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[G.R. No. 2715. February 27, 1906]

BEHN, MEYER & CO., PLAINTIFFS AND APPELLEES, VS. F. ROSATZIN, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

The defendant and appellant was employed by the partnership of Behn, Meyer & Co. as a bookkeeper during the years 1901, 1902, and 1903. He left their employ in the last-named year, and the partnership brought this action to recover a balance of 686.24 pesos claimed to be due it from the defendant. The ledger for the partnership for the year 1901 contained a page devoted to the account- current of the defendant with the partnership. That account for that year showed a balance in favor of the partnership and against the defendant of 686.24 pesos. This account was kept by the defendant himself, and all the entries therein are in his handwriting. The defendant introduced no evidence in relation to the account or its payment, and judgment was entered against him for P571.87 in Philippine currency, the equivalent of 686.24 pesos in Mexican currency. The defendant moved for a new trial, which was denied, and he has brought the case here by bill of exceptions.

Objection was made in the court below to the admission of some of the books of the partnership in evidence on the ground that they were not kept as required by the Code of Commerce. We do not find it necessary to decide this question. The ledger which contained the account above mentioned in the handwriting of the defendant was certainly properly received, in evidence, being an admission by him of this indebtedness. The fact that the book was not kept in accordance with the provisions of the Code of Commerce could not detract from the force of this admission. This book alone was sufficient evidence to prove the cause of action, and the reception in evidence of the other books, if it were error, was error without prejudice.

It was proved that the defendant continued in the employ of the partnership during the

years 1902 and 1903, and was paid for those years his regular monthly salary, and it is claimed by the appellant that this indicates that he must have paid the balance due from him for the year 1901. This contention can not be sustained.

The plaintiff offered no evidence to show that this balance had not been paid, and it is claimed by the appellant that the judgment must be reversed for that reason. The plaintiff having proved the existence of the obligation, the burden of proof was upon the defendant to show that it had been discharged. This was the law in force during the Spanish domination. (Art. 1214, Civil Code.) This rule has not been changed by section 297 of the present Code of Procedure, which section is as follows:

> "*Party must prove his affirmative allegations*.—Each party must prove his own affirmative allegations. Evidence need not be given in support of a negative allegation except when such negative allegation is an essential part of the statement of the right or title on which the cause of action or defense is founded, nor even in such case when the allegation is a denial of the existence of a document, the custody of which belongs to the opposite party."

It is also claimed by the appellant that the existence of the plaintiff partnership was not proved—that is, that there was no proof to show that the partnership had been organized in accordance with the Code of Commerce. There was evidence presented by the defendant in the case that a partnership known as Behn, Meyer & Co. existed in 1900. The defendant contracted with that partnership in 1901 and subsequent years, and is now estopped to say that it was not a partnership.

The appellant also attempted to prove that there had been a change in the partners constituting the firm after 1901, and prior to the commencement of the action, and that the partnership which brought this suit was not the partnership with which the defendant contracted. He however, failed in his attempt, because the witness whom he called to make the proof testified that the new partner, Dittmar, became a member of the firm in 1900.

It is finally claimed by the defendant that the court erred in entering judgment against him for the amount of the debt payable in Philippine currency. This contention has already been decided adversely to the appellant in the case of Gaspar *vs.* Molina,[1] No. 2206, November 2, 1905 (3 Off. Gaz., 651).

The judgment of the court below is affirmed, with the costs of this instance against the appellant. After the expiration of twenty days let judgment be entered in accordance herewith and the case remanded to the lower court for execution thereof. So ordered.

Torres, Mapa, Johnson, and *Carson, JJ.,* concur.

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[1] Page 197, *supra*.

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