

GEORGE O. DIETRICH, PLAINTIFF AND APPELLEE, VS. O.K. FREEMAN, JAMES L. PIERCE, AND BURTON WHITCOMB, DEFENDANTS.—BURTON WHITCOMB, APPELLANT.

G.R. No. 6252. January 28, 1911

Ponente: TRENT, J.

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TRENT, J.:

This action was brought against O. K. Freeman, James L. Pierce, and Burton Whitcomb, as owners and operators of the Manila Steam Laundry, to recover the sum of P952 alleged to be the balance due the plaintiff for services performed during the period from January 9, 1907, to December 31, 1908. Judgment was rendered in favor of the plaintiff and against Freeman and Whitcomb, jointly and severally, for the sum of P752 with interest at the rate of 6 per cent per annum from the 27th day of August, 1909, and the costs of the cause. The complaint as to Pierce was dismissed, Whitcomb alone appealing.

When the plaintiff was first employed on the 9th of January, 1907, this steam laundry was owned and operated by Freeman and Pierce. Pierce, on the 18th of January, 1907, sold all of his right, title, and interest in the said laundry to Whitcomb, who, together with Freeman, then became the owners of this laundry and continued to operate the same as long as the plaintiff was employed.

The trial court found that the balance due the plaintiff for services performed amounted to the sum of P752. This finding is fully supported by the evidence of record.

Counsel for the appellant Whitcomb now insists -

- That the court erred in giving, jointly and severally, a judgment against Freeman and Whitcomb for any sum whatever; and
- That the court erred in holding the appellant Whitcomb liable.

It appears from the record that Whitcomb never knew the plaintiff, never had anything to do with him personally, and that the plaintiff's contract was with Freeman, the managing partner of the laundry. It further appears from the record that Pierce, after he sold his interest in this laundry to Whitcomb, continued to look after Whitcomb's interest by authority of the latter.

Articles 17 and 119 of the Code of Commerce provide:

"Art. 17. The record in the commercial registry shall be optional for private merchants and compulsory for associations established in accordance with this code or with special laws, and for vessels.

"Art. 119. Every commercial association before beginning business shall be obliged to record its establishment, agreements, and conditions in a public instrument, which shall be presented for record in the commercial registry, in accordance with the provisions of article 17.

"Additional instruments which modify or alter in any manner whatsoever the original contracts of the association are subject to the same formalities, in accordance with the provisions of article 25.

"Partners can not make private agreements, but all must appear in the articles of co-partnership."

In the organization of this partnership by Freeman and Whitcomb the above provisions of law were not complied with; that is, no formal partnership was ever entered into by them, notwithstanding the fact that they were engaged in the operation of this laundry.

The purposes for which this partnership was entered into by Freeman and Whitcomb show clearly that such partnership was not a commercial one; hence the provisions of the Civil Code and not the Code of Commerce must govern in determining the liability of the partners. (Manresa, vol. 1, p. 184; Aramburo, Civil Capacity, 407, 432; Prautch vs. Hernandez, 1 Phil Rep., 705; and Co Pitco vs. Yulo, 8 Phil. Hep., 544.)

In support of the second assignment of error our attention has been called to the cases of Hung-Man-Yoc vs. Kieng- Chiong-Seng (6 Phil. Rep., 498); Ang Quian Cieg vs. Te Chico (12 Phil. Rep., 533) ; Bourns vs. Carman (7 Phil. Rep., 117). In the first of these cases the partnership was a mercantile one, as it was engaged in the importation of goods for sale at a profit. This was also true in the second case. In neither of these cases were the provisions of articles 17 and 119 of the Code of Commerce complied with. Those partnerships, although commercial, were not organized in accordance with the provisions of the Code of Commerce as expressed in those articles. In determining¹ the liability of the partners in these cases the court, after making the finding of facts, was governed by the provisions of article 120 of the Commercial Code. In the last case cited the partnership was one of *cuentas en participacion*. "A partnership," quoting from the syllabus in this case, "constituted in such a manner that its existence was only known to those who had an interest in the same, there being no mutual agreement between the partners, and without a corporate name indicating to the public in some way that there were other people besides the one who ostensibly managed and conducted the business, is exactly the accidental partnership of *cuentas en participacion* defined in article 239 of the Code of Commerce."

In a partnership of *cuentas en participacion*, under the provisions of article 242 of the Code of Commerce, those who contract with the person in whose name the business of such a partnership was conducted shall have only the right of action against such person and not against other persons interested. So this case is easily distinguished from the case at bar, in that the one did not have the corporate name while the other was known as the Manila Steam Laundry.

The plaintiff was employed by and performed services for the Manila Steam Laundry and was not employed by nor did he perform services for Freeman alone. The public did not deal with Freeman and Whitcomb personally, but with the Manila Steam Laundry. These two partners were doing business under this name and, as we have said, it was not a commercial partnership. Therefore, by the express provisions of articles 1698 and 1137 of the Civil Code the partners are not liable individually for the entire amount due the plaintiff. The liability is *pro rata* and in this case the appellant is responsible to the plaintiff for only one-half of the debt.

For these reasons the judgment of the court below is reversed and judgment entered in favor of the plaintiff and against the defendant Whitcomb for the sum of P376, with interest as fixed by the court below. No costs will be allowed either party in this court.

A motion was filed on the 22d of August, 1910, by O'Brien and De Witt, asking this court to strike from the record certain allegations in the printed brief of counsel for the appellee. These allegations are as follows: "Does the receipt bear the earmarks of newly discovered evidence? Or of newly manufactured evidence?" These questions were directed against O'Brien, one of the counsel for appellant in this case, and were intended to have the court believe that O'Brien had manufactured the receipt referred to. There is nothing in this record which

shows that O'Brien did falsify or manufacture that receipt. These questions are clearly impertinent. It is our duty to keep our records clean and free from such unwarranted statements. It is, therefore, ordered that the same be stricken from the record. So ordered.

Arellano, C. J., Mapa, Carson, and Moreland, JJ., concur.

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