

THE INTERNATIONAL BANKING CORPORATION, PLAINTIFF AND APPELLEE, VS. FRANCISCO MARTINEZ, DEFENDANT AND APPELLANT.

G. R. No. 3604. August 24, 1907

Ponente: TRACEY, J.

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TRACEY, J.:

These parties executed an agreement in which it was recited that the bank had placed at the disposition of the defendant an open account in the sum of 4,000 pesos, for which it gave him a credit to be drawn against by him in such amounts as should be considered necessary, and as security for repayment of which the defendant gave the bank a pledge of the steamer Balayan.

This action was brought to recover the sum of 4,000 pesos, alleged to have been loaned under the contract, and to foreclose the pledge of the steamer. The foreclosure was denied for the reason that the pledge was held to have been unauthorized and invalid, and the plaintiff was given judgment for the 4,000 pesos and interest. Although the defendant moved for a new trial, he failed to except to the order denying his motion, and for this reason we are not at liberty to review the proofs, but may only examine the judgment to determine whether, in the light of the pleadings, the facts found by the trial judge sustain his conclusions of law. In no place does he find that the 4,000 pesos or any part thereof had ever been advanced under the agreement. His findings are:

"That the amount received in credit has not been repaid to the plaintiff, and the whole thereof is now due from the defendant to the plaintiff with interest thereon since the commencement of this action. That the defendant, Francisco Martinez, obtained from the plaintiff credit to the amount of 4,000 pesos; that the same has not been paid, nor any part thereof, and that the whole is due from said defendant to the plaintiff with interest thereon since the commencement of this action."

It is contended that a finding of the amount due may be accepted as a finding of fact, as, indeed, in some circumstances it may. But the contrary doctrine prevails where the finding involves the very issue in controversy, and the statement of amount due following a recital, such as we read in this judgment, amounts to a conclusion of law and not the statement of a fact. (Ward vs. Clay, 82 Cal., 502; Field vs. Field, 73 N. Y., 588; Hotchkiss vs. Mosher, 48 N. Y., 478; Jarvis vs. Jarvis, 66 Barb., 331.)

Furthermore it is said that the finding that the amount has not been repaid to the plaintiff necessarily implies that it had already been paid by the plaintiff. This contention admits of two answers; first, that in a final judgment the facts upon which the recovery depends must be expressly stated and not left to inference; and, second, that in the judgment in question the phrase, "the amount received has not been repaid," is qualified and limited by the words "in credit," reading that the amount received in credit has not been repaid, which effectually negatives the implication that the learned judge meant that it had been received in cash or otherwise than in credit. Consequently it appears that the facts stated in the judgment of the Court of First Instance fail to sustain the conclusion founded thereon, because they show no advance of money to the defendant under the 4,000 pesos

credit given him on the books of the bank. So much of the judgment as awards to the plaintiff the 4,000 pesos with interest is reversed, and a new trial in the Court of First Instance is ordered to determine the amount of money, if any, advanced to the defendant by the plaintiff under the credit given him, and to enter such further judgment thereupon as may be fitting. So ordered.

Arellano, C. J., Torres, and Johnson, JJ., concur.

Willard, J., dissents.

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