

ANG QUIAN CIEG ET AL., PLAINTIFFS AND APPELLEES, VS. JUAN TE CHICO ET AL, DEFENDANTS AND APPELLANTS.*G.R. No. 4766. January 19, 1909*

Ponente: WILLARD, J.

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The partnership, the members of which are defendants in this case, is the partnership the members of which are defendants in the case of Ang Seng Quen et.al. vs. Juan Te Chico et al.,[1] No. 4765, just decided, and they are defendants in the case of Margarita Mendoza vs. Juan Te Chico, No. 4767. Some of them are also defendants in the case of Trinidad Jurado Te Quim Jua vs. Juan Te Chico et al., No. 4768. When these four cases were tried in the Court of First Instance it was agreed that all the evidence offered in any one of them should be considered as having been presented in all of the others, so far as it was applicable.

This action was brought to recover the amount of eight promissory notes signed by Te Quim Jua as manager in Manila of the defendant partnership Sam Jap Jim & Co. They amount in all to about P9,156. The case of Margarita Mendoza was brought to recover the amount of five promissory notes, all of them signed by Te Quim Jua as manager in Manila of the partnership of Sam Jap Jim & Co. A list of the notes in the order of their dates, with the amount of each, follows:

MargaritaMendoza Mar.18,1905

P3,000.00

12 months.

Jua Qui Apr. 8, 1905

500.00

12 months

Jua Qui Apr. 11,1905

1,492.50

12 months

Jua Qui Apr. 21,1905

412.50

12 months.

Margarita Mendoza Apr. 24,1905

650.00

12 months

Jua Qui Apr. 29,1905

1,296.00

6 months.

Jua Qui. May 6,1905

1,805.00

12 months.

Jua Qui May 12, 1905

1,240.00

6 months.

Jua Qui. May 20,1905

1,210.00.

6 months.

Jua Qui July 20,1905.

1,200.00

12 months.

Margarita Mendoza July 21,1905

730.00

12 months

Margarita Mendoza July 24,1905

1,000.00

6 months.

Margarita Mendoza July 27,1905

5,000.00

6 months.

In case No. 4768, Trinidad Jurado Te Quim Jua vs. Juan Te Chico et al., the plaintiff is the manager above-mentioned, and he brought the action to recover a balance claimed to be due him for his services and profits to which he was entitled.

The theory of the defendants Juan Te Chico and Cu Ung Jeng is that these claims are all fictitious and that they are the result of a conspiracy between the plaintiffs in the respective actions and Te Quim Jua for the purpose of defrauding the defendant company. In the present case the partner who actually delivered the money represented by the promissory notes was, according to the testimony of the plaintiff Ang Bang Ca the other plaintiff Ang Quian Cieg. It is a suspicious circumstance that about six weeks before the trial he departed from the Islands for

China, leaving here his notes and the book of the plaintiff company which showed the payment of the money. His partner, however, testified that the amount represented by the promissory notes had actually gone out of the business and had been paid to Te Quim Jua. Te Quim Jua testified that he received the money and used it in the business of the defendant company.

The witnesses for the plaintiff in this action and the witnesses for the plaintiff in the case of Margarita Mendoza, all testified that these notes were made at different times and at their respective dates. The witness Claro Reyes testified that he made them all upon a typewriter upon Catalan paper, which he had in his office. The defendants insist that it appears conclusively from the internal evidence offered by the notes themselves that they were not made at different times and upon their respective dates, but that, on the contrary, all of the notes in this case were made at one time and all of the notes in the Margarita Mendoza case were made at another distinct time. This internal evidence consists in the first place in the appearance of the typewritten letters on the notes, it being claimed that in the Margarita Mendoza notes the same letters are blurred in each one of them, although they were made, some of them, months after others. In all the notes in this case the same letters present the blurred appearance, but the blurred letters in the notes in this case are not the letters which are blurred in the notes in the Margarita Mendoza case. To illustrate: Exhibit B in the latter case, purporting to have been made on the 24th of April, 1905, and Exhibit D, purporting to have been made on the 24th of July, 1905, present the same blurred letters, while Exhibit E in the present case, purporting to have been made on the "21st of April, three days before Exhibit B in the Mendoza case presents a different set of blurred letters. The other internal evidence consists in the fact claimed to exist by the defendants that the little indentations caused by the tearing of the paper fit perfectly. And in Exhibits C and B in the present case the parts of the watermark conform exactly, showing, as is claimed, that the two pieces originally formed a part of the same sheet of Catalan paper. These two notes are dated nearly a month and a half apart.

In addition to this internal evidence the defendants proved, we think, that Te Quim Jua, the manager of the defendant company during the time covered by the notes in this case acted for the plaintiff firm, whether in the capacity of an employee or of a partner does not appear, but it is proved that he received money in payment of goods sold by them and signed receipts for the payment of such money. He denied that he ever acted in any such capacity. The evidence satisfies us that he did not tell the truth in this respect and the other evidence indicates that other witnesses who testified in behalf of the plaintiffs did not state some of the facts as they existed.

But notwithstanding all of this evidence, and notwithstanding the fact that these defendants may not have testified truly in regard to the time when the notes were made, yet, if, in fact, the plaintiffs in these two cases really paid the money represented by these notes to Te Quim Jua and he used it in the business of the defendant company, the latter should be made to repay the money.

Juan Te Chico was the general manager of the company, living in Iloilo, where was located the main office of the company. Te Quim Jua was the manager of the Manila branch and had authority to buy goods in the name of the firm and to borrow money in its name. The business of the concern was the purchase of sinamay in Iloilo and its shipment to Manila for sale, and the purchase of jusi and other merchandise in Manila and its shipment to Iloilo. Juan Te Chico, the manager, left the Islands for China some time in the early part of the year 1905, January or February, and returned to Iloilo some time in May or June and thereafter came to Manila some time in June or July. It will be seen that he was absent during the time when some of these notes purport to have been given. His representative in Iloilo during his absence was Ong Bong Po, who had full authority to act for him during his absence and who, as testified to by Juan Te Chico himself, had all the powers that he had in the management of the business.

Juan Te Chico testified that when he was in Iloilo he was in the habit of making drafts upon the Manila branch,

which the latter accepted and paid. During his absence in China Ong Bong Po drew drafts repeatedly, for large amounts, on the Manila branch. These drafts, according to the testimony of Te Quim Jua, were accepted by him and afterwards paid by him, and he presented at the trial thirty-four such documents, stating that he had paid during the year 1905 more than P40,000 upon drafts drawn upon the Manila branch by the Iloilo house. The fact that these drafts were drawn by Ong Bong Po is proven by certain letters in which he states that he has been compelled to draw them and urges Te Quim Jua to accept them and pay them, directing him to borrow money if necessary and occasionally telling him that within a few days he would remit money to him. It appears from these letters also that the value of the material sent to Manila was inconsiderable when compared with the amount of the drafts drawn by the Iloilo house. It moreover appears that the Manila branch had no capital set aside for the transaction of its business and that during the time in question Te Quim Jua, as the manager, bought jusi and other material, which he sent to Iloilo. The purchase of this merchandise and the payment of the drafts above mentioned required a large amount of money.

No evidence was introduced by the defendants to contradict this proof. They made no attempt to show that drafts were not drawn to the amount claimed by Te Quim Jua, nor any evidence to show that he had not paid them.

There is an additional circumstance, moreover, of importance in the case. The notes are, almost all of them, drawn in the following form, to wit: "Know all men by these presents that I, Trinidad Jurado Te Quim Jua, as attorney in fact of Juan Te Chico, manager of the firm of Sam Jap Jim & Co., of the Iloilo branch in Manila, established at 149 Calle Nueva, Manila, P. I., hereby set forth that, my principal having drawn drafts Nos. 125, 126, and 128 in Iloilo for the sum of P1,296 for acceptance and payment by this firm under my management though it be necessary to borrow money for the purpose, I find myself obliged to borrow money from Jua Qui, represented by Ang Quinsec, by virtue of the powers conferred in me, my principal and the firm I represent obligating themselves to pay within six months from the date of the execution of this document of indebtedness.

"In testimony whereof I subscribe this and affix the seal of the house I represent this 29th day of April, 1905.

"[SEAL.] (Signed) TRINIDAD J. TE QUIM JUA."

It will be seen that these notes specified by numbers the drafts to pay which the money was borrowed. If no such drafts were drawn, it would have been an easy matter apparently for the defendants to have proven that fact.

More than P40,000 was paid out, therefore, by the Manila house; to meet these payments it was necessary to borrow money. This appears not only from the letters written by Ong Bong Po but also from those written by Te Quim Jua in answer thereto. The amount as appears from these two suits was about P20,000. It having been necessary to borrow money, and money having been actually borrowed, the court below was evidently of the opinion that the evidence in the case was sufficient to show that the plaintiffs in these two cases were the ones who loaned it. With this opinion we agree. There are other facts which strengthen this conclusion. Juan Te Chico himself was here in Manila during part of June and all of the month of July, 1905; he lived in the same house with Te Quim Jua; nearly P8,000 was borrowed while he was here and actually engaged in the business of the firm. Te Quim Jua testified that he informed Juan Te Chico of these loans; there was testimony of other witnesses to the effect that the last two loans were made from Margarita Mendoza, upon the express orders of Juan Te Chico and that when the money produced by the loan was brought to the store Juan Te Chico himself helped to count it.

The notes are all in Spanish. The plaintiff who testified in this case could not read Spanish. Margarita Mendoza could neither read nor write, and when they testified that these particular exhibits were delivered upon their respective dates they could not really know whether these identical documents were the ones which they then received. It is possible that as the money was advanced by the plaintiffs from time to time some memorandum thereof was given, and when all the transactions were completed these memoranda were surrendered and the notes now in question were given in their place. But however that may be, we do not think the fact that these notes were

all written at the same time is sufficient to overcome the testimony to which we have above referred.

The only defendants who appealed are Juan Te Chico and Cu Ung Jeng. In the case of Ang Seng Quen and others against Juan Te Chico, No. 4765, just decided, we have discussed the liability of the two appellants for the debts of the partnership, and what is there said is applicable to this case.

The judgment, so far as it relates to Juan Te Chico, is affirmed, with the costs of this instance against him; so far as it relates to Cu Ung Jeng it is reversed, and he is acquitted of the complaint, with the costs of first instance against the plaintiffs. No costs will be allowed to Cu Ung Jeng in this court.

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

[1]Page 547, post.

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