

**C. E. HELVIE, PLAINTIFF AND APPELLEE, VS. F. M. FARMER ET AL.,
DEFENDANTS AND APPELLANTS.***G.R. No. 4240. December 11, 1908*

Ponente: WILLARD, J.

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On the 19th of April, 1906, the plaintiff Helvie was, and for some time had been, the general agent in Manila of the Kelly-Springfield Road Roller Company. At that time the company kept an account in the Hongkong and Shanghai Bank under the name of C. E. Helvie, general agent. Against this account Helvie had a right to draw checks, as also did the defendant Hunt, who was the bookkeeper of the company in Manila. At the same time Helvie had a personal account in the International Bank. Against this account Helvie and his wife were authorized to draw checks, but Hunt was not. Prior to the date mentioned this account in the International Bank never had been used in connection with the business of the company, and Helvie then had to his credit P151.24, which admittedly was his own private money. Helvie left Manila for China on business for the company on the 19th of April, 1906, and returned on the 22d of August of the same year. During his absence, the company being in need of money and not being able to obtain it from the Hongkong and Shanghai Bank, did obtain it through the International Bank, using this personal account of Helvie, the attorney in fact of Helvie making the necessary arrangements for the payment of a draft made upon the home office of the company in the United States, the proceeds of the draft being deposited to the credit of this account in the International Bank. The account was used to transact the business of the company from this time until the return of Helvie on the 22d of August, when he found that it was overdrawn to the amount of P862.60. When he discovered this, he ordered Hunt, the bookkeeper, to deposit to his credit in that account money received from the business of the company until this overdraft had been canceled and then to continue to deposit such money until the company had paid to Helvie what was due him on his salary account. Helvie testified positively to the giving of these instructions. Hunt did not, in terms, deny that they were given, but limited himself to saying simply that he could not remember anything about it. That Helvie had authority to pay himself his salary from the money of the company was not disputed.

After Helvie's return, the money of the company was deposited to this account in the International Bank. From time to time some of it was drawn out for the benefit of the company, but on the 27th of October, 1906, there was a balance therein to the credit of the account of P2,462.98.

The defendant Farmer arrived in Manila on the 16th day of October, 1906. He brought with him a power of attorney of the president of the company to act with reference to its affairs. There is some dispute between the parties as to whether he showed this power of attorney to Helvie or not, at the time of his arrival. We do not think this is important because it appears from a letter of Farmer dated the 20th of November, 1906, that Helvie continued as manager of the company until that date.

A day or two before the 27th of October, Helvie went to Cavite on business of the company. Before he departed, the defendant Hunt asked him to leave one or two checks on the International Bank, signed in blank, for use in case of necessity during his absence. Helvie did not take up these checks on his return and on the following day

the defendants Hunt and Farmer filled out one of them for the entire balance in the bank, presented it to the bank, secured the money thereon, which Farmer deposited in the same bank to an account which he then opened in the name of the company. When Helvie discovered this transaction a few days later, he protested against it and has brought this action to recover the P2,462.98, and damages which he suffered by not having the money to pay certain debts of his maturing in December.

Judgment was entered in the court below in his favor for the amount in the bank on October 27 and for P1,600, the amount of other damages suffered by him. From this judgment the defendants have appealed.

That this account was exclusively the account of Helvie when he left for China on the 19th of April, 1906, and that he then had therein P151.24 of his own money, is undisputed. Hunt testified that, after Helvie's return, he paid him P151.24, so that the account should belong to the company, Helvie denied this, and the court below found in his favor. This finding is strongly supported by the evidence. No entry was made by Hunt upon the cashbook of the company of this payment of P151.24. An entry was made upon a certain book kept by him, relating to the bank accounts, which entry is so unusual in its nature as to be suspicious. Hunt himself admitted that he afterwards told Helvie that he would pay him this P151.24, if Helvie was not satisfied with the evidence as to this prior payment.

In deciding the case in favor of the plaintiff, the court below stated:

"Whether the deposits of funds belonging to the Kelly Springfield Road Roller Company, deposited with the International Banking Corporation in the name of C. E. Helvie, exceeded the amount which might have been due C. E. Helvie, is not an issue in this action, and is immaterial so far as the issues herein are concerned. The plaintiff was authorized to pay himself, and whether he overpaid himself or not, can not be determined here. *

* * If there was a question as to whom the funds actually belonged, the question should have been legally determined before the defendants resorted to the means which were used to obtain possession of the same."

We do not find it necessary to determine whether this is a correct view of the law or not, because there is evidence in the case to the effect that the money was the money of Helvie. That it proceeded from the funds of the company is not disputed but it was paid into the account for the purpose of canceling the debt due from the company to Helvie, and Helvie testified that the amount of P2,462.98 was his money on the 27th of October, 1906, and was due to him on account of his salary. There is no evidence to contradict this statement. The defendants were in possession of the books of the company. They did not produce these books. It appears from the evidence given at the trial before the court that they did not produce the books before a notary public when asked to do so. Both of the defendants testified that the amount which appeared upon the books as due to Helvie for salary was not correct, but neither one of them testified to any facts showing that it was not correct. The P1,000 paid in November to Helvie by Farmer was the amount of his salary for October. It is suggested by the appellants that they are not liable because they acted for the company, but their act being entirely wrongful, they can not relieve themselves from responsibility therefor by saying that they did it for the benefit of another. As to the P2,462.98, the judgment must be affirmed.

We do not think, however, that the evidence justifies the allowance of P1,600 as special damages which the plaintiff suffered by not having the use of this money. It appears that he bought from one Jones a piece of real estate for which he had agreed to pay P4,600. He had made the first payment of P1,600 prior to these events. The second payment became due in December. He failed to meet this payment because, as he says, the defendants had appropriated the money which he had intended to use for that purpose. Jones, the creditor, commenced an action to foreclose the mortgage. A witness for the plaintiff testified that the lot was worth P2,500. The theory of the court below seems to be that the plaintiff has lost the land by reason of his failure to pay the second installment, but nothing of that kind appears from the evidence. It is not shown how far the foreclosure case has proceeded.

There is no evidence to show that any judgment had been entered therein, nor any sale ordered or made. So far as the case shows, Helvie still has a right to redeem the property by paying the amount due upon his debt. That he is personally liable for the whole amount of the debt, of course, appears, and that liability could not be increased by any acts of the defendants. It may be that he was badly advised when he bought the property for P4,600 which is now worth only P2,500, but for that loss the defendants are not responsible and the recovery of P1,600 as damages can not be sustained.

We can see that he may have been damaged by the defendants' acts to the amount of the costs which he had to pay in the suit brought by Jones and the expenses of defending that suit, but there is no sufficient evidence in the case to determine what those amounts were.

The judgment of the court below is modified and judgment entered in favor of the plaintiff, and against the defendants and each of them, for the sum of P2,462.98, with interest at the rate of six per cent per annum from the 27th day of October, 1906, and for the costs of the first instance. No costs will be, allowed to either party in this court.

Arellano, C. J., Torres, Mapa, Johnson, Carson, and Tracey, JJ., concur.

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