

QUE YONG KENG, PLAIN TIF AND APPELLEE, VS. RAFAEL TAN QUICO, DEFENDANT AND APPELLANT.

G.R. No. 4609. September 18, 1909

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 26th day of October, 1906, the plaintiff commenced an action in the Court of First Instance of the city of Manila, against the defendant, for the purpose of recovering the sum of P1,785. The basis of the plaintiff's cause of action was that he had delivered to the defendant various sums of money from time to time, amounting to the sum

The plaintiff further alleged that on or about the 4th day of August he had delivered to the defendant a certain bill of exchange for the sum of P300, which sum the defendant had collected on the said bill of exchange at Amoy in China.

The defendant filed a general denial and a counterclaim to the claim of the plaintiff. The defendant's counterclaim consisted in the allegation that he had delivered to the plaintiff the sum of P450, which sum the plaintiff had failed and refused to repay.

After hearing the evidence adduced during the trial of the cause, the lower court found that the evidence adduced by the plaintiff was insufficient, under the provisions of the 6th paragraph of article 1280 of the Civil Code, to support his claim with reference to all of the items mentioned in his complaint, except as to the item of P300, represented by the said bill of exchange. The lower court also found, under the said provisions of the Civil Code, that the evidence was insufficient to support the counterclaim of the defendant, and rendered a judgment against the defendant and in favor of the plaintiff for the sum of P300. From this decision the defendant appealed and made the following assignments of error:

"1. The court below erred in finding that, in respect to the 300 pesos mentioned in paragraph 5 of the complaint, there is written evidence, i. e., the bill of exchange, Exhibit A, in addition to the plaintiff's testimony in connection with the testimony of Vicente de Dios.

"2. The court below erred in sentencing the defendant to pay the said sum of 300 pesos.

"3. The court below erred in holding that it has not been proven that the defendant loaned the plaintiff the sum of 450 pesos referred to in his answer."

With reference to the first assignment of error, the alleged bill of exchange was presented as evidence during the trial of the cause and was marked "Exhibit A." The bill of exchange was written in Chinese characters; a translation of the same, however, appears in the record at page 74, and is as follows:

"I have received 300 pesos from the Chinaman Tan Seng Quan, at three days sight, to take to Amoy, and afterwards to pay the same to the said Tan Seng Quan."

It was admitted during the trial of the cause that the said Tan Seng Quan was the defendant in the present cause. It is difficult to understand just how the plaintiff can claim from the defendant the payment of the amount of the said bill of exchange. The plaintiff admitted that he had received from the defendant P300 and had given to him this bill of exchange. The plaintiff further admits that the defendant received from certain persons in Amoy the amount of money mentioned in said bill of exchange and that he, after the present action had been commenced, wrote to Amoy and received the bill of exchange from the persons who had paid it. We can not understand upon what theory the plaintiff bases his action for the recovery of this P300. If he received the P300 from the defendant, as he admits, then certainly the defendant was under no obligation to pay him more. If the defendant received the money upon the bill of exchange in Amoy then he received a consideration for his P300, and the relations between the plaintiff and defendant were closed, so far as that transaction was concerned. The bill of exchange itself constitutes no evidence whatever, in the absence of other facts, of a liability of the defendant to the plaintiff. There is no evidence in the record which justifies the plaintiff's right to recover of the defendant the P300 represented by the said bill of exchange. The judgment of the lower court, therefore, as to the P300 is hereby revoked.

What we have said in relation to the first above assignment of error, we believe answers the second assignment as well.

With reference to the third assignment of error, the lower court found that the evidence was not sufficient to sustain the claim of the defendant.

An examination of the evidence shows, beyond question, in relation with the provisions of paragraph 6 of article 1280 of the Civil Code, that the defendant did not justify his right to recover of the plaintiff the sum of P450. Therefore the judgment of the lower court, denying the defendant the right to recover of the plaintiff the sum of P450 is hereby affirmed. In consideration of the foregoing facts, the judgment of the lower court, granting to the plaintiff the right to recover the sum of P300, is hereby reversed. In all other respects the judgment of the lower court is hereby affirmed. So ordered.

Arellano, C. J., Torres, Carson, and Moreland, JJ., concur.

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