2 Phil. 445

[G.R. No. 1125. August 24, 1903]

LUCIANO CORDOBA Y PASCUAL, PLAINTIFF AND APPELLANT, VS. ANGEL CONDB Y MORENO, DEFENDANT AND APPELLEE.

D E C I S I O N

WILLARD, J.:

On February 20, 1901, the plaintiff and the defendant formed a mercantile partnership, the seventh clause of the contract being as follows:

> "7. In all matters not provided for in the said contract, the partners will be bound by the provisions of the Spanish Code of Commerce, it being agreed that all doubts, disputes, or disagreements which may arise between the partners during the existence of the partnership, as well as during the period of its dissolution and liquidation, will be decided by friendly adjusters."

Certain differences having arisen between the parties, the plaintiff brought this action for the dissolution of the partnership. There is no allegation in the complaint that before the commencement of the action any attempt had been made by the plaintiff to settle the said differences in accordance with the seventh clause above quoted. The court below, in view of that clause, held that it had no jurisdiction to try the case. The plaintiff appealed.

As said by the counsel for the appellee in the argument, litigation by means of friendly adjusters (*juicio de amigables componedores*) was thoroughly well known at the time this contract was made, and it was the method which the parties intended to follow in the settlement of their differences. The procedure in this kind of litigation was minutely described in the former *Ley de Enjuiciamiento Civil*. Twenty-one; articles, including those incorporated by reference, are devoted to it. (Arts. 810-822.) The adjusters had to be men who could read and write. The number hart to be odd, and could not exceed five. A third

perwm could not be given the power to name them. Unless the agreement of submission was executed before a notary, it, was void. It was also void if it did not contain five specified particulars. An adjuster could be challenged if he had an interest in the subject-matter of the suit or was manifestly antagonistic to either party, provided the cause for challenge arose or came to the knowledge of the party after the appointment. If the adjuster challenged refused to withdraw, the matter had to be tried in the Court of First Instance where the adjuster resided. The decision of i)w. dispute by the adjusters was void if not made before a notary. Against this decision the party aggrieved could, witinn sixty days, prosecute a writ of error in the supreme court of Spain, on the grounds that the judgment was rendered outside1 of the time limited therefor, or that it decided questions .not submitted, (Art. 1670, par. 3; sec. 1073, par. 3; art. 1756.) If no writ of error was sued out, or if it was dismissed, the judgment of the adjusters was to be executed by the Court of First Instance of the district where the decision was made in the same manner as other judgments.

This was the procedure to which the plaintiff gave his consent when the said seventh clause was made a part of the contract. He has never consented that the differences between the parties should be settled in any other way. He has never agreed that lie would arbitrate all differences, leaving the method to be afterwards agreed upon. He has agreed to arbitrate only in a certain well-defined and well-known way.

He has never, for instance, consented to an adjustment under which lie would not have the right to appeal against an adverse decision on the two grounds named, or an adjustment under which the decision might be made by means of a private document, or under which a judgment in his favor would not be subject immediately to execution as soon as the time for appeal had passed.

All of these provisions relating to the suit of friendly adjusters disappeared with the repeal of the *Ley de Enjuiciamiento Civil*, and it is not claimed by the appellee that there can now be any settlement in the manner pointed out by that law. There is nothing in the new code that is in any respect like it. The provision for the appointment of referees (sees. 135-140) is entirely dissimilar. It simply allows the parties, in a suit already pending in court, to submit their evidence and argue the case before a third person instead of doing it before the judge himself. The referee reports the result to the judge, who takes such action as he sees fit. It is merely a method of determining what the facts are in a pending case.

It being impossible, therefore, to carry out the provisions of the seventh clause, becau.se the

only method there agreed upon has been abolished, the plaintiff was at liberty to resort to the court.

The court below was of the opinion that, although the provisions of the procedural law had been repealed, the contract could have effect under the provisions of the Civil Code. (Arts. 1820, 1821.) The power, however, given by article 1820 is expressly limited by article 1821, which declares that not only the form of procedure but also the effect of these agreements shall be controlled by the *Ley de Enjuiciamiento Civil*. When that was repealed the Civil Code was left without any declaration as to what the effect of such an agreement would be. These articles, 1820 and 1821, have therefore been repealed.

What would be the rights of the parties if the former procedural law were in force, and whether this case could then be distinguished from the case of Wahl vs. Donaldson, Sims & Co. (1 Off. Gaz., 441),[1] are questions not necessary to be decided.

For the reasons above stated, the order or judgment appealed from is reversed, and the case remanded for further proceeding's, with the costs of this instance against the appellee. Judgment will accordingly be entered twenty days after the filing of this decision.

Arellano, C.J., Torres, Cooper, Mapa, and *McDonough, JJ.,* concur.

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[1] Page 301, *supra.*

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