

ARTADY & CO., PLAINTIFF AND APPELLANT, VS. CLARO SANCHEZ, DEFENDANT AND APPELLEE.

G.R. No. 3749. October 08, 1907

Ponente: TRACEY, J.

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TRACEY, J.:

The plaintiff brought this action to recover from the defendant P4,434.88, on a promise made upon the rendering and statement of an account, and also for the further sum of P203.19 for goods sold and money advanced after the settlement. An attachment was also obtained against the property of the defendant upon the general allegation that he was attempting to secrete and dispose of his property with intent to defraud his creditors.

The trial judge dissolved the attachment for lack of any proof of fraudulent intent upon the part of the defendant, and he also dismissed the complaint upon the theory that the transactions between the plaintiff and defendant constituted a commercial loan under article 311 of the Code of Commerce, which was not due for the reason that no time of demand was fixed thereby and no notarial demand had been made, as required by article 313 of the same code in case of loans for an indeterminate time. In this disposal of the case upon its merits we think the trial judge erred, as neither the account once stated nor the promise to pay it constituted a commercial loan, and the balance agreed upon apparently became due forthwith.

The failure of the plaintiff to except to the order denying his motion for a new trial precludes us from examining the proofs and disposing of the case upon its merits.

The defendant objects that exceptions to the judgment were not filed in due time. The date of the judgment is not given in the bill of exceptions, and the original papers are not before us, but it appears from an affidavit recited in an order of the judge to have been, in fact, in the clerk's office on the 22nd day of September, but not to have been placed with the files of the case until the 8th day of November, when the plaintiff, on being notified of its existence, immediately excepted. It is not shown that he was in default.

So much of the judgment of the Court of First Instance as vacates the attachment is hereby affirmed, and the rest of the judgment is reversed and a new trial is ordered of all the issues, without the costs of this instance. So ordered.

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

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