

**FRANCISCO GONZALEZ Y QUIROS, PLAINTIFF AND APPELLANT, VS.
CARLOS PALANCA TAN-GUINLAY, DEFENDANT AND
APPELLEE.-GERMANN & CO., LIMITED, APPELLEES.**

G.R. No. 4816. January 27, 1909

Ponente: WILLARD, J.

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WILLARD, J.:

Some of the matters connected with this litigation have been examined by this court twice before. (Quiros vs. Tan-Guinlay, 5 Phil. Rep., 675; Palanca Tan-Guinlay vs. Quiros, 10 Phil. Rep., 360.)

On the 18th day of April, 1906, judgment was rendered in the Court of First Instance of the city of Manila in favor of the plaintiff in this action and against the defendant Tan-Guinlay for 7,981.80 pesos, and interest from the 1st day of January, 1894. The plaintiff, claiming that Germann & Co., Limited, were indebted to the defendant Tan-Guinlay in the amount of 7,741.17 pesos, with interest from the 1st day of January, 1894, took these proceedings for the purpose of having that debt applied in payment of its judgment against Tan-Guinlay.

We will not stop to inquire whether the practice adopted by the plaintiff is or is not authorized by the Code of Civil Procedure, but will pass directly to the merits of the case, which involve only one question, namely, whether in 1893 Germann & Co. owed Tan-Guinlay the amount which the plaintiff claims they owed him, or any other amount.

Tan-Guinlay was not a witness in these proceedings. The person who was the manager of Germann & Co. in 1893 long since ceased to be such manager and did not testify at the trial, nor did any persons so testify who were then connected with that concern. The evidence in the case practically consisted of the books of Germann & Co. kept at that time and parts of the records of "various proceedings in the litigation then had between Quiros, the present plaintiff, and Tan-Guinlay, and between Germann & Co. and Tan-Guinlay. The books above mentioned show that Germann & Co. not only did not owe Tan-Guinlay anything but that he owed them 7,358.83 pesos. It was also proven that Germann & Co. then obtained judgment against Tan-Guinlay for that amount; that the judgment never was collected, and that it was charged off as loss upon the books of Germann & Co. It seems to be admitted by the plaintiff and appellant that Tan-Guinlay did, in fact, owe Germann & Co. this amount of 7,358.83 pesos. And the whole case of the plaintiff rests upon the proposition that Tan-Guinlay was entitled to credit upon that sum to the amount of 15,100 pesos, money paid by Tan-Guinlay, or on his account, to Germann & Co. Deducting the admitted balance of 7,358.83 from this amount of 15,100 pesos, there is left 7,741.17 pesos, which is the amount claimed in these proceedings to be due from Germann & Co. to Tan-Guinlay, with interest.

The evidence relating to this sum of 15,100 pesos is as follows; On the 5th day of December, 1893, the plaintiff Quiros commenced an action against Tan-Guinlay, in which action all the property of Tan-Guinlay in his store in Calle Rosario, in Binondo, was attached, including all his books, papers, and documents. Among the papers thus seized were seven documents—two promissory notes and five bills of exchange. These bills of exchange were all substantially of the same kind and number; 423 (4148) will serve as an example of the rest. It is a bill of exchange

drawn at Calibo on the 7th of September, 1893, for 5,150 pesos, signed by Chiu-Ponso to the order of Chua-Seongco, drawn upon Tan-Tuco, and accepted by him payable on the 17th of October, 1893. The following names appear upon the back in this order: Chua-Seongco, C. Tan-Guinlay, and under them these words: "Recibimos, Germann y Ca." It also bears a rubber stamp which reads, "Germann & Co., Manila."

The two promissory notes were signed by persons other than Tan-Guinlay and Germann & Co., and were not payable to either of them, though both bore the name of Tan-Guinlay upon the back and the words, "Recibimos, Germann & Co."

It will be observed that Tan-Guinlay was not the person who was ultimately bound to pay these obligations. That person, so far as the bills of exchange are concerned, was Tan-Tuco, and Tan-Guinlay was only an indorser.

The only thing that appears in connection with these documents, is the bare fact that they were found among the papers of Tan-Guinlay when the attachment above-mentioned was levied; that they were then taken possession of by a receiver, were introduced in evidence in a criminal case against Tan-Guinlay and the manager of Germann & Co. in 1895, and have been since that time in the records of the Court of First Instance of Manila, and at the present trial were presented as a part of that record.

The theory of the plaintiff, however, is that Germann & Co. received by reason of these documents 15,100 pesos in cash from someone on account of Tan-Guinlay and that 7,358.83 pesos of the amount was applied in payment of the debt then due from Tan-Guinlay to Germann & Co., leaving a balance of 7,741.17 pesos still due from Germann & Co. to Tan-Guinlay. There is no direct evidence to show these facts.

It seems apparent that these documents were at one time in the possession of Tan-Guinlay, and that they were afterwards delivered by Tan-Guinlay to Germann & Co., who later redelivered them to Tan-Guinlay. The books of Germann & Co., kept at the time, were examined at the trial of this proceeding and they contained no entry whatever relating to these papers. There was no entry in any of the books showing that any money had ever been received by Germann & Co. on account thereof, either from Tan-Guinlay or Tan-Tuco or the other persons ultimately bound to pay them. That the obligations were never paid by Tan-Tuco is clearly proven by the fact that the papers were found in the office of Tan-Guinlay, an indorser. If they had been paid by Tan-Tuco to Germann & Co., the latter would have delivered the documents to Tan-Tuco and they would be in his possession and not in the possession of Tan-Guinlay. It is also apparent that the obligations were never paid by any other of the persons primarily responsible thereon, for the reason that they are now found in the possession of Tan-Guinlay, one of the indorsers. Not only were they never paid by any of the parties thus responsible, but it is very evident that they never will be paid and are worthless.

Germann & Co. not having received this amount of 15,100 pesos from the makers and acceptors, they must have received it from Tan-Guinlay if they received it at all. If the theory is that when Germann & Co. returned the notes they demanded that Tan-Guinlay pay them the amount of their bill, and he did make that payment, the plaintiff is in no way aided because Tan-Guinlay would have paid only what he owed and no money belonging to him would have been left in the hands of Germann & Co. The theory must be that when they returned the notes, Germann & Co. demanded not only payment for their bill but the balance of the 15,100 pesos, to wit, 7,741.17 pesos. This theory must rest on the claim that Germann & Co., when receiving the bills, actually paid that amount in cash for them.

There is no evidence to support this theory and it is inherently improbable when it is considered that Germann & Co. were only interested in securing the payment of their debt of 7,358.83 pesos, for which two of the bills-No. 4119 for 3,000 pesos, and No. 4148 for 5,150 pesos-would more than have sufficed, and no reason is shown why they should have desired to purchase and pay cash for the five other bills, which were then of so little value that

they were not considered worth protesting.

The only reasonable theory is that these documents were delivered by Tan-Guinlay to Germann & Co. with the understanding that whatever amount was collected by them should be credited on his account, and nothing having been collected, they were all returned to him.

The plaintiff relies to a great extent upon an opinion given on the 19th of October, 1896, by two expert bookkeepers, who were appointed by the Court of First Instance of Binondo to examine the books and accounts of Germann & Co. These experts were appointed in a criminal action for estafa which had been instituted by the plaintiff against Tan-Guinlay and the then manager of Germann & Co. They reported the facts which have been set forth above in regard to the notes amounting to 15,100 pesos, held that, under the circumstances, Germann & Co. should be charged with the amount of these notes, and that therefore they owed Tan-Guinlay 7,741.17 pesos. Two other experts appointed in the same proceeding made a similar report on the 22d of March, 1898. These reports amounted to nothing more than the legal opinion of the experts as to the liability of Germann & Co. for the amount of these notes and bills of exchange and as such can not be considered as evidence of any facts. In the report of the first two experts, it is stated that Germann & Co. recognized that these notes and bills had been paid by Tan-Guinlay.

Nothing is said upon this subject in the report of the second experts, one of whom was a witness at the trial of this proceeding. He testified that the then manager of Germann & Co. was not informed by the experts of the results of the investigation and that they had no communication with him. These experts were appointed to examine the books of Germann & Co. Their faculties were limited to a report of what appeared from the books and anything inserted in the report relating to statements made by the then manager of Germann & Co. would be purely hearsay. None of the first board of experts was examined as a witness in this proceeding. It follows, therefore, that even if these reports, made in another proceeding to which Germann & Co. were not parties, could in any way be considered evidence in this case, they can not vary the result which necessarily follows from the other evidence presented.

The plaintiff not having proved that Germann & Co. are indebted to Tan-Guinlay in any amount, the judgment of the court below must be sustained. It is accordingly affirmed, with the costs of this instance against the appellant

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

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