

5 Phil. 611

[G.R. No. 2437. February 13, 1906]

MONICA CASON, PLAINTIFF AND APPELLANT, VS. FRANCISCO WALTERIO EICKARDS ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

WILLARD, J.:

From the 1st day of November, 1895, until the 31st day of October, 1896, the defendant Rickards was the agent at Dagupan, in the Province of Pangasinan, of the other defendant, Smith, Bell & Co. While he was such agent he received from the plaintiff, as a deposit, the sum of 2,000 pesos. When he left the employ of the defendant company the 2,000 pesos were, by his orders, delivered to another agent of Smith, Bell & Co. in that province, and Smith, Bell & Co. received and used the same. This money was not mingled with other money belonging either to Rickards or to Smith, Bell & Co., and at the time of its delivery by Rickards to the other agent he notified Smith, Bell & Co. that it was not the money of Smith, Bell & Co., but was the money of the plaintiff. The judgment of the court below holding Smith, Bell & Co. responsible for this amount was clearly right. The question as to whether Rickards was authorized by Smith, Bell & Co. to receive deposits of this character for third persons is a matter of no consequence. The identical money which he received from the plaintiff was by him turned over to Smith, Bell & Co., with notice that it was the money of the plaintiff, and they now have it in their possession, and are therefore bound to pay it to her.

At the trial of this case Rickards testified that a few days after he received the 2,000 pesos from the plaintiff, and about the 8th day of October, 1896, he received from her an order or warrant upon the Spanish treasury for the sum of 4,200 pesos; that he wrote Smith, Bell & Co., asking if it could be collected; that they told him to send it to Manila. It was sent to Manila, and collected through the Hongkong and Shanghai Bank. Rickards testified that he received the money from the Hongkong and Shanghai Bank, and paid all of it out in the

business of Smith, Bell & Co.; that after he had received it he entered upon the books of Smith, Bell & Co. at Dagupan a credit in favor of the plaintiff of 4,200 pesos, less 5 per cent commission for collection, of which commission Smith, Bell & Co. received the benefit. He testified that all these transactions took place prior to the 31st day of October, 1896, when he left the employ of Smith, Bell & Co. He also testified that he had seen the books of Smith, Bell & Co.; that they were in court in an action commenced in regard to this same amount in 1896 or 1897, and that the books which were then produced in court by Smith, Bell & Co. contained an entry or entries of the receipt by Smith, Bell & Co. of this 4,200 pesos. If this testimony is to be believed there is no doubt as to the liability of Smith, Bell & Co. to repay to the plaintiff the sum of 4,200 pesos, less the commission of 5 per cent.

The question as to the general authority of Rickards to receive money on deposit for Smith, Bell & Co. has nothing to do with this cause of action, for Rickards testified that he received express directions in regard to this particular transaction. Rickards in his testimony stated that he had had several conversations with different agents and employees of Smith, Bell & Co. in Manila in regard to the transaction. At the trial of this case Smith, Bell & Co. did not present as witnesses any of these employees or agents, and did not present any of their books which the witness Rickards declared would corroborate his statement, if produced, but contented themselves with calling as a witness one who was then a bookkeeper of the Hongkong and Shanghai Bank. He, testifying from entries which appeared in the books of that bank, stated that there was received for Rickards, in November, 1896, 4,200 pesos, a part of which was credited to his accounts in that bank, and the balance, amounting to about 2,616 pesos, was paid in cash. The witness could not testify to whom this cash was paid. Although he testified that he had some independent recollection of this transaction, yet it is apparent that his testimony is substantially, if not entirely, based upon the entries made in the books of the bank, which were in his handwriting.

The question in this case is this: Can the positive testimony of Rickards, which has been set forth above, be overcome by the testimony of the agent of the bank in view of the fact that Smith, Bell & Co. had it in their power to demonstrate the falsity of the testimony of Rickards by producing their books? No reason appears in the case why the books were not produced. The trial was had in Manila, where is located the main office of Smith, Bell & Co. Rickards gave his testimony at the opening of the trial. If it were false its falsity could have been easily proved by the introduction of these books, and their production was more imperatively demanded considering the statement of Rickards that he had seen them, and that they did contain the entries in regard to this amount of 4,200 pesos.

Under these circumstances the judgment of the court below relieving Smith, Bell & Co. of the responsibility for this 4,200 pesos can not be affirmed. The evidence as it stands in the record strongly preponderates against them, and the judgment must be reversed.

The question arises as to what disposition should be made of this case; whether final judgment should be entered in this court against Smith, Bell & Co., or whether the case should be remanded for further proceedings. Under the Code of Civil Procedure we have authority, when the judgment must be reversed, either to enter final judgment in this court or to remand the case for a new trial or for further proceedings. In the present case we think that the ends of justice require that there should be a new trial as to the 4,200 pesos. (Regalado vs. Luchsinger & Co., 1 Phil. Rep., 619.) If at the new trial Smith, Bell & Co. still fail to produce their books, and no additional evidence is offered to overcome the testimony of Rickards, final judgment should be entered against them in reference to this 4,200 pesos. In accordance with the provisions of section 505 of the Code of Civil Procedure, upon the new trial it will not be necessary to retake any of the evidence which has already been taken.

The judgment is reversed, and the case is remanded to the court below for a new trial only of the issue relating to the 4,200 pesos. After the new trial judgment will, as a matter of course, be entered for the plaintiff against Smith, Bell & Co. in reference to the 2,000 pesos, and for or against them in respect to the 4,200 pesos, as the results of the new trial may require. No costs will be allowed to either party in this court. So ordered.

Torres, Mapa, Johnson, and Carson, JJ., concur.