

6 Phil. 479

[G.R. No. 2939. October 02, 1906]

JAIME SERRA, PLAINTIFF AND APPELLEE, VS. GO-HUNA, DEFENDANT AND APPELLANT.

D E C I S I O N

TRACEY, J.:

The defendant denies that the lumber, for a part of the price of which this action was brought, was either bought by him or sold by the plaintiff. His testimony on both points is outweighed by that of the two witnesses for the plaintiff, who satisfactorily explain the circumstance that the receipt for part of the lumber was signed not by the defendant, but by another Chinaman. The doubt in the case arises from the failure to prove directly either the fact that the lumber was the property of the estate in plaintiff's hands or the other fact that he was its administrator.

If the lumber had been sold by the intestate, formal proof of the representative character of his administrator might have been required, but inasmuch as the point was not expressly made on the trial below and as the sale was made in the name of the plaintiff, we are of the opinion that the documentary proof, consisting of the bill presented to the defendant made out against him in the name of the plaintiff as administrator and the receipt for part of the lumber, running to the plaintiff by name and signed by defendant's agent, in the light of the testimony of plaintiff's witnesses and in the absence of contradictory proof, suffice to supply the lack of the usual formal testimony.

The judgment of the court below is affirmed with costs. After the expiration of twenty days let judgment be entered in accordance herewith and ten days thereafter the cause be remanded to the lower court for proper procedure. So ordered.

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

Date created: May 02, 2014