

NICOLAS CO-PITCO, PLAINTIFF AND APPELLEE, VS. PEDRO YULO, DEFENDANT AND APPELLANT.

G.R. No. 3146. September 14, 1907

Ponente: WILLARD, J.

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WILLARD, J.:

The appellee makes the point in his brief in this court that although the defendant excepted to the order of the court below denying his motion for a new trial on the ground of the insufficiency of the evidence, yet we can not review such evidence because it is not properly certified. We think that this point is well taken. The testimony of one witness is certified to by the stenographer, Who says that it is all the evidence which he took during the trial. The testimony of this witness is unimportant. There follow in the record several pages of what purports to be evidence of different witnesses taken in narrative form, but neither the judge, nor the clerk, nor the stenographer certify in any way what these pages are or that they contain evidence taken during the trial of this case. For the purposes of this review, therefore, we can only consider the facts admitted by the pleadings and those stated in the decision of the court below. In that decision the court makes the following finding of fact, among others:

"Before February, 1903, Florencio Yulo and Jaime Palacios were partners in the operation of a sugar estate in Victorias, Island of Negros, and had commercial dealings with a Chinaman named Dy-Sianco, who furnished them with money and goods, and used to buy their crop of sugar. In February, 1903, the defendant, Pedro Yulo, father of the said Florencio, took charge of the latter's interest in the above-mentioned partnership, and he became a general partner with the said Jaime Palacios in the same business, and he continued as such partner until about the end of 1904, dealing with Dy-Sianco in the same manner as the old partnership had dealt with the latter."

He then finds that the balance due from the firm of Pedro Yulo and Jaime Palacios was 1,638.40 pesos, Philippine currency, and orders judgment against the defendant, Pedro Yulo, for the entire amount, with interest.

The partnership of Yulo and Palacios was engaged in the operation of a sugar estate in Negros. It was, therefore, a civil partnership, as distinguished from a mercantile partnership.. Being a civil partnership, by the express provisions of articles 1698 and 1137 of the Civil Code, the partners are not liable each for the whole debt of the partnership. The liability is pro rata and in this case Pedro Yulo is responsible to plaintiff for only one-half of the debt. The fact that the other partner, Jaime Palacios, had left the country can not increase the liability of Pedro Yulo.

The judgment of the court below is reversed and judgment is ordered in favor of the plaintiff and against the defendant, Pedro Yulo, for the sum of 819.20 pesos, Philippine currency, with interest thereon at the rate of 6 per cent per annum from the 12th day of January, 1905, and the costs of the Court of First Instance. No costs will be allowed to either party in this court. So ordered.

Arellano, C. J., Torres, Johnson, and Tracey, JJ., concur.

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