

**MANUEL ORMACHEA TIN-CONGCO, DECEASED, REPRESENTED BY
THE CHINAMAN TIU TUSAY, JUDICIAL ADMINISTRATOR OF HIS
ESTATE, PLAINTIFF AND APPELLEE, VS. SANTIAGO TRILLANA,
DEFENDANT AND A...**

G.R. No. 4776. March 19, 1909

Ponente: TORRES, J.

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TORRES, J.:

On the 15th of January, 1904, Manuel Ormachea Tin-Congco, a Chinaman, presented an amended complaint against Santiago Trillana, alleging that the plaintiff Ormachea and Luis Vizmanos Ong Queco were engaged in business in the pueblos of Hagonoy, Malolos, and other places in the Province of Bulacan, and that in the course thereof the defendant purchased from them merchandise to the value of 4,000 pesos, local currency; that two years prior to that date, a little more or less, the partnership was dissolved and the business was divided up between the partners, all accounts and debts of the defendant were allotted to the plaintiff, and became the individual property of Ormachea Tin-Congco; the indebtedness is proven by the documents signed by the defendant or his agents in favor of Ormachea or of Vizmanos Ong Queco or their agent named Lawa in charge of the business. The documents of indebtedness are inserted in the complaint and duly numbered. They aggregate 135 documents, some of which are written in Tagalog with their corresponding translations; that the legal interest on the said 4,000 pesos is 1,500 pesos which makes the total debt amount to 5,500 pesos, and the same has not been paid by the defendant. Therefore, the plaintiff prays that judgment be entered ordering the defendant, Santiago Trillana, to pay the said 5,500 pesos with costs.

The defendant filed a written answer on November 15, 1904, setting forth: That he admitted the first statement of the complaint, but had no knowledge as to the second as it appears therein; that he did not admit the same, nor the other allegations in the complaint in the sense in which they are set out; that as a special defense, the defendant alleges that he had already settled his accounts and obligations contracted in the business to which the complaint refers, by means of periodical payments in tuba or the liquor of the nipa palm, and that if any accounts are still pending, the same should, owing to their character and the manner in which they were constituted, be paid in kind and not in money as the plaintiff claims in his complaint, and should be paid at the time and under the circumstances which, as is customary in Hagonoy, such class of obligations are settled; he therefore asked the court below to enter judgment absolving the defendant of the complaint, with the costs against the plaintiff.

After hearing the evidence presented by the parties, the trial judge, on February 27, 1907, rendered judgment ordering the defendant, Santiago Trillana, to pay to the Chinaman Florentino Tiu Tusay, the judicial administrator of the estate of the deceased plaintiff, Ormachea Tin-Congco, the sum of P2,832.22, in tuba, under the same conditions stipulated between the debtor and the copartnership for the working of the distillery of Luis Vizmanos and the late Chinaman Manuel Ormachea, with costs.

The representative of the defendant excepted to the above judgment, and announced his intention to appeal by

means of a bill of exceptions; and by a writing dated March 22, 1907, he prayed the lower court to revoke or amend its former decision of the 27th of February, and to order a new trial as the evidence adduced at the hearing was not sufficient to justify said decision, because the vale No. 88 is subscribed by another person who is not the defendant, and for said reason its value can not be demanded from him; that vales numbered 31, 87, 91, 93, 94, 96, and 97 are in the same condition; that the vales Nos. 5, 6, 7, 32, 33, 35, 40, 41, 44, 48, 54, 63, 104, 105, 127, 132, and 133 offered by the plaintiff in evidence and signed by the defendant, clearly express on whose account they were issued, and for said reason the obligations contained in said vales are not those of the defendant, Santiago Trillana, and can not stand as evidence against him; that the vales Nos. 109, 112, 113, 115, 116, 118, 12, and 15 by themselves do not prove, nor can they prove that the amount of money which they represent should form part of the defendant's debt, because it does not appear that there was ever a lawful transfer, cession or indorsement made between the person in whose favor they are made out and the so-called creditor, nor between said person and the successor of the said entity, that is to say, the representative of the plaintiff; that vale No. 113 is made out as a mere recommendation of the defendant, and for account of a third person; that vale No. 1 does not state the year, and No. 135 bears no date at all, therefore, they do not constitute sufficient proof to justify the condemnatory judgment with respect to the amount which they represent, because the time when said respective obligations were contracted is not determined; that the vales which are dated previously to vale No. 98 are invalidated by the note of general liquidation between the creditor Manuel Ormachea, and the debtor Santiago Trillana written on the back of the said vale No. 98 in Chinese characters and explained by the witness Jose R. Lopez Lawa, and, notwithstanding said liquidation, the said vales are reputed as unpaid; and finally, that if the debt is payable in tuba, unless it is shown and it does not so appear that the defendant refused to pay it in that manner or has failed to comply with his obligations, there is no reason to compel him to pay, therefore he should not be ordered to do so, much less to pay the costs.

At the hearing, the trial judge, on the 7th of May, 1907, overruled the motion to modify his former decision as far as it referred to the amount of the indebtedness found against the defendant and the said judgment was modified by adding the provision that the defendant should make payment in tuba which he should deliver at the plaintiff's distillery in the town of Hagonoy within the term of six months, but that, if said term should expire without such payment, whatever might be the cause, he should be obliged to pay his debt in cash.

The defendant requested a decision in his motion for a new trial in which he contended that the evidence was not sufficient to justify the judgment of February 27, and on the 12th of November the court below held that, by its order of May 7, last, the motion for a new trial was denied, and said denial was reproduced as explanation of the ruling of May 7. The defendant excepted to the foregoing decision and presented the corresponding amended bill of exceptions; when approving the bill of exceptions, the court below ordered the suspension of the execution providing that the defendant furnish bond in the sum of P4,000.

As Manuel Ormachea Tin-Congco claimed from Santiago Trillana the payment of the sum which, as capital and interest thereon, he owed the former for amounts in cash and in goods which he took from the creditor and his partner, Luis Vizmanos Ong Queco, as shown by the 135 vales which are attached to the complaint and which were admitted as authentic by the defendant, with the exception of eight of them signed by other persons, aggregating P173, the court below, in view of the evidence, found that the debt which could be claimed from the defendant, after deducting the said P173, amounted only to P2,832.22 4/8.

The record shows that the amounts advanced to the debtor, Santiago Trillana, and to others by means of the said vales, most of which were" addressed to Lopez Lawa, and some to other persons, were delivered by the said Lopez Lawa who, from the years 1894 or 1895 to 1901, was the manager of the distillery situated in the barrio of San Sebastian, municipality of Hagonoy, Bulacan, and owned in partnership, by Ormachea and Vizmanos, but that

the money furnished by the manager to Trillana and to the others on account of the tuba or liquor of the nipa palm which the defendant had engaged to supply to said distillery, belonged to the two owners of the same, not to the manager, Jose Lopez Lawa.

It has also been fully proven that, when in June or July, 1901, the aforesaid Ormachea Tin-Congco and Vizmanos Ong Queco withdrew from the business, Lawa ceased to act as manager of the distillery, and then, among other things that belonged to the two partners, they divided between them the credits that they held against third persons, those that stood against Santiago Trillana as evidenced by the said 135 vales, having gone to Manuel Ormachea Tin-Congco. This is affirmed by Luis Vizmanos Ong Queco, Syo Bunchad, by Jose R. Lopez Lawa himself, and, as stipulated between the parties, by Tiu Langco, a Chinaman who was at the time employed as mixer in said distillery. It should be noted that, while this litigation was pending, the plaintiff, Manuel Ormachea, died, and Florentino Tiu Tusay was appointed administrator of his estate; letters of administration in favor of the latter were issued on the 9th of October, 1905. (Folio 56.)

As has been seen, the defendant stated that he had already

paid his accounts and obligations contracted in favor of the said Ormachea and Vizmanos by means of periodical deliveries of tuba or liquor of the nipa palm, and alleged that, if any amount was still pending payment, it should be paid not in monjy but in tuba, at such time and under such circumstances as are customary in the town of Hagonoy. In evidence of this, while testifying under oath, he introduced the following document marked "A" which appears at folio 248:

"I, Jose R. Lopez (Lawa), a Christian Chinese, do hereby declare that D. Santiago Trillana has no outstanding debt whatever with the distillery situated in the barrio of San Sebastian in this town, which in past times was under my management, what I have stated is the truth.-Hagonoy, November 19, 1903.-Jose R. Lopez."

The debtor explained how and in what manner he obtained the foregoing document from Lawa, and stated: That in November, 1903, he received a letter from Mr. McGirr, the plaintiff's attorney, requesting him to settle his account with Lawa, for which reason he called on the latter and asked him whether he still owed him anything on account of the distillery in San Sebastian; Lawa replied that he no longer owed anything; thereupon he requested Lawa to issue the said document, and under Lawa's direction the debtor wrote out the document, and the former, upon being informed of its contents, signed it; for said reason the witness believed that he no longer owed anything.

However, Lopez Lawa affirms that he gave the said document marked as "Exhibit A" to the debtor, Santiago Trillana, because the latter was not indebted to him but to Manuel Ormachea, to whom the credits standing against Trillana were transferred when Ormachea withdrew from the above-mentioned partnership with Vizmanos Ong Queco. When drawing up the preinserted document, it was not his intention to annul and set aside the vales which represented the indebtedness of the defendant, Trillana.

If the business jointly carried on by Ormachea and Vizmanos was dissolved, and its transactions ceased in 1901, Jose Lopez Lawa, who managed the distillery on behalf of the owners of the same, also ceased to act as such manager in said year, and for said reason the document Exhibit A, which he issued to the debtor on the 19th of November, 1903, two years after ceasing to be manager, can not serve to relieve the debtor from paying what he owed by virtue of the documents or vales that he had issued in order to obtain money from the owners of the said distillery; that is to say, as agreed upon by them, the right to recover the debts of the defendant still belonged to Ormachea when the business was dissolved, as Lawa was not authorized by Ormachea to deliver to the debtor an acquittance releasing him from the obligations that he had contracted, to the prejudice of the real creditor, the only person entitled to condone a debt in the event of waiving the right to recover the same.

If the document marked "A" had been issued by Jose Lopez Lawa while still at the head of the business of the distillery, as representative of the owners thereof, the aforesaid Ormachea and Vizmanos, prior to their withdrawal from business, perhaps it might have served as a foundation for the debtor to allege that his obligations evidenced by said vales had been settled, although, if such was the case, the said vales should have been returned to him by Lawa, or by the owners of the distillery; but, as the document was made out and issued two years afterwards, without a previous payment of the amounts secured on the said vales, when the business no longer existed, when the owners had entirely withdrawn from it, and when Lawa, who then acted as manager of the distillery, had no express authority to issue such a document, with the further circumstance of its being written in Spanish, a language with which the Chinaman who signed it was probably not well acquainted and the fact that it was written by the defendant, Santiago Trillana himself; it is not proper nor lawful to admit the said document as possessing a force and effect that would fully exempt the defendant from the payment of his obligation, and with greater reason if it is considered that it has not been shown that Lawa was authorized to liquidate accounts, or to issue an acquittance releasing the debtor from the payment of his debt. (Arts. 1714 and 1719, Civil Code.)

Article 1162 of said code reads:

"Payment must be made to the person in whose favor an obligation is constituted, or to another authorized to receive it in his name."

After the close of the business of the distillery owned by Ormachea and Vizmanos, and after Lawa had ceased for two years to act in the administration and management thereof, he was not authorized to sign the document marked "A," made out by the debtor, by which the credit of Ormachea should be considered as settled, and the obligation contracted by Santiago Trillana, as shown by the vales which appear in the record, extinguished.

Since the vales existed, and were in the possession of the creditor, it was because the amounts they called for had not yet been paid, inasmuch as an obligation can only be presumed to have been fulfilled when the proofs of its existence have been returned to the debtor. (Sec. 834, par. 8, Code of Civil Procedure.)

Seeing that the amounts stated in the vales acknowledged by the debtor were advanced to him in part payment of the price of certain quantities of tuba or liquor of the nipa palm which he had contracted to deliver at the distillery, and as long as he is able to comply with these stipulations within a reasonable time, the defendant can not be compelled to pay his debt in cash. The amounts stated in the vales were advanced under the condition that the same would be paid or satisfied with the value of the tuba received by the distillery; therefore, the decision of the court below, which moreover appears to have been acquiesced in by the appellee for the reason that it was undoubtedly so stipulated, is in accordance with the law. (Art. 1278, Civil Code.)

In view of the foregoing, and accepting the conclusions contained in the judgment of February 27, 1907, appealed from, it is our opinion that the same should be affirmed, and we hereby affirm it, with the addition made in the order of May 7 of the same year, with the costs against the appellant. So ordered.

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

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