

**KUENZLE & STREIFF, PLAINTIFFS AND APPELLEES, VS.
SILVERIO JIONGCO Y FELIX, SOTERA ROCO Y DE VERA, AND
EUSEBIO SANCHEZ QUIBIAO, DEFENDANTS. EUSEBIO SANCHEZ
QUIBIAO, APPELLANT.**

G.R. No. 6479. February 27, 1912

Ponente: JOHNSON, J.

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JOHNSON, J.:

It appears from the record that prior to the 14th of October, 1909,. a Chinaman by the name of Anastasio C. Chiong was conducting a business in Santo Cristo street, No. 216, in the city of Manila, and was indebted to the plaintiffs herein in the sum of P1,700.

Upon that date the said Chiong sold said business to the said Quibiao, with the consent and knowledge of the plaintiffs, upon the following conditions:

That Quibiao should assume the payment of the said indebtedness, which was, by agreement between him and the plaintiffs herein, reduced to the sum of P880, to be paid at the rate of P80 per month, and that the said Quibiao should give a guaranty for the payment of the said sum of P880 together with the value of whatever other goods and merchandise the "plaintiffs might sell to him (Quibiao).

In accordance with this agreement between the plaintiffs and Quibiao, the other defendants, Silverio Jiongco y Felix and Sotera Roco y De Vera, executed and delivered a contract of guaranty (Exhibit A), by which they guaranteed the payment of the said sum of P880, in accordance with the terms of the agreement between the plaintiffs and Quibiao, as well as the payment for any goods, wares and merchandise sold by the plaintiffs to Quibiao up to the sum of P3,000.

The defendant, Quibiao, failed to comply with his agreement with the plaintiffs herein, whereupon the present action was commenced. The plaintiffs claim that the amount due by reason of the failure of Quibiao to pay the monthly installments, together with the value of the goods sold by the plaintiffs to him, is P1,279.99.

After hearing the evidence adduced during the trial of the cause, the Honorable Simplicio del Rosario, judge, found that there was due from the defendant, Quibiao, to the plaintiffs, the sum of P1,279.99, and that the guarantors, under their contract of guaranty, were jointly and severally liable with him for the payment of the said amount, together with costs.

From that judgment the defendant Quibiao appealed.

The apellant in his brief attempts to show that Quibiao is not responsible for the payment of the sum of P880, for the reason that the provisions of section 335 of the Code of Procedure in Civil Actions had not been complied with. It will be noted, however, that no objection was made in the court below to the admissibility of the evidence showing Quibiao's liability. Section 335 relates to the form of the proof simply. If the parties permit the fact to be

proved by evidence other than that provided for by said section 335, it is then too late for them to object for the first time in this court as to the form of the proof.

In the contract of guaranty executed and delivered by the defendants Silverio Jiongco y Felix and Sotera Roco y De Vera, two parcels of land described in the first and second paragraphs of said contract were given in guaranty for the payment of the obligation resulting under said contract. The lower court evidently treated this contract (Exhibit A) as a mortgage lien upon said parcels of land. The document (Exhibit A) was not recorded in the registry of property and can not be considered as a mortgage, and the lands can not, therefore, be subjected to the payment of the judgment herein, under the provisions of the Civil Code, upon the theory that said contract was a mortgage, but can only be subjected to the payment of the judgment herein under an execution. The contract of guaranty (Exhibit A) did not constitute a mortgage upon said property.

In our opinion, with the modifications hereinbefore suggested, the judgment of the lower court should be and is hereby affirmed.

Arellano, C. J., Torres, Mapa, Carson, Moreland, and Trent, JJ., concur.

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