

LOUIS CHAPMAN, PLAINTIFF AND APPELLEE, VS. GIL GARCIA ET AL., DEFENDANTS. ASUNCION VIUDA DE SANZ, DEFENDANT AND APPELLANT.

G. R. No. 42524. August 24, 1937

Ponente: VILLA-REAL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-42524/>

VILLA-REAL, J.:

This is an appeal taken by the defendant Asuncion Viuda de Sanz from the judgment of the Court of First Instance of Leyte, the dispositive part of which reads as follows:

"In view of the foregoing considerations, dismissing the counterclaim presented by the defendant Asuncion Viuda de Sanz, judgment is rendered ordering her to pay to the plaintiff the sum of one thousand five hundred pesos (P1,500), with the legal interest of six percent (6%) per annum thereon from December 28, 1930, until fully paid, and to pay the costs of the suit. So ordered."

As ground of her appeal, the appellant assigns six alleged errors as committed by the court a quo in its judgment in question, which will be discussed in the course of this decision.

The following undisputed facts have been proven at the trial, to wit:

The plaintiff Louis Chapman was one of the organizers and principal partners of the Philippine Lumber Co., a partnership duly organized under the laws of this country, with principal office in the municipality of Tacloban, Province of Leyte. The other partners-organizers were Jesus Sanz, Gil Garcia, Santiago Martinez and Adela Allen. The latter two withdrew later, leaving Jesus Sanz, Gil Garcia and the plaintiff herein as partners. On or about November 1, 1927, Chapman sold all his participation in the business to his co-partners Gil Garcia and Jesus Sanz for the sum of P10,000. Immediately after Chapman's withdrawal, a liquidation of the partnership's business, covering a period of one year up to said date, November 1, 1927, was made, and the sum of P1,500 was declared as the plaintiff Chapman's participation in the profits realized. Said sum was credited to him and to that effect the manager Gil Garcia issued to him the document Exhibit A, dated November 2, 1927.

Said plaintiff, who is a building contractor, used to obtain lumber on credit from the Philippine Lumber Co., for use in his private contracts. He did not keep a record of his transactions nor any copy of the liquidation of his accounts or debts.

By reason of the death, of Jesus Sanz, which took place in February, 1933, the partnership Philippine Lumber Co. was dissolved on September 21st of said year, while this action was pending. By virtue of an agreement which was made to appear in the contract of dissolution, the herein defendant and appellant Asuncion Viuda de Sanz, in her own name and as administratrix of the estate of her deceased husband Jesus Sanz, acquired all the rights and assumed all the obligations of the Philippine Lumber Co. and, as such, she admitted the plaintiff Louis Chapman's claim for the sum of P1,500, appearing in the document Exhibit A, to be true. She alleged, however, that Chapman, in turn, was indebted to her in the sum of P3,109.77, representing the still unpaid value of lumber

which said plaintiff had obtained on credit from the Philippine Lumber Co. on different dates, as evidenced by the books and invoices Exhibits 1, 2 and 3.

In support of their counterclaim the defendants tried to prove that from January 1, 1927, to January 1, 1928, the plaintiff Louis Chapman continued to make transactions on credit with the Philippine Lumber Co., his indebtedness thereto having reached the sum of P3,312.90 (Exhibit 1, page 3). On November 2, 1927, the plaintiff bought on credit lumber worth P53.28 from said company, and on the 23d of said month and year he contracted with it a debt of P243.76, representing the freight of lumber taken by him, as evidenced by the book Exhibit 1. On January 3, 1928, he contracted another debt in the sum of P140 (Exhibit 1). It appears from the cashbook Exhibit 2, page 167, that on October 6, 1927, the plaintiff was credited with the sum of P1,500 as his share in the company's profits corresponding to the year 1926. On December 7, 1927, the plaintiff himself paid the sum of P1,000 on account of his debt, as shown on page 192 of said cashbook Exhibit 2 and on page 3 of the daybook Exhibit 1. The entries in the above-stated books Exhibits 1 and 2 have been made by the bookkeeper Basilio Moreto, whose handwriting has been identified by the witness Patrido Coloma. On January 3, 1927, the plaintiff took lumber valued at P47.68, as shown by invoice No. 910 (Exhibit 3) and on page 1 of Exhibit 1. The other books and invoices of the company disappeared when an internal revenue agent took possession thereof to investigate alleged anomalies and when the receiver appointed by the court was taking them from one place to another.

The plaintiff, in turn, tried to prove that when he withdrew from the company and was credited with the sum of P1,500 as his share in the profits thereof on November 2, 1927 (Exhibit A), he had already settled all his accounts therewith and, therefore, he no longer owed anything on said date; that from said date, November 2, 1927, he had no transaction whatsoever with the Philippine Lumber Co.; that his commercial transactions with the company had ceased three months prior to said date, November 2, 1927; that Exhibit A was delivered to him after the liquidation of all his accounts; that the books of the company were kept in a very irregular manner, some of the transactions having been entered therein about five to ten months after the true date thereof, for which reason he became disgusted with his copartners, causing his withdrawal from the partnership; that the entry of November 2, 1927, in the sum of P53.28, under invoice No. 4014, is incorrect; that he did not pay any amount of P1,000 on account of his debt on December 7, 1927, but that said amount must have been what Jesus Sanz owed him some months prior to November 2, 1927, evidenced by a promissory note returned to the latter by the plaintiff on condition that said Sanz would credit said debt in the company's books; that the above-stated entries of P53.28 and P1,000 were made about three to seven months after the respective transactions; that when he returned the promissory note in question to Sanz, he already suspected the irregularity of the entries; that he had been asking for a liquidation of his account with the company but his copartners did not gratify him, and this was one of the reasons for his withdrawal.

The appellant's first assignment of alleged error is well founded because, as seen in the statement of undisputed facts established during the trial, the plaintiff Louis Chapman sold all his participation in the Philippine Lumber Co. to his copartners Gil Garcia and Jesus Sanz, and not to said partnership as held by the court *a quo* in its judgment.

The second question to be decided, which embraces the questions raised by the appellant in her second and third assignments of error, is that stated in the fourth assignment of alleged error, consisting in; whether or not the court *a quo* erred in not sustaining the counterclaim of the Philippine Lumber Co. and Asuncion Vda. de Sanz, and in not ordering the plaintiff-appellee to pay to said defendant-appellant the sum of P3,312.90 representing the amount of her counterclaim. It will be seen that the counterclaim of the defendant-appellant is based solely upon the debit and credit accounts appearing in the books Exhibits 1 and 2, which are the daybook and cashbook,

respectively, of the Philippine Lumber Co. The plaintiff-appellee questions the admissibility of said books as evidence inasmuch as, according to him, the entries therein are not duly authenticated by the same bookkeeper who wrote them. In order that the account books of a merchant may be admissible as evidence of their contents, it is necessary that they have been kept in accordance with the provisions of the Code of Commerce (art. 38), and their admissibility is subject to the rules laid down in article 48 of said Code relative to the graduation of the weight of evidence thereof. In the case at bar, the evidence shows that the daybook Exhibit 1 has not been kept in accordance with the provisions of article 38 of said Code, inasmuch as the alleged accounts of the plaintiff were not entered day by day but some of them were entered about five to ten months after the respective transactions, according to the testimony of the appellant's witness himself, named Patrick) Coloma. Furthermore, the record shows that the bookkeeper who kept the accounts was one Basilio Moreto and he has not. been presented as a witness, nor was his deposition taken, to testify on the certainty and correctness of the plaintiff's accounts appearing therein. Under these circumstances, the daybook and cashbook, Exhibits 1 and 2, respectively, presented by the defendant-appellant, are not competent and, therefore, are not admissible as evidence for lack of authentication (F. M. Yap Tico & Co. vs. Lopez Vito, 49 Phil., 61).. The fact that the entry appearing on page 1 of Exhibit 1 coincides with the amount of invoice No. 910 of Exhibit 3, dated January 3, 1927, is no evidence that may give rise even to the presumption that the entries appearing in the daybook Exhibit 1 were made on the same day that each transaction took place.

The plaintiff-appellee admits that he had been taking lumber on credit from the Philippine Lumber Co. but ha alleges that three months prior to the liquidation of November 2, 1927, he had already 3topped having transactions with the company in question and had paid the entire debt. The plaintiff-appellee's claim is based upon the liquidationvoucher Exhibit A which is expressly admitted by the defendant-appellant. A liquidation presupposes the settlement and adjustment of all accounts had between the parties prior thereto and is competent evidence at the trial, unless it can be satisfactorily proven that some items have been omitted therein either expressly or involuntarily, which does not appear in this case.

Wherefore, the appealed judgment is affirmed, with coats to the appellant. So ordered.

Avancena, C. J., Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

Judgment affirmed.

DECISION ON MOTION FOR RECONSIDERATION

October 5, 1937

VILLA-REAL, J.:

This is a motion filed by the defendant-appellant Asuncion Viuda de Sanz praying, for the reasons alleged therein. that the decision of this court promulgated on August 24, 1937, affirming that of the lower court, be reconsidered, and that it be set aside by reversing the decision appealed from.

Except that part referring to the manner in which the credit of the plaintiff-appellee Louis Chapman should be made, as stated in the memorandum Exhibit A, the motion raises the same questions of fact raised by the defendant-appellant in her brief, and adduces the same arguments in. support of her contention, and this court finds no sufficient reason to alter its findings relative to said questions of fact.

With respect to the manner in which the payment of the plaintiff-appellee's credit should be made, the memorandum Exhibit A reads as follows:

"I declare that Mr. Louis Chapman has a credit with the Philippine Lumber Co. in the sum of one thousand five hundred pesos (P1,500) worth of lumber at the prices usually charged him heretofore.

(Sgd.) "GIL GARCIA "

It will be seen that the credit of P1,500 acknowledged in favor of the plaintiff-appellee is in lumber at the prices charged him up to the date of said document. The defendant-appellant, as the person who has acquired the rights and obligations of the Philippine Lumber Co., is only obliged to pay the P1,500 in lumber. In her brief the appellant assigned as alleged error committed in the appealed judgment her having been ordered to pay to the plaintiff-appellee in money and not in lumber.

Considering the motion well founded in so far as the manner of payment of the credit is concerned, it is ordered that the dispositive part of the decision of this court rendered in this case be amended so as to read as follows:

"Wherefore, the appealed judgment is modified and the defendant Asuncion Viuda de Sanz is ordered to pay to the plaintiff Louis Chapman the sum of P1,500 in lumber at the price established in the memorandum Exhibit A, with the legal interest thereon from the date of the filing of the complaint, until fully paid, with costs to the appellant. So ordered."

Avancena, C. J., Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.