

J. M. PO PAUCO & CO., PLAINTIFF AND APPELLANT, VS. WISE & CO., DEFENDANT AND APPELLEE.*G. R. No. 31237. January 13, 1930*

Ponente: STREET, J.

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This action was instituted in the Court of First Instance of Iloilo by J. M. Po Pauco & Co. for the purpose of recovering about P15,000 as damages from Wise & Co., which damages were alleged to have been incurred by the plaintiff by reason of the failure of the defendant company to make timely collection of certain claims which had been assigned to the defendant by the plaintiff. Upon hearing the cause the trial court absolved the defendant from the complaint, and the plaintiff appealed.

It appears that in civil case No. 6416 of the Court of First Instance of Iloilo the herein defendant, Wise & Co., sued J. M. Po Pauco upon an indebtedness alleged to be due to Wise & Co. from said Po Pauco. In that action Po Pauco interposed a special defense and counterclaim, asserting that the debt sued on had been satisfied by the transfer of certain credits, and Po Pauco sought damages for the failure of the therein plaintiff to apply said credits to the indebtedness. This defense and counterclaim was disallowed by the court in said case and judgment was entered in favor of Wise & Co. for the balance found to be due it. After said litigation had reached its finality, the therein defendant, Po Pauco, caused this action to be instituted, in the name of J. M. Po Pauco & Co., to recover damages for the alleged negligent failure of Wise & Co. to collect the credits which had been transferred, as previously stated, to the latter.

The facts are fully and, we think, sufficiently stated in the appealed decision, and we are of the opinion that no error was committed by the trial court in absolving the defendant from the complaint. It is quite evident that the claim sued upon is the same that was used for purposes of defense and counterclaim in the action brought by Wise & Co. against the present appellant; and although, technically speaking, there is not an identity of parties, since the defendant in the former case was the individual J. M. Po Pauco and the plaintiff in the present case is J. M. Po Pauco & Co., it seems quite clear that the bringing of the present action in the firm name of J. M. Po Pauco & Co. was a mere device to enable the plaintiff to evade a plea of former adjudication. But it is not necessary to place the judgment upon this point. For the purposes of the present decision it is sufficient to point out that the proof in this case does not establish negligence on the part of Wise & Co. for failure to collect the credits referred to in the complaint, and moreover, the testimony of Po Pauco himself in this case shows, if it shows anything, that the credits referred to were transferred absolutely to Wise & Co. in total payment of the claim that was the subject of suit in the former action. This being accepted, it must follow that the plaintiff herein has no case.

The judgment appealed from will be affirmed, and it is so ordered, with costs against the plaintiff.

Justices Johnson, Ostrand and Johns voted to impose double costs upon the appellant.

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

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