

43 Phil. 391

[G. R. No. 16870. May 25, 1922]

GENATO & CO., LTD., PLAINTIFF AND APPELLANT, VS. FLORENTINO PAREJA ET AL., DEFENDANTS AND APPELLANTS.

D E C I S I O N

ROMUALDEZ, J.:

The defendants, who had an account current with the plaintiff, received from the latter various amounts of money with the result that on August 31, 1919, they were owing the plaintiff the sum of P14,301.16.

The defendants do not deny being indebted to the plaintiff in that amount. They claim, however, that they did not receive said sums of money under contracts Exhibits A and B which are the documents by which the plaintiff concern opened an account current with them, and, in which, among other things, the defendants agreed to pay an annual interest of 12 per cent over all amounts that they might be owing; and the defendants, Florentino Pareja, Pedro Altea, Juan Deseo, Ponciano Espinosa, and Valeriano Altea, furthermore, obligated themselves, in Exhibit A, to pay the plaintiff 10 per cent of the amounts of their indebtedness as attorney's fees in case the employment of one should be necessary for the collection of their debts.

The preponderance of the evidence, however, is to the effect that the defendants are indebted to the plaintiff in the amount above stated and under the conditions stipulated in the said documents Exhibits A and B.

That was the first cause of action of the plaintiff. The second cause of action refers to its commission for the copra, which, according to said exhibits, the defendants should have delivered for the account of the amounts of money that they had received from the plaintiff, but since the copra was never delivered—and it has not been shown that the plaintiff ever received such merchandise for sale so that it might perceive commission from such sales—we cannot find sufficient grounds for giving judgment in favor of the plaintiff on its

second cause of action. It results from the evidence that all the defendants are principal debtors, but none of them is a surety as declared in the judgment appealed from. However, it has not been proven that their obligation was solidary.

The judgment appealed from is modified and all the defendants are sentenced, as principal and joint debtors, to pay the plaintiff the amount of P14,301.16 with interest at the rate of 12 per cent per annum from October 21, 1919, until its full payment; and the defendants, Florentino Pareja, Pedro Altea, Ponciano Espinosa, Valeriano Altea, and Juan Deseo, are further sentenced to pay the plaintiff the sum of P1,430.12 which represents the 10 per cent of their indebtedness that they agreed to pay the plaintiff as attorney's fees.

All the defendants are sentenced to pay the costs of both instances. So ordered.

Araullo, C. J., Malcolm, Avanceña, Villamor, and Ostrand JJ., concur