

4 Phil. 709

[G.R. No. 1842. August 25, 1905]

**DOMINGO CO-YENGCO, PLAINTIFF AND APPELLEE, VS. LEON REYES,
DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

This action was brought by a contractor to recover the value of work done by him for the defendant in the construction of a building for the latter. There was a written contract between the parties, and the price of the work was fixed at 5,500 pesos. Of this sum the defendant has paid 2,837.50 pesos. The plaintiff claims that under instructions from the defendant he performed certain other work and furnished certain other material outside of the contract, for which he has not been paid. One item was for 1,195.70 pesos, and the other for 1,444 pesos. The defendant in his answer admitted making the contract, but denied that he had ordered the extra work, and he presented a counterclaim for damages caused him by nonfulfillment of the contract on the part of the plaintiff.

The court below, in its decision, rejected the defendant's counterclaim. He rejected the item of extra work of 1,195.80 pesos claimed by the plaintiff, and reduced the other item of extra work from 1,444 pesos to 540.09 pesos, and ordered judgment for the plaintiff for 3,247.48 pesos.

The defendant presented a motion for a new trial based upon the discovery of new evidence, but he did not present any motion for a new trial based on section 497, paragraph 3 of the Code of Civil Procedure—that is to say, upon the ground that the findings of fact

made by the court below were not justified by the evidence. We can not, therefore, review the evidence, but are concluded by the findings made by the judge below.

All the errors which the appellant alleges that the court below committed, relate to the weight of the evidence, and to nothing else.

The judgment of the court below is accordingly affirmed, with the costs of this instance against the appellant. After the expiration of twenty days judgment will be entered in conformity herewith, and the cause will be returned to the lower court for execution. So ordered.

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