

**GO TIAM TING, PLAINTIFF AND APPELLEE, VS. DI PING JO ET AL.,
DEFENDANTS AND APPELLANTS.***G.R. No. 4360. July 22, 1908*

Ponente: TORRES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-4360/>**TORRES, J.:**

On March 15, 1907, Go Tiam Ting, by his attorney F. E. Green, filed a complaint in the Court of First Instance of Iloilo against Di Ping Jo and Dy Ping Yan, merchants established in Molo under the firm name of "Joe Jo Chong," claiming payment of the sum of P969.61 and costs, alleging that the defendants were indebted to the plaintiff in the said sum on account of goods sold and delivered to the said defendants by the plaintiff during the years 1906 and 1907, and not paid for by them in spite of the fact that they had obligated themselves to do so, and notwithstanding the demands for payment made upon them. Exhibit A, a statement of the account of the said defendants with the plaintiff, containing a statement of the goods taken by them and the respective value of each item, was produced in evidence; said account amounted to P5,355.86 and showed a balance of P969.61, the sum now claimed.

The defendants, by their attorneys De Leon and De la Rama, in a writing dated the 20th of April following, in answer to the complaint, set forth that they had commenced to do business with the plaintiff on the 23d of July, 1906, and purchased goods from him stating the respective values of the same, until the 5th of February of the following year; that the total amount of their purchases was P6,155, and that since the 14th of August following they had paid the total cost of the goods purchased, there being an excess of P35 in the payment of the 6th of March, 1907; that they ceased to do business with the plaintiff for the reason that notwithstanding their agreement, the plaintiff refused to deliver to them a bale of silk; that they had had no other transactions with the plaintiff beyond the purchases and payments above referred to, and denied the correctness of the account presented by the plaintiff showing that they were indebted to him, but that, on the contrary, he owes them P35 for which they ask that judgment be rendered in favor of the defendants for said amount with costs.

Evidence having been adduced by both parties and their exhibits attached to the record, the court, on the 20th of July, 1907, entered judgment in favor of the plaintiff and ordered that he recover from the defendants the amount claimed, with legal interest thereon from March 15, 1907, and the costs of the proceedings.

The defendants excepted to the above judgment and moved for a new trial on the ground that the evidence did not sufficiently justify the decision. Said motion was overruled, and, upon exception being taken by the appellants, the corresponding bill of exceptions was presented by them and submitted to this court by virtue of the appeal interposed.

The appellants assign two errors to the judgment appealed from: (1) That the court below failed to consider that the defendant's answer involved a counterclaim which, from the fact that it was not answered by the plaintiff, should have been considered as admitted by him; (2) for entering judgment against the defendants for the sum of P969.61.

In support thereof they alleged that, as may be seen from the bill of exceptions, the plaintiff did not reply to the defendants' answer, which contains a counterclaim for the sum of P35, either admitting or denying the allegations stated in the said writing, and to this purpose they cited sections 94, 95, and 99 of the Code of Civil Procedure, and the settled doctrine contained in Volume V of the Encyclopedia of Pleading and Practice, page 684, and by Escriche in Volume IV, page 802; and in view of the fact that the plaintiff did not demur to the counterclaim nor answer the same, the legal conclusion is that he admitted said counterclaim without reservation. As to the second error, the appellants set forth that, in the event that the first error is not considered, they request judgment for the defendants for the reason that the evidence taken in the proceedings is perfectly balanced, and it can not be said that the evidence offered by the plaintiff is superior to that of the defendants.

As has been seen, the object of the complaint is the recovery of a certain balance of an account due by the defendants to the plaintiff, and notwithstanding the denial of the debtors and their allegation that they had overpaid the said balance, and that, on the contrary, the plaintiff still owed them the sum of P35, the truth is that, in view of the evidence appearing in the record, the certainty of the indebtedness has been fully established, as well as the lack of proof of the payments as alleged by them, from which resulted an excess of P35, which they claim should be refunded to them by the plaintiff.

The trial court so found when considering that the accounts of the plaintiff were kept in a proper manner; and that the defendants were indebted for the balance claimed. The court found for the plaintiff by reason of the preponderance of the evidence adduced by him in support of the reality and existence of the credit claimed.

Section 273 of the Code of Civil Procedure treating of the manner of determining the preponderance of evidence reads as follows:

"In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the Witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of the witnesses, though the preponderance is not necessarily with the greatest number."

In the complaint, facts demonstrating the existence of the debt claimed were set forth, and during the course of the litigation it was proven by documents and the uncontradicted testimony of proper witnesses that, as a matter of fact, the defendants owed the balance of the account offered in evidence.

The defendants in their turn presented in their answer statements tending to demonstrate that such a debt did not exist, and that, on the contrary, they were the creditors of the plaintiff to the extent of ₱35 although they have not succeeded in proving that the cost of the goods taken by them was Wholly paid, or that in the last payment made by them, there resulted a balance or excess of 35 in their favor.

The allegations of the defendants in their answer, must be assumed to have been denied and refuted at the trial by the plaintiff, inasmuch as they are directly in opposition and contrary to those set forth in the complaint, and because the latter has not been amended as provided by section 104 of the said Code of Procedure, which reads thus:

"The plaintiff may reply to any new matter or special defense set up in the defendant's answer by an amendment to his complaint, which may be filed as a matter of course and without terms, within a period to be fixed by general rules of court. If the plaintiff does not amend his complaint, as provided in this section, he shall be deemed to have controverted every material statement of the answer."

Taking into consideration the facts that the defendants acknowledge that they have taken goods from the plaintiff,

without, however, having duly proven that they had wholly paid the cost thereof, while the plaintiff creditor has on his part proven that from the transactions and accounts between them, there resulted a balance of P969.61 riot paid by the defendants; for the above consideration, and in view of the fact that the judgment appealed from is in accordance with the law and the merits of the case, it is our opinion that the same should be and is hereby affirmed with the costs of this instance. So ordered.

Arellano, C. J., Carson, Willard, and Tracey, JJ., concur.

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