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[G.R. No. 1433. January 14, 1904]

CO-BOO, PLAINTIFF AND APPELLEE, VS. LIM-TIAN, DEFENDANT AND APPELLANT.

D E C I S I O N

COOPER, J.:

This suit was brought by Co-Boo, the plaintiff, against Lim-Tian, the defendant, for the recovery of certain furniture and store fixtures of the value of 676 pesos.

Judgment was rendered in favor of the plaintiff against the defendant for the recovery of the property.

A motion for a new trial was made by the defendant in the Court of First Instance, which was overruled and an appeal was taken to this court.

The questions raised by the assignment of errors, while several in number, relate to the sufficiency of the plaintiff's evidence to support the judgment of the court. This will require a review of the evidence to determine its sufficiency.

Co-Boo, the plaintiff, testified with reference to his ownership of the property that in 1899 his father, Co-Kay, intended to open a business in the store which the defendant now occupies and in which the furniture in question is situated, and, with this view, placed this furniture, which then belonged to him, in the store; that on account of ill health he left for China and gave the property in question to the plaintiff; that before leaving for China, his father assigned over the lease on the store to the defendant and also leased to him the furniture, all for the monthly rental of 75 pesos; that the defendant has since been paying to him 75 pesos per month for the store and furniture.

La-Jo, a witness for the plaintiff, testified that Co-Kay, the father of the plaintiff Co-Boo, was the owner of the furniture in question at the time of the signing of the document leasing the storehouse and the furniture to the defendant.

The plaintiff also adduced in evidence a certain document, dated October 1, 1899, purporting to be executed by Lim-Liab, Lim-Tian, and Co-Kay, by which the latter leased to the former the storehouse and the furniture and fixtures in question. Objections were made by the defendant to the admission of this document, among them that the document was not signed by the defendant, Lim-Tian, nor by Co-Kay; that it did not bear the "timbre" of Lim-Tian, as is customary among the Chinese; that Si-Tiang, who signed the document for all of the parties, was not authorized to sign the same. Other objections of minor importance were made, which need not be noticed.

The contract having been made and the document executed in Manila, the sufficiency of it must be tested by the laws of the Philippines, though it appears from the testimony of the witnesses that the contract was made in strict compliance with the custom of the Chinese in making such contracts. According to the testimony of this witness, the document having been written upon red-colored paper, it was not necessary that the "timbre" of Lim-Tian should have been placed on it; nor was it necessary that the defendant should have signed the document, his name appearing in the body of it.

It is not material that another person sign the name of the party executing a document, if the act of signing was authorized at the time and in the presence of the defendant, or was afterwards adopted or ratified by the performance of acts under and in pursuance of the contract, (7 Am. and Eng. Enc. of Law, 143.) Another principle of law is that where a contract is signed by one and delivered to another whose name does not appear to the document, the latter may bind himself as fully by accepting the delivery as if he had attached his signature to the writing.

The plaintiff, Co-Boo, testified that all of the parties to the document were present when it was executed, and, at their request, Si-Tiang signed it

for all; that the document was then delivered to him or his father in the presence of the defendant.

The testimony of Dou-Jo, a witness for the plaintiff, corroborated this statement. He said that all were present and that Si-Tiang wrote the document and signed it for all, including the signing of the witness's name, whose name was placed on the document as a witness.

La-Jo, a witness for the plaintiff, also testified as to the signing of the document and that Lim-Tian, the defendant, was present at the time of the signing of the contract by Si-Tiang, who wrote the document and signed for all parties.

Lim-Tian, the defendant, does not contradict the statement of the plaintiff and the witness to the effect that the document dated October 1, 1899, was signed by Si-Tiang under his direction and delivered by him to the plaintiff.

The testimony of the defendant consists of his own statement to the effect that he bought the furniture in question from Co-Tio, in the month of February, 1901; that Co-Tio was at the time of the purchase his partner, and that the partnership on that day was dissolved, at which time the books of the partnership show that the defendant purchased the furniture in question from Co-Tio.

The defendant offered in evidence the books of the partnership above referred to, between himself and Co-Tio, in which a list of the property, assets, capital, etc., then belonging to the partnership between Co-Tio and the defendant, Lim-Tian, was shown. These books were admitted without objection on the part of the plaintiff. An entry appears in this book showing "various furniture in the store of the value of 375 pesos," and which, on the dissolution, among the other property belonging to the partnership, was transferred to the defendant.

The defendant also offered in evidence two receipts for rent, signed by the plaintiff, in which the 75 pesos, the monthly rental for the store, was acknowledged, without referring to the hire of the furniture contained in the store. He also offered in evidence an industrial license issued by the

Government to Co-Tio, authorizing the carrying on of the business, and which was afterwards transferred on the 15th of March, 1901, by Co-Tio to the defendant.

The defendant in his testimony does not contradict in express terms the testimony of the plaintiff that the furniture in question was turned over to the partnership of which he was a member at the time of the making of the contract, nor that the furniture, at the time of the making of the contract, was owned by the father of the plaintiff, Co-Kay. He seems to have rested his claim upon the insufficiency of the contract of October 1, 1899, by reason of the failure of himself and of the plaintiff to sign the contract and upon the disputable presumptions mentioned in section 334, Code of Civil Procedure, such as the presumption that "things which a person possesses are owned by him," and the presumption that "a person is presumed to be the owner of property from exercising acts of ownership over it;" these are but presumptions of fact and have weight only in the absence of evidence, and are of no value in a case where the proof as to ownership is fully shown by the evidence; nor was the other proof of the defendant of any weight, that is, the entry contained in the books of partnership between the defendant and Co-Tio; nor was the industrial license in the name of Co-Tio transferred to the defendant; nor the receipts for rent which omitted any statement that the 75 pesos, the monthly rental, was for the rent of the furniture as well as for the storehouse. This character of testimony is wholly insufficient, in view of the direct testimony as to the ownership of the property adduced by the plaintiff, and rather indicates a purpose on the part of the defendant to wrongfully appropriate the plaintiff's property.

In order that this court may review the evidence taken in the court below, it is necessary that there should have been a motion for a new trial in the Court of First Instance. Not only was the judgment of the court not plainly and manifestly against the weight of evidence, but had the court rendered judgment in favor of the defendant, it would have been plainly and manifestly against the weight of evidence.

The judgment of the lower court is affirmed, with costs against the appellant, Lim-Tian, and after the expiration of twenty days judgment will be entered and the cause returned to the court below for execution. So ordered.

Arellano, C.J., Willard, Mapa, McDonough, and Johnson JJ.,
concur.

Torres, J., did not sit in this case.

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