

**CHAU CHIENCO (ALIAS TIMA), PLAINTIFF AND APPELLEE, VS.
ANGEL VARGAS, DEFENDANT AND APPELLANT.***G.R. No. 4414. September 07, 1908*

Ponente: TORRES, J.

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On the 22d of July, 1904, the attorney for Sua Tico filed a complaint in the Court of First Instance of Occidental Negros against Angel Vargas, a resident of the capital of that province, praying that after due process of law, the latter be sentenced to pay P1,382.50, alleging that at different dates between the 12th of January and the 17th of March, 1902, Vargas had received from the plaintiff the total sum of 2,082.50 pesos, as shown by vales in the possession of the creditor; that the debtor has only paid on account, thereof, on the 8th of March and the 15th of November of said year, the sum of 700 pesos, which, deducted from the amount of the debt, leaves the defendant, Vargas, still owing the Chinaman Sua Tico, 1,382.50; that all efforts made by the creditor to collect the same have proved useless, notwithstanding the fact that the time set for payment in the documents of indebtedness has expired; and that in view of the fact that the debtor, who formerly lived in the town of Kabankalan, and worked at the hacienda of San Lucas, came over to this capital (Bacolod), bringing with him his carabaos and other cattle, probably in order to conceal or sell them to the prejudice of the plaintiff's interests, the latter asked for a preliminary attachment of said animals for the reason that the case was included in section 412 of Act No. 190.

The attorney for the defendant demurred to the complaint on the ground that the Chinaman Sua Tico was absolutely unknown to the defendant, and the latter did not recollect ever having had any business relations with him or that he was indebted to him in the amount claimed; for said reason he asked that the case be dismissed with costs, and the preliminary attachment raised.

On the 14th of August of said year the plaintiff's counsel applied to the court for permission to amend the complaint by stating the name of the plaintiff to be Chua Tinco, alias Tima, instead of Sua Tico as had been erroneously given, basing his motion on section 110 of the Code of Civil Procedure. On the 18th of August the court issued an order overruling the demurrer and allowing the amendment of the complaint asked for by the plaintiff.

Counsel for the defendant answered the complaint on the 23d of the said month of August, stating that between the plaintiff, Chua Tinco, alias Tima, otherwise known by the name of Chua Chienco, and the defendant Vargas, there existed a current account by reason of business transactions; that as a result of the liquidation made on the 7th or 8th of March, 1902, the defendant owed the plaintiff 700 pesos, which was set out in a vale or receipt signed by the debtor, who in turn took up other vales held by the creditor; that after the date above mentioned the defendant continued to obtain from the plaintiff other sums of money for which he issued the corresponding receipts or vales; that on the 18th of October, 16th of November, and 16th of December, 1902, respectively, the defendant drew three drafts against the firm of Hijos de I. de la Rama, of Iloilo, each for the sum of 500 pesos, for the purpose of settling his accounts; that the said drafts were collected by the plaintiff to be credited to the account of the defendant, who, after drawing the last mentioned draft ceased to obtain money from the plaintiff; that in the

month of August, 1903, the plaintiff demanded from the defendant the payment of 82 pesos, which, according to his statement, the latter still owed him, but, as according to his reckoning it was the Chinaman who owed him, because he did not keep accounts other than his vales, he declined to pay, and demanded that he be shown the vales in order to settle the accounts. This was never acceded to by the plaintiff, who does not limit his complaint to claiming the 82 pesos, but demands 1,382.50 pesos, thus trying to defraud the defendant of the value of the three drafts of 500 pesos each that were drawn by him in payment of his debt: Therefore the defendant asked that the plaintiff be compelled to produce his vales in court for examination; that he (the plaintiff) be ordered to pay the resulting balance, with legal interest thereon from the 16th of December, 1902, together with indemnification for the damages to which he has been subjected by reason of the preliminary attachment, and costs, with the reservation of the right to the defendant to bring such criminal action against the plaintiff as might be proper.

On the same date (August 24), counsel for the plaintiff stated that in rebuttal of the defendant's answer he denied that the plaintiff was known by the name of Chua Chienco; he denied the contents of paragraph 4 of his answer, and also that he was indebted in any amount to the defendant, and asked that judgment be rendered as prayed for in his complaint.

On the 17th of September, 1904, counsel for the plaintiff asked permission to amend his complaint in respect to the name of the plaintiff who, besides the name of Chua Tinco and the nickname of Tima, is also known as Chua Chinco, or Chua Chienco, on account of the difference in pronunciation, and that he is also called by the nickname of Tima.

Evidence was adduced by both parties to the suit and their exhibits were made of record. On the 4th of March, 1907, the judge below rendered judgment ordering Angel Vargas to pay to the plaintiff the sum of 1,382 pesos, Mexican currency, or the equivalent thereof, at the rate of 1.25 Mexican for each Philippine peso, with legal interest thereon at the rate of 6 per cent per annum from the 12th of July, 1904, until completion of payment, together with costs. The defendant excepted to the decision and moved for a new trial on the ground that the findings were contrary to the weight of the evidence; the motion was overruled and excepted to, whereupon the bill of exceptions was presented in due course by the defendant and brought to this court.

The following facts are proven by the record: that there had been business transactions between both parties during several months in the year 1902; that Vargas, by reason of certain sums that he obtained on various occasions from the plaintiff, Chua Chienco, alias Tima, owed the latter, according to a liquidation of accounts made in March of said year, the sum of 1,382 pesos, as proven by the vales produced at the trial and numbered 2, 3, 4, 5, and 6. These vales were admitted and recognized by the defendant, so that the existence of said debt, duly proven in the record is unquestionable. Proof that the obligation had been extinguished by its payment devolves upon the debtor who takes such exception to the claim of the plaintiff creditor filed in court. (Arts. 1156, 1214, Civil Code.)

From the total amount of the indebtedness of 2,082.50 pesos there is deducted, in the account shown as exhibit 1, one vale for 50 cents (fol. 5), and the sum of 700 pesos which the plaintiff acknowledges to have received in part payment from the debtor; the balance, amounting to 1,382 pesos, is the sum claimed in the complaint.

It is alleged by the defendant that he had already paid his debt with the three drafts of 500 pesos each drawn by him in favor of the plaintiff on October 18, November 16, and December 16, 1902, on the firm of Hijos de I. de la Rama, merchants of Iloilo, and that by reason thereof he is even a creditor of the plaintiff for the difference between the two amounts.

This allegation is absolutely lacking in proof. On the contrary, it has been rejected and entirely contradicted by the plaintiff and his witness, Dian Congo, alias Onga, both of whom attest that the value of the drafts drawn in

October and December was respectively paid in cash by the plaintiff upon receiving each of said drafts from the defendant, and with respect to the draft drawn in November, the plaintiff paid 400 pesos in cash, and credited the defendant's account with only 100 pesos; he further stated that there was only one liquidation made in March, 1902, as appears from document No. 1, and if the vales, attached to the account have not been returned to the debtor, it is because the latter has not paid the balance standing against him, and that as a matter of fact he was indebted to the plaintiff in the amount claimed in the complaint.

The ordinary proceeding when acquiring bills of exchange or drafts, is, that the purchaser at the time they are issued, pays the drawer the value of the same. In the case at bar, if the defendant, Vargas, did actually draw said drafts of 500 pesos each on three different occasions in favor of the plaintiff in payment of his indebtedness for amounts received by him on prior occasions, and if the purchaser of the drafts did not pay him for the same, he, the defendant, should have requested the plaintiff for the corresponding receipt for the value of each draft; as he did not do so, there is no proof of this exception.

It is a strange thing that, as his debt consisted of five vales for different amounts, he did not take them up in the absence of a proper receipt, because if each time he obtained money from Chua Chienco he gave a vale for the same, it is inexplicable that, on the occasions that Vargas gave drafts in partial payment of his debt, he did not demand the return of some of the vales or a receipt therefor from the creditor. The record discloses that Vargas personally called at the store of the purchaser of the drafts and received from him the value of the same in cash on the three dates cited above, with the exception of the 100 pesos which were credited to him.

Article 1157 of the Civil Code reads:

"A debt shall not be considered as paid until the full amount of the thing has been delivered, or the prestation of which the obligation consisted has been made."

The amounts received by the debtor and which he bound himself to pay to the creditor, have not been shown to have been refunded to the latter; therefore, under the law, it can not be considered that the debt in question has been paid, especially when the certainty and legality thereof appears proven by competent documents recognized by the debtor and kept by the creditor in his possession, they being for this reason equal in value to a public instrument so far as the debtor is concerned. (Art. 1225, Civil Code.)

For the above considerations, and inasmuch as the judgment appealed from is supported by the weight of the evidence, it is our opinion that the same should be affirmed, with the costs against the appellant. So ordered.

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

Mapa, J., did not sit in this case.

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