

**GUTIERREZ HERMANOS, PLAINTIFFS AND APPELLEES, VS.
CUSTODIO DAUDEN, DEFENDANT AND APPELLANT.***G.R. No. 4291. January 21, 1909*

Ponente: WILLARD, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-4291/>**WILLARD, J.:**

The plaintiff, a commercial house in Manila, had a branch in Bulan in the Province of Sorsogon. The defendant, from the 15th of November, 1903, to the 31st of December, 1904, was the representative of the plaintiff at Bulan and was, during that time, in charge of its business at that point. After he had left its employ, the plaintiff brought this action against him to recover P26,020.57, the value of money and other property which it alleged the defendant had appropriated during his management of the business in Bulan. Judgment was rendered in the court below in favor of the plaintiff for P18,505.17, with interest. From this judgment the defendant has appealed.

The charges made against the defendant are of two kinds. In one class it is charged that when he left the business on the 31st of December, 1904, there was not on hand the amount of hemp, rice, salt, and aniseed spirit that according to the books should have been on hand. In order to prove the charges of this nature it was absolutely necessary for the plaintiff to show how much hemp, rice, salt, and aniseed spirit was in fact on hand on the 31st of December, 1904. No such evidence appears in the case and the judgment can not be sustained so far as it relates to the hemp, rice, and aniseed spirit. As to the salt, the court found in favor of the defendant.

There was presented in evidence what purports to be an inventory of all the property connected with the business at Bulan on the 31st of December, 1904, but no witness testified as to the correctness of this inventory. Leopoldo Criado, a partner in the plaintiff company, who was in Bulan in the latter part of December, says that he did not make it. He stated that it was made by the defendant, but this he could not know because he said that he himself did not go into the warehouse where the property was. The defendant testified positively that he had nothing whatever to do with the making of this inventory. On cross examination he stated that the warehouseman counted the amount of stock on hand in the warehouses at Bulan and when asked if he was not present, he answered that he was in the office and that the persons who examined the property were Pedro de la Vega and Don Angel. Pedro de la Vega was a witness in the case, but made no declarations whatever relating to the inventory. The defendant did not sign the inventory and there is no evidence that he ever gave his consent thereto.

The other class of charges relate to money claimed to have been received by the defendant and not entered on the books, and to entries made on the books of money claimed to have been paid out by the defendant when, in fact, he made no such payments. The defendant in his brief makes the same point in regard to this class of charges as he made in regard to the shortage in the stock on hand. He says:

"There is no evidence introduced by the plaintiff to prove in a direct and conclusive manner that said amount was not really on hand, or, in other words, that the balance showed that the said amount has disappeared. Nor is there any proof tending to show that the balance resulting from said account did not belong to the amount found on hand or to that which should be found therein if the sum of P3,000, delivered by Pujol, be included."

And again:

"No balance of the funds on hand was presented, nor any inventory of the same."

This claim, we think, must be sustained. The inventory above mentioned, Exhibit R, shows that the cash on hand on the 31st of December, 1904, was P4,096.27. As has been said, there is no evidence that the defendant took any part in the making of this inventory or ever consented to it as a whole, but we think there is evidence to show his consent to this particular item for on January 14, 1905, when lie definitely turned over to his successor the cash then on hand there is an item in the statement which he then signed to the effect that the amount of cash on hand on the 31st of December, 1904, was P4,096.27. But while it is proven that this amount was on hand, there is no proof to show what amount should have been on hand in accordance with the books of the company. There is nothing to show whether this amount of P4,096.27 was more than should have been on hand according to the books, or whether it was less. Before the plaintiff can charge the defendant with misappropriation of these items of cash, it must prove that there was an actual misappropriation. In other words, it must prove that that money has disappeared from the cash. This could only be done by showing what the shortage was at the close of business on the 31st of December, 1904. As has been said, there is no evidence to establish this point and the judgment in favor of the plaintiff with reference to these items can not be sustained.

We think, however, that the plaintiff should be given an opportunity to cure these defects and to make proof, if it can, upon these points.

We have noticed also that the proof was very deficient relating to the dealings with Marcos, Timoteo de Castro, and Aniceto Judit. The last person was not called as a witness. Marcos was a witness, but was asked no questions in regard to the items which the defendant claims lie paid to him, and which the plaintiff claims never were paid. The testimony of Timoteo de Castro was very general. He made no reference to the particular items claimed to have been received by him and the only denial made by him as to the truth of the entries by the defendant in the books is contained in a letter which was received in evidence without objection on the part of the defendant.

The judgment of the court below is reversed and the case remanded for a new trial. No costs will be allowed to either party in this court.

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