

7 Phil. 12

[ G.R. No. 3025. November 23, 1906 ]

**SI-BOCO, PLAINTIFF AND APPELLEE, VS. YAP TENG, DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**MAPA, J.:**

This is an action by the plaintiff to recover from the defendant the sum of P1,442.95, alleged to be due him from the latter. The court below rendered judgment in favor of the plaintiff for the aforesaid sum and legal interest thereon at the rate of 6 per cent per annum from the 25th of March, 1905, with costs against the defendant, who excepted to the said judgment, made a motion for a new trial on the ground that the findings of fact contained in the said judgment were plainly and manifestly against the weight of the evidence, and has brought the case to this court by a bill of exceptions.

The evidence shows that for a period of three years, more or less, the plaintiff had been furnishing to the defendant native cloth for the latter's store in the city of Manila. The goods were at first furnished on credit, but the business relations of the parties ceased entirely in 1904. The defendant had a partner by the name of Yapsuan, who was the manager of the business. The defendant introduced him to the plaintiff as such manager, and told him that Yapsuan had authority from him to receive the cloth, and that the value thereof should be charged to his, the defendant's account, and in fact the cloth was, as a rule, received by Yapsuan from the plaintiff, it became necessary for Yapsuan to return to China in 1902 on account of ill health and a liquidation of the accounts between the plaintiff and the defendant was made in December of (he said year, showing a balance of P1,444.05 in favor of the plaintiff, which the defendant expressly undertook to pay. This was proved not only by the testimony of the plaintiff himself, but by that of two witnesses who were present. After the liquidation was made the defendant continued to buy goods from the plaintiff for cash until the year 1904, when, as already stated, the business relations between the parties

ceased.

The defendant has failed to show that he had paid the aforesaid balance of P1,444.05 or any part thereof. Consequently the judgment of the court below is just and legal and should be affirmed. There is a difference of P2 between the said balance and the amount of the judgment but, as the court properly said, the plaintiff is not entitled to receive more than he prays for in his complaint, and the amount stated in the judgment is all that is sought to be recovered.

It is contended by the appellant that the court below erred in not finding that, the only indebtedness of the defendant being P1,442.05 according to the liquidation made in December, 1902, he having thereafter paid the sum of P1,810.87 as alleged in the complaint, and in default of proof as to the value of the goods furnished to the defendant, after that date, the plaintiff could not maintain an action to recover the said sum. There is, in fact, no evidence in the record upon this last point. It was not necessary, however, to offer such evidence. The action was not for the recovery of the value of the goods furnished to the defendant after the liquidation of 1902. The plaintiff himself testified that the defendant had paid cash for such goods, but alleged that the latter had paid nothing on account of the balance due after the said liquidation. His testimony upon this point has not been contradicted in any way and it is apparent from such testimony that the P1,810.87 represented the value of the goods for which the defendant paid cash. If this amount was mentioned at all in the complaint, it was for the purpose of comparing the same with the total value of the goods furnished the defendant up to the year 1904, which, according to the complaint, amounted to P3,235.75. It should be borne in mind that the plaintiff continued to furnish goods to the defendant after the liquidation until the year 1904. There is no evidence that the aforesaid amount was paid on account of the balance due because of the liquidation and not on account of the value of the said goods. The plaintiff testified without contradiction, that absolutely nothing had been paid on the balance due from the said liquidation.

It is further alleged by the appellant that there is nothing to show that after the year 1902 he continued to purchase goods from the plaintiff, paying cash therefor, as was erroneously found by the court below. The positive and uncontradicted statement of the plaintiff to the contrary is sufficient, however, to justify the finding of the court below upon that point. That court, therefore, committed no error in this respect.

The appellant finally contends that the goods having been furnished to and received by the

partnership between himself and Yapsuan, and the accounts of the same not having been liquidated, this action should have been brought against the partnership itself, or against the partners jointly, and not against the defendant only. However that in a.v be, the fact remains that the defendant in this case was the only one who contracted with the plaintiff in his own name, as appears from the latter's testimony. When the defendant told the plaintiff that he had authorized Yapsuan to receive the goods, he instructed the plaintiff to charge them to him (the defendant) personally. The defendant, moreover, undertook personally to pay the balance due the plaintiff, after the liquidation made in December, 1902, such being the sum sought to be recovered in this case, as appears from the testimony of the plaintiff and that of the two witnesses who took part in the said liquidation. Consequently the court below properly allowed the plaintiff to maintain this action against the defendant. The judgment appealed from is accordingly affirmed with the costs of this instance against the appellant. After the expiration of twenty days let judgment be entered in accordance herewith and in due time let the record be remanded to the court below for execution. So ordered.

Arellano, C. J., Torres, Johnson, Carson, Willard, and Tracey, JJ., concur.

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