

MARIANO VALMILERO, PLAINTIFF AND APPELLEE, VS. KONG CHANG SENG, DEFENDANT AND APPELLANT.

G.R. No. 10809. December 24, 1915

Ponente: MORELAND, J.

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MORELAND, J.:

The complaint in this action, ppart from the paragraph stating the residence of the parties and the demand for payment and the prayer for relief, contains this sole paragraph: "That the defendant is in debt to plaintiff in the sum of one thousand and fifty pesos (P1,050) Philippine currency, which became due and payable on the 6th day of the present month." (Complaint filed in October, 1914.)

To this complaint a demurrer was interposed containing these two paragraphs only: "First. That the complaint does not contain facts sufficient to constitute a cause of action.

"Second. That the complaint is ambiguous, unintelligible and vague."

The trial court overruled the demurrer and the defendant answered. Trial was had, at which plaintiff presented a written instrument in which the defendant acknowledged a debt in favor of plaintiff of P1,050 and agreed to pay the same on the 6th of October, 1914. The defendant presented no evidence. His answer admitted the execution of the instrument recognizing the debt and agreeing to pay it but alleged that the plaintiff had extended the time of payment until the end of the year 1914 and agreed that the debt could be paid from the products of the sale of certain merchandise which the defendant had purchased of plaintiff.

The trial court found for the plaintiff and rendered judgment for the sum demanded and interest. Defendant appealed.

Appellant makes no specific assignment of error but hia brief being very short and his whole argument devoted to one specific point, we are of the opinion that the brief is in itself an assignment of error sufficient to come within the rule requiring in each case an assignment of error by the appellant. (Paterno vs. City of Manila, 17 Phil. Rep., 26; Santiago vs. Felix, 24 Phil. Rep., 378.) The argument is devoted to the proposition that the demurrer should have been sustained on the ground that the complaint does not state facts sufficient to constitute a cause of action. We would agree with that contention if the demurrer had been properly framed in accordance with the decisions of this court. It is now the settled doctrine of this court that the demurrer must not only state the objections to the complaint as they are set out in the Code of Civil Procedure but it must also state the grounds on which the objections rest. (Sec. 91, Code of Civil Procedure; Lizarraga Hermanos vs. Yap Tico, 24 Phil. Rep., 504; De la Riva vs. Molina Salvador, 32 Phil. Rep., 277, filed November 23, 1915.) In the case .befere-us the demurrer is couched in the language of the Code and, therefore, gives only the objections to the complaint. The demurrant overlooked the last paragraph of section 91 which requires that the grounds on which the objections are based shall also be stated. The trial court overruled the demurrer on the sole ground that 'the demurrer containing no grounds for the objections presented against the complaint, it is overruled."

From the sections of the Code of Civil Procedure and the cases just cited it is clear that the demurrer was properly overruled, as it was defective in form. The court based its decision overruling the demurrer precisely on that ground. Appellant did not seek to amend his demurrer or offer a new one properly drawn, and, as a result, he finds himself in this court under the necessity of attempting to procure the reversal of an order overruling a demurrer which was admittedly defective and valueless as a pleading.

While the complaint did not state facts sufficient to constitute a cause of action, evidence was introduced, without objection on the part of the defendant, to prove the cause of action which it is clear plaintiff intended to allege. The reception of that evidence cured the defects in the complaint and established a cause of action against appellant. The appellant not having produced evidence to overcome that offered by the appellee, the trial court could do nothing else than to enter the judgment appealed from. (*Lizarraga Hermanos vs. Yap Tico*, supra; *De la Riva vs. Molina Salvador*, supra.)

The judgment appealed from is affirmed, with costs against appellant. So ordered.

Arellano, C.J., Torres, Johnson, Carson, Trent, and Araullo, JJ., concur.

Judgment affirmed.

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