6 Phil. 515

[G.R. No. 2278. October 26, 1906]

SUA TICO, PLAINTIFF AND APPELLANT, VS. CARLOS GEMORA, DEFENDANT AND APPELLEE.

D E C I S I O N

TRACEY, J.:

This is an action upon two written instruments. The first, a note for 1,042 pesos, was signed "Carlos Gemora," made to the order of Que Sue Co, and indorsed to the plaintiff over a signature consisting of the impression of a stamp bearing Chinese characters and the name "Bhey Suego" written beneath. The second, a *vale* for 1,100 pesos, was signed "Gemora" and was not indorsed.

The defendant did not plead or appear, and judgment having been entered by default, the court, as required by section 128 of the Code of Civil Procedure, proceeded to hear the plaintiff and his witnesses and assess the damages.

The only evidence offered was these two instruments, without proof of any of the signatures. Upon this unsupported evidence the court refused judgment to the plaintiff and vacated an injunction previously granted in the action, but without costs.

This judgment was correct. It is plain that no link in the chain of proof is more vital than that which connects the defendant with the cause of action. Here there is nothing to show any relation of the defendant to these pieces of paper. The signatures should have been identified, thereby proving the execution of the papers by the defendant and the ownership of them by the plaintiff.

In what is known as the reformed system of procedure in most of the American States there are two methods of treating judgments by default in actions upon instruments for the recovery of money only. In the greater number of States when process has been served with

a verified complaint or in some cases with a notice of the amount claimed, and the defendant fails to appear, judgment may thereupon be entered for the amount stated without any further proof. In other jurisdictions proof of the cause of action is called for in every case of default and such is the procedure adopted by the author of our code. Being expressly required by statute, such proof can not be dispensed with and must fully establish in every particular the cause of action against the defendant.

The judgment of the lower court is affirmed with costs of this instance against the appellant.

After the expiration of twenty days let judgment be entered in accordance herewith and the case remanded at the proper time to the court below for execution. So ordered.

Arellano, C. J., Torres, Johnson, Carson, and *Willard, JJ.,* concur.

Mapa, J., did not sit in this case.

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