

**JOSE Y. LOPEZ, ATTORNEY IN FACT AND AGENT FOR ANGEL ORTIZ,
PLAINTIFF AND APPELLANT, VS. IGNACIO MENDEZONA ET AL.,
DEFENDANTS.IGNACIO MENDEZONA, APPELLANT.**

G.R. No. 3945. September 07, 1908

Ponente: CARSON, J.

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CARSON, J.:

The complaint alleges that the defendant Ignacio Mendezona and the estate of his brother Jose Mendezona, deceased, are jointly and severally indebted to the plaintiff Angel Ortiz, in the sum of P9,423.84, being a balance due on account arising out of commercial relations between Ortiz and the brothers Mendezona, together with interest to the date of the filing of the complaint. It is alleged further that the defendant Andrea C, widow of Jose Mendezona, who died on the 20th of October, 1902, took possession of all the property of her deceased husband, and at the same time assumed all his obligations, and thus became responsible, together with the defendant Ignacio Mendezona, for the payment of this indebtedness.

The defendant Ignacio Mendezona denied the existence of the joint and several indebtedness alleged by the plaintiff, and alleged that his business relations with the plaintiff were wholly separate and distinct from those of his brother, and that, instead of being indebted to the plaintiff, the plaintiff was indebted to him on the 31st day of December, 1904, in the sum of P362.81, being a balance of P256.13, due on account, together with interest at the rate of eight per cent, and prayed that judgment be entered in his favor against the plaintiff for that amount, with legal interest from that date until paid. The defendant Andrea C, widow of Jose Mendezona, although duly summoned, did not appear or answer, and judgment in default was entered as to her.

The trial court rendered final judgment in favor of the defendants on the ground that the plaintiff had failed to prove the indebtedness alleged against Ignacio Mendezona, and that the plaintiff further failed to establish his allegation that the defendant Andrea C, widow of Jose Mendezona, had assumed responsibility for the payment of the debts of her deceased husband. The court also declined to give judgment for the amount of the counterclaim set up by the defendant Ignacio Mendezona, on the ground that it was impossible to determine from the accounts as submitted by the plaintiff just what amounts were due this defendant on his separate account. From this judgment the plaintiff Ortiz and the defendant Ignacio Mendezona appealed. The plaintiff, in support of his allegations as to the amount of the indebtedness, relied substantially upon a statement of account taken from his books, whereby it appears that the defendant Ignacio Mendezona and his brother, Jose Mendezona, deceased, were jointly indebted as set out in the complaint. The defendant, however, put in evidence a series of letters, which leave no room for doubt that, by agreement between the plaintiff and the brothers, it was understood that from and after the 30th day of June, 1901, the plaintiff would keep two separate accounts with the brothers, and that the sum of P6,510.81, which had theretofore been charged to the account of the defendant Ignacio Mendezona, as the balance due on the 31st day of December, 1900, would be divided between the two brothers so as to show Ignacio Mendezona indebted on his separate account in the sum of P1,457.16 and Jose Mendezona indebted in the sum of P5,053.65.

The accounts submitted by the plaintiff in support of his claim show that he failed to carry out this agreement and that he charged the defendant Ignacio Mendezona and his brother Jose, jointly, and severally with the full sum of P6,510.81, thereby failing to carry out his agreement to keep separate accounts with the brothers who did business in different towns, and, as appears from the above-mentioned agreement, on separate account. As held by the trial judge, therefore, this account fails utterly to sustain the plaintiff's allegation that there is any indebtedness due the plaintiff from the defendant Ignacio Mendezona.

The defendant, in support of his counterclaim, submitted an account wherein it appears that on the first day of January, 1901, he was indebted to the plaintiff in the sum of P1,457.16, that being the amount which it was agreed should be charged to his separate account on that date; the account showing further various credits in favor of the plaintiff, and two entries, one as of the date of January 16, 1901, for 340 empty demijohns, amounting to P488.62, and the other as of date of April 19, 1901, for a shipment of cattle, amounting to P2,810.29. These items are supported by written acknowledgments of the plaintiff, and are not contradicted by any evidence introduced at the trial; and there is no evidence in the record of credits which should be allowed the plaintiff upon this account other than those set out therein. The balance of this account on the 31st of December, 1904, amounted to P256.13, together with interest in favor of the defendant, amounting to P106.68 as claimed by him.

Counsel for the plaintiff endeavors to sustain the contention that Ignacio Mendezona was responsible jointly and severally with his brother Jose for the total amount due by both, by directing attention to citations from a number of letters written by Ignacio Mendezona to the plaintiff, but we are of opinion that there is nothing in any of these letters, when read together with the letters introduced by the defendant, which is sufficient to modify or qualify the plain terms of the above-mentioned agreement between the various parties as to the separation of accounts, as it is set out in the series of letters which appear on the 5th, 6th, and 7th pages of the defendant's brief. It may be that, prior to the agreement for the separation of accounts, the relations of the various parties were such as to render Ignacio Mendezona responsible jointly and severally with his brother Jose Mendezona for the joint account which plaintiff appears to have kept with them, and there are several observations in the earlier letters which would tend to support such a contention, but, as has been stated before, we find nothing in any of the correspondence after the 20th of September, 1901, when the plaintiff agreed to keep separate accounts with the brothers, which would justify the inference that it was not the intention and agreement of all the parties that each of the brothers would be responsible thereafter merely for the amount due upon his own separate account. We are of opinion, therefore, that the trial court properly held that the defendant Ignacio Mendezona is not responsible for the balance due upon the joint account which was kept by the plaintiff in violation of his agreement with the brothers, but that it erred in failing to find that the defendant Ignacio Mendezona had established the balance due as claimed by him upon his separate account and in failing to render judgment in his favor for that amount.

Counsel for the plaintiff insists that the court erred in requiring proof of the allegations of the complaint that Andrea C., widow of Jose Mendezona, had taken possession of the goods of her deceased husband and assumed responsibility for his debts, judgment having been rendered against her in default. In this contention counsel seems to rely principally upon the provisions of section 94 of the Code of Civil Procedure, which provides that "a material allegation of the complaint which is neither generally nor specifically denied in the answer shall be deemed to have been admitted," and contends that one who has been duly summoned and fails to appear or answer should not be in a better position as to material allegations in the complaint which have not been traversed than one who has actually appeared and answered and failed to traverse such allegations. It is to be observed, however, that under the provisions of section 128 it is expressly provided that, where judgment by default has been entered, the court shall thereupon proceed to hear the plaintiff and his witnesses and assess the damages or determine the other relief to which the plaintiff may be entitled, and render final judgment for the plaintiff to recover such sum or to receive such other relief "as the pleading and the facts warrant." It is evident that, in order

to ascertain the facts as to any material allegation, it is necessary for the plaintiff in such cases to introduce evidence in support thereof. Counsel further contends that the fact that the widow took possession of the goods of her husband and assumed responsibility for his debts and obligations was sufficiently established by certain admissions contained in letters written by her to the plaintiff after the death of her husband in which she appears to recognize the existence of the debt and asks for an extension of time for the payment thereof. We do not think, however, that a careful examination of these letters admits of so broad an inference. It would be too much to say that, because the widow of a deceased person writes to a creditor, as did the widow in this case, his indebtedness could not be settled immediately because she had no money and the credits of her husband had not been collected, and that she was writing to her husband's brother, asking him to pay the amount due, it must be presumed that the widow thereby assumed personal responsibility for the debts of her husband, especially in a case such as the present, wherein it appears that the deceased left an heir of his body and no will, so that the widow herself was not his sole heir. The estate of the deceased is, of course, responsible for his debts and thus this judgment in no wise prevents the plaintiff from recovering the amount which may appear to be due by the deceased Jose Mendezona in a proper action, but we think that the court properly refused to render judgment against the defendant Andrea C, widow of Jose Mendezona, for any debt due by her husband, the plaintiff having failed to prove her responsibility therefor. The judgment of the trial court is, therefore, affirmed in so far as it affects the defendant Andrea C, widow of Jose Mendezona, but it should be and is hereby modified in so far as it failed to give judgment in favor of Ignacio Mendezona and against the plaintiff in the sum of P362.81, with interest from the date of the filing of the counterclaim, it not appearing that demand had been made prior thereto, and thus modified, the judgment of the trial court is affirmed, with the costs of this instance against the plaintiff. So ordered.

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

CONCURRING

TRACEY, J., :

The plaintiff Lopez, was not the real party in interest, and although the defendant may have omitted to take that objection in due time in the manner prescribed in the Code of Civil Procedure or at any time, yet the vice of an action maintained in his name, instead of that of his principal, makes itself felt throughout the proofs, which state a good cause of action, indeed, but one owned by another person, and therefore one not entitling him to judgment. Consequently the facts pleaded and proved by him do not constitute a cause of action in his favor for the same reason that the facts established by the defense do not make out a counterclaim, against him.

This judgment must needs rest upon the failure of the parties to take the fitting objection at any stage of the case, or to raise the point before us on appeal. Judgment modified.

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