

[ G.R. No. 2243. February 08, 1906 ]

**MATEO ALDEGUER, PLAINTIFF AND APPELLANT, VS. GREGORIO APOSAGA AND SERVANDA BAGAYGAY, DEFENDANTS AND APPELLEES.**

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

**JOHNSON, J.:**

This was an action brought by the plaintiff against the defendants to recover of the latter the sum of 810.72 pesos, with interest at the rate of 15 per cent per year from the 8th of January, 1903, and costs. The defendants denied generally all the facts upon which the plaintiff relied and set up a counterclaim against the plaintiff in the sum of 785 pesos.

After hearing the evidence adduced during the trial, the inferior court denied the right of the plaintiff to recover the said sum of the defendants, as well as the right of the defendants to recover of the plaintiff the amount of the counterclaim and rendered a judgment in favor of the defendants for the costs which they had incurred by virtue of the said action.

The evidence adduced during the trial in the inferior court discloses the following facts: That the plaintiff and defendants each resided in the pueblo of Sara, in the Province of Iloilo; that the defendants had had certain commercial relations with one Alejandro Noarbe, as a result of which the defendants were indebted to the said Noarbe, for which a judgment had been rendered in a sum equal to about 1,600 pesos; that this indebtedness had not been paid in the month of January, 1903; that the defendants on or about the 22d of January, 1903, delivered to the plaintiff the sum of 800 pesos to be paid by the latter to the said Noarbe, to be applied on the said indebtedness (this fact is not denied); that the plaintiff, instead of paying this sum of 800 pesos to the said Noarbe as was intended by the defendants, purchased the account which the said Noarbe held against the defendants paying therefor the sum of 850 pesos. The plaintiff claims that he purchased said account of Noarbe on or about the 9th day of February, 1903. This action was brought to recover of the defendants the difference between the account which Noarbe held against the defendants of

1,610.72 pesos and the 800 pesos which the defendants paid to the plaintiff on the 22d of January, 1903, or for the sum of 810.72 pesos. The defendants claim that they paid the plaintiff on the 13th of April, 1903, another sum of 850 pesos, which was to be applied on said account, but while there was still due on said account the sum of 810.72 pesos, only; the difference between this km and the 850 pesos paid in the month of April was to cover the expenses incurred by the plaintiff in his trip from the pueblo of Sara to the city of Iloilo. The statement of the defendants with reference to the payment of this 850 pesos on the 13th of April, 1903, was supported by three witnesses alleged to be servants of the defendants. The plaintiff denies that the defendants paid him on the 13th of April for the purpose of liquidating the said account the sum of 850 pesos or any other sum. This statement on the part of the plaintiff is supported by two witnesses.

Taking into consideration the character of the witnesses presented by the respective parties with reference to the payment of this 850 pesos, it is difficult to determine the preponderance of testimony; however, the inferior court who saw and heard the witnesses found as a fact that the defendants had paid the plaintiff this sum of 850 pesos. Because of the conflicting character of the testimony presented by the respective parties, we are inclined to be governed by the finding of facts upon this question by the inferior court. The judgment of the inferior court is therefore hereby affirmed with costs.

The defendants in presenting their counterclaim against the plaintiff evidently had in mind the provisions of article 1535 of the Civil Code, which provides that—

“When a litigated credit is sold, the debtor shall have the right to extinguish the same by reimbursing the assignee, for the price the latter paid for it, the. judicial costs incurred by him, and the interest on the price he paid from the day on which the same was paid. A credit shall be considered as litigated from the date the suit relating to the same has been answered. The debtor may make use of his right within nine days, counted from the day the assignee shall demand payment of him.”

But they did not exercise the right given them under the latter provision of this article; therefore they are not entitled to the rights given them under said article.

After the expiration of twenty days judgment should be entered in accordance herewith and ,the case remanded to the court below for execution. So ordered.

*Torres, Carson, and Willard, JJ., concur.*

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