

GUTIERREZ HERMANOS, PLAINTIFFS AND APPELLEES, VS. ANTONIO DE LA RIVA, DEFENDANT AND APPELLANT.*G.R. No. 4604. January 12, 1909*

Ponente: WILLARD, J.

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The plaintiffs are, and for many years have been, a general partnership, established in Manila and engaged in the purchase of hemp, copra, and other products of the country in the provinces and their transportation to Manila. The defendant, on the 27th day of July, 1903, became the owner of the business formerly carried on by Rafael Molina, in the Island of Catanduanes, which business consisted in the purchase of products of the country and their remission to Manila, and the sale of merchandise in that island. Business relations were established between the plaintiffs and the defendant, and a current account was opened between them. The balance due on this current account from the defendant to the plaintiffs on December 31, 1903, was agreed to by the parties. Business continued between them until about the month of August, 1905. On the 21st of that month a receiver was appointed for the business, of the defendant in Catanduanes, in a suit instituted by Rafael Molina, and business relations between the plaintiffs and the defendant ceased about that date. The plaintiffs made a demand upon defendant for the balance due them from the defendant; payment was refused, and on the 10th day of January, 1906, plaintiffs brought this action, asking judgment against the defendant for P106,947.02, with interest. The defendant in his answer made over twenty specific objections to different items in the current account presented by the plaintiffs. Some of these were decided by the court below in favor of the plaintiffs and some in favor of the defendant. The plaintiffs have not appealed from any decisions made by the court against them. Judgment was rendered in favor of the plaintiffs for the sum of P94,222.50, with interest. From this judgment the defendant has appealed. Of the various objections made by the defendant to the account, only five have to be considered here, namely, those numbered 5, 9, 18, 21, and 23.

In the fifth objection the defendant alleged that he was charged 40 cents a sack for freight on 22,500 sacks of rice, when he should have been charged only 30 cents a sack. The evidence shows, and the court so found, that the usual charge made to the defendant was 40 cents a sack until about the 9th of December, 1904, when the defendant complained that the charge was excessive. Plaintiffs, in their reply of the 20th day of December, 1904, made the following statement:

"Freight.-I received the note you sent me on this subject. We will go carefully into the matter and will let you know the result and what reductions we can make-"

and they afterwards reduced the freight to 30 cents a sack.

We find nothing in this letter, nor in any other part of the proof, which indicates a promise on the part of the plaintiffs to refund to the defendant 10 cents a sack for the rice already transported. By the letter, they simply promised that they would study the matter and would advise him if they could make any reduction. The evidence introduced by the. defendant to show that 30 cents a sack was charged to other persons at the same time is not

controlling. In one case it was by virtue of an express contract, and there was evidence also that the landing and discharge of cargoes at Bato, where the defendant's business was established, was more difficult than at other places in the Islands to which a lower rate was made. The judgment of the court below in favor of the plaintiffs in respect to this objection must be affirmed.

The ninth objection relates to the change, on the 30th of June, 1904, of the account of the plaintiffs from Mexican money to Philippine money. This change was made at the rate of 1 peso and 4 cents, Mexican money, for 1 peso, Philippine money. The defendant claims that it should have been made at the rate of 1 peso and 10 cents, Mexican money, for 1 peso, Philippine money. No evidence was introduced by him to show what the actual relative value of the two moneys was on the 30th day of June, 1904. Evidence was introduced to show that prior to and after that date transactions were had between the parties at a different rate, but this is by no means conclusive as to the value on that particular day, because, as it is well known, the value of Mexican money fluctuated greatly at that time. It appears, moreover, that the personal accounts of the members of the plaintiff firm were transferred at the same time from Mexican money to Philippine money and at the same rate of 1 peso and 4 cents, Mexican money, for 1 peso, Philippine money. But the chief reason for not allowing this objection is found, as stated by the court below, in the fact that on the 4th day of August the plaintiffs advised the defendant that they had changed the accounts from one kind of money to the other, at the rate above named. To the letter containing this statement and others relating to the law then in force concerning the new money the defendant answered, on the 6th day of August, 1904, as follows:

"Currency.-I am in receipt of and have carefully noted your communication with respect to the new monetary system in Conant, and the transactions in Mexican, under Act No. 1045. Thanks for the notification,"

It was necessary that this change should be made, and the plaintiffs having made it at a certain rate and having notified the defendant thereof it was clearly his duty to object to the rate if he was not satisfied with it. As is seen, he made no objection whatever at the time, and as far as appears never made any objection until he filed his answer herein. The evidence is sufficient to show that he assented to the rate at which the change was made. The judgment of the court below with reference to this objection must be sustained.

Objection No. 18 relates to the same matter, and the judgment must be sustained for the same reason.

Objection No. 21 relates to the interest which the plaintiffs charged against defendant in the current account. There is no dispute that by agreement between the parties interest was to be charged for or against each of them at the rate of 8 per cent per annum. On the 30th day of June, 1904, plaintiffs charged the defendant as interest P4,792.72; on the 30th of December, 1904, they charged the defendant with P3,814.55; on the 30th day of June, 1905, they charged him with P5,760.29, and on the 30th of November, 1905, with P4,824.25. These several items of interest were at the dates named added to the principal, and the interest was thus capitalized every six months. As we understand the objection of the defendant, it is that this capitalization of the interest took place every six months instead of taking place every year. The over-charge that would result would therefore be the interest on P4,792.72 from the 30th of June, 1904, to the 31st of December, 1904, and on P5,760.29 from the 30th of June, 1905, to the 31st of December, 1905. According to Exhibit W, presented by the plaintiffs, there would also be interest on P605.65 from the 30th of July, 1904, to the 31st of December, 1904. In passing upon this objection, the court below allowed the defendant P1,289.06 with reference to the accounts for the year 1904, and with reference to the accounts for the year 1905 he held that the plaintiffs were entitled to P256.40 more than they had charged, making a total allowance in favor of the defendant of about P1,000. This is very largely in excess of the interest for six months upon the three items which we have above mentioned, and there was no error therefore committed by the court below to the prejudice of the defendant.

In the twenty-third objection, the defendant claims that he should be allowed P240 as his commission on freight

secured by him in Catanduanes for the steamers of the plaintiffs and sent from there to Manila. The court disallowed this claim, holding that it was included in objection No. 2, which had been allowed by it; but objection No. 2 related to the commission of the defendant upon merchandise sent from Manila to Catanduanes, while objection No. 23 related to merchandise sent from Catanduanes to Manila. The court below having allowed the commission claimed in objection No. 2, we think that this commission claimed in objection No. 23 should also be allowed, and that the defendant is entitled to a credit on his account of P240 and interest. The date from which this interest should be computed does not clearly appear, but we allow it for the year 1905, at the rate of 8 per cent, and there should be deducted from the judgment ordered by the court below, namely, P94,222.50, this amount of P259.20, leaving a balance of P93,963.30, for which judgment should be rendered, with interest thereon from the 1st day of January, 1900.

Considerable space in the appellant's brief is devoted to a discussion of the first error assigned by him, which is that the debt sued upon was not due at the time the action was commenced. This claim is based upon the proposition that the debt appears in a current account, and that this current account had not been liquidated by the parties prior to the commencement of the action; in other words, that until the parties had liquidated the account, and agreed upon the balance, no action could be maintained, or, if one could be maintained, it would be an action not for the recovery of money but for the liquidation of the account. It is very apparent that this claim can not be sustained. The defendant owed the plaintiffs money. If the parties could not agree upon the amount, the plaintiff's had a right to apply to the court, not only to determine the amount but also in the same suit to order judgment against the defendant for the amount so determined. That was all that was done in this case. Repeated demands were made upon the defendant for the payment of the balance due; these demands were refused; nothing remained for the plaintiffs except to commence an action to recover the amount which they claimed to be due. Of course, they could not by themselves determine conclusively what this amount was and compel the defendant to pay the amount so fixed by the plaintiffs, but they had a right to present their account to the court with their proof relating thereto. In this action the defendant had the right to object to any one or all of the items of the account. He in fact exercised that right, presenting objections to more than twenty items therein. These objections were all decided by the court, and the court in fact liquidated the account between the parties and found that there was a balance due from the defendant.

It is also claimed by the defendant that the plaintiffs had no right to close this account of their own motion and then bring an action for the amount due thereon. There is nothing in this contention. When the defendant bought the business from Rafael Molina, on the 27th of July, 1903, he agreed to pay therefor P134,636.12, in four installments. The first installment was paid at the date of the contract. The second installment became due on the 27th of July, 1904. This was not paid, and on the 10th of March, 1905, Rafael Molina commenced an action against De la Riva to recover it. That action was finally decided in this court on the 22d of March, 1900. (See *Molina vs. De la Riva*, 6 Phil. Rep., 12.) While this suit was pending, another installment became due, on the 27th of July, 1905. This was not paid. Molina commenced another action against the defendant for its recovery, and on the 21st of August, 1905, procured the appointment of a receiver to take charge of the entire business of De la Riva in Catanduanes. (See *Molina vs. De la Riva*, 7 Phil. Rep., 302.)

The appointment of this receiver effectually stopped the business of the defendant, and as appears from the current account practically nothing more was done between the parties to this action. It is very clear that this of itself closed their business relations and justified the plaintiffs in closing the account.

The plaintiffs were also justified in closing the account by reason of other acts of De la Riva. He was bound by his agreement with the plaintiffs to consign to them the hemp and other products of the country which he bought in Catanduanes for shipment to Manila. It is proven to our satisfaction by the testimony of the defendant himself, in

connection with other evidence that about the month of July, 1905, he sold to persons other than the plaintiff's over 2,000 piculs of hemp, and received therefor in cash more than P60,000. He admitted that no entry of the receipt of this money was made in his cash book but only in the account of the capital which he had invested in the business. As he said, "This money did not pass through the cash, but went directly to my pocket." One thousand one hundred piculs of this hemp were sent to Roberto Spalding in Manila, and the value thereof, amounting to nearly P50,000, was paid by Spalding to the father-in-law of the defendant. If the hemp thus sold by De la Riva had been remitted to the plaintiffs for sale they not only would have been entitled to a commission on the sale but would have been entitled to credit the amount received therefrom to the debt of De la Riva, which would thereby have been to a large extent extinguished. This violation by De la Riva of his contract with the plaintiffs justified the latter in closing the account.

The answer of the defendant contains a counterclaim, in which it is alleged that defendant bought the business of Molina at the instigation and request of the plaintiffs, and that the plaintiffs agreed with the defendant to pay to Molina the purchase price thereof and to furnish the defendant unlimited credit for carrying on the business in the future. The finding of the court below upon this counterclaim is as follows:

"The evidence shows that the plaintiffs were friends of the defendant. They persuaded him not to return to Spain, and induced him to purchase the business of Rafael Molina, one of the members of the plaintiff firm acting for him as attorney in fact in the purchase.

"It also appears that the plaintiffs assisted the defendant by extending him credit, at least to the extent of continuing the business bought by him, and they paid the first installment owing for its purchase. Subsequent installments were not paid when due; the plaintiffs thereupon commenced to make demands upon the defendant, the latter's property was attached, and his business brought to a close.

"Nevertheless, it has not been shown that the plaintiffs agreed to pay for the business of Molina, or to advance the money required to carry it on, and while on the one hand it is possible that there existed a certain moral obligation on the part of the plaintiffs to continue to assist the defendant, they were under no legal obligation so to do, and in consequence the counterclaim of the defendant must also be dismissed."

After a careful study of all the evidence relating to this counterclaim, we agree entirely with the above-quoted conclusions of the court below. It is very improbable that the plaintiffs ever agreed with the defendants to pay Molina the purchase price of this property. If they had made such agreement they would themselves have bought the property, and that agreement would undoubtedly have appeared somewhere in writing. That the plaintiffs did make large advances to the defendant upon the purchase by him of the business appears in the evidence. They paid the first installment of P33,000 due Molina at the time the contract was made, by crediting Molina with that amount upon the current account which they had with him, and charging the same amount to the defendant in his current account. It moreover appears that before they had received any money or other property from the defendant they had made other advances to him, to such an amount that, as De la Riva himself testified, from the beginning he owed them P60,000.

The failure to pay the second installment due Molina can not, we think, be attributed to plaintiffs. In the property sold by Molina to De la Riva were included claims against various persons in Catanduanes, amounting to a large sum. Prior to the time when the second installment became due the defendant had notified the plaintiffs that some of these claims could not be collected, and in view of the fact that Molina in the contract had guaranteed their payment he insisted that the amount of the uncollectible debts, which, as he afterwards stated in a counterclaim presented against Molina reached the sum of P72,000, should be deducted from the price. Molina's agent was notified of this claim and refused to admit it. No agreement could be reached between the parties, and Molina commenced his second action, as has been stated, in August, 1905. It is true that the defendant testified that he

repeatedly asked the plaintiffs to pay this second installment, but the documentary evidence indicates that he insisted upon some allowance by reason of the uncollectible debts.

The judgment of the court below is modified, by changing the amount thereof, to wit, P94,222.50, to P93,963.30, and with this modification it is affirmed and judgment ordered against the defendant for P93,963.30, with interest thereon from the 1st of January, 1906, at 8 per cent per annum, and the costs of the First Instance. No costs will be allowed to either party in this court.

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

CARSON, J., with whom concurs MAPA, J., dissenting:

I dissent.

I agree with the majority as to the disposition of the various contentions of the appellant, except as to the affirmation of the finding of the court below touching the rate of exchange from Mexican to Philippine currency, at which the plaintiff, on July 31, 1904, converted the alleged balance due on account, and at which various bills of exchange mentioned in claim No. 18 were thereafter entered in the account stated.

Defendant having denied the allegations of plaintiff as to the market rate of exchange at the time when these entries were made, the burden of proof as to the fact undoubtedly fell upon the plaintiff.

There does not appear to be any evidence in the record upon which a finding as to the true market rate of exchange at the dates indicated can be predicated, but it does appear that the official rate was \$1.13, Mexican currency, for P1, Philippine currency, and that a short time before and a few days after the conversion of the balance at the rate of P1.04, Mexican, for P1, Philippine currency, the plaintiff company made other exchanges at the rate of \$1.10, Mexican, for P1, Philippine currency.

The loss to defendant and the gain to the plaintiff company by making the exchange at the rate of \$1.04, Mexican, rather than \$1.10, Mexican, for P1, Philippine currency, amounts to many thousands of pesos, and without satisfactory proof as to true market rate of exchange, I do not think judgment should be entered in favor of the plaintiff. The letter relied upon by the plaintiff as evidence of the acquiescence of defendant in the entry at the rate indicated seems to me to fall far short of establishing that fact, and, is in truth no more than an acknowledgment of receipt of notification of proposed change in system of keeping the account, and in no wise an acceptance of the rate indicated, should it afterwards appear to have been erroneously adopted.

The judgment should be reversed and returned to the court below for the taking of testimony as to the true rate of exchange at the time of the making of the entries under discussion.

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