34 Phil. 376

[G.R. No. 9974. March 24, 1916]

CANG YUI, PLAINTIFF AND APPELLANT, VS. HENRY GARDNER AND TAN SINGCO, DEFENDANTS AND APPELLEES.

D E C I S I O N

TRENT, J.:

This action was instituted for the purpose of recovering the sum ₱704.77, with interest, the balance on an open account. From a judgment absolving the defendant, Henry Gardner, the plaintiff appealed.

The plaintiff claims that the defendants opened a joint account in his store on January 29, 1911, which continued until November 18, 1912, during which time he furnished them money and merchandise to the amount of ₱4,842.37 and that they have paid on this account ₱4,137.60, leaving a balance of ₱704.77 due and unpaid. There can be no doubt about the correctness of these amounts. Whether the defendants incurred the indebtedness jointly as partners is the principal question presented for our determination.

The plaintiff testified that the money and merchandise were delivered to the defendants as partners; that he so made the entries in his books; that he delivered to Gardner personally the following amounts in cash in 1911: January 25, ₱500; February 6, ₱l,000; March 6, ₱200; April 23, ₱400; and October 22, ₱50. The plaintiff in thus testifying, used, for the purpose of refreshing his memory, his books and stated that the entries were made at the time and in the manner set forth therein. A copy of this account, taken from the plaintiff's books, was introduced in evidence as Exhibit B and admitted without objection. The plaintiff presented also Exhibit C, which is a letter written by the defendant, Tan Singco, on January 23, 1911, and addressed to the plaintiff. In this letter Singco stated, among other things, that—

"On this trip my chief and partner, Mr. Henry Gardner, has taken passage for

> Dumaguete for medical treatment, and it is he who carries this letter. On handing you this letter he will ask of you the sum of ₱500, which we beg you to give to him without fail. Please answer stating whether this delivery was made."

On the presentation of Exhibit C by Gardner, he received from the plaintiff the ₱500.

The defendant, Tan Singco, alleged in his answer that on the dissolution of the partnership composed of Gardner and himself, Gardner took over all the assets of the firm and assumed all outstanding liabilities, and that he (Singco) has no further interest in the matter. This defendant did not appear at the trial.

The defendant Gardner testified that:

> "I am going to begin to explain this business from its commencement. In November, 1911, I was very sick. This Chinaman Tan Singco was owing me ₱1,700 for merchandise taken at my store, for he had a *tienda*, but he lost all his capital and could not pay me. Being sick, as I said, I called him to my house and told him that, as he was owing me ₱1,700 and could not pay me because he no longer had a *tienda*, he ought to come in with me to work, and that I would pay him. There was also another Chinaman named Lo Pico who had been a bookkeeper, whose services I secured in order that, between them both, they might keep the books, under my orders, but the license of the store (was) in my name. Tan Singco begged me, saying that the salary that I could give him, of from ₱40 to ₱50, wag not sufficient, because he had a family. As I was not interested in enriching myself out of this store, I was willing that they should work as if it belonged to them and that we should divide the profits among ourselves, to which they agreed."

Gardner admitted that he received some of the amounts stated by the plaintiff and as to the others, he did not remember, but he at no time denied having received all of these amounts. He bases his nonliability largely upon the following letter (Exhibit 1) received by him from the plaintiff.

"DUMAGUETE, *December 8, 1912*.

"Mr. ENRIQUE, C. A. I. (American),

"*Guihulngan*.

"Dear Friend: I beg to inform you that Tansing, the man in charge of your store, now owes in this store of mine ₱704.77. The condition was that corn should be credited on account, but for the past six months no corn whatever has arrived here. For this reason, as no corn has been credited to the account for a long time, if it is not too much trouble for you I would like you to hurry him up, for my money is now long overdue, wherefore I rely on you to obtain the amount of the claim I make in this letter. I await your reply by return mail.

"With nothing further, receive my kind regards and command,

"Your sincere, faithful servant,

(Sgd.) "CANG YUI."

In passing upon the probative force of this letter (Exhibit 1), the trial court said:

"Coming now to an examination of the evidence of the defendant Henry Gardner, we find that it completely overthrows that adduced by the plaintiff. Exhibit 1 is a conclusive proof of it. A mere perusal of this exhibit is sufficient to understand that the plaintiff himself throws the whole liability for the debt upon the defendant Tan Singco, and never upon Gardner. Neither does this letter speak of any partnership or company formed between Gardner and Tan Singco, so as to allow the inference of any joint and several liability which Gardner might have had together with Tan Singco. The authenticity of this Exhibit 1 is recognized by the plaintiff, and this being so, it must be admitted that the plaintiff 'has dug his own pit.' That the debt referred to in the letter is the particular one mentioned in the complaint, there is not the least doubt, for the amount claimed in the complaint is the same amount claimed in the letter."

The plaintiff, on being questioned about Exhibit 1, admitted its authenticity and testified that according to his understanding "partner" and "manager" (encargado) were the same and that he notified Gardner that the "*tienda*" (meaning the *tienda* owned and operated by

Gardner) owed him (the plaintiff) the amount in question.

That the plaintiff understood that the defendants were partners and dealt with them as such for a period of nearly two years, there can be no question. He so testified and he is corroborated by his books, which show continuous dealings with the defendants as partners, and contain original entries of charges and credits made by the plaintiff in the ordinary course of his business and at the time of the transactions. But it is urged that as the plaintiff's books were kept in the Chinese language, they were wholly unintelligible to both the court and the defendant Gardner and, therefore, inadmissible as evidence because they did not meet the requirements of the Code of Civil Procedure, the Code of Commerce, or section 65 of Act No. 1956. In considering the force of these contentions it must be remembered that the plaintiff testified that the entries were correct and made in the manner above set forth and that the translations were likewise correct, all without objection on the part of the defendant Gardner, and that the books were open to inspection by Gardner at all times.

In Garrido *vs.* Asencio (10 Phil. Rep., 691), this court said:

> "The plaintiff assigns as error the admission of this account on the ground that the books of the partnership were not kept in accordance with the provisions of Title III, Book I, of the Code of Commerce. It is not necessary for us to consider this assignment of error as to the inadmissibility of this account on the ground that the books were not kept in accordance with the provisions of the Commercial Code, because no objection was made to its admission in the court below; and further, because in any event it was admissible under the provisions of section 338 of the Code of Civil Procedure as a memorandum used to refresh the memory of the witness."

Whether we treat the plaintiff's books as *prima facie* evidence of the facts therein stated or as a memorandum used to refresh the memory of the witness, the result in this case is the same, because it has been clearly established by the testimony of the plaintiff that the books were kept in the manner stated. In fact, the plaintiff's testimony on this point stands uncontradicted.

The defendant Gardner personally received the ₱500, which is the first item in the plaintiff's account. Exhibit C states that the defendants were partners. Gardner knew this fact and

induced the plaintiff to believe that he and the other defendant were partners by presenting the letter, Exhibit C, and accepting the money. Again, Gardner testified that his codefendant had lost all of his capital and could not pay his debts, and this was the reason that he took him into his own store as an employee on a salary, but later agreed that he might participate in the profits, thereby making him an industrial partner. This occurred before the account was opened with the plaintiff. In view of all these facts, we are of the opinion that the trial court erred in its interpretation of Exhibit 1. In writing this letter, Exhibit 1, the plaintiff did not intend to relieve Gardner of liability for the payment of the balance due. He notified Gardner that the manager of his store owed on the open account the sum of ₱704.77. When this letter was written the plaintiff knew that the accounts in his books were carried on in the names of both Gardner and the other defendant, so the plaintiff's interpretation of this letter to the effect that he considered the manager and partner one and the same thing, is in accordance with the facts as they appear in the record. It is true that the partnership of Gardner and Singco was not organized in accordance with the Code of Commerce, but this fact does not relieve either one of them from the payment of the debt, which they incurred jointly and from which they jointly received benefits.

For the foregoing reasons, the judgment appealed from is reversed and judgment will be entered against the defendants jointly, but not severally, for the sum of ₱704.77, together with legal interest from the date of the institution of this action, without costs in this instance. So ordered.

Torres, Johnson, Moreland, and *Araullo, JJ.,* concur.

Date created: May 29, 2014