

SIMEON ROQUE, PLAINTIFF AND APPELLANT, VS. RUFINO NAVARRO, DEFENDANT AND APPELLEE.

G.R. No. 3991. December 21, 1907

Ponente: CARSON, J.

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CARSON, J.:

This is an appeal from a judgment rendered in the Court of First Instance of Manila in an action for damages for "unfair competition," as defined in Act No. 666 of the Philippine Commission.

The plaintiff alleges that he is the owner of a registered trade-mark, used to designate a certain brand of cigarettes manufactured by him, and that the defendant in selling cigarettes not manufactured by the plaintiff gave them the general appearance of the cigarettes of the plaintiff, both by the use of an emblem similar to the trade-mark of the plaintiff and by the wrapping of the packages in which they were contained, for the purpose of influencing purchasers to believe that the cigarettes sold by the defendant were those manufactured by the plaintiff.

The trial court was of opinion that the testimony introduced by the plaintiff failed to establish the allegations of the complaint, and gave judgment in favor of the defendant for costs.

A motion for a new trial was presented to the trial court in the following language:

"Counsel for the plaintiff appears and respectfully submits, first, that upon the 8th day of March, 1907, he was notified of the judgment rendered in this case; second, that, aside from the official bill of lading, which was duly presented at the hearing as proof that the defendant had used a trade-mark similar to that of the plaintiff, and which perhaps the court failed to take into consideration because it was not at that time united with the record, I have discovered new evidence that the defendant continues until this time making use of the said trade-mark; third, the court is prayed, therefore, to receive the new evidence and to revoke its said judgment."

The trial court properly denied this motion for a new trial on the ground of newly discovered testimony, because the motion was not submitted in accordance with section 145 of the Code of Civil Procedure, as construed in the cases of *Aldeguer vs. Hoskyn* (2 Phil. Rep., 500) and *United States vs. Tengco* (2 Phil Rep., 189).

Counsel for the appellant assigns as error the finding of the trial court that the evidence failed to establish the allegation that the defendant had ever used, or was using at the time when the complaint was filed, a trade-mark similar to the registered trade-mark of the plaintiff.

We do not think that the foregoing motion for a new trial was submitted in such form as to justify us in reviewing the evidence, under the provisions of section 497 of the Code of Civil Procedure, as amended by Act No. 1596. That act provides that the Supreme Court shall not review the evidence taken in the court below except, first, when a motion for a new trial is submitted to the Supreme Court on the ground of newly discovered evidence, or, second, where a motion is submitted in the Court of First Instance for a new trial, on the ground that the evidence was insufficient to justify the decision.

It will be seen that the above-cited motion for a new trial does not fall under either of these heads, and therefore

this court is precluded from examining the testimony of record, or passing upon the error assigned by the appellant.

It is suggested that under a liberal construction the motion for a new trial submitted below might be regarded, in substance if not in form, as a motion on the ground that the decision was contrary to the weight of the evidence. Even under the most liberal construction it would be difficult to give the language of the motion such an effect, though that may have been the intention of counsel in submitting it.

However, it may not be improper to observe that our ruling in no wise prejudices the substantial rights of the appellant, since the most superficial examination of the record demonstrates that no evidence was submitted at the trial which in any wise tends to sustain the plaintiff's allegation that the defendant had ever used, or was using at the time when the complaint was filed, a trade-mark similar to the registered trade-mark of the plaintiff. The document purporting to be an official bill of lading of certain cigarettes sold by the defendant, without any testimony of record to show what kind of wrappers or packages were used in "selling these cigarettes, and without connecting the vendor therein with the defendant by proper evidence, can have no bearing on the question at issue.

The judgment of the trial court is affirmed with the costs of this instance against the plaintiff. So ordered.

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

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