

**F. M. YAP TICO &#038; CO., LTD., PLAINTIFF AND APPELLANT, VS.  
JOSE LOPEZ VITO, IN HIS CAPACITY AS ADMINISTRATOR OF THE  
ESTATE OF GREGORIO YULO, DEFENDANT AND APPELLEE.**

*G. R. No. 24988. March 25, 1926*

Ponente: JOHNS, J.

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**JOHNS, J.:**

**STATEMENT**

October 14, 1910, Gregorio Yulo y Regalado, then 37 years of age, executed a mortgage to and in favor of the commercial house of Francisco Manzano Yap Tico, through its attorney-in-f act, Yap Eng Chong, on his sugar plantation, in consideration of which and at that time, the firm advanced Yulo the sum of P15,000. It was stipulated in the mortgage that the debt should draw interest at the rate of 10 per cent per annum, and that the original debt, "as well as such obligations as are herein contained," should become due and payable about the month of May, 1911. It was contemplated by both parties that the debt should be paid by Yulo by the delivery and sale of sugar produced on his plantation. This was followed by another like instrument of date November 24, 1911, including some other property, in which it is recited that "on account of the fact that the fields of said haciendas were burned," and "for the purpose of obtaining an extension of that debt up to June 30, 1912, and to increase the credit of P15,000 by the amount of P8,000, Philippine currency, to attend to the necessities of the haciendas Tongo and Napay," that the amount of the original debt should be increased to P23,000, P8,000 of which was then advanced, and that the total amount should draw interest at the rate of 10 per cent per annum.

It further appears that on October 22, 1922, there was a settlement between the parties in which it was agreed that there was then due and owing the firm, the sum of P20,065.20. It also appears that the firm from time to time and in different amounts continued to advance money to Yulo, and that Yulo continued and at different times delivered sugar to the plaintiff; that the last money advanced to Yulo was on July 30, 1918; and that Yulo made his last delivery of sugar on May 30, 1915, amounting to P1,181.43. Apparently, such items are the last debits and credits between the parties.

Yulo, having died, Jose Lopez Vito was appointed as administrator of his estate. In the ordinary course of business, commissioners on claims were appointed to whom the firm duly presented its claim, and, for some unknown reason, no part of it was allowed.

From that decision the firm appealed to the Court of First Instance where it sought to establish its claim against the estate for P72,496.48.

At the trial before the court, the parties entered into the following stipulation:

"The parties agree that the chits signed by Gregorio Yulo and Meliton Fernandez represent the amounts and goods taken by said Gregorio Yulo on the date shown therein; that the defendant does not admit nor recognize such items set forth in the statement of accounts which the plaintiff presents as Exhibit C, as are not evidenced

by receipts or chits signed by Gregorio Yulo or Meliton Fernandez or Jose Yulo.

"That the defendant alleges as special defense in this case that plaintiff's action has already prescribed as to the amounts shown in the statement of accounts in Exhibit C taken up to October 14, 1914; that the value of the sugar delivered after October 14, 1914, must be applied upon the payment of the amounts taken by Gregorio Yulo, evidenced by chits or receipts subsequent to October 14, 1914; that the document marked Exhibit A is one signed by Gregorio Yulo on the date shown therein; that the document marked Exhibit D is one signed by Gregorio Yulo on the date shown therein; that the receipts and chits marked Exhibits B-1 to B-39 are the vouchers of the items shown in Exhibit C referred to in said receipts and chits; that Exhibit C is an abstract of the debit and credit of the account of the deceased Gregorio Yulo in the books of the plaintiff written in Chinese.

"That Exhibits E-1 to E-4 are the report of the commissioners of appraisal; the claim of the plaintiff filed with the commissioners; the notice of the hearing of the claim; and a receipt of the commissioners of the copies of chits B-1 to B-39.

"That the plaintiff has made demand on the defendant for the payment of the amount claimed in the complaint, and said defendant has not paid the same.

"That the plaintiff corporation is the successor of F. M. Yap Tico.

"That with the facts herein agreed upon and the defense of the defendant, the parties submit the case to the court for judgment."

The lower court held that, as to all of that portion of plaintiff's claim filed before the commissioners which was contracted prior to October 14, 1914, had prescribed under the provisions of paragraph 1, of section 43, of the Code of Civil Procedure, and upon that theory held that the proceeding in so far as it is founded upon Exhibits B-1 to B-24, inclusive, is barred by the statute of limitations, and rendered judgment in favor of the plaintiff and against the estate of Gregorio Yulo for the sum of P11,860.72, plus P10,222.84, with legal interest upon P10,222.84 from October 15, 1924, until the date of payment, together with the costs. .

Plaintiff appeals and assigns the following errors:

"1. The court erred in considering that the statute of limitations is applicable to this case, and that the right of action of plaintiff against the defendant for a certain portion of the indebtedness set out in the complaint has prescribed.

"2. The court erred in not allowing interest at the rate of 10 per cent per annum on the principal after the date on which the decision was written in this case.

"3. The court erred in not rendering judgment in favor of the plaintiff for the full amount of the principal demanded in the complaint."

#### **JOHNS, J.:**

The first question is whether or not, as the trial court held, all of plaintiff's claim prior to October 14, 1914, is barred under the provisions of section 43 of the Code of Civil Procedure.

It is admitted that on October 22, 1912, the parties then had a settlement of all of their previous mutual dealings, in which it was agreed that Yulo was indebted to the plaintiff in the sum of P20,065.20, and for which he gave the firm a chit on that date. There is no evidence of any other settlement. Be that as it may, on October 24, 1912, Yulo signed a chit to and in favor of the plaintiff for P1,000, and from time to time signed the following chits on the specified dates for the following amounts:

November 14, 1912

P1,000.00

December 27, 1912,

38.75

January 3, 1913

896.05

January 20, 1913

154.00

February 4, 1913

200.00

February 6, 1913

300.00

February 19, 1913.

200.00

February 24, 1913

80.50

February 28, 1913

17.00

March 8, 1913

200.00

March 15, 1913

500.00

March 26, 1913

80.50

April 2, 1913

500.00

April 7, 1913

300.00

April 22, 1913

250.00

April 29, 1913

120.00

May 2, 1913

150.00

May 14, 1913

450.00

July 28, 1913

300.00

March 31, 1914

194.00

April 1, 1914

1,000.00

December 3, 1914

1,000.00

January 9, 1915

100.00

January 21, 1915

280.00

January 22, 1915

115.27

January 27, 1915

500.00

February 15, 1915

88.00

February 23, 1915

100.00

March 1, 1915

77.00

March 13, 1915

200.00

March 15, 1915

2,500.00

March 16, 1915

90.00

March 30, 1915

500.00

April 15, 1915

500.00

April 24, 1915

194.00

April 30, 1915

50.00

July 30, 1918

6,600.00

All of these items are evidenced by Mr. Yulo's own chits in the record, and, hence, as to them, there cannot be any dispute as to either dates or amounts.

It will thus be seen that from their inception, on October 14, 1910, Yulo's dealings with the plaintiff were continuous from month to month and from year to year. By their stipulation of facts "the parties agree that the chits signed by Gregorio Yulo and Meliton Fernandez represent the amounts and goods taken by said Gregorio Yulo on the dates shown therein."

It is further stipulated "that Exhibit C is an abstract of the debit and credit of the account of the deceased Gregorio Yulo in the books of the plaintiff written in Chinese." That is to say, Exhibit C is a true and correct copy of all the different entries pro and con in plaintiff's book of accounts. But it will be noted that there is no stipulation, neither is there any evidence that the books in question were 'accurate or authentic, or that the entries therein made were based on debits and credits, or the mutual dealings between the parties. Neither does it appear that the entries were "repeated in the regular course of business," or that they were "copied from another at or near the time of the transaction." Without some evidence as to how and in what manner the books were kept and by whom they were kept, and the authenticity of the entries, and standing alone, the books themselves would not be competent evidence for any purpose. In this connection, except as to the entries based upon the chits in question, they cannot be used to prove plaintiff's case. It would be a very dangerous thing to admit account books, standing alone, as competent evidence without something to show that they were authentic and were kept in the ordinary course of business. Without some reasonable safeguards, it would be very easy to establish a fictitious claim on manufactured account books against any person.

It is very probable that in this particular case, the account books are authentic and were kept as they should have been kept. But there is no evidence of that fact. For such reasons, Exhibit C is not competent evidence for the plaintiff, except in so far as it is corroborated by the chits, the stipulation of facts or the original documents.

Again, referring to the stipulation of facts and Exhibit C, the abstract of the entries made in plaintiff's books, we find that from month to month and from year to year, after the inception of the transaction, Yulo delivered sugar to the plaintiff on February 5, 1913, March 8, March 11, March 26, April 2, May 14, June 15, 1914, January 9, 1915, January 21, January 25, March 1, March 16, March 29, April 30, and May ,30, amounting in value to P14,857.24, for all of which Yulo received credit on plaintiff's books on the corresponding dates of delivery, and his estate now relies upon and claims the amount of such credits as payments on his account.

Hence, we have an open, mutual, current account between the plaintiff and the defendant commencing on October 14, 1910, in which debits and credits were made from month to month and from year to year down to and including May 30, 1915, the date of the last credit, and July 30, 1918, which was the date of the last debit, all of which was in the lifetime of Yulo.

It will be noted that plaintiff's claim is based upon an open, mutual, and current account. The plaintiff could have legally treated and relied upon the settlement of October 22, 1912, as a stated account, and if it had done so, that portion of its claim would have been barred by the statute of limitations. Therein lies the error of the lower court. The plaintiff relies upon and sought to prove an open, current, mutual account dating from the original mortgage. Yulo had a legal right to say to the plaintiff that I want all of my future deliveries of sugar applied to my indebtedness accruing after October 22, 1912, the date of the settlement. There is no evidence that he ever gave plaintiff any such instructions, in the absence of which, plaintiff had a legal right to apply any such payments on the open, current, mutual account. Again, it is very probable that if Yulo had ever given any such instructions, the plaintiff would then have insisted upon the payment of the debt evidenced by the settlement, and would not have permitted it to run for a period of ten years without a payment of some kind on that account. The fact that there is no proof that Yulo in his lifetime gave any instructions as to the appropriation of payments creates a strong presumption that he and the plaintiff continued in their respective dealings with each other on the assumption that the transactions between them were continuous from the date of their inception.

Upon the question of mutual, current account, Corpus Juris, volume 37, says:

Page 865:

"Where there is a mutual, open, and current account consisting of reciprocal demands, the general rule is that the cause of action to recover the balance is deemed to accrue at the date of the last item proved, and that the statute of limitations runs from that time, so that, if the last item on either side of the account is not barred, it draws to itself all the other items' which will become barred only when the statute has run against the last no matter how far back the account commenced. \* \* \* "

Page 867:

" \* \* \* It is commonly stated that the main ground upon which the rule as to mutual accounts rests, independent of express statutory provision, is that every new item and credit in an account given by one party to the other is an admission that there are some unsettled accounts between them, each item within the statutory period being regarded as equivalent to evidence of a promise which takes all the prior items out of the statute. \* \* \* "

Page 868:

"The distinction between a mutual open account and a simple open account is that in the former case the bar of

the statute of limitations does not begin to run until the date of the last item, while in the latter the statute begins to run from the date of each particular item."

Page 869:

"Mutual accounts being made up of matters of set-off, to make an account mutual within the meaning of the rule under discussion the items on the different sides of the account must be capable of being set off against each other, and one time alone does not comply with that requirement. The account on both sides must be between plaintiff and defendant and must have originated between them, and the parties must have dealt with each other in the same capacity or relation. \* \* \*"

Page 879:

" \* \* \* Where accounts are settled by carrying the balance forward instead of paying it in cash, they are not to be considered as open and running accounts from the beginning within the rule as to mutual accounts; but the balance carried forward may form a part of a new mutual account so as to be saved from the statute by subsequent items within the statutory period."

Ruling Case Law, volume 17, page 730, says:

"91. Actions on accounts.—Where there is a mutual open account between two parties it is said that it implies that they have mutually consented that each item shall not constitute an independent debt due immediately, to be paid or enforced at once, but that the items occurring from time to time, in favor of the respective parties, shall operate as mutual set-offs, and that the shifting balance, when either or both shall call for it, shall be the debt, and for this reason the statute of limitations does not run during such a state of mutual dealings, but only from the date of the last item. Where there has been a delay for the statutory period in making or adding any new items to an old mutual account, it may operate as a bar, but if the hiatus is less than the period of limitations, it will not have this effect, and if the last item is within the statutory period, it draws after it items beyond that time. \* \* \* "

Tested by this rule, we are clearly of the opinion that no part of plaintiff's claim is barred by the statute of limitations.

Although, standing alone and within itself, Exhibit C does not tend to prove plaintiff's case, yet having been offered in evidence, the defendant has a legal right to use and rely upon the exhibit to prove his case and show the amount of defendant's credit, this upon the theory that the exhibit is an admission by the plaintiff against his own interest.

It is equally clear that under the terms and provisions of their original contract, the plaintiff is entitled to interest on the amount of each yearly balance at the rate of ten per cent per annum. But there is no legal principle upon which it should have compound interest. That is to say, the plaintiff has no legal right to add the amount of the annual interest to the amount due him for each succeeding year, bring the interest forward, and make it a part of the principal, and thus obtain interest upon interest. The contract will not bear that construction.

The question then as, to the amount due and owing the plaintiff is one of mathematics only. It was agreed that on October 22, 1912, the amount due the plaintiff was P20,065.20. The chits show that during the remainder of that year, the plaintiff advanced Yulo the further sum of P2,039.00, making a total of P22,104.20 due and owing on January 1, 1913. During that year, as appears from the chits, the plaintiff advanced the further sum of P6,752.39, and Yulo paid on account P8,188.75, leaving a balance on January 1, 1914, of P20,667.84, the annual interest upon which would be P2,066.78. For the year 1914, Yulo received P4,417.86, and paid the plaintiff P672.69, leaving a balance due and owing plaintiff on January 1, 1915, of P24,413.01, the annual interest upon which would be P2,441.30. It appears from the chits that during the year 1915, the plaintiff advanced Yulo P7,836.76,

and that he paid the plaintiff P5,995.80, leaving a balance on January 1, 1916, of P26,243.97, the annual interest on which is P2,624.39. It does not appear that there are any other credits, and the last debit was on July 30, 1918, at which time the plaintiff paid Yulo P6,600, thus leaving due and owing the plaintiff on January 1, 1919, the principal sum of P32,843.97, the annual interest on which is P3,284.39. Since that time there have been no other dealings between the parties.

Plaintiff's complaint was filed on March 26, 1925. At that time, the amount of its claim, exclusive of any charge for interest, was P32,843.97. In round numbers, the interest on this amount from January 1, 1925, to March 26, 1925, would be about P800.

On this basis, for the year 1914, plaintiff would be entitled to interest amounting to P2,066.78. For 1915 P2,441.30, and for the years 1916 to 1919, inclusive, annual interest in the sum of P2,624.39, and for the years 1920 to 1924, inclusive, to the annual interest of P3,284.39, to which should be added the P800 for the accrued interest from January 1, 1925 to March 26, 1925, inclusive, making a total of P32,227.59, for interest which had accrued on plaintiff's claim at the time its complaint was filed on March 26, 1925, or a total amount due and owing the plaintiff from the estate on March 26, 1925, of principal and all accrued interest, of P65,071.56.

It will be noted that our conclusion as to the amount due the plaintiff is based upon Mr. Yulo's own personal chits, about which there is no dispute, and that we have given the defendant credit for every item in Yulo's favor on Exhibit C, and that there is no evidence of any other payments having been made to the plaintiff.

The judgment of the lower court is reversed, and one will be entered here in favor of the plaintiff and against the estate of Yulo for P65,071.56, with interest thereon from March 26, 1925, at the rate of 10 per cent per annum, and for costs. So ordered.

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

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