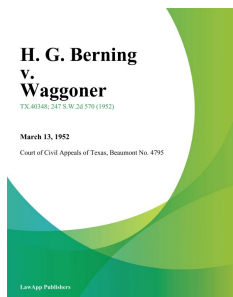


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H G BERNING V WAGGONER EBOOKS 2019



Author: Beaumont Court of Civil Appeals of Texas

Realese Date: Expected @@expectedReleaseDate@@

Suit was instituted by H. G. Berning, Inc., the appellant here, against Maurice Waggoner, the appellee, and others, in the County Court at Law of Harris County and the case was transferred to the County Court of Nacogdoches County upon the plea of privilege of the appellee. The suit was upon an itemized verified account for goods, wares and merchandise consisting of flowers and floral supplies in the total sum of \$771.90. According to the appellants statement in its brief, the appellee filed a sworn answer, alleging that the account made the foundation of plaintiffs action was wholly not just or true. We do not find such an instrument in the transcript but since both parties agree in their briefs that such a sworn denial was filed, we must of course accept such statement as correct. In the transcript, however, the instrument designated "defendants original answer" is in fact the plea of privilege filed in the County Court at Law of Harris County and contains no allegations in regard to the correctness of the verified account filed. Appellant filed exceptions to the sworn answer of the appellee, alleging that the answer was insufficient in that it failed to allege the items of the account which were not true or correct, as required by Rule 93, Section k, Texas Rules of Civil Procedure; that the same was insufficient in that it failed to allege which items or particulars of the sworn account were unjust, as required by Rule 93, Section k, Texas Rules of Civil Procedure. These exceptions were overruled by the trial court. The case went to trial to a jury and the only evidence introduced was the testimony of Mrs. Maurice Hartt, the appellee, who was before her marriage to Mr. Hartt known as Maurice Waggoner. The testimony of Mrs. Hartt extends through pages 3 to 41 of the statement of facts. Also, received in evidence in connection with her testimony were exhibits Nos. 5, 6 and 7, which were letters written by the appellee to the appellant. From all this evidence it was established that the appellee operated a retail flower shop in Nacogdoches and in that business purchased flowers and floral supplies from the appellant, through both its Houston and Dallas branches, during August, September, October, November, and December of 1948; that the parties were in disagreement in regard to the amount of her balance at different times; that the appellee wrote a letter to the appellant dated February 2, 1949, in which she stated that appellant had drawn a draft on her for the amount of \$267.55 and that she owed them only \$252.77.

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