

5 Phil. 693

[G.R. No. 2645. March 08, 1906]

**FRANCISCA CABREROS, PLAINTIFF AND APPELLEE, VS. VICTORINO PROSPERO,
DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

In the spring of 1895 the plaintiff delivered to the defendant 4,000 pesos, which the defendant received under an agreement to use the money in business and to divide between himself and the plaintiff one-half of the profits, after deducting the expenses. In October, 1895, in response to demands made upon the defendant by the plaintiff for the return of the money, the defendant promised to return it, with interest, on the 1st day of February, 1896, after deducting the expenses. He did not fulfill this promise, and this action was brought to recover the 4,000 pesos. The court below entered judgment in favor of the plaintiff for 4,000 pesos, less 866 pesos which had been repaid by the defendant to the plaintiff in small amounts from time to time. The defendant appealed from the judgment, but the plaintiff did not.

In view of the promise of the defendant made in October, 1895, to pay the amount received, and interest, on the 1st of February, 1896, we do not think it at all necessary to decide whether the original arrangement between the parties constituted a partnership between them or not. If that arrangement was a partnership the rights and obligations of the parties thereto were fixed by the agreement of the defendant to return the capital and interest.

This promise to return the money contained a provision that the expenses should be deducted. At the trial of the case the defendant, testifying as a witness, stated that he had paid out all of the money to various persons, from time to time, at the request of the plaintiff. The first of these payments was on the 22d of April, 1895, and they continued from month to month until the 10th day of July of the same year, in amounts varying from 100 pesos to 300 pesos. The amounts thus claimed by the defendant to have been repaid prior to

the 11th day of July, 1895, exceeded 2,500 pesos. He also testified that the expenses for carromata hire amounted to 59 pesos. No other evidence was offered by the defendant to show that any expenses had been incurred by him in connection with this business. His testimony in regard to these payments made in the spring and summer of 1895 was so manifestly false, that his testimony in regard to the 59 pesos for expenses must be rejected.

The defendant demurred to the complaint in the court below, which demurrer was overruled, and to the order overruling the demurrer he excepted, and assigns as error in this court that order. That the complaint states a cause of action is apparent from a reading of the ninth paragraph thereof. If the demurrer should have been sustained on the ground that the complaint was ambiguous, this error could in no event justify a reversal of the judgment, for it did not in any way prejudice the substantial rights of the appellant. (Sec. 503, Code of Civil Procedure.)

The assignments of error based upon the testimony of the defendant above referred to, to the effect that he had paid out various sums of money prior to July 10, 1895, can not be sustained, because the evidence upon which they are based is manifestly false.

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

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