

P. P. ANGEL ORTIZ AND EDUARDO DE ROTAECHE, PLAINTIFFS AND APPELLEES, VS. THE CHINAMAN FELIX MELLIZA (ALIAS PINGA), DEFENDANT AND APPELLANT.

G.R. No. 5902. March 07, 1912

Ponente: TORRES, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-5902/>

TORRES, J.:

This is an appeal raised by counsel for the defendant from a judgment of conviction rendered in this case by the Honorable Jose C. Abreu, judge.

On February 15, 1908, counsel for Angel Ortiz filed a written complaint in the Court of First Instance of Sorsogon, against the Chinaman, Felix Melliza, alias Pinga, wherein he alleged that about the years 1903 and 1904 the defendant was doing business with the commercial firm of "Viuda e Hijos de F. Suarez," and on January 31, 1905, the date when the defendant finally ceased to do business with the said firm, he owed the latter the sum of P4,037.82, according to a balance struck on that date, a copy of which was attached to the complaint; that, on January 28, 1907, Angel Ortiz purchased from "Viuda e Hijos de F. Suarez" all the shares and accounts held by this firm in the Province of Sorsogon, there thus being transferred to Angel Ortiz the credit of P4,037.82 of the said "Viuda e Hijos de F. Suarez;" and that the defendant Chinaman, Felix Melliza, had not up to date paid this sum, though it had been demanded of him. The plaintiff therefore prayed that judgment be rendered by sentencing the defendant to pay the sum of P4,037.82, with legal interest thereon from the date of the complaint until its final payment, and the costs of the suit.

The demurrer to the complaint having been overruled, counsel for the defendant set forth in his answer that he admitted the allegations of paragraphs 1, 2, 3, and 5 of the said complaint, and denied those of paragraphs 4, 6, and 7 of the same.

In a cross complaint said counsel for the defendant represented: that when the plaintiff acquired from "Viuda e Hijos de F. Suarez" the accounts mentioned in paragraph 5 of the complaint, he at the same time assumed all the debts, obligations and liabilities which the said firm had in the Province of Sorsogon; that the concern aforementioned unjustly and maliciously, on January 10, 1903, charged the defendant with the crime of estafa, before the justice of the peace of the pueblo of Sorsogon and prosecuted the case until his filial acquittal by the Supreme Court, on January 7, 1908, thereby causing his said unjust and malicious arrest and prosecution, moral sufferings and great damage to his public reputation, as well as large pecuniary losses and expenses made necessary by his attorney's fees and the legal proceedings required finally to prove his innocence, which damages amount to the sum of P25,000. Therefore counsel for the defendant prayed that he be absolved from the complaint, and the plaintiff sentenced to pay him the damages claimed, and to pay the costs.

The demurrer interposed by counsel for the plaintiff against the defendant's cross complaint was sustained, on the ground that the latter was vague and unintelligible, inasmuch as it contained no clear statement of the facts constituting the alleged damages, and because the facts alleged did not constitute a cause of action, since, though

the defendant's claim was based on the judgment of acquittal rendered by the Supreme Court on January 7, 1908, yet still it was not alleged that said decision held that the charge presented against the defendant was unjust and malicious; and therefore the cross complaint was dismissed.

On March 23, 1908, counsel for the defendant filed an amended answer to the complaint wherein he stated that he admitted the allegations of paragraphs 1, 2, and 3 of the complaint and denied each and all of those of the other paragraphs thereof; that, as a special defense, he alleged that the accounts between the defendant and the said commercial firm had been settled long prior to the filing of the complaint, which settlement showed that the former owed the latter nothing, and that subsequent to the said settlement the defendant had incurred no debt nor obligation towards the firm of "Viuda e Hijos de F. Suarez;" and he therefore prayed that his client be absolved from the complaint and the costs assessed against the plaintiff.

With the permission of the court, counsel for the defendant, on October 26, 1908, filed a written amended answer and cross complaint to the original complaint, wherein he set forth that he admitted the allegations of paragraphs 1, 2, and 3 of the complaint and denied each and all of those of the other paragraphs thereof, and alleged that the accounts between the defendant and "Viuda e Hijos de F. Suarez" had been settled long prior to the filing of the complaint, in which settlement it was found that the former no longer owed anything either to the latter or their successors, and that subsequently thereto the defendant had not contracted any debt or obligation towards either the said firm or the plaintiff.

As a counterclaim and cross complaint, he alleged that Angel Ortiz purchased, on January 28, 1907, from the firm of "Viuda e Hijos de F. Suarez," all the liabilities, shares and accounts which the latter company had in the Province" of Sorsogon; that, in November, 1902, the defendant and the aforesaid company entered into a verbal contract by virtue of which the defendant bound himself to deliver to the commercial house before mentioned, hemp, upon the allowance of a commission of one peso for each picul; that, under this agreement, the defendant did deliver to the said firm 386 piculs and 35 cates of hemp; that, in December of that year, the same parties made a verbal contract whereby the firm of "Viuda e Hyos de F. Suarez" promised the defendant a commission of one peso and fifty centavos for each picul of hemp that he should deliver to it, and that he did deliver to the same 1,171 piculs and 73 cates of the said product, for which his commission was P1,757.44, and the whole of the commissions earned by the defendant amounted to the sum of £2,143.79, which sum had not been paid to him, either by "Viuda e Hijos de F. Suarez" or by the plaintiff, with the exception of P303, there remaining in defendant's favor a balance of P1,840.79 still unpaid and owing him. Said counsel, therefore, prayed that judgment be rendered against the plaintiff party for the sum of P1,840.79, with legal interest thereon, and for the costs of the suit.

On the same date, October 26, 1908, counsel for the plaintiff, in answer to the cross complaint and counterclaim presented by the defendant, set forth in writing that he admitted paragraph 1 of the cross complaint and denied paragraphs 2 and 3 of the same, and requested that the plaintiff be absolved from the said cross complaint and that judgment be given against the defendant for the sum specified in the complaint, together with the legal interest thereon, and for the costs.

In another writing of the same date, counsel for the plaintiff represented that in the balanced account accompanying the complaint there did not appear two items which had been erroneously omitted therefrom and which consisted of the following debit items:

February 7-26 S. of salt.....

P56.25

February 7 L-652 S. L. Manila.....

1,000.00

That the total sum, P10,302.50, that appears in the said balance was not altered by the amount of these two items, since they formed a part of that total sum, and he therefore prayed that the plaintiff be permitted to make the said amendments by substituting for the said balanced account the corrected copy thereof, and that the latter be made a part of the complaint. This petition was allowed by the court.

After the hearing of the case and the introduction of evidence by both parties, the documentary evidence being attached to the record, the court, as a result of the conclusions reached from their due consideration, rendered judgment, on November 17, 1908, sentencing the defendant, Felix Melliza, to pay to the plaintiff the sum of P4,037.82, together with legal interest thereon from February 15, 1908, until its final payment, and to pay the costs of the suit. Counsel for the defendant excepted to this judgment and asked for a rehearing on the grounds that the judgment was contrary to the weight of the evidence and to the law. This motion was denied, exception was entered by the defendant, whose counsel duly filed the required bill of exceptions, which was approved by an order of July 6th in which provision was also made for the execution of the judgment, unless the appellant-defendant should file a bond for P6,000 to respond for the sum which is the subject matter of the judgment, with interest and costs, which bond appears to have been filed; according to a notarial certificate of the 3d of August, 1909, and the bill of exceptions, with a transcript of the evidence, was forwarded to the clerk of this court.

This suit concerns the collection of the sum of P4,037.82 which, according to the balance sheet attached to the complaint, the defendant Chinaman, Felix Melliza, alias Pinga, o/w. the counsel for Angel Ortiz who, on January 28, 1907, acquired from the firm known as "Viuda e Hijos de F. Suarez," established in Sorsogon, all the rights, snares and accounts that belonged to the said firm, among them, the account aforementioned owed by the defendant on the date of the complaint.

The defendant Chinaman denied the correctness of the balance sheet accompanying the complaint, as well also as that of the contents of the memorandum book, exhibited under letter A, by the plaintiff, as proof of the debt claimed.

In view of the fact that the defendant did not admit as true and legitimate all the items contained in the said balance sheet and in the memorandum book exhibited in evidence, and denied the alleged certainty of the debt claimed, it was an indispensable requisite for the enforcement of payment that the plaintiff satisfactorily prove that the defendant did really owe him the sum set out in the complaint.

Article 1214 of the Civil Code provides:

"Proof of obligations devolves upon the persons claiming their fulfillment, and that of their extinction upon those opposing it."

There is perfect accord between this statutory provision and the doctrine laid down by the supreme court of Spain in its decisions of November 3, 1902, and October 30, 1903, in so far as it declares that it is incumbent upon him who avers the facts to prove them.

In conformity with the provision contained in the foregoing article, section 297 of the Code of Civil Procedure prescribes:

"Each party must prove his own affirmative allegations. Evidence need not be given in support of a negative allegation except when such negative allegation is an essential part of the statement of the right or title on which the cause of action or defense is founded, nor even in such case when the allegation is a denial of the existence of a document, the custody of which belongs to the opposite party."

It is not sufficient that he who claims to be the creditor should have presented, as proof of the existence and certainty of the debt of P4,037.82, the balance sheet of an account which lacks the necessary assent and acceptance of the debtor, but it is indispensable that, in the absence of this requisite, the debt be proven by other means of evidence recognized by law and that there be exhibited the due bills and receipts which, according to the allegation of the debtor, were issued by the latter in exchange for the sums and effects which he had taken or received from the aforesaid firm. The testimony of the former manager of that company, contradicted by the defendant and uncorroborated by other evidence, is not sufficient to prove the certainty of the debt as set forth in the complaint and admitted in the judgment appealed from.

The defendant, however, testifying under oath and with the notes before him which he had made in a book presented by him at the hearing and written in Chinese characters, stated, among other things, as follows; that, according to the last settlement had between himself and the head of the Suarez firm, on March 2, 1903, as a result of certain transactions made by them, noted in the book above mentioned there was a balance against witness of P3,647.22, though, on the 2d of May following, this sum he had until then owed, was paid, through a final settlement effected for the purpose, upon which transaction he took up all the receipts against him held by the said firm.

The debtor Chinaman, Melliza, alias Pinga, has not furnished proof of any kind to establish his payment of the said sum which he admitted he owed the creditor firm, as disclosed by the settlement on March 2, 1903; wherefore, though it is proper to accept his own statement, freely made, that he was a debtor of the said firm in the amount of P3,647.22, according to the notes' in his own book, there is no reason, for lack of conclusive evidence, why the payment of this sum should be held to have been proved, and, therefore, the judgment should be modified by sentencing the defendant to the payment only of the sum which he admitted he owed, as a memorandum made in his own book, and the amount awarded in the judgment appealed from can not be held to be correct, as it was not established by good and sufficient evidence.

The mere affirmation on the part of the debtor that a settlement had been effected of the accounts between himself and the creditor firm which had arisen through the mercantile transactions and relations that they had had is not sufficient to warrant the finding that payment was made of a debt which he, the defendant himself, admitted he had entered in his own book, because it is indispensable for him to prove that as a result of the said settlement and upon the closing of the account, the debt, originating from such account, disappeared and ceased to exist, by reason of its payment by the debtor. So, the sentence to make payment is founded on the defendant debtor's own admission.

Neither does the record disclose proof of the special agreement alleged by the defendant that the said firm obligated itself to pay him, as a commission, one peso for each picul of hemp that he should acquire and deliver to the Suarez firm during the month of November, 1902, and, also as a commission, one peso and fifty centavos for each picul of hemp purchased for and delivered to the said firm during the month of December of that year, because, upon the denial of these alleged facts by the plaintiff party, the defendant did not furnish any proof 'whatever of the said agreement and of the special extra remuneration stipulated as a commission for the gathering of hemp during such months of November and December, 1902.

For the foregoing reasons, whereby some of the errors ascribed to the judgment appealed from are held to have been refuted, the latter should be, in our opinion, and is hereby affirmed; provided, however, that the defendant is sentenced to pay only the sum of P3,647.22, with legal interest thereon from February 15, 1908, until the date of payment; and the costs of this instance.

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

Moreland, J., dissents.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.