5 Phil. 496

[G.R. No. 2397. January 04, 1906]

LO SUI, PLAINTIFF AND APPELLEE, VS. HARDEE WYATT, DEFENDANT AND APPELLANT.

D E C I S I O N

JOHNSON, J.:

This was an action by the plaintiff to recover of the defendant the sum of $1,590.48, Mexican, for groceries sold to the defendant at his request.

The complaint contains three different causes of action. The first is to recover the sum of $178.42, Mexican, on an open account, the second for the sum of $919.40, Mexican on a promissory note, and the third to recover the sum of $492.66, Mexican, also on a promissory note.

The evidence adduced during the trial shows that the open account as well as the two promissory notes represented an indebtedness for groceries sold to the defendant at his special instance and request.

The defendant filed a general denial to the first cause of action and demurred to the second and third causes of action. The ground of the demurrer to the second and third causes of action was based upon the fact that they were incomplete and insufficient, because each did not set forth all of the facts constituting the particular cause of action. The first paragraph of the second cause of action (and the first paragraph of the third cause of action is the same) states:

> "The plaintiff refers to the first and second paragraphs of the first cause of action as a part thereof the same as if said paragraphs were specifically set forth herein."

The defendant bases his objection upon section 90 of the Code of Procedure in Civil Actions. Said section 90 defines a complaint and indicates in a general way what it should contain.

Paragraph 2 of said section provides among other things :

> "If a complaint contains more than one cause of action, each distinct cause of action must be set forth in a separate paragraph, containing all of the facts constituting the particular cause of action."

No rule of pleading is better settled than that each cause of action must contain all of the essential facts necessary to constitute a cause of action, but where a complaint contains two or more causes of action, allegations contained in one cause may be incorporated in the other by express reference without the necessity of rewriting the same in the second cause. That is what the plaintiff did here. When the plaintiff in the second and third causes of action referred in the first paragraphs of the same to paragraphs 1 and 2 of the first cause of action and made said paragraphs a part of said second and third causes of action, it was the same as if he had rewritten said paragraphs 1 and 2 into the second and third causes of action.

The defendant attempted to show that the said promissory notes had not been executed by him; that they had been signed by the hotel "The Drexel," by J. E. Sweeney, manager. The evidence adduced during the trial shows that J. E. Sweeney was the manager of the said hotel, but that the defendant was the owner of the said hotel business; that the groceries were sold to the defendant; that the said promissory notes were actually drawn by the said J. E. Sweeney and signed by him as manager of the said hotel business at the special instance and direction of the defendant.

After hearing the evidence, the inferior court rendered a judgment in favor of the plaintiff and against the defendant for the amount of the claim set forth in the several causes of action. After the rendition of said judgment, the attorney for the defendant requested the lower court to make a finding of facts upon which said judgment was based, in accordance with section 133 of the Code of Procedure in Civil Actions. The inferior court made the following finding of facts in accordance with said request:

"I.

"The court finds the plaintiff, Lo Sui, is the owner and proprietor of the Philippine Grocery Store, and that a final judgment in this case will protect the defendants against a recovery by the Philippine Grocery Company, or its assigns, on this same cause of action.

"II.

"The court finds that J. E. Sweeney was the manager of the Hotel Drexel for the defendant Wyatt and was his, Wyatt's, authorized agent.

"III.

"The court finds that the defendant, Wyatt, was present at the Hotel Drexel when the plaintiff and his bookkeeper were there to collect the amount of said notes from the defendant Wyatt, which were there on account, and that said Sweeney was directed by defendant, Wyatt, to execute the notes sued on in this case in the form, and signed them, as they appear, and that he, Wyatt, made and signed the endorsement on the back thereof, as appears thereon and that he is, in fact, the maker of said notes.

"IV

"The court finds that the payment of said notes was demanded of defendant, Wyatt, after maturity.

"The court finds that it is clear from the proof in this case that the defendant had bought groceries from plaintiff from time to time up to the 20th of June, 1904, for which said two notes 'A' and 'B were executed, after which time he purchased groceries of plaintiff to the amount of P502.43, Philippine currency, upon which account defendant, Wyatt, paid plaintiff 324 pesos, leaving a balance due on account of 178.42 pesos, which balance of account, together with the two notes, 'Exhibits A and B' the complaint alleges to be due plaintiff and which the court found to be true and rendered judgment accordingly.

"Defendant's counsel on behalf of his client seems to have placed stress on the language used in the second paragraph of the complaint, to wit:

" 'For a part of said above described indebtedness.'

> "It is not clear to the court why this language was inserted nor does the court think it material. If it has no place, it can be treated as surplusage. Under the pleadings and proof in this case the rights of the parties are clear.
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> "Dated Manila, P. I., January 3, 1904
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> (Signed) "JOHN C. SWEENEY, *Judge*."

The evidence adduced during the trial justifies this finding of facts.

The amount claimed by the plaintiff in the three, different causes of action amounts to $1,590.48, Mexican, which reduced to Philippine currency at the rate of $1.10, Mexican, for 1% Philippine currency, equals the sum of Pl,445.89, Philippine currency, for which judgment is hereby rendered against the defendant in favor of the plaintiff, with the costs in both instances.

After the expiration of ten days it is hereby ordered that judgment be rendered against the defendant and in favor of the plaintiff for the sum of P1,445.89, Philippine currency, with interest at the rate of 6 per cent from the 19th of July, 1904, with the costs in both instances.

Arellano, C. J., Mapa, Carson, and *Willard, JJ.*, concur.

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