

SANTIAGO TIN FIAN, PLAINTIFF AND APPELLEE, VS. PABLO TAN, DEFENDANT AND APPELLANT.

G.R. No. 4235. September 15, 1909

Ponente: JOHNSON, J.

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JOHNSON, J.:

From the record it appears that on the 14th day of February, 1907, the plaintiff presented a complaint in the Court of First Instance of the Province of Leyte against the defendant, asking for a judgment for goods sold and delivered, etc., for the sum of P608.33, together with interest, and P500 damages for failure to pay the said indebtedness.

To this complaint of the plaintiff the defendant, upon the 28th day of May, 1907, filed a general denial and a cross-complaint, denying each and all of the allegations of the plaintiff, and asking for a judgment against the plaintiff in the sum of P486, with costs.

After hearing the evidence adduced during the trial of the cause, the lower court found that the defendant was indebted to the plaintiff for goods sold by the latter to the former during the years 1904 and 1905, in the sum of P608.33, and rendered a judgment in favor of the plaintiff for that sum with interest from the 14th day of February, 1907.

From this judgment of the lower court the defendant, after having made a motion for a new trial, appealed to this court, making several assignments of error, all of which assignments of error, however, relate to the sufficiency of the evidence to support the judgment of the lower court.

The only witnesses presented in the court below were the plaintiff on behalf of the plaintiff and the defendant on behalf of the defendant. In addition to the oral testimony of the plaintiff he presented also some documentary evidence, consisting of vales and a copy of a book account. The book account had been presented to the defendant for payment by a notary public. To this demand the defendant made no objection as to the correctness of the bill, stating simply to the notary public that he had no recollection of being indebted to the plaintiff.

The defendant during the trial swore that the plaintiff had been indebted to him in various amounts, but upon cross-examination admitted that all of the indebtedness which he held against the plaintiff existed prior to the claims upon which the plaintiff sued. The plaintiff contended that all of the indebtedness against him and in favor of the defendant had been paid prior to the creation of the indebtedness upon which the present action was brought.

The plaintiff, in his action in the court below, attempted to recover not only the amount of money due for the goods sold and delivered, together with interest, but also the sum of P500 as damages for the nonpayment of said obligation. The lower court refused to allow the plaintiff to recover this sum. There was nothing in the contract or in the evidence which showed that the defendant had promised to pay any sum other than the amount due for the said merchandise. In the absence, therefore, of a contract between the parties, no damages can be allowed for the

nonfulfillment of the obligation. Damages for the nonfulfillment of an obligation to pay money, in the absence of a stipulation to the contrary, shall consist in the payment of the interest agreed upon, and should there be no agreement as to interest, then the legal rate may be collected. (Art. 1108, Civil Code; Quiros vs. Tan-Guinlay, 5 Phil. Rep., 675.)

We are of the opinion, and so hold, that the preponderance of the evidence is in favor of the plaintiff and in favor of the conclusions of the lower court. The judgment, therefore, of the lower court is hereby affirmed, and is it hereby ordered that a judgment be rendered against the defendant and in favor of the plaintiff for the sum of P608.33, with interest at 6 per cent from the 14th day of February, 1907, with costs. So ordered.

Arellano, C. J., Torres, Carson, and Moreland, JJ., concur.

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