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[G.R. No. 929. October 08, 1903]

THUNGA CHUI, PLAINTIFF AND APPELLEE, VS. QUE BENTEC, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

This case was before this court in November, 1902. It was then decided that the only question open to the appellant was whether the findings of fact made by the trial judge in his decision supported the judgment. (Thunga Chui *vs*. Que Bentec, 1 Off. Gaz., p. 4.)[1]

The appellant claims that the partnership contract was required to be in writing by article 119 of the Code of Commerce and, the amount of the capital being more than 1,500 pesetas, by article 1280 of the Civil Code and article 51 of the Code of Commerce.

We think it fairly appears from the decision that the contract of partnership was not in writing. Whether this was a civil or a commercial partnership we consider immaterial, for in neither case do we think that the contention of the appellant can prevail.

1. Considered as a civil partnership, that part of article 1280 of the Civil ("ode applicable to the case is as follows:

> "All other contracts, on which the amount of the *prestaciones* of one or of the two contracting parties exceed 1,500 pesetas, must also be drawn in writing, even when they are private documents."

Articles 1278 and 1279 of the same code are as follows:

> "ART. 1278. Contracts shall be binding, whatever the form may be in which they

> have been entered into, provided the essential conditions required for their validity are present.
>
> "ART. 1279. When the law exacts the execution of a deed or other special form for making effectual suitable obligations of a contract, the contracting parties may compel each other to comply with such forms, from the moment in which consent and the other requirements, necessary for their validity, have taken place."

The plaintiff contributed to the partnership 1,000 pesos and the defendant 2,000, and it is therefore claimed by the latter that the case falls under article 1280, and that before the plaintiff can maintain any action on the verbal contract he must proceed under article 1279 to compel the defendant to reduce it to writing. Whatever may be said of earlier decisions of the supreme court of Spain upon the proper construction of these three articles, the later ones have, we think, settled the question involved against the claim of the appellant.

In the judgment of May 3, 1897, the court said:

> "Article 1279 does not impose an obligation, but confers a privilege upon both contracting parties, and the fact that plaintiff has not made use of same does not bar his action."

In the judgment of October 19, 1901 (Alcubilla, Appendix, 1902, p. 139), it appeared that the plaintiff, Doiia Ana Laborda, agreed with the defendant, Don Nemesio Alamanzon, to leave the employment which she then had and to enter the defendant's service, and he agreed that if she left his service he would pay her during life an annuity equal to the salary which she was receiving in her former employment. This contract was verbal. Having been dismissed, she sued for several months' salary and the annuity. The judgment of the audienciu was in her favor, and the defendant removed the case to the Supreme Court, assigning as error that the court had infringed article 1280. The judgment was affirmed, the court saying :

> "Contracts are binding and therefore enforceable reciprocally by the contracting parties, whatever may be the form in which the contract has been entered into, provided that the essential conditions for their validity are present The

observance of this general rule, expressly established by article 1278 of the Civil Code, is not in opposition to the provisions of the two following articles, as this Supreme Court has repeatedly held, and especially in its judgment of July 4, 1899. Article 1280 is limited to an enumeration of the acts and contracts which should be reduced to writing, in a public or private document. Article 1279, far from making the enforceability of the contract dependent upon any special extrinsic form, recognizes its enforceability by the mere act of granting to the contracting parties an adequate remedy whereby to compel the execution of a public writing, or any other special form, whenever such form is necessary in order that the contract may produce the effect which is desired, according to whatever may be its object. This, in substance, is equivalent to establishing as an implied condition of every contract that these formal requisites shall be complied with, notwithstanding the absence of any express agreement by the contracting parties to that effect, but does not subordinate the principal action for the enforcement of the agreement to the bringing of the secondary action concerning the form. Such subordination would be unnecessary, as the cause of action would be the same in both cases, i. e., the existence of a valid contract. Hence it follows that the court below in its judgment has not committed the error assigned as the sole ground for its reversal, even supposing that the contract upon which this case turns is one of the class which should be reduced to writing."

The same doctrine was announced in the judgment of June 18, 1902 (Alcubilla, Appendix, 1902, p. 806), the court there saying:

"As has been repeatedly held by this court, the enforceability of contracts does not depend upon their extrinsic form, but solely upon the presence of the conditions necessary for their validity—which it is not denied are present in the contract in question—that contracts are binding whatever may be the form of their celebration. The reduction to writing in a public or private document, required by the law with respect to certain contracts, is not an essential requisite of their existence, but is simply a coercive power granted to the contracting parties by which they can reciprocally compel the observance of these formal requisites. It follows, hence, that article 1280 of the Civil Code has not been violated as alleged in the first assignment of error because the contract was not reduced to writing, notwithstanding the fact that the amount involved exceeds

> 1,500 pesetas, even supposing this article to be applicable to a contract of a mercantile character such as that in question which is specially covered by the Code of Commerce,"

In the judgment of July 4, 1899, it was found by the Audieneia that the plaintiff had sold to the defendants by a verbal contract her rights in an inheritance. She, claiming that the case fell under article 1280 (4), appealed from the judgment against her, alleging that such rights could only be transferred by a public document. This contention was not sustained.

In the judgment of April 17,1897, cited by the appellant, the judgment was annulled only in one particular, and the decision of the Supreme Court is capable of the construction that, in ordering judgment against the defendants for the price of certain lands sold by a private document, the Audieneia should have inserted a clause* requiring the plaintiff on receiving the amount to execute the proper public document. As so construed it is consistent with the decisions heretofore cited.

We think that it can now be said that when the question arises between the immediate parties to the contract the constant doctrine of the Supreme Court is that stated in these decisions.

The same result must be reached if we consider the question without reference to the authorities. If the requisites of article 1261 exist, the contract is valid between the parties. This is expressly stated in article 1278. Although a contract is by article 1280 required to be in writing, yet if it can be "made effective" without that writing, the plaintiff can maintain an action against the other contracting party at once on the verbal contract without resort to article 1279. That need be done only when by reason of the subject-matter of the contract, or for other causes, the plaintiff can not make the contract fully effective without the prescribed document.

The cause of Elias Gueb vs. Trinidad Kuiz, decided by this court on November 7, 1901, was placed upon the ground that, in the assignment by the creditor to plaintiff of a, demand against the defendant, the latter was a third person, and that as against him the assignment could not be made effective without the writing mentioned in article 1280.

2. If the Civil Code is to govern this contract, what has been said disposes of the claim of the appellant based on article 1280. The appellant, however, assigns as error the infringement of articles 119 and 51 of the Code of Commerce.

Article 117 of the Code of Commerce is as follows :

“The contract of mercantile partnership entered into with the essential requisites of the law shall be valid and binding upon the parties thereto, Avhatever may be its form, or whatever lawful and fair conditions and combinations may enter into it, provided they are not expressly prohibited by this Code * * *.”

We hold that under this article a verbal contract of partnership is good as between the parties themselves. The phrase “essential requisites of the law” means those general requirements of the law which are of the essence of every contract, namely, parties who are capable of contracting, the meeting of the minds, the absence of fraud, and those enumerated in article 1261 of the Civil Code. If the intention was to require a compliance with article 119, it would have been more natural to have used the expression found in article 116, namely, “according to the provisions of this Code.” The word “form” refers to the manner in which the contract is made, whether by parol or in writing, and not the class to which it may belong as general, limited, or corporate. In view of the fact that organization in one of these three forms is expressly prescribed in subsequent sections, it would be unusual to expect a statement in this section that the contract should be valid between the parties even if it was in one of these forms. In article 1667 of the Civil Code, the word “form” is used in the sense which we have given to the word here. This article, 117, is expressly limited to partners, and as to them it is declared that a verbal contract is sufficient.

But when third persons are involved, the Code has established a different rule. Articles 118 and 119 are as follows :

> “ART. 118. Contracts executed between commercial associations and any other persons capable of binding themselves shall be valid and binding, provided the same are legal and honest, and that the requisites mentioned in the following article are complied with.
>
> “ART. 119. Every commercial association, before beginning business, shall be obliged to record its establishment, agreements, and conditions in a public instrument, which shall be presented for record in the commercial registry, in accordance with the provisions of article 17.
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> “Additional instruments which modify or alter in any manner whatsoever the

> original contracts of the association are subject to the same formalities, in accordance with the provisions of article 25.
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> "Partners can not make private agreements, but all must appear in the articles of partnership."

It is expressly provided in article 118 that contracts with third persons shall not be valid unless the provisions of article 119 are complied with. There is no such provision in article 117. It is not there said that the contract shall not be valid between the parties unless article 119 is complied with.

The effect of a failure to comply with article 119 is the subject of several articles. This article requires the contract to be recorded in the Mercantile Registry. This is required also by article 17; yet article 24 says that even if it is not so recorded it shall be valid as between the partners, but not as to third persons. Article 120 declares that the managers of the partnership who fail to comply with article 119 shall be liable to third persons with whom they have dealt. But we can find nothing in the Code which declares that a failure to comply with the article in respect to the public writing shall have any effect upon the partners as between themselves. The last paragraph of article 119 is applicable only to third persons, for as between the partners themselves there could be no secret agreements in the contract.

Article 285 of the Code of Commerce of 1829 plainly required a public instrument, even as between the partners. If the intention was to make no change in the law in this respect, that article would have been retained. But as it appears from the preface cited below, the intention was to change that provision.

The most reliable commentary on this Code is the preface attached to the Code of the Peninsula of 1885. Therein is declared the meaning of the law, and upon the question here at issue are made the following statements:

> "The provisions of the projected Code with respect to the different manners and forms under which mercantile partnerships can be organized are based upon similar principles. These principles may be reduced to three, to wit: Absolute lack of restriction on the part of associations to organize as they may see fit; complete absence of governmental intervention in the interior regime of these entities; publicity of such partnership matters as may be of interest to third persons. * * *

> In consequence of the third principle, i. e., the guaranty of the interest of third persons, it is provided that, although every contract of partnership is binding upon the associates in whatsoever manner it may appear the contract has been entered into, it is not so with respect to outsiders until such time as the contract is evidenced by a public writing recorded in the Mercantile Registry, in which office, furthermore, must be recorded all contracts introducing reforms into the original contract of partnership, the emission of shares and bonds payable to bearer, and the dissolution of partnership, * .* * Although the projected Code does not impose any penalty or establish any coercive measures in order to compel the associates to make public the organization of the partnership by means of the Mercantile Registry, it holds all persons directly in charge of the management of the company personally liable for all damages which a failure to comply with this requisite may cause to third persons, who in no case will be bound by the terms or conditions of the contract of partnership of the contents of which they are ignorant. But for this same reason the partners can not avail themselves of this lack of publicity, for they having full knowledge of the terms and conditions of the agreement by which the partnership is created, it is binding ,upon them from the very moment of its celebration. This is the doctrine of the projected Code, in this respect repealing the present Code, which establishes a contrary principle."

In the case of Prautch, Scholes ,& Co. *vs.* Hernandez (1 Off. Gaz., 203)[1] we held that a commercial partnership which had not complied with article 119 could not maintain an action in its partnership name against a third person. That case is consistent with our present holding.

There being no provision of the Code of Commerce which requires the contract of partnership to be in any particular form as between the partners, this case does not fall within the terms of article 52 of this Code, and that article is not applicable.

Article 117, expressly authorizing, as we hold, a verbal contract of partnership as between the partners, such a contract is thereby excepted from the operations of article 51. The case at bar is covered by the former article and not the latter. Whether, therefore, this be a civil partnership and so governed by the Civil Code, or a commercial partnership and so governed by the Code of Commerce, in neither case can the objections made by the appellant be sustained.

The judgment of the court below is affirmed, with the costs of this instance to the appellant.

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

Torres and *Johnson, JJ.,* did not sit in this case.

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[1] 1 Phil. Rep., 356.

[1] Phil. Rep., 705.

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