

JOSE GARRIDO, PLAINTIFF AND APPELLANT, VS. AGUSTIN ASENCIO, DEFENDANT AND APPELLEE.

G.R. No. 4281. March 30, 1908

Ponente: CARSON, J.

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CARSON, J.:

Plaintiff and defendant were members of a partnership doing business under the firm name of Asencio y Cia. The business of the partnership did not prosper and it was dissolved by mutual agreement of the members. The plaintiff brings this action to recover from the defendant, who appears to have been left in charge of the books and the funds of the firm, the amount of the capital which he had invested in the business. The defendant, alleging that there had been considerable losses in the conduct of the business of the partnership, denied that there was anything, due the plaintiff as claimed, and filed a cross complaint wherein he prayed for a judgment against the plaintiff for a certain amount which he alleged to be due by the plaintiff under the articles of partnership on account of plaintiff's share of these losses.

The trial court found that the evidence substantially sustains the claim of the defendant as to the alleged losses in the business of the partnership and gave judgment in his favor.

The only question submitted on appeal is the competency and sufficiency of the evidence on which the trial court based its findings as to the status of the accounts of the company.

Plaintiff and appellant makes the following assignment of errors:

First. The trial court erred in holding the estado de cucntas (statement of account) of the partnership of Asencio y Cia. submitted by the defendant as competent and sufficient evidence in this case.

Second. The trial court erred in holding that the evidence of record proved the existence of losses in the business of the said partnership.

Third. The trial court erred in refusing to give judgment in favor of the plaintiff.

It appears from the record that by mutual agreement the defendant had general charge and supervision of the books and funds of the firm, but it appears that these books were at all times open to the inspection of the plaintiff, and there is evidence which tends to show that the plaintiff himself made entries in these books touching particular transactions in which he happened to be interested ; so that while it is clear that the defendant was more especially burdened with the care of the books and accounts of the partnership, it would appear that the plaintiff had equal rights with the defendant in this regard, and that during the existence of the partnership they were equally responsible for the mode in which the books were kept and that the entries made by one had the same effect as if they had been made by the other.

At the trial the principal question at issue was the amount of the profits or losses of the business of the partnership during the period of its operation. The plaintiff made no allegation as to profits, but denied defendant's allegation

as to the losses. The defendant in support of his allegations offered in evidence the estado de cuentas (general statement of accounts) of the partnership, supported by a number of vouchers, and by his own testimony under oath as to the accuracy and correctness of the items set out therein. The plaintiff assigns as error the admission of this account on the ground that the books of the partnership were not kept in accordance with the provisions of Title III, Book I, of the Code of Commerce.

It is not necessary for us to consider this assignment of error as to the inadmissibility of this account on the ground that the books were not kept in accordance with the provisions of the Commercial Code, because no objection was made to its admission in the court below; and further, because in any event it was admissible under the provisions of section 338 of the Code of Civil Procedure as a memorandum used to refresh the memory of the witness. (Tan Machan vs. Gan Aya, 3 Phil. Rep., 684.) We think further that in view of the testimony of record that the plaintiff jointly with the defendant kept these books, made entries therein, and was responsible¹ with him therefor, the doctrine laid down in Behn, Meyer & Co. vs. Rosatzin (5 Phil. Rep., 660) is applicable in this case, and the correctness of the entries in these books must be taken to be admitted by him, except so far as it is made to appear that they are erroneous as a result of fraud or mistake.

It appears from the record that the statement of account, the vouchers, and the books of the company were placed at the disposition of the plaintiff for more than six weeks prior to the trial, and that during the trial he was given every opportunity to indicate any erroneous or fraudulent items appearing in the account, yet he was unable, or in any event he declined to specify such items, contenting himself with a general statement to the effect that there must be some mistake, as he did not and could not believe that the business had been conducted at a loss.

The court below seems to have scrutinized the account with painstaking care, and to have been satisfied as to its accuracy, except as to some unimportant items, which he corrected, but counsel for the appellant reiterates in this court his general allegations as to the inaccuracy of the account, and points out some instances wherein he alleges that items of expenditure appear to have been charged against the partnership more than once.

Upon the whole record as brought here by the appellant we are not able to say that the weight of the evidence does not sustain the findings of the trial court, and the judgment entered in that court should be, and is hereby, affirmed with the costs of this instance against the appellant. So ordered.

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

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