

MENZI & CO., INC., PETITIONER, VS. QUING CHUAN AS ADMINISTRATOR OF THE INTESTATE OF QUING TONG CO., RESPONDENT.*G.R. No. 46278. October 26, 1939*

Ponente: CONCEPCION, J.

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The question to be determined in this appeal has to do with the extent, or rather the limit, of the liability of a surety. This question arises from the following facts:

King Meng purchased merchandise on credit from the plaintiff-appellee Menzi & Co., Inc. On October 3, 1932, his account showed a balance against him in the amount of P3,168.80. The plaintiff corporation required him to give a bond for P10,000. Quing Tong Co gave the bond under certain conditions, one of which is that Quing Tong Co guaranteed the payment of the merchandise and goods which King Meng should purchase from the plaintiff in his own name or in that of King Yap Yek, paying in the manner to be set out in the invoices, with interest at 12 per cent, the value of the merchandise from the date of maturity. King Meng purchased from the plaintiff on different dates merchandise and goods totalling P32,453.70. Adding to this sum the preexisting debt of P3,168.80, gives a total of P35,622.30. On the other hand, King Meng had made payments amounting to P35,264.60. The plaintiff corporation applied the payment first to the original indebtedness of P3,168.80 and thereafter to the amount of the successive purchases made by King Meng from October 3, 1932, resulting in a balance in favor of the plaintiff in the sum of P358, payment of which is claimed, with interest and attorney's fees, from the intestate of the surety Quing Tong Co. The trial court gave judgment for the plaintiff corporation, but on appeal to the Court of Appeals, the latter reversed the judgment of the trial court and absolved the administrator of the intestate of Quing Tong Co from the complaint.

We believe that the application of payments made by the plaintiff corporation is erroneous for the reason that, where, as in the present case, there is more than one indebtedness, the payment or payments made by the debtor, in the absence of any agreement to the contrary, should first be applied, under the provisions of article 1174 of the Civil Code, to the most burdensome of the matured debts. The debt of P32,453.70 was more burdensome than the old indebtedness of P3,168.80 because, unlike the latter, it earned interest at 12 per cent. Moreover, according to the decision of the Court of Appeals, the period fixed for the payment of the invoices is one week, after which they become due and payable. Accordingly, the various payments made by King Meng should have been applied first to the amount of the goods taken one week earlier. From this it follows that the amount claimed by the plaintiff is the balance of the former indebtedness of P3,168.80 from which the surety is not liable because the bond given by him cannot be extended to debts incurred before the execution thereof. (*El Vencedor vs. Canlas*, 44 Phil., 699; *Asiatic Petroleum Co. vs. De Pio*, 46 Phil., 167; *Socony-Vacuum Corporation [formerly the Standard Oil Company of New York] vs. Leon C. Miraflores*, 37 Off. Gaz., 2807).

Finding no merit in the errors assigned in the petitioner's brief, the appealed judgment is affirmed, with the costs

to said petitioner. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Diaz, and Laurel, JJ., concur.

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