

**RICARDO NOLAN, PLAINTIFF AND APPELLANT, VS. ANTONIO SALAS, DEFENDANT AND APPELLEE.***G.R. No. 2563. November 23, 1906*

Ponente: MAPA, J.

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This is an action for the recovery of a credit of 690.18 pesos assigned to the plaintiff by the Chinaman, Tan-Yngco, or Ynga. The court below entered judgment in favor of the plaintiff for the sum of 110 pesos, 6 reales and 10 cuartos, Mexican currency, and legal interest thereon from the date of the filing of the complaint, absolving the defendant from the balance, without express provision as to costs. The plaintiff excepted to this judgment, made a motion for a new trial, and has brought the case to this court for review.

The plaintiff in order to prove his claim introduced in evidence three different notes signed by the defendant, making a total of 110 pesos, 6 reales and 10 cuartos, and a book, which, according to the Avitness Tan-Yngco, assignor of the said credit, contained a statement of the account of the defendant. The latter admitted the authenticity of the notes above referred to. That part of the judgment of the court below condemning the defendant to pay the amount of the said notes, and which the defendant, himself, admitted that he had voluntarily offered to pay prior to the commencement of this action, is therefore fully justified by the evidence.

The entries appearing in the book in question are the only proof introduced by the plaintiff as to the balance of the credit claimed; they were apparently made in Chinese characters which Avere read by one of the plaintiff's witnesses at the trial. It appears from these entries that at various times between the 26th of May and the 25th of September, 1898, the defendant borrowed several amounts aggregating 600 pesos.

With reference to these entries the Avitness Tan-Yngco testified as folloAvs: "Salas (the defendant) OAved him 690.18 pesos; that this indebtedness appears in his book; that it was entered in his book by the Chinese clerk, Salvador Sia-Cayco; that the said Salvador is noAv. dead." He further testified that "all the sums borroAved by Salas Avere entered by his cashier, Salvador, in the book in question." And finally, testifying as a Avitness in rebuttal, said that "he knows of the sums borroAved by Salas because he was told by Salvador Avho made the entries in the book."

It is to be inferred from this testimony that the amounts borroAved by Salas Avere received by him directly from the cashier Salvador and not from Tan-Yngco. He knew of it simply because Salvador told him. Tan-Yngco, in his testimony, did not say positively that he himself had delivered any sum of money to the defendant in this case. Consequently his testimony is merely hearsay and does not prove the existence of the indebtedness in question.

There is no proof upon this point other than the entries appearing in the book referred to, and the question reduces itself to determining the probatory force of those entries. It was proved at the trial that the cashier, Salvador, who kept the book in question, was dead, and the plaintiff sought to avail himself of the provisions of section 328 of the Code of Civil Procedure which provides that the writings of a deceased person may be read as prima facie evidence of the facts therein stated.

This legal provision may be successfully invoked provided the authenticity of the manuscript in question has been first satisfactorily established. In the case at bar there is not the slightest proof upon this point; no one testified to having seen the deceased Salvador write the entries in question. Tan-Yngco himself, who is the only witness who referred to the book where these entries appear, did not make any positive statement to this effect. The only thing he said was that Salvador kept the book and made the entries in regard to the amount borrowed by the defendant. This general statement indicates or might indicate that the making of this entry was intrusted by Tan-Yngco to the deceased Salvador in the ordinary course of business, but it does not necessarily prove that Salvador actually made the entries himself. These entries might have been easily made by some one else, notwithstanding the fact that this work was ordinarily performed by Salvador. At least it does not appear conclusively that he and no one else made these entries.

On the other hand, there is not even an indication of the exact date upon which these entries were made, which always constitutes an important detail when the manuscript of a deceased person is intended to be used as proof. Section 328 above cited requires that the manuscript intended to be utilized as evidence should be made at or near the time of the transaction.

Nor has the handwriting of these entries been compared with the actual handwriting of the deceased, Salvador; nor has the authenticity of those entries, which is the fundamental basis for the application of the above-mentioned legal provisions, been established in any other competent manner.

Whatever may be the true construction of the provisions of the aforesaid section 328, upon which the parties to this action do not agree, and which it is not necessary for us to decide for the purpose of this decision, we hold the entries in question did not nor can they constitute prima facie evidence in this particular case because they were not properly identified as being in the authentic handwriting of the deceased, Salvador.

For the reasons above stated and not upon the ground set out in the judgment of the court below, the same is affirmed in all respects, with the costs of this instance against the appellant. After the expiration of twenty days let judgment be entered in accordance herewith and the case remanded in due time to the court below for execution. So ordered.

Arellano, C. J., Torres, Johnson, Carson, Willard, and Tracey, JJ., concur.

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