

LA COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, PLAINTIFF AND APPELLEE, VS. MATEO TRINCHERA, DEFENDANT AND APPELLANT.

G.R. No. 3368. March 07, 1907

Ponente: WILLARD, J.

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WILLARD, J.:

The complaint contained the following allegation:

"1.º Que la demandante es una sociedad mercantil debidamente establecida en estas Islas con arreglo a las leyes vigentes en las mismas, teniendo establecida una de sus agencias en Tacloban, Leyte, Islas Filipinas."

The answer denied each and every one of the allegations contained in said paragraph 1 of the complaint. There was thus put in issue the question as to the juridical personality of the plaintiff. No evidence was offered at the trial to show that it was a mercantile partnership or a civil partnership, or that it had ever acquired any personality distinct from the personality of the persons who composed it. The assignment of error based upon this failure of proof must, therefore, be sustained.

The evidence does not show that the defendant is estopped from denying the personality of the plaintiff by reason of dealings with it, for the cause of action set out in the complaint is based upon a debt due from the defendant to Mendezona & Co., and afterwards assigned to the plaintiff. It does not appear that the defendant ever had any personal dealings with the plaintiff.

The defense contained in the denial in the answer was not waived by the fact that in another part of the same pleading the defendant set up a counterclaim against the plaintiff. (Castle Bros., Wolf & Sons vs. Go-Juno,[1] No. 3429, decided December 6, 1906.)

In view of further proceedings in the case, we will say that the evidence to support the item of 442.68 pesos found in the plaintiff's account was hardly sufficient to show a liability on the part of the defendant to pay that sum.

The judgment of the court below is set aside and the case remanded thereto for a new trial. Upon such new trial it will not be necessary to retake the evidence already taken, but either party will be at liberty to present such additional evidence as it deems proper. No costs will be allowed to either party in this court. After the expiration of twenty days let judgment be entered 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, Carson, and Tracey, JJ., concur.

[1] Page 144, *supra*.

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