

LORETO IGUILDEZ, AS ADMINISTRATRIX OF THE ESTATE OF ABRAHAM WEILL, DECEASED, PLAINTIFF AND APPELLANT, VS. LEVY HERMANOS, DEFENDANT AND APPELLEE.*G.R. No. 28817. March 23, 1928*

Ponente: VILLAMOR, J.

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The plaintiff as administratrix of the estate of Abraham Weill claims the sum of P155,437 from the defendant, alleging that Abraham Weill was chief and one of the partners of La Estrella del Norte, a firm established in this city; that after Abraham Weill's death, La Estrella del Norte was incorporated under the name of Levy Hermanos, Inc., the new firm thus organized having been subrogated to all the assets and liabilities of the former partnership; and that the late Abraham Weill, upon his death left the amount of one hundred fifty-five thousand four hundred thirtyseven pesos (P155,437), deposited with the defendant Levy Hermanos.

After denying the allegations of the complaint, the defendant sets up as a defense: (1) That La Estrella del Norte was a foreign partnership organized under the laws of the French Republic, and the late Abraham Weill never had been a member of said partnership during the time when the same was engaged in business in these Islands; (2) that the balance in favor of Abraham Weill when the defendant was organized as a domestic corporation, and of which he took charge, had been fully paid by the defendant.

In view of the allegations of the complaint and the answer and of the evidence adduced at the hearing, the trial court rendered judgment absolving the defendant from the complaint, with costs against the plaintiff.

The plaintiff appealed from this judgment through the proper bill of exceptions, and now alleges that the trial court erred: (1) In accepting as good and true, the entries appearing in Exhibits 1, 2, 3, 4, 6, 7, 7a, and 8 of the complaint; (2) in admitting the said Exhibits 1, 2, 3, 4, 6, 7a, and 8; (3) in holding that it has been proved that the Kilayco property in Exhibit A belonged to Levy Hermanos and not to the deceased Abraham Weill; (4) in finding that the sum claimed by the plaintiff has already been fully paid by the defendant; (5) in absolving the defendant from the complaint and in ordering the plaintiff to pay the costs.

For the proper understanding of the first and second errors assigned by the appellant's counsel, it must be understood that Exhibits 1, 2, and 3 are the books of account of the commercial firm Levy Hermanos; that Exhibit 4 is the ledger of Levy Hermanos Inc., opened on February 1, 1922; that Exhibit 6 is a copy of the entries in Exhibits 1, 2, and 3, duly certified by the clerk of the Court of First Instance of Iloilo; that Exhibit 7 is one of the books of account of Levy Hermanos which was saved from the fire; that Exhibit 7-A is an exact copy of the entry contained in Exhibit 7 regarding the participation of Abraham Weill on June 10, 1914, in favor of Fernando Levy and Alfred Schwab.

The appellant's contention that said exhibits were wrongly admitted by the lower court, is untenable. Not only does it not appear in the bill of exceptions that said commercial books were not kept in accordance with the Code of Commerce, but it appears that the trial court, after examining them, found that said books had been kept in

conformity with the provision of the aforesaid code, aside from the fact of having been admitted at the hearing by counsel for the appellant. In the case of *Tan Machan vs. Gan Aya de la Trinidad* (3 Phil., 684), it was held that: "Where the introduction in evidence of books of account is objected to upon the ground that they are not kept in conformity with the requirements of the Code of Commerce, the bill of exceptions must show that such was the fact in order to make the exception available in the appellate court." In *Garrido vs. Asencio* (10 Phil., 691), it was held that: "Books of account, although not kept in accordance with the provisions of the Code of Commerce, if not objected to, are admissible in evidence, and, in any event, they may be admitted under section 338 of the Code of Civil Procedure, as a memorandum to refresh the memory of the witness. (*Tan Machan vs. Gan Aya de la Trinidad*, 3 Phil., 684.)" In *Cang Yui vs. Gardner and Tan Singco* (34 Phil., 376), the same rule was sustained and it was said that, at any rate, the account books, even if they have not been kept in accordance with the provisions of the Code of Commerce, may be admitted as evidence under section 338 of the Code of Civil Procedure.

With regard to the correctness of the entries appearing in the exhibits in question, it appears that the entries were regularly made in the ordinary course of the defendant's business in such a manner that even the interest on Abraham Weill's deposit is shown, and his share corresponding for each year as manager of *Levy Hermanos* is credited to his account.

Moreover, Alfred Schwab, a witness for the plaintiff, identified Exhibit I, and the trial judge having personally examined the defendant's original account books Exhibits 1, 2, 3 and 4, declares in his decision that said books were kept in conformity with the provisions of the Code of Commerce, not having discovered any indication of falsity in the entries.

Corpus Juris, vol. 22, pp. 867 and 868, reads:

"Proof of Correctness of Accounts.—In order to render books of account admissible, there must be a showing that the party kept clear and correct accounts, which showing must, it is generally held, be by the testimony of third persons who have dealt with him. It has been held further that the witness must be able to identify the books and to testify to settlements made from the books and based upon an examination of the items contained therein.

"Form and Regularity of Accounts—In General.—The entries must appear to have been made in the regular course of business and under such circumstances as to import trustworthiness, and the book must be in such shape that it may be presumed to be the register of the daily business transactions of the party offering it."

With regard to Exhibit 8 suffice it to say that, being a public document there is nothing to stand in the way of its admission as evidence. In this exhibit the late Abraham Weill states, among other things, that the sole owner of the mercantile establishment, *La Estrella del Norte*, doing business under the name of *Levy Hermanos* is Mr. Rafael Levy, whose general attorney-in-fact was the declarant. Such statement completely destroys plaintiff's allegation that the late Abraham Weill was the chief and one of the partners of *La Estrella del Norte*.

Anent the ownership of the Kilayco property, which appears in plaintiff's Exhibit A and defendant's Exhibit 1, it is true that in this exhibit there is an entry in the current account of Abraham Weill, "expenses and account house Kilayco of P18,914.54;" but Mr. Schwab, a witness for the plaintiff, testified that this entry was erroneously made and that it was corrected by another entry of P19,000 to the credit of his account instead and this testimony was corroborated by the bookkeeper Fernando Ramirez. At all events it cannot be reasonably inferred from the fact that the entry of P18,914.54 was debited to Mr. Weill's account, that the Kilayco house was his property, and less so because in plaintiff's Exhibit B, which is the contract of sale of the same house by *Levy Hermanos, Inc.*, in favor of the spouses Francisco Lizares and Guillerma Alunan, it appears that said property is registered in the office of the registrar of deeds of the Province of Iloilo under certificate of title No. 3270. We presume that this certificate of title belongs to *Levy Hermanos, Inc.*, because otherwise the deed of sale, Exhibit B, could not have

been registered, as it was, in volume 14, folio 129 of the book of transfer certificates as certificate No. 3367.

As has been said, the plaintiff claims the sum of P155,437 from the defendant, alleging that this sum was left by Mr. Abraham Weill at his death on deposit with the defendant. This aspect of the case was greatly simplified by the following agreement entered into by the parties: (1) That according to the ledger of 1914, it appears from page 68 of April 1, 1914 that there was a balance of P69,794.21 in favor of Abraham Weill; this sum was in Abraham Weill's current account with Levy Hermanos but not with the defendant Levy Hermanos, Inc.; and (2) that defendant Levy Hermanos, Inc., admits that on January 31, 1922 there was a balance in favor of Abraham Weill of P9,490.87 and that when Levy Hermanos, Inc. was organized on February 1, 1922, it took over this balance and so it is shown in its books.

In view of the facts agreed upon by both parties, and as counsel for the appellant admits in its brief, the vouchers (?) Exhibits 5-A to 5-S presented by the defendant firm, of the withdrawal of funds made by the deceased and his heirs, which covered the balance of P9,490.87 of which the defendant took charge on February 1, 1922, and it appearing, on the other hand, from Exhibit 6, that is, the current account of Abraham Weill with Levy Hermanos, that the sum of P69,794.21 which the former had in his favor on April 1, 1914 was reduced to P9,490.87 on January 31, 1922 by various drafts sent to Abraham Weill and for other reasons described in detail in said Exhibit 6, it results that the sum claimed by the plaintiff has already been fully paid by the defendant, as was held by the trial court. It is true that the vouchers of the account shown in Exhibit 6 have not been presented at the trial; but this omission has been explained to the satisfaction of the court, for such omission was due to the loss of the vouchers by fire in Iloilo, which damaged the establishment of La Estrella del Norte. Furthermore, the defendant, according to the agreement of the parties, took charge of only the balance of P9,490.87 in favor of Mr. Weill, which existed when Levy Hermanos, Inc., was organized on February 1, 1922, when Mr. Weill died. And it is unnecessary to add that Levy Hermanos, Inc., a domestic partnership composed of various members is different from the firm Levy Hermanos, whose sole owner was Rafael Levy.

The judgment appealed from, being in accordance with law, must be, as it is hereby, affirmed, with costs against the appellant. So ordered.

Avanceña, C. J., Johnson, Ostrand, Johns, and Romualdez, JJ., concur.

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