawn into question. The appellant, Robles, was the plaintiff below in a declarative action of greater import brought to recover for services rendered by him to the appellee, Sanz, the defendant below, as an employee in the latter's store in Manila from January 9, 1886, to March 12, 1895. One question at issue between the parties was as to whether any payments had ever been made the plaintiff by the defendant on account of said services, the plaintiff alleging in his demand that no such payments had been made and the defendant in his answer alleging the contrary, and specifying the dates and amounts of certain payments, which he stated appeared upon his books of account.

Among other proofs proposed by counsel for the plaintiff was the following; "Documentary; I designate as documentary proof the commercial books of the defendant, Don Juan Sanz, where he says the payments of salary received by my principal appear."

The defendant's books were accordingly examined by the court, due notice to the parties being first given, although neither the plaintiff nor his counsel appears to have been present; and the result of the examination was embodied in a statement specifying certain entries of payments to the plaintiff during the years in question found in the book of accounts-current, and adding that they appeared to have been transferred from the corresponding entries in the daybook and ledger, that the books had been properly stamped, and that the portions where the entries appeared bore no evidence of alterations or erasures.

The appellant's contention is that as a matter of fact the entries mentioned in this statement were made after the books in which they appeared had been closed, and that the omission to note in the statement this circumstance, which was apparent from the books themselves, rendered the taking of the evidence invalid. In the court below the appellant moved that evidence be taken in the incident to enable him to establish this fact as to the character of the entries, but the court refused the application. He now asks in a petition addressed to this court that the same evidence be taken at second instance.

If the omission to state that the entries appeared to have been made after the books had been closed, such being the fact, would constitute a fatal objection to the legality of the proceedings in the taking of the evidence, the appellant should have been permitted to show the fact in the court below, and not having been permitted to do so there, his petition that the evidence be taken at second instance might properly be granted. But we do not think that the court below was bound to examine the books or to state anything that appeared therein, or any circumstance in connection with them, further than as called upon to do so by the plaintiff in his designation of the evidence which he desired taken. If the plaintiff desired the court to ascertain and state whether the entries appeared to have been made after the books had been closed, he should have so requested at the proper time. Not having done so, he can not object that the failure of the court to examine and report upon the condition of the books in this particular has the effect of invalidating the proceeding, especially as it is at least doubtful whether in the absence of such request the court would have been justified in making such examination. (Art. 47 of the Code of Commerce.)

Assuming, therefore, that the fact which the appellant proposes to prove were established it would have no bearing upon the question involved in this incident. It would undoubtedly tend to discredit the entries as evidence in the main action; but the sole question before us in this incident is a purely procedural one, the determination of which depends in no manner upon the character or value of the evidence of the entries, either considered in itself as it appears in the statement drawn up by the court below or in connection with any qualifying circumstance which might be disclosed upon a further examination of the books. The petition for the taking of evidence at second instance must, therefore, be denied.

These considerations also dispose of the appeal itself, no defect in the proceedings in the taking of the evidence being pointed out other than that which the appellant claims results from the omission of the court to note the character of the entries, as having been made after the books were closed. As already indicated, we are of opinion that this omission does not invalidate the proceeding.

The petition for the taking of evidence at second instance is denied, and the judgment is affirmed with costs to the appellant.

Arellano, C. J., Torres, Cooper, Willard, and Mapa, JJ., concur.

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