

JOSE CAMPS, PLAINTIFF AND APPELLANT, VS. PEDRO A. PATERNO ET AL., DEFENDANTS AND APPELLEES.*G.R. No. 3610. November 20, 1907*

Ponente: CARSON, J.

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The complaint in this action alleges that the defendants agreed to pay to the plaintiff the sum of P1,850 for a banquet to be furnished by the plaintiff on the 16th of March, 1905; and, in addition, to pay the value of the wine and other liquors which might be drunk upon that occasion. The complaint further alleges that the plaintiff furnished the banquet in fulfillment of the agreement; that the wine consumed on that occasion amounted to P160; that the defendants, although oftentimes requested so to do, had paid but P1,000 in accordance with their agreement; and that the balance of P1,093 was still due and payable at the date of the filing of the complaint.

The defendants, Paterno and Velarde, failed to appear or to answer the complaint. Against them judgment was entered in default, and thereupon, in conformity with the provisions of section 128 of Act No. 190, the plaintiff was given an opportunity to submit his evidence in support of allegations of the complaint. Thereafter final judgment was entered in favor of the plaintiff and against the defendants in default, for the sum of ₱261, with interest thereon from the 16th day of November, 1905, the date of the filing of the complaint. From this judgment the plaintiff appealed, and insists that he is entitled to judgment in his favor for the entire amount prayed for, less ₱439, which he appears to have been paid after the filing of the complaint.

We think that the judgment of the trial court is in strict conformity with the testimony of record. The only witnesses called by the plaintiff to prove the allegations of his complaint were the two defendants, Martin and Pablo Ocampo. Martin Ocampo testified that, in company with the defendant Velarde and at the request and on behalf of the defendant Paterno, he entered into an agreement with the plaintiff, whereby the plaintiff was to furnish the banquet for the sum of P1,700. Pablo Ocampo testified that under the contract the amount which was to be paid for the banquet was P1,700 and no more. These witnesses positively denied that there was any agreement that Paterno or the banquet committee would be responsible for the wines and liquors furnished in the manner and form alleged in the complaint, and stated that these wines and refreshments were furnished separately by the plaintiff without the authority of the defendants or of the banquet committee. There is no other evidence in the record to support the allegations of the plaintiff as to the responsibility of the defendants in default, for the payment on account of the wines and liquors furnished at the banquet; hence the trial judge properly held that the allegation of the complaint as to indebtedness of the defendants in default, for the wines and liquors furnished, had not been sustained. There is no proof in the record as to a demand for payment upon any of the defendants, prior to the filing of the complaint in this action, and interest was properly allowed only from the date of the filing of the action, and not from the date when it is alleged in the complaint extrajudicial demand had first been made.

It is not entirely clear from the testimony adduced at the trial that the defendant Velarde contracted for himself as well as for the defendant. Paterno, though this might perhaps be inferred from the language used by the witness Martin Ocampo. It is not necessary to enter into this question, however, since Velarde did not appeal from the

judgment.

The judgment of the trial court is affirmed, with the costs of this instance against the appellant, and it is so ordered.

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

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