44 Phil. 675

[G.R. No. 19278. March 24, 1923]

CHARLES A. FOSSUM, PLAINTIFF AND APPELLEE, VS. FERNANDEZ HERMANOS, A GENERAL COMMERCIAL PARTNERSHIP, JOSE F. FERNANDEZ Y CASTRO AND RAMON FERNANDEZ Y CASTRO, MEMBERS OF THE SAID PARTNERSHIP OF FERNANDEZ HERMANOS, DEFENDANTS AND APPELLANTS.

D E C I S I O N

STATEMENT

Plaintiff alleges that he is a resident of the City of Manila, and that the defendant Fernandez Hermanos is a duly registered commercial partnership with its place of business in the same city, and that the other defendants are members of the partnership. That on November 17, 1920, Fernandez Hermanos accepted a bill of exchange, which is now overdue, drawn in the City of New York by the American Iron Products Co., Inc., upon Fernandez Hermanos for the sum of $4,716.14, United States currency, payable ninety days after sight at the Asia Banking Corporation, with interest at the rate of 9 per cent. That the Bank endorsed the bill of exchange to the plaintiff, a copy of which with the acceptance and endorsement thereon are specifically plead in the complaint. At the time of the maturity of the bill of exchange, the current rate of Bank Demand drafts on New York was 12¾ per cent which would make the amount due and payable on the bill of exchange at maturity P11,190.67, Philippine currency. It is then alleged that demand has been made and payment refused. Wherefore, plaintiff prays judgment for the amount, with interest at 9 per cent from February 15, 1921, and costs.

For answer, the defendants make a specific denial of all the material allegations of the complaint, and, as a special defense and counterclaim, allege that the defendant Fernandez Hermanos on February 4, 1920, entered into a

contract with the plaintiff in his capacity as manager of the American Iron Products Co., Inc., copy of which is set forth in the pleading. That the Products Company sent the defendant a chain and at the same time and, founded upon the contract, drew the bill of exchange alleged in the complaint. That the defendant Fernandez Hermanos, believing that the chain sent by the American Iron Products Co., Inc., was in conformity with the conditions specified in the contract, accepted the bill of exchange as drawn. That the chain sent does not meet the conditions imposed by the contract. That by reason thereof the defendant refused and still refuses to accept the chain sent by the company, of which the defendant was notified, and has refused and still refuses to pay the bill of exchange, which was the price of the chain. As a counterclaim, the defendant alleges that due to the fact that the chain could not be used, he was damaged in the sum of P5,000, wherefore, defendants pray judgment for that amount and costs.

Upon such issues, the parties entered into a stipulation of facts upon which the case was tried and submitted to the lower court, which rendered judgment in favor of the plaintiff as prayed for in the complaint, from which the defendants appeal, claiming that the lower court erred in holding that "there is in the record evidence sufficient to support this action," in holding that defendants' Exhibit 4 is a certificate issued by Lloyd's register of shipping, in rendering judgment in favor of the plaintiff, and in not rendering judgment for the defendants, and in denying their motion for a new trial.

JOHNS, J.:

Under our view it is unnecessary to decide many of the legal questions raised and discussed by opposing counsel in their respective briefs. It is admitted that the defendants placed a written order with the American Iron Products Co., Inc., for "300 Fathoms, best quality Iron Chain Links, 6½" X 3 7/8″ X 1¼", to be made up in accordance with blueprint which you submitted in your inquiry of December 18, 1919," and that the order specifies that "this chain is to fit into a gipsy wheel, so therefore, the size must be exact. Material is to be made up according to Lloyd's rules and the material is to be stamped with test marks and certificate of origin is to be sent with shipping documents. Price, $18.70 per 100 lbs, F. L. F. Manila." It is also admitted that the draft in question was drawn by the American Iron Products Co., Inc., and that it was duly accepted by

the defendants, and that a chain was shipped by the American Iron Products Co., Inc., to the defendants at or about the time the draft was drawn, and later it was received by the defendants. Having received the chain and accepted the draft, the defendants became at least primarily liable for the payment of the draft. Assuming that the American Iron Products Co., Inc., was itself the owner and holder of the draft, under such a state of facts, it would devolve upon the defendants to allege and prove that the chain, which was delivered and received, did not comply with the specifications, and did not answer the purposes for which it was intended. On that point it may well be doubted whether the allegations in the answer are sufficient to raise that question. It is alleged "that the chain sent by the American Iron Products Co., Inc., does not meet the conditions imposed by the aforesaid contract, nor were the terms of the said contract complied with." It will be noted that the answer does not specify or point out any specific defect in the chain, or how, or in what manner or particular it does not comply with the conditions or terms of the contract, and it might well be contended that the answer is not sufficient to raise the question of any defects in the chain. Be that as it may, upon the admitted facts, it devolved upon the defendants to prove, by a preponderance of the evidence, that the chain was defective, and how and in what manner it was defective. Upon that point, the trial court found as a fact that there was a failure of proof, and the evidence supports the finding. As stated, the chain was bought and sold on a written order, specifying that it was to fit into a gipsy wheel, and that the size must be exact, and that the material is to be made up according to Lloyd's rules and is to be stamped with test marks and the certificate of origin which was to be sent with the shipping documents. There is no allegation or proof that the chain does not fit into a gipsy wheel, or that the size is not exact, and the shipment was accompanied with a certificate made by the "Surveyor to Lloyd's Register of Shipping," in substance and to the effect that the material in the chain was made up according to Lloyd's rules, and the certificate shows that the chain was stamped with the proper test marks and the certificate of origin. This certificate was delivered to, and was in possession of, the defendants, by whom it was introduced in evidence at the trial. It is conclusive evidence that the chain was made of the material and in the manner specified in the written order. In substance that was the finding and theory of the trial court.

This case was formally submitted in this Court on December 2, 1922. It appears that on December 29, 1922, the plaintiff formally assigned his claim to the Asia Banking Corporation which now asks that any judgment rendered should be in its name. It also appears that Mr. Tenney, who represented Mr. Fossum in both this and the lower court, had a contract for his legal services, which is more or less contingent upon success. The Bank now claims that Mr. Tenney never was its attorney, and denies any liability for his fee. Be that as it may, the assignment was made about four weeks after the case was formally submitted to this court. Hence, judgment will be entered here in the name of Fossum as plaintiff. The legal services have all been rendered, the agreed fee is reasonable and Mr. Tenney should be paid out of the judgment.

Judgment is affirmed, with costs. So ordered.

Araullo, C.J., Street,
Malcolm, Avanceña, Ostrand, and *Romualdez, JJ.,* concur.

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