

6 Phil. 100

[ G.R. No. 2484. April 11, 1906 ]

**JOSE FORTIS, PLAINTIFF AND APPELLEE, VS. GUTIERREZ HERMANOS,  
DEFENDANTS AND APPELLANTS.**

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

**WILLARD, J.:**

Plaintiff, an employee of defendants during the years 1900, 1901; and 1902, brought this action to recover a balance due him as salary for the year 1902. He alleged that he was entitled, as salary, to 5 per cent of the net profits of the business of the defendants for said year. The complaint also contained a cause of action for the sum of 600 pesos, money expended by plaintiff for the defendants during the year 1903. The court below, in its judgment, found that the contract had been made as claimed by the plaintiff; that 5 per cent of the net profits of the business for the year 1902 amounted to 26,378.68 pesos, Mexican currency; that the plaintiff had received on account of such salary 12,811.75 pesos, Mexican currency, and ordered judgment against the defendants for the sum of 13,566.93 pesos, Mexican currency, with, interest thereon from December 31, 1904. The court also ordered judgment against the defendants for the 600 pesos mentioned in the complaint, and interest thereon. The total judgment rendered against the defendants in favor of the plaintiff, reduced to Philippine currency, amounted to P3,025.40. The defendants moved for a new trial, which was denied, and they have brought the case here by bill of exceptions.

(1) The evidence is sufficient to support the finding of the court below to the effect that the plaintiff worked for the defendants during the year 1902 under a contract by which he was to receive as compensation 5 per cent of the net profits of the business. The contract was made on the part of the defendants by Miguel Alonzo Gutierrez. By the provisions of the articles of partnership he was made one of the managers of the company, with full power to transact all of the business thereof. As such manager he had authority to make a contract of employment with the plaintiff.

(2) Before answering in the court below, the defendants presented a motion that the complaint be made more definite and certain. This motion was denied. To the order denying it the defendants excepted, and they have assigned as error such ruling of the court below. There is nothing in the record to show that the defendants were in any way prejudiced by this ruling of the court below. If it were error it was error without prejudice, and not ground for reversal. (Sec. 503, Code of Civil Procedure.)

(3) It is claimed by the appellants that the contract allege in the complaint made the plaintiff a copartner of the defendants in the business which they were carrying on. This contention can not be sustained. It was a mere contract of employment. The plaintiff had no voice nor vote in the management of the affairs of the company. The fact that the compensation received by him was to be determined with reference to the profits made by the defendants in their business did not in any sense make him a partner therein. The articles of partnership between the defendants provided that the profits should be divided among the partners named in a certain proportion. The contract made between the plaintiff and the then manager of the defendant partnership did not in any way vary or modify this provision of the articles of partnership. The profits of the business could not be determined until all of the expenses had been paid. A part of the expenses to be paid for the year 1902 was the salary of the plaintiff. That salary had to be deducted before the net profits of the business, which were to be divided among the partners, could be ascertained. It was undoubtedly necessary in order to determine what the salary of the plaintiff was, to determine what the profits of the business were, after paying all of the expenses except his, but that determination was not the final determination of the net profits of the business. It was made for the purpose of fixing the basis upon which his compensation should be determined.

(4) It was not necessary that the contract between the plaintiff and the defendants should be made in writing. (Thunga Chui vs. Que Bentec,<sup>[1]</sup> 1 Off. Gaz., 818, October 8, 1903.)

(5) It appeared that Miguel Alonzo Gutierrez, with Whom the plaintiff had made the contract, had died prior to the trial of the action, and the defendants claim that by reason of the provisions of section 383, paragraph 7, of the Code of Civil Procedure, plaintiff could not be a witness at the trial. That paragraph provides that parties to an action against an executor or administrator upon a claim or demand against the estate of a deceased person can not testify as to any matter of fact occurring before the death "of such deceased person. This action was not brought against the administrator of Miguel Alonzo, nor was it brought upon a claim against his estate. It was brought against a partnership which was in existence at the time of the trial of the action, and which was a juridical person. The fact that Miguel

Alonzo had been a partner in this company, and that his interests therein might be affected by the result of this suit, is not sufficient to bring the case within the provisions of the section above cited.

(6) The plaintiff was allowed to testify against the objection and exception of the defendants, that he had been paid as salary for the year 1900 a part of the profits of the business. This evidence was competent for the purpose of corroborating the testimony of the plaintiff as to the existence of the contract set out in the complaint.

(7) The plaintiff was allowed to testify as to the contents of a certain letter written by Miguel Gutierrez, one of the partners in the defendant company, to Miguel Alonzo Gutierrez, another partner, which letter was read to plaintiff by Miguel Alonzo. It is not necessary to inquire whether the court committed an error in admitting this evidence. The case already made by the plaintiff was in itself sufficient to prove the contract without reference to this letter. The error, if any there were, was not prejudicial, and is not ground for reversal. (Sec. 503, Code of Civil Procedure.)

(8) For the purpose of proving what the profits of the defendants were for the year 1902, the plaintiff presented in evidence the ledger of defendants, which contained an entry made on the 31st of December, 1902, as follows:

“Perdidas y Ganancias.....a Varios. Ps. 527,573.66  
Utilidades liquidas obtenidas durante el año y que abonamos conforme a la  
proporcion que hemos establecido segun el convenio de sociedad.”

The defendant presented as a witness on the subject of profits Miguel Gutierrez, one of the defendants, who testified, among other things, that there were no profits during the year 1902, but, on the contrary, that the company suffered considerable loss during that year. We do not think the evidence of this witness is sufficiently definite and certain to overcome the positive evidence furnished by the books of the defendants themselves.

(9) In reference to the cause of action relating to the 600 pesos, it appears that the plaintiff left the employ of the defendants on the 19th of March, 1903; that at their request he went to Hongkong, and was there for about two months looking after the business of the defendants in the matter of the repair of a certain steamship. The appellants in their brief say that the plaintiff is entitled to no compensation for his services thus rendered, because

by the provisions of article 1711 of the Civil Code, in the absence of an agreement to the contrary, the contract of agency is supposed to be gratuitous. That article is not applicable to this case, because the amount of 600 pesos is not claimed as compensation for services but as a reimbursement for money expended by the plaintiff in the business of the defendants. The article of the code that is applicable is article 1728.

The judgment of the court below is affirmed, with the costs of this instance against the appellants. After the expiration of twenty days from the date of this decision let final judgment be entered herein, and ten days thereafter let the case be remanded to the lower court for execution. So ordered.

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

---

<sup>[1]</sup> 2 Phil. Rep., 561.

---