

GUTIERREZ HERMANOS, PLAINTIFFS AND APPELLEES, VS. MARIANO FUENTEBELLA, DEFENDANT AND APPELLANT.

G.R. No. 4761. March 02, 1909

Ponente: WILLARD, J.

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WILLARD, J.:

On the 26th day of August, 1903; the defendant signed the following document, which at the trial in the court below was marked Exhibit A:

"All my accounts with the late Don Tonia R. Perez having been settled this day, I declare that I am indebted for the balance of \$22,509.03, Mexican currency, resulting therefrom, which sum I bind myself to pay to his widow Doña Concepcion Valero, and all the receipts and vales dated prior to this are hereby annulled by both parties, the account of the business at Goa carried on by Don Simon Perfecto being the only one which remains unsettled.

"Lagonoy, August 26, 1903.

(Signed) "MARIANO FUENTEBELLA.

"\$22,509.03.

"Note.-Signed in duplicate, one copy retained by each."

When the plaintiffs as assignees of Doña Concepcion Valero brought this action against the defendant to recover, among other things, the amount mentioned in Exhibit A, he claimed that, in the settlement of the accounts as a result of which Exhibit A was signed, two mistakes had been committed against him.

He claimed that on the 12th and 23d of October, 1902, he had delivered hemp of the value of 5,424.30 pesos, which amount as he said, had not been credited to him at the time when he signed Exhibit A and never has been credited to him. He himself produced at the trial a statement of account which was marked Exhibit 1, delivered to him by the agent of Doña Concepcion Valero some days before Exhibit A was signed and which formed the basis of the settlement. In the last item in this statement the defendant is credited with two deliveries of hemp on the 12th and 23d of October of the value of 5,424.30 pesos. This entry shows that he was, in fact, given credit for this hemp at the time of the settlement and effectually disposes of his claim to the contrary.

The other mistake relates to a delivery of hemp on the 20th of November, 1901, of the value of 1,612.20 pesos. He says that he never was given credit for this amount. In Exhibit 1 there is an item crediting him with this amount, but later on in the same exhibit the same amount is charged to him, so that when Exhibit 1 was delivered to the defendant for his examination It did not appear that he had, in fact, been credited with this delivery. The double entry of this amount upon Exhibit 1 is explained by the witnesses for the plaintiffs who testified that this particular hemp was delivered by one Miguel Estela; that it was credited to the defendant because it was at first thought that it was his hemp, and that it was afterwards charged back to him on the theory that it was the hemp of Estela.

According to the defendant's own testimony, he had Exhibit 1 in his possession for several days. He testified that he and the agent of the creditor spent several days in examining the accounts; that he, the defendant, kept books of account and kept books which showed the amount of hemp which he had delivered to Perez; and that he examined these books of his during the process of the settlement. After this examination he presented to the creditors' agent a list of his objections to the account. The balance against him, as shown by Exhibit 1 as it originally was, amounted to 28,687.65 pesos. He claimed that, by reason of mistakes and errors in the account, it should be reduced by 6,178.62 pesos. The agent of the creditor allowed his entire claim in this respect, subtracted this sum from the original amount, 28,687.65 pesos, and the account was liquidated at the difference, namely, P2,509.03 pesos, which is the exact amount contained in Exhibit A. The plaintiffs' witnesses, testified that the claim as presented in the complaint was taken from the books kept by the creditor and was correct according to those books. The books themselves the plaintiffs produced in court and offered to the defendant for his examination. The defendant testifying as a witness, admitted that he was allowed a reduction of 6,178.62 pesos, but did not undertake to say how that amount was made up. We have no doubt that in it was included this sum of 1,612.20 pesos.

The defendant having signed Exhibit A, is bound by it unless at least he shows affirmatively that there was some mistake or error in the settlement. The burden of proof was on him to show such mistake or error, and, if this amount of 1,612.20 pesos was not included in the 6,178.62 pesos it was his duty to show it as he easily could have done. He testified that he himself kept books of account, but he did not offer them in evidence at the trial. Having before him when he signed Exhibit A his own books, showing the amount of hemp he had delivered, in which book the amount represented by this 1,612.20 pesos must have appeared, it is impossible to believe that he did not then make a claim for an allowance on account of that delivery.

It will have been observed that in Exhibit A it is stated that all the accounts pending between the parties had been arranged, except that relating to the business at Goa in charge of Don Simon Perfecto. On the 29th of August, 1903, the following document was signed by Simon Perfecto:

"The accounts of the business at Goa which I represent on account and by order of Don Mariano Fuentebella, having been this day settled with Don Tomas R. Perez, I hereby acknowledge the correctness of the balance of 7,434.95 pesos resulting against my account in the business, the sum of \$647.03 as the purchase commission on 647.03 piculs of hemp only remaining unpaid; which sum shall be paid to Don Mariano Fuentebella as per contract.

"San Jose, Lagonoy, August 29, 1903.

(Signed) "SIMON PERFECTO."

The plaintiffs included this amount in their complaint in this action and claimed that the defendant was responsible therefor. He denies such responsibility, alleging that he had nothing to do with the business of Perfecto at Goa except to ask the creditor at one time to deliver to Perfecto 2,000 pesos. The court found against the defendant upon this point and the evidence is entirely in favor of such finding. In the first place Exhibit A itself is a strong indication that the business at Goa belonged to the defendant. The agent of the creditor testified that the defendant told him, the agent, to settle the account with Perfecto, and that he, Perfecto, was authorized to make the settlement. The defendant himself testified that Perfecto was his purchaser at Goa and was in charge of the business there; that he, the defendant, had authorized him to buy hemp, giving him one-half of the commission which he received from the creditor; and that the creditor knew that Perfecto was the agent or purchaser of the defendant at Goa.

The business between the parties was entirely closed on the 20th of June, 1904. This action was commenced on

the 22d of June, 1906, The defendant claims that the balance which appeared against him on the 20th of June, 1904, constituted a mercantile loan made by the creditor to him and that, in accordance with the provisions of the Code of Commerce, no action could be maintained upon it until a notarial demand for its payment had been made by the creditor, and no such demand having been made, the action was prematurely brought. The account between the parties was an ordinary current account between a commercial house in Manila and a dealer in the provinces and embraces a great variety of transactions. It is apparent that the balance which results from the settlement of such a current account can in no sense be called a mercantile loan. (Gutierrez Hermanos vs. De la Riva, 7 Off. Gaz., 215.[1])

The court below allowed the plaintiffs interest from the 20th of June, 1904. We think that in this respect the court erred and that the plaintiffs are entitled to interest only from the time of the presentation of their complaint. There was no agreement as to interest. The transaction did not constitute a mercantile loan so as to fall within the provisions of article 316 of the Code of Commerce relating to interest. Nor can the balance due on a current account be said to be due for the sale of merchandise, so as to bring the case within article 341 of the same code. It rather falls under articles 1108 and 1100 of the Civil Code. No demand for payment having been made before the bringing of this suit, interest can be allowed only from the presentation of the complaint.

The judgment of the court below is modified by providing for interest only from the 22d day of June, 1906. In all other respects it is affirmed, with the costs of this instance against the appellant.

Arellano, C. J., Torres, Mapa, Johnson, and Carson, JJ., concur.

[1] 12 Phil. Rep., 458.

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