

7 Phil. 685

[ G.R. No. 3186. March 07, 1907 ]

**THE GREAT COUNCIL OF THE UNITED STATES OF THE IMPROVED ORDER OF RED MEN, PLAINTIFF AND APPELLEE, VS. THE VETERAN ARMY OF THE PHILIPPINES, DEFENDANT AND APPELLANT.**

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

**WILLARD, J.:**

Article 3 of the constitution of the Veteran Army of the Philippines provides as follows:

“The object of this association shall be to perpetuate the spirit of patriotism and fraternity among those men who upheld the Stars and Stripes in the Philippine Islands during the Spanish war and the Philippine insurrection, and to promote the welfare of its members in every just and honorable way; to assist the sick and afflicted and to bury the dead, to maintain among its members in time of peace the same union and harmony with which they served their country in times of war and insurrection.”

Article 5 provides that:

“This association shall be composed of—

“(a) A department.

“(b) Two or more posts.”

It is provided in article 6 that the department shall be composed of a department commander, fourteen officers, and the commander of each post, or some member of the post appointed by him. Six members of the department constitute a quorum for the

transaction of business.

The constitution also provides for the organization of posts. Among the posts thus organized is the General Henry W. Lawton Post, No. 1. On the 1st day of March, 1903, a contract of lease of parts of a certain building in the city of Manila was signed by W. W. Lewis, E. C. Stovall, and V. O. Hayes, as trustees of the Apache Tribe, No. 1, Improved Order of Red Men, as lessors, and Albert E. McCabe, acting for and on behalf of Lawton Post, Veteran Army of the Philippines, as lessee. The lease was for the term of two years commencing February 1, 1903, and ending February 28, 1905. The Lawton Post occupied the premises in controversy for thirteen months, and paid the rent for that time. It then abandoned them and this action was commenced to recover the rent for the unexpired term. Judgment was rendered in the court below in favor of the defendant McCabe, acquitting him of the complaint. Judgment was rendered also against the Veteran Army of the Philippines for P1,738.50, and the costs. From this judgment, the last-named defendant has appealed. The plaintiff did not appeal from the judgment acquitting defendant McCabe of the complaint.

It is claimed by the appellant that the action can not be maintained by the plaintiff, The Great Council of the United States of the Improved Order of Red Men, as this organization did not make the contract of lease.

It is also claimed that the action can not be maintained against the Veteran Army of the Philippines because it never contracted, either with the plaintiff or with Apache Tribe, No. 1, and never authorized anyone to so contract in its name.

We do not find it necessary to consider the first point because we think the contention of the appellant on the second point must be sustained.

It is difficult to determine the exact nature of the defendant organization. It is of course not a mercantile partnership. There is some doubt as to whether it is a civil partnership, in view of the definition of the term in article 1665 of the Civil Code. That article is as follows:

“Partnership is a contract by which two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves.”

It seems to be the opinion of the commentators that where the society is not constituted for the purpose of gain, it does not fall within this article of the Civil Code. Such an organization

is fully covered by the Law of Associations of 1887, but that law was never extended to the Philippine Islands. According to some commentators it would be governed by the provisions relating to the community of property. However, the questions thus presented we do not find necessary to, and do not resolve. The view most favorable to the appellee is the one that makes the appellant a civil partnership. Assuming that it is such, and is covered by the provisions of title 8, book 4 of the Civil Code, it is necessary for the appellee to prove that the contract in question was executed by some one authorized to do so by the Veteran Army of the Philippines.

Article 1695 of the Civil Code provides as follows:

“Should no agreement have been made with regard to the form of management, the following rules shall be observed:

“1. All the partners shall be considered as agents, and whatever any one of them may do by himself shall bind the partnership; but each one may oppose the act of the others before they may have produced any legal effect.”

One partner, therefore, is empowered to contract in the name of the partnership only when the articles of partnership make no provision for the management of the partnership business. In the case at bar we think that the articles of the Veteran Army of the Philippines do so provide. It is true that an express disposition to that effect is not found therein, but we think one may be fairly deduced from the contents of those articles. They declare what the duties of the several officers are. In these various provisions there is nothing said about the power of making contracts, and that faculty is not expressly given to any officer. We think that it was, therefore, reserved to the department as a whole; that is, that in any case not covered expressly by the rules prescribing the duties of the officers, the department could not be bound unless by resolution adopted by it at some meeting where at least six members of the department were present. It is hardly conceivable that the members who formed this organization should have had the intention of giving to any one of the sixteen or more persons who composed the department the power to make any contract relating to the society which that particular officer saw fit to make, or that a contract when so made without consultation with, or knowledge of the other members of the department should bind it. We therefore hold, that no contract, such as the one in question, is binding on the Veteran Army of the Philippines unless it was authorized at a meeting of the department. No evidence was offered to show that the department had ever taken any such action. In fact,

the proof shows that the transaction in question was entirely between Apache Tribe, No. 1, and the Lawton Post, and there is nothing to show that any member of the department ever knew anything about it, or had anything to do with it. The liability of the Lawton Post is not presented in this appeal.

Judgment against the appellant is reversed, and the Veteran Army of the Philippines is acquitted of the complaint. No costs will be allowed to either party in this court. After the expiration of twenty days let judgment be rendered in accordance herewith, and ten days thereafter let the case be remanded to the lower court for proper action. So ordered.

*Arellano, C. J., Torres, Mapa, Johnson, and Tracey, JJ., concur.*  
*Carson, J., did not sit in this case.*

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