

**THE ROYAL SHIRT FACTORY, INC., PLAINTIFF AND APPELLEE, VS.
CO BON TIC, DEFENDANT AND APPELLANT.***G.R. No. L-6313. May 14, 1954*

Ponente: MONTEMAYOR, J.

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The present appeal involves an action originally brought in the Municipal Court of Manila by the plaintiff, the Royal Shirt Factory, Inc., to recover from defendant Co Bon Tic the sum of P1,422 said to represent the balance of the purchase price of 350 pairs of "Balletteenas" shoes at P7 a pair, with interest at 12 per cent per annum from August 27, 1948, and 25 per cent of said sum as attorney's fees, and costs.

The principal issues in the Municipal Court was the nature of the sale of the 350 pairs of shoes by plaintiff to defendant—whether it was an outright sale as contended by the plaintiff, or a sale merely on consignment as claimed by the defendant who wanted to return the shoes not yet sold by him. There was also involved the question of the amount already paid by the defendant to the plaintiff. The Municipal Court held that the contract was of sale on consignment; that of the 350 pairs of shoes consigned, 207 pairs were sold at the rate of TS a pair, amounting to a total of P1,656; and that defendant had paid the sum of P1,028 to plaintiff on account of the purchase price of the shoes sold, excluding the amount of P42, value of Check No. 790264 issued by defendant as payment but returned to him by the plaintiff and not replaced with cash. Judgment was rendered sentencing the defendant to pay plaintiff the sum of P628 with interest thereon at the legal rate from the date of the filing of the complaint, and to return to plaintiff the 143 pairs of shoes still unsold, unless he preferred to retain and pay for them at the rate of P8 a pair within a period of fifteen days from receipt of a copy of the decision.

The defendant appealed from the judgment to the Court of First Instance of Manila, and after trial, the appellate court held that the transaction involved was one of outright sale at P7 per pair of shoes, sales tax included, the court accepting the version given by the plaintiff to the effect that on the basis of the order slip (Exhibit A), the defendant had 9 days from delivery of the shoes to make his choice of the two alternatives, that is to consider the sale of the 350 pairs of shoes closed at the flat rate of P7 per pair, sales tax included, or, at the expiration of 9 days to pay for the shoes sold at P8 per pair, and to return the remaining unsold ones to plaintiff; and that, inasmuch as defendant, at the expiration of the 9 days stipulated, failed to return the shoes, and actually began making partial payments on account of the purchase price agreed upon, the transaction in the nature of a straight sale, was considered closed. The court also found as did the Municipal Court that the amount of P420 represented by Check No. 790624 was never replaced or exchanged for cash by the defendant upon its return to him, and consequently, it may not be considered as part payment.

Judgment was rendered in favor of the plaintiff and against the defendant and the latter was ordered to pay to the former the sum of P1,422, the unpaid balance of the sales price of 350 pairs of shoes in question, with interest on the amount due at the rate of 12 per cent per annum from August 27, 1948 until final payment, plus the amount of 25 per cent of the same sum for attorney's fees as stipulated, and costs. After failing to get a reconsideration of the judgment, the defendant appealed the case to the Court of Appeals which Tribunal after submission of the briefs

for both parties, and acting upon a motion filed by counsel for the appellant that the case be certified to the Supreme Court for the reason that the question raised in his first and second assignment of errors involved the jurisdiction of the trial court, granted the same and certified the appeal to us for final determination pursuant to Section 17, par. 2(3) of Republic Act 296.

Under the first and second assignment of errors, the defendant raises the question of jurisdiction of the Court of First Instance of Manila in reviewing and passing upon the issues already passed upon and decided by the Municipal Court but not appealed from by plaintiff. It is the theory of the appellant that as for instance, when the Municipal Court found that the transaction between plaintiff and defendant was a sale on consignment and plaintiff failed to appeal from that decision, that part of the judgment became final as to him (plaintiff), and should be regarded as *res adjudicata*, and that the Court of First Instance in the exercise of its appellate not original jurisdiction may not review and pass upon the same question or issue, and that in so doing it exceeded its appellate jurisdiction. Defendant further contends and cites authorities in support of his contention that regardless of the provisions of Rule 40, section 9, of the Rules of Court whose provisions are to the effect that a perfected appeal from a decision of the justice of the peace or the municipal court shall operate to vacate the said judgment and shall stand for trial *de novo* upon its merits in accordance with the regular procedure in that court as though the same had never been tried before and had been originally commenced there, an appeal brings up for review only that which was decided against the appellant so that that part of the judgment favorable to him is not reviewable if the other party does not appeal; that a party who has not appealed a judgment cannot assail it, neither can he ask for a judgment more favorable to him than that rendered in the court below; that the party who has not appealed a judgment signifies his acceptance of the correctness of the said judgment, and that in the appeal his position is merely defensive and he may only refute appellant's assignment of errors and sustain the judgment of the trial court.

The above contention of appellant might possibly hold with regards to appeals from judgments of Courts of First Instance to the Court of Appeals or to the Supreme Court in that one cannot seek further remedy or relief in the appeal not taken by him than that granted him by the trial court, unless of course, the appellate court *motu proprio* takes cognizance of palpable errors committed by the trial court and proceeds to correct the same even if the correction favors the appellee (Section 5, Rule 53, Rules of Court). However, we have a special legal provision governing an appeal from justice of the peace or municipal courts to Courts of First Instance, the very Rule 40, section 9, of the Rules of Court cited by defendant-appellant. Such appeal serves to vacate the judgment appealed from and the action will stand for trial *de novo* upon its merits as though the same had never been tried before and had been originally commenced in the Court of First Instance. The Court of First Instance will try the case without regard to the proof presented in the Justice of the Peace or Municipal Court or the conclusions arrived by said court. The Court of First Instance will not affirm, reverse, or modify the rulings or the judgment appealed from for the simple reason that there is no ruling or judgment to affirm, reverse or modify because all the proceedings had in the justice of the peace or municipal court, including the judgment, do not in contemplation of law exist, having been vacated; and the only instance when said judgment appealed from is revived is when the appeal is withdrawn or dismissed (*Crisostomo vs. Director of Prisons*, 41 Phil., 868; *Colegio do San Jose vs. Sison*, 56 Phil., 344, 351; *Lizo vs. Carandang*, 2 Off. Gaz., 302, March 1943; *Co Tiamco vs. Diaz*, [*] 42 Off. Gaz., 1169, 1231; *Lichauco vs. Guash*, 42 Off. Gaz., 1863, 1865; Rule 40, Sec. 9, Rules of Court). From all this it is evident that the contention of the appellant is untenable; and that any and all issues involved in a case originating in an inferior court, whether or not passed upon by said court and whether or not appealed upon by any or both parties, are, thrown open and may be passed upon by the Court of First Instance when the case is appealed to it. Consequently, the Court of First Instance of Manila had jurisdiction and authority to rule on the issue as to the nature of the transaction between plaintiff and defendant as to the sale of the shoes. Now, was it an absolute sale or a sale on

consignment?

Exhibit A of the plaintiff which was accepted, admitted and considered by the Court of First Instance of Manila is an order slip which lists down and classifies the 350 shoes in question according to color, and contains the following condition of the sale in the handwriting of Mr. Chebat, the agent of the plaintiff who sold the shoes to the defendant—

CONDICION (Terms)

"Al cabo de 9 dias, pagar todo a razon de P7 al par, o pagar lo vendido a P8 el par".

Explaining said condition, Mr. Chebat testifying, said that it meant that the defendant could either consider the sale as one on consignment, sell as many shoes as he could at any price, pay for them at P8 a pair and at the end of nine days return the shoes unsold to the plaintiff, or, consider the sale of the 350 shoes as absolute at P7 a pair; and that since the defendant did not return any of the shoes at the expiration of 9 days he must be held to have chosen the second alternative, namely, that he bought the whole stock of shoes at P7 a pair. It will be noted, however, that Exhibit "A" was never accepted, much less signed by the defendant or his sales manager Mr. Bernardo Geronimo, and therefore, cannot bind the defendant and so is but a self-serving evidence which should not have been admitted and considered by the trial court.

Disregarding Exhibit "A", the nature of the transaction must be judged by other evidence, including the conduct of the parties at the time of making the contract and subsequent thereto (Art. 1282 of the old Civil Code and Art. 1371 of the new Civil Code). Exhibit "B" of the plaintiff is an invoice of the same 350 pairs of shoes whose price including sales tax is listed as P2,450. It was evidently not only accepted by the defendant but on it he noted down in his own handwriting the different partial payments of P500, P528 and lastly of the controversial P420 by check. It will also be noticed that the defendant in making said notations of payment considered the full purchase price of the 350 pairs of shoes at P7.00 or P2,450, and it was against said total that he had been making the payments, putting down the balance after each payment. For instance, after paying P500 on account, he put P1,950 as balance, and after paying another P528, he put down as balance P1,422. In other words, he obviously accepted the straight sale to him on credit of the whole 350 pairs of shoes for P2,450 and made partial payments on account thereof. In making said partial payments, he made no mention whatsoever of the number of shoes sold by him and the number of shoes remaining unsold, which he should have done had the sale been on the consignment basis. On the other hand, he merely mentioned the balance of the purchase price after deducting the several partial payments made by him. Furthermore, if the sale had been on consignment, a stipulation as to the period of time for the return of the unsold shoes should have been made; but evidently that had not been done and defendant kept the shoes unsold more or less indefinitely, but giving the same excuse that he could not return them to the plaintiff because he did not know where to return them. The plaintiff Royal Shirt Factory, Inc., is quite well-known. It has a store at the Escolta and according to the invoice (Exhibit B), it is an importer, wholesaler and manufacturer, and it could not have been hard, much less impossible for the defendant to return the shoes unsold by him had the transaction really been a sale on consignment. So, on this issue of the nature of the transaction between the parties, we agree with the trial court that it was a straight sale at the rate of P7 per pair of shoes.

As regards Check No. 790264" of the China Banking Corporation, Exhibit F, in the amount of P420 with which defendant attempted to make another partial payment as appears in Exhibit 'B', both parties agree that since the check was postdated, it was returned by the plaintiff to the defendant who however claims that he replaced it with cash. This was stoutly denied by plaintiff. After a careful review of the evidence, we agree with the trial court that the preponderance thereof is to the effect that the amount of said check of P420 was never replaced by the defendant. It is also interesting to note that the Municipal Court of Manila where this issue was first considered,

came to the same conclusion that the defendant never replaced the amount of this check in cash.

The decision appealed from sentences the defendant to pay to the plaintiff P1,422 with interest at 12 per cent per annum from August 27, 1948, plus 25 per cent of the same sum for attorney's fees, besides costs. This rate of interest and the 25 per cent for attorney's fees appears in Exhibit "B" in printed form as terms or conditions. In Exhibit "A", the order slip, the conditions of sale also printed provide for 20 per cent only as attorney's fees and no rate of interest in case of litigation. Had the defendant signed Exhibit "A", which he did not, he would have been bound by it and would be liable to 20 per cent of any amount due from him, but because of the absence of stipulation as to the rate of interest he would be paying only the legal rate of 6 per cent per annum. There is no explanation of this difference in conditions of sale about rate of interest and attorney's fees found in the order slip (Exhibit "A") and the invoice (Exhibit "B") both of the plaintiff. Anyway, neither did the defendant sign Exhibit "B". If we hold defendant bound by Exhibit "B" at all, it is because of his tacit acceptance of the total value of 350 pairs of shoes and by his notation against it of his partial payments. We do not think it fair for him to be bound also by the printed terms of the conditions of sale. Moreover, we find under said printed form the clause in pencil: "as agreed with Mr. Chebat." We may even say that said clause in hand- writing may be considered as having overruled what was printed as to the rate of interest and the attorney's fees. We therefore hold that the defendant should only pay 6 per cent interest on the amount due him from the date of the filing of the complaint, with costs, and nothing for attorney's fees. It is also interesting to note that this was the same ruling of the Municipal Court on this point.

With the above modification, the decision appealed from is hereby affirmed, with costs.

Paras, C J., Pablo, Bengzon, Reyes, Jugo, Bautista Angelo, Labrador, and Concepcion, JJ., concur.

[*] 75 Phil., 672.

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