

CARLOS PALANCA, PLAINTIFF AND APPELLEE, VS. EFIGENIO MANDANAS, DEFENDANT AND APPELLANT.

G. R. No. 24623. February 23, 1926

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The complaint asks that the defendant be ordered to pay the plaintiff the sum of P17,900.47 (p. 50, Bill of Exceptions), which the latter claims he owes him, plus legal interest on said sum.

The defendant answered denying generally the facts alleged in the complaint and setting up a special defense in "which he states that the balance alleged to be due from Mm is incorrect, because he has made payments to the plaintiff amounting to P16,933.29, leaving a balance due from him of only P1,611.36. He, in turn, prays that the attachment levied on his property be declared illegal.

The lower court finding it proved that some payments had been made by the defendant amounting to P2,083.92 which, deducted from the P17,900.47, leaves a balance due from the defendant of P15,816.55, ordered the defendant to pay the plaintiff the latter sum, plus legal interest from August 16, 1923, the date of the filing of the complaint, and the costs.

The defendant appeals from this decision and makes several assignments of error as specified in his brief and which deal, principally, with the payments which he alleges to have made to the plaintiff.

He impliedly admits having received merchandise and other effects from the plaintiff, the value of which amounts to the sum adjudicated to the plaintiff. He claims, however, that he has paid the greater part of it. It is incumbent upon him to prove such assertion which has not been proven in the record.

The fact that he, as alleged, delivered to the plaintiff his account books, receipts and vouchers referring particularly to the payments not recognized by the latter, without demanding a receipt therefor, indicates gross imprudence incompatible with the amount of business experience possessed by the defendant, as may be seen from the record. Said delivery, denied by the plaintiff, has not been sufficiently proven, nor is there any proof of the existence of the receipts which it is said were delivered.

The journals and books of travel presented by the defendant as evidence of the alleged payments made by him, do not convince us because the payments were made in cash, for which the defendant should have demanded and received the proper receipts as he claims he did but which were not produced at the trial without sufficient reason to explain their non-presentation, inasmuch as said delivery cannot be taken into consideration as the same has not been proven. Even supposing that such books are really account books, we are of the opinion that the weight of authority militates against the admission of their entries as proof of cash sums delivered by way of payment or loan. (See Wigmore on Evidence, vol. II, pp. 1901, 1902, 1907-1909.)

The testimony of Teodoro Bulaon, who testified that a certain sum of money was offered him to corroborate the defendant's testimony, greatly weakens the defendant's case. We do not find sufficient reason to reject the

testimony of the said witness Bulaon as being unworthy of credit.

In regard to the documents Exhibits 1 and 2 which the defendant says are statements of account sent to him by the plaintiff which, if authentic, would tend to corroborate the defendant's statement that he was not in debt to the plaintiff, because it appears from said documents that the balances against the defendant at the end of the years 1920 and 1921 were only P7,296.80 and P11,709.72, respectively, instead of P17,481.41 and P25,901.61 which appear in the specifications made by the plaintiff, the authenticity of which documents, vigorously attacked in these proceedings, cannot be held proven.

Said documents having been signed, contrary to the usual custom, according to the evidence, of not signing them but only stamping them; certain details in their make-up such as their numbering, punctuation marks, compared with those of unquestioned documents of the same kind, and the signatures which appear at the bottom thereof and the authenticity of which is strongly doubted, have the effect of making us consider them, as the lower court should have done, in admissible as evidence, not being authentic.

We find no sufficient ground in the record for declaring that the attachment levied on the defendant's property is illegal and unjustifiable.

In regard to the new trial applied for by him and denied by the lower court, the evidence alleged to have been newly discovered is not alleged in the defense set up by the defendant in his answer; it would not prove the defense alleged, but another defense not stated in the answer. Therefore, it would not change the result of the case.

The assignments of error being without merit, and the judgment appealed from being in accordance with the facts and the law, the same is hereby affirmed with the costs against the appellant. So ordered.

Avanceña, C. J., Street, Malcolm, Villamor, Ostrand, Johns, and Villa-Real, JJ., concur.

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