

**MODESTO ACUÑA CO CHONGCO, PLAINTIFF AND APPELLEE, VS. EL CHINO DIEVAS, DEFENDANT AND APPELLANT.***G.R. No. 4416. December 16, 1908*

Ponente: TORRES, J.

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On the 17th of September, 1906, Modesto Acuna Co Chongco filed a written complaint against a Chinaman named Dievas, setting forth that in consideration of services rendered to him by the defendant, both as a clerk in his store and as his representative in his sugar business, the said Dievas allowed him a share in the profits of his said business, and that on several occasions he had paid him certain sums which were charged to the account of the profits due the said defendant when the yearly account was made up; that when the sums taken by the defendant from the plaintiff were liquidated on the 22d of April, 1905, it was found that they amounted to P5,579.36, which amount was debited to the defendant; that, nevertheless, on balancing the accounts of his store and of the sugar business in the same year, the sum of P2,619.78 was found to be the share of the defendant as profits, which amount was credited to his account, and must be deducted from said debt; that if certain pieces of lumber, valued at P1,050.75, were taken for account of the plaintiff, he in exchange paid the defendant the sum of P408.40, besides several bills due by the defendant for goods and cash received by the latter from the Chinamen Yap Tico and Cuan Chong as specified in the attached account, according to which the defendant is still indebted to him in the sum of P2,694.89 and interest thereon which should be at the same rate as paid by the plaintiff to his creditors, that is, 15 per cent per annum; therefore, he prayed that judgment be entered sentencing the defendant, the Chinaman Dievas, to pay him the sum of P2,694.89 with interest thereon, at the rate of 15 per cent per annum from the date of the complaint, together with costs and damages.

By a writing dated October 15, 1906, the defendant prayed the court to order the plaintiff to specify: (1) the date of the commencement of the copartnership between the plaintiff and the defendant, and that of its dissolution, (2) the share of the defendant in the profits of the copartnership.

In deciding this motion the court below dismissed the petition of the defendant as to the first specification for the reason that such copartnership had never existed, and the defendant could not lie considered as a partner; and, as to the second, ordered the plaintiff to state the share that the defendant was entitled to in the profits of the business. The defendant excepted to the first part of this ruling, and the plaintiff, in compliance with the second part, stated that until January, 1901, the defendant had not been allowed any share in his business, but that, on the other hand, the plaintiff had let him have certain amounts of money for his own private business, without however participating therein; and that since February of said year, the plaintiff assigned to the defendant three of the thirteen parts into which the profits of the plaintiff's general business was divided, and asked that his previous statement at the hearing of the motion be considered as withdrawn and substituted by the explanation contained in his writing of the 1st of December, 1906.

In his amended answer of the 12th of February, 1907, the defendant set forth: that he denied all the allegations of the complaint, and as special defense alleged that, from October, 1894, until February or April, 1905, the

defendant had been representing the plaintiff in the sugar' business in which the latter was engaged in said city; that when the business was first commenced, it was agreed upon between them that the defendant should receive one-half of the profits, but that after the balance of accounts made in 1901, it was stipulated between them that from that time forward, the defendant should receive only one-third of the profits as his share, for the reason that Chinaman Lam Pin had commenced to participate in the business; that during the time in which the defendant managed the plaintiff's business, the accounts were balanced four times, that is in the years 1900, 1901, 1903, and 1905, and that, according to said balances, the business yielded a profit of P36,040 during the period from 1894 to 1900; P8,900 from 1900 to 1901, P10,060 from 1901 to 1903; and P9,000 from 1903 to 1905; that the defendant had not drawn more than P10,500 on account of his share in the profits, there remaining" in consequence a balance of P18,323.33 standing in his favor.

As a counterclaim he alleged: that the plaintiff is indebted to him in the sum of P18,323.33 as balance in his favor for his share in the profits of the said business; that for several pieces of lumber mentioned in the complaint, the plaintiff owes him the sum of P1,050.75; and that the amounts stated in the counterclaim have not been paid him up to this date; therefore, he prayed the court below to dismiss the complaint, and render judgment sentencing the plaintiff to pay P19,374.08, with legal interest thereon from the date of the original answer, and the costs of the proceedings.

At the trial, evidence was adduced by the parties to the suit and their exhibits were made of record. The court below rendered judgment on the 12th of September, 1907, absolving the defendant from payment of the debt claimed, and sentencing the plaintiff to pay the defendant the sum of P1,050.75, with legal interest thereon from February 12, 1907, the date of the counterclaim, without special ruling as to costs. Against said decision both parties to the suit took exception and moved for a new trial on the ground that the conclusions contained in the judgment were manifestly and openly contrary to the weight of the evidence; the motion was overruled by the court to which overruling both the plaintiff and defendant excepted; the latter presented the corresponding bill of exceptions which, as agreed upon between the parties, is also to be considered as the bill of exceptions of both parties, for the reason that the attorney Hilado had engaged to prepare the said bill and present it as if it came from both parties who had duly excepted to the judgment, according to a resolution of the Tribunal dated July 14, 1908, by virtue of a motion made in this court by attorney at law Ledesma.

The matter at issue is the collection of certain sums which the parties claim from each other, in the sense that each is the creditor of the other as a result of accounts existing between them.

From a careful examination of the allegations of both the plaintiff and the defendant, and from the evidence adduced by them, we are of the opinion that the conclusions set forth by the trial judge in the judgment appealed from, with the exception of those relative to certain amounts set out in the special account of the defendant marked Exhibit C, are in accordance with the law and the evidence because at the time when the judicial resolution was entered the clear provisions of section 273 of the Code of Civil Procedure were undoubtedly taken into consideration.

In the record it is clearly shown that the plaintiff owes the defendant P1,050.75, the value of lumber which he obtained from the latter, as acknowledged by the plaintiff himself, and considered by the trial judge when sentencing him to the payment thereof.

It is true that the said amount appears in the account Exhibit A to the credit of the defendant, but it is none the less true that the latter denied said account together with the first debit entry of P5,579.36; in view of the lack of sufficient proof there is no way under the law to consider said amount as a lawful debt of the defendant Dievas, and, in consequence, that the price of the lumber had been paid him.

In the aforesaid account, Exhibit A, it is stated that the defendant owes the plaintiff Co Chonco the said amount by reason, of the sums furnished him by the latter as shown by the liquidation made on the 22d of April, 1905; but neither the payment of these amounts nor their purpose and respective dates appear to be proven, nor does the concurrence of the debtor with said liquidation appear, inasmuch as the evidence adduced by the plaintiff, besides being contradictory, does not establish the reality and certitude of the said debit item of P5,579.36, and consequently of the balance of his account, which is the debt claimed.

The other debit items of the said account, Exhibit A, are the same which appear in the itemized account of Dievas in his relations with the plaintiff shown in the original and its translation marked as Exhibit C. This last account, differing from the one marked as Exhibit B, which includes the liquidation of the plaintiff's business, is a special account, kept by the plaintiff in the name of the defendant, of his transactions with him, and in view of the fact that the items in said special account, together with the balance of P754.94 in favor of the plaintiff, were not positively impugned or denied by the defendant debtor when the account was presented to him in the presence of his lawyer, and that the declarations of some of the witnesses for the plaintiff confirm, although without marked precision, the certainty of the indebtedness, one acquires the conviction that the debit and credit entries in the said special account are correct, and that the defendant Dievas is really indebted to the plaintiff, Co Chongco, for the aforesaid balance of P754.94.

The sum of P2,200 which Dievas owed Co Chongco in 1900 and which was remitted by the latter by way of gratification for the services that Dievas rendered the creditor prior to the year 1901, is an anterior debt entirely independent of the sums and the balance shown in the said special account, marked Exhibit C.

Therefore, admitting that the two respective credits of P1,050.75 of defendant Dievas, and that of P754.94 of the plaintiff, the only ones which as the object of complaint and counterclaim have been considered as proven, legally exist, inasmuch as the rest of the sum of P18,323.33 debit balance which, according to the defendant the plaintiff owed him as part of the profits in the sugar business claimed by him in his counterclaim, has not been in any way proven, the finding of the court with respect to the larger amount counterclaimed is in accordance with the law ;hence, it is proper to consider that both credits have been offset, because both conform to the conditions required by the law for a set-off. The articles of the Civil Code bearing on this matter are:

"ART. 1195. Compensation [set-off] shall take place when two persons in their own right are mutually creditors and debtors of each other.

"ART. 1196. In order that compensation may be proper, it is required:

"1. That each of the persons bound should be so principally, and that he be at the same time the principal creditor of the other.

"2. That both debts consist of a sum of money or, when the things due are perishable, that they be of the same kind and also of the same quality, if the latter should have been stipulated.

"3. That both debts be due.

"4. That they be determined and demandable.

\* \* \* \* \*

"ART. 1202. The effect of compensation is to extinguish both debts to the concurrent amount, even when the creditors and debtors have no knowledge thereof."

Compensation being therefore made between both credits, the one and the other become of course extinguished in the concurrent amount, and defendant Dievas is still entitled to recover the difference, that is, the sum of P295.81.

In view of the foregoing, it is our opinion that it should be held, and we hereby hold, that the credit of P754.94 of the plaintiff Modesto Acuña Co Chongco, and that of P1,050.75 of the defendant Chinaman Dievas, should be set off against each other; the said Modesto Co Chongco is sentenced to pay to the said Dievas the sum of P295.81, with legal interest thereon from February 12, 1907; both parties are absolved from the payment of the remaining amounts mutually claimed in the complaint and counterclaim, without any special ruling as to costs. The judgment appealed from is affirmed in so far as it agrees with this decision. So ordered.

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

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