

THE MANILA RAILROAD COMPANY, PLAINTIFF AND APPELLEE, VS. C. S. SALMON, DEFENDANT AND APPELLANT.

G.R. No. 23273. October 09, 1925

Ponente: STREET, J.

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STREET, J.:

This action was instituted on February 5, 1924, in the Court of First Instance of the City of Manila by the Manila Railroad Company for the purpose of recovering from the defendant, C. S. Salmon, the unpaid balance due to the railroad company as freight charges on various quantities of coconut shells shipped over the railroad by the Philippine By-Products Co., which charges had been guaranteed by Salmon. Upon the petition of Salmon, his codefendant W. G. Frisbie was impleaded, and the cause proceeded thenceforth against the two. Upon hearing the cause judgment was entered in favor of the plaintiff to recover of Salmon the sum of P1,647.22, with interest from the date of the filing of the complaint, but Frisbie was absolved with all costs of the cause against Salmon. From this judgment Salmon appealed.

It appears in evidence that in the year 1918 W. G. Frisbie and W. J. Allen, under the name of the Philippine By-Products Co., undertook to buy coconut shells in the provinces for use by the Government of the United States in the prosecution of war. Much of the material collected by them had to be brought to Manila by rail; and Salmon, being the agent of the American buyer with whom Frisbie and Allen had contracted, guaranteed to the Manila Railroad Company the payment of any freight for coconut shells shipped over the railroad by the Philippine By-Products Co. The note by which this obligation was created is as follows:

"May 6, 1918

"The MANILA RAILROAD CO.,

"Manila.

"GENTLEMEN: Relative freight charges on coconut shell shipped over your railroad by the Philippine By-Products Co. I hereby personally guarantee payment of same. Bills may be rendered daily or monthly at my office, 314 Kneeder Building, at your convenience.

"Very respectfully,

(Sgd.) "C. S. SALMON"

While engaged upon the contract above-mentioned, Frisbie and Allen, under the name of the Philippine By-Products Co., caused 846,000 kilos of coconut shells to be transported over the plaintiff railroad to Manila from various municipalities in the provinces of Laguna and Tayabas. The freight charges on these shipments amounted to P3,294.44. To recover this debt the plaintiff instituted a prior civil action (No. 20206) in the court of the City of Manila, in the course of which both Frisbie and Allen were brought in as codefendants with Salmon.

Before that case reached its conclusion Allen died; and upon motion of the plaintiff showing this fact, the action was dismissed as against Allen, in order that the claim against him might be presented through proper channels in the proceedings for the administration of his estate. As a consequence the case proceeded to judgment against Frisbie and Salmon only.

Upon hearing the cause the trial judge found and declared that the Philippine By-Products Co. was not a legal entity, inasmuch as no articles of partnership or incorporation had been entered into by Frisbie and Allen; and the court further found that the two principals, Frisbie and Allen, should be held liable as partners in a civil partnership, each being responsible for one-half of the debt. It was further declared that Salmon, as guarantor, was liable in a subsidiary capacity only. Judgment in favor of the plaintiff was therefore given against Frisbie for half of the amount due and against Salmon for the same amount in the event that it should not be made out of Frisbie. As the action had been dismissed as against Allen nothing was adjudicated with respect to Salmon's subsidiary liability for the half which pertained to Allen. Neither the plaintiff nor defendants against whom judgment had been rendered appealed from this decision, and Frisbie afterwards satisfied the judgment as against himself, leaving Salmon free from any liability under that judgment.

It further appears that the plaintiff's claim against Allen was in due time submitted to the committee on claims in the proceedings on Allen's estate, by which committee it was approved. Later, the court ordered the claim to be paid, but Allen's estate proved insolvent and nothing was ever realized upon the claim. The present action was then begun by the plaintiff to recover of Salmon the amount which the plaintiff had unsuccessfully attempted to get out of Allen's estate.

The case for Salmon as presented in his brief on appeal in this court is planted on the following line of reasoning, namely, first, that the judgment in the first case was erroneous in that Frisbie was there held liable only to the extent of one-half of the plaintiff's claim, when judgment should have been given against him for the whole; and, secondly, that Salmon, as guarantor, has been released by the failure of the plaintiff to obtain judgment against Frisbie for the entire indebtedness in that action. We are of the opinion that this contention is unsound and that the defendant Salmon is liable for the amount awarded against him in this action whether the first action was correctly decided or not. To make this intelligible it is necessary first to explain why, in the former action, the Court of First Instance declared Frisbie liable for one-half of the debt only.

In the case of *Hung-Man-Yoc vs. Kieng-Chiong-Seng* (6 Phil., 498), it was held that where a partnership engages in business without the recording of articles of partnership in the mercantile register, such partnership cannot be recognized as having legal existence, and under article 120 of the Code of Commerce only those members of the partnership who engage in the management of its affairs are liable to its creditors. This decision, though perhaps necessary under the provision cited, has not infrequently been invoked to the prejudice of creditors; and the courts, in order to give creditors all possible protection, have been inclined to hold the individual members of such a partnership liable as members of a civil partnership, for it will be remembered that in civil partnership all who participate in the enterprise are liable for the acts of the management though only to the extent of the proportionate share of each. Thus, in *Co-Pitco vs. Yulo* (8 Phil., 544), it was held that certain individuals who had engaged in the operation of a sugar estate constituted a civil partnership, as distinguished from a mercantile partnership and each member of the society was bound to pay his pro rata share. In *Dietrich vs. Freeman* (18 Phil., 341), three individuals operated the Manila Steam Laundry; and in an action to recover damages caused by the enterprise, it was held that the three associates were liable as members of a civil partnership and that each must pay his part of the claim. Again, in *Bachrach vs. "La Protectora"* (37 Phil., 441), the same doctrine was applied to the case of various individuals who had engaged in the business of transporting passengers and freight at Laoag, Ilocos Norte. In the light of these decisions the action of the Court of First Instance in declaring the Philippine

By-Products Co. to be a civil partnership and the two partners to be each liable for one-half the plaintiff's claim is comprehensible enough. It follows furthermore, in this view of the case, that the present action is properly maintainable against Salmon to recover the share for which Allen was liable but which, because of the insolvency of Allen's estate, could not be recovered from him. In this connection it is to be borne in mind that Salmon, as guarantor, has claimed the benefit of the exhaustion of the liability of his principals; and for this reason no judgment could be entered against Salmon in the former case for Allen's part of the debt after the cause was dismissed as against Allen. Indeed, no question is made in the appellant's brief upon the point that judgment was rightly entered against Salmon in this case, supposing that Frisbie and Allen were each liable only to the extent of one-half of the plaintiff's claim.

But it is contended for the appellant that both Frisbie and Allen were jointly and severally liable for the entire amount, in accordance with the rule of liability in commercial partnerships (article 127, Code of Commerce); and in this connection emphasis is placed upon the undeniable fact that the purchase and sale of coconut shells is commercial business. It must be remembered, however, that the Philippine By-Products Co. had never been registered in the commercial register; and in such case, as we have already pointed out, only the manager, or managers, of the enterprise are solidarity liable, the other partners not being liable at all. In the absence therefore of a finding that both Allen and Frisbie were managers of the Philippine By-Products Co., it could not even be said that they were both solidarity liable even though it be admitted that the enterprise was a commercial rather than civil partnership.

The attorney for the appellant relies upon the case of the Manila Engineering Co. vs. Cranston and Heacock (45 Phil., 128), as having established that the liability of persons operating as partners in an unregistered partnership is solidary and not pro rata. It is true that in the case mentioned both Cranston and Heacock were held jointly and severally liable, but the facts of that case, if examined, will show, we think, that both Cranston and Heacock were managers of the partnership and were hence solidarity liable by the express terms of article 120 of the Code of Commerce.

But admitting that the appellant's view as to the joint and several liability of Frisbie and Allen is correct and that judgment might properly have been entered in the former case against Frisbie (who is solvent) for the whole, it by no means follows that Salmon was discharged by the failure of the plaintiff to prosecute that cause with full effect against Frisbie. The fact that the lower court in that action failed, even though erroneously, to give judgment against Frisbie for the whole debt cannot be imputed to the plaintiff as an act of bad faith towards Salmon. Neither can it be said that the plaintiff owed Salmon the positive duty of bringing that case by appeal to this court, even supposing that success might have crowned the effort, which is doubtful. Rather it might be said to have been the duty of Salmon to prosecute an appeal for his own protection, if he deemed it of importance in that action, to fix primary liability for the whole debt upon Frisbie.

One apparent anomaly in this case there undoubtedly is, which consists in the fact that two actions have been successfully maintained against Salmon upon a single obligation; but this is due to the circumstance that Salmon guaranteed a liability which has turned out to consist of the separable obligations of two persons and Salmon, relying upon the subsidiary character of his own undertaking, has insisted upon the exhaustion of legal remedies against each of his principals. By his own election he has, therefore, made it impossible for his own liability to be settled in a single lawsuit.

Our conclusion, upon a careful examination of all aspects of the case, is that no error was committed in the judgment which is the subject of appeal, and the same will be affirmed. So ordered, with costs against the appellant.

Avanceña, C. J., Malcolm, Villamor, Ostrand, and Romualdez, JJ., concur.
Johns and Villa-Real, JJ., concur in the result.

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