

[G.R. No. 3225. February 06, 1907]

**BEHN, MEYER & COMPANY, PLAINTIFF AND APPELLEE, VS. W. H. MITCHELL,
DEPUTY SHERIFF OF THE CITY OF MANILA, DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

The court below found from the evidence that on the 6th day of July, 1905, Lim-Cong-Quiang was the owner and in possession of the merchandise described in the complaint; that at that time he was indebted to the plaintiff in a large sum of money, and that in consideration of the sum of 6,000 pesos he sold, transferred, and delivered by a written document the said merchandise to the plaintiff. Mariano Velasco having commenced an action against Lim-Cong-Quiang, secured a writ of attachment therein, which was levied upon the property described in the complaint by the defendant sheriff on the morning of July 7, 1905. At the time of the levy the plaintiff, by its agent, was in possession, and had taken actual control of the property under the contract of sale executed the day before.

These findings of fact made by the court below must be sustained unless they are plainly and manifestly against the weight of the evidence. (*De la Rama vs. De la Rama*, 201 U. S., 303.)

The important finding of fact relates to the time when the plaintiff took possession, whether it was before or after the levy made by the defendant. Upon this point the agent of the plaintiff swore positively that he was at the store when the deputy sheriff arrived to make the levy, and that he presented to him the contract of sale and notified him that he was the owner and in possession of the property. The deputy sheriff admitted that the contract was exhibited to him and the above statement made, but says that at the time he arrived in the store the agent of the plaintiff was not there. He says, however, that he did not examine a room in the rear of the store and does not know whether the plaintiff's agent, when he first saw him, came through the street entrance or came from the rear. There was other

evidence on the part of the defendant indicating that the plaintiff's agent was not there when the deputy sheriff arrived, but in view of the positive declaration of the plaintiff's witness we can not say that the finding of the court upon this point is plainly and manifestly against the weight of the evidence.

The defendant made a motion for a new trial in the court below on the ground of newly discovered evidence relating to this point. That motion was denied. The ruling of the court below upon such motion can not be reviewed in this court. (Code of Civil Procedure, sec. 146.)

It appeared that at that time of the trial the plaintiff had not given credit on its books to Lim-Cong-Quiang for the purchase price of these goods, the reason given by the plaintiff's witnesses at the trial being that it was not in possession of the goods. The contract executed between the debtor and the plaintiff on July 6 contained all the elements of a valid contract required by article 1261 of the Civil Code, and the mere fact that the plaintiff had not made an entry upon its books showing that 6,000 pesos of its indebtedness against the vendor had been paid, can not render the contract invalid. It is apparent that the reason why the entry was not made was because the possession had been taken from it by the sheriff under an adverse claim before a reasonable time had elapsed within which it could make the entry. It was in possession of the goods for about a half hour only.

The judgment of the court below is affirmed, with the costs of this instance against the appellant. After expiration of twenty days let judgment be entered in accordance herewith and ten days thereafter the record remanded to the court from whence it came for proper action. So ordered.

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