

GUTIERREZ HERMANOS, PLAINTIFF AND APPELLEE VS. ORIA HERMANOS & CO., DEFENDANT AND APPELLANT.*G.R. No. 12266. December 17, 1918*

Ponente: TORRES, J.

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There have come before us the petitions of the 23d and 25th of last November whereby counsel for the defendant, Oria Hermanos & Co., making an amended motion for a rehearing, prays for a reopening of the case in order to afford the parties an opportunity for a new discussion on the request made to this court to reconsider its decision. Said counsel alleged that the decision of the 12th of last November^[1] is openly at variance with the previous decision of March 30, 1915,^[2] inasmuch as the former approves the rendition of accounts by the plaintiff without due proof in the matter of the invoices relative to the rice and kerosene oil and the internal revenue taxes, while by the later decision, the plaintiff Gutierrez Hermanos was ordered to render a vouchered account of these invoices and taxes. The later decision of this court is not a strict compliance and is not in agreement with what was ordered in the earlier decision, inasmuch as in the later decision there was approved a rendition of accounts without proof by means of the exhibition of documents, vouchers and books which Gutierrez Hermanos did not present.

The petitioner's chief contention consists precisely in that this court, in approving in its decision of the 12th of last November the second report of the referee, of the date of June 29, 1916, fixed the amount which was to be deducted from the sum claimed by the plaintiff Gutierrez Hermanos, basing this finding upon a liquidation and account rendered without vouchers; wherefore the first decision of March 30, 1915, was not complied with, as regards said invoices of rice and kerosene oil and the internal revenue taxes.

If the suits and litigations brought before the courts are to be decided in accordance with the pleadings and evidence submitted by the parties, and if mere pleadings without proof to show the propriety and justice of a claim are insufficient, then, as Oria Hermanos & Co. did not succeed in proving, during the trial of the present case in the Court of First Instance, that the amount of the increase in the weight and price of the rice and kerosene oil and the amount of the overcharge of certain sums over the value of these commodities constitute a greater sum than that fixed in the decision of this court rendered on November 12th last, to wit, P37,063.57, which is to be deducted from that contained in the decision of March 30, 1915, to wit, P147,204.28, nothing could be more just and logical than the pronouncement contained in this court's last decision that is the subject of the petitioner's motion.

Irrefutable as is the averment by the plaintiff, Gutierrez Hermanos, that the defendant, Oria Hermanos & Co., owed it the sum claimed, that is, P147,204.28, according to the documentary evidence which the plaintiff had presented, and said claim having been contested by the debtor, Oria Hermanos & Co., the latter firm, in order to prove that the plaintiff had defrauded it by increasing the price of the rice and kerosene oil and the weight of the grain in the invoices, and by unduly charging, in these latter and in the internal revenue account, amounts to which the plaintiff was not entitled, averred that such fraudulent increases amounted to P273,425.17, which sum, compared with that stated in the said decision, would show a balance in favor of Oria Hermanos & Co. of

P56,544.24. This sum appears in the documents that form Exhibit A.

With respect to the schedules or statements that compose Exhibit A, the referee states on page 58 of his report that there is no proof as to how the figures and conclusions set out in said schedules or statements of fraud's were arrived at, and that he could not accept such alleged frauds as a justification of the claim of Oria Hermanos & Co. against Gutierrez Hermanos. After a very close and careful examination of the record, together with the documents and books thereto attached, this court also has found no proof that the increase in the price and weight of the rice, and the amounts given as overcharges in the price of the said article and in that of the kerosene oil, amount to the aforementioned sum of P273,425.17, nor that there is a balance of P56,544.24 in favor of Oria Hermanos & Co.

There would have been no certain and sufficient reason for the commission of such an injustice as would have been committed by a failure to acknowledge the existence of such a balance in favor of the defendant, Oria Hermanos & Co., if the latter had furnished satisfactory proof of its contention and claims, for its counsel well knew that the defendant was at the same time a claimant and plaintiff in the matter of the exception and therefore obliged to prove that it was the creditor of a certain sum in which said balance consisted, and that Gutierrez Hermanos was owing it that sum.

If, for want of books and vouchers, Gutierrez Hermanos did not succeed in proving the certainty and exactness of the contents of the invoices, especially of the invoices of rice, and if Oria Hermanos & Co. had presented proof that showed that Gutierrez Hermanos, instead of being its creditor, was still its debtor to the extent of P56,544.24, it would have been a glaring and flagrant injustice for this court not to have heeded the defendant's pleading and proofs. It was alleged and very much discussed, but not proven, that Oria Hermanos & Co. was the creditor that it claims to be, and not the debtor as the evidence discloses it is.

In view of the fact that the firm of Gutierrez Hermanos could not or would not present a vouchered account, alleging that it was quite a long time since the books and their vouchers had disappeared, and in the absence of proof to the contrary the trial court was authorized to approve the account and liquidation made by the referee inasmuch as the party obliged to render and present the accounts had not done so, and the referee was appointed by the court in conformity with law and with the agreement had between the parties[^]

It is not a question of the value of the hundreds of sacks of rice received by Oria Hermanos & Co. and for which this company is a debtor to Gutierrez Hermanos, but the point in issue concerns the surcharges, extra prices and other increases complained of by Oria Hermanos & Co. and unsubstantiated by vouchers. In a suit for the tender or rendition of accounts both parties are at the same time each plaintiff and defendant, as in a double action, and, consequently, both should have submitted their respective proof, but as they did not do so, the trial court, in order to terminate the suit at once, abided by the report of the referee and the result of the accounts which the latter drew up after hearing both parties. (Decision of the supreme court of Spain of March 7, 1867.)

In view of the fact, then, that Gutierrez Hermanos has not proven the true price of the rice and kerosene oil to which the invoices in question refer, nor the origin or the legitimacy of the surcharges and other increases which it had included in said invoices, and, on the other hand, it being unquestionable that Oria Hermanos & Co. received the rice and kerosene oil, though it also has not proven its averments, this court, in view of the evidence, rendered decision in accordance with the law by admitting, though not absolutely, the conclusions of the referee in his second report, for, due to the failure of both parties to submit proof relative solely to the alleged extra prices, surcharges and other improper increases made by Gutierrez Hermanos in said invoices, and owing to the further fact of there being no record of the denial by Oria Hermanos & Co. of its having received the rice and kerosene oil the price of which it was claimed was increased to its prejudice by the shipper, the commercial firm of

Gutierrez Hermanos/this court could not have incurred the error of relying upon the first report of the referee and failing to decide the suit by a declaration of the respective liability accruing to each of the litigating parties and, accordingly, to fix the sum which the defendant owes to the plaintiff and the sum which must be deducted from the defendant's debt and in its favor, for the reason that not because Gutierrez Hermanos, with intent of gain, increased the price and the weight of the rice and the kerosene oil and increased other sums, the total amount of which, discretionally fixed, should be deducted from its credit, would Oria Hermanos & Co. not be obliged to pay the true value and price of the effects which it had received according to the evidence shown in the record.

The reservation of qualifying as fraudulent the conduct of Gutierrez Hermanos in its preparation of said invoices, as stated in the previous decision of March 30, 1915, depends on the evidence adduced by both parties at the trial, although, according to that evidence, weighed in the decision which is the subject matter of the motion, this court would not have held that it should have made such a qualification, perhaps inopportune and premature in view of the existing evidence.

For the foregoing reasons, the motion for reconsideration presented by the petitioner is denied, with costs. So ordered

Arellano, C. J., Carson, Street, Malcolm, and Avanceña, JJ., concur.

Araullo, J., did not take part.

[1] Page 92, ante.

[2] 30 Phil. Rep., 491.

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