

VICENTE QUIOGUE, PLAINTIFF AND APPELLEE, VS. L. P. MCKEEHAN ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 6774. October 06, 1911

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of the city of Manila, the Hon. A. S. Crossfield presiding, in favor of the plaintiff for the sum of P471.65, with interest thereon at the rate of 6 per cent per annum from the 1st day of July, 1910, and for the costs of the action.

The learned trial court in the opinion upon which his judgment is based says:

"From the evidence presented at the trial I find that the plaintiff is engaged in the undertaking business in the city of Manila, and that the defendant is engaged in the same business.

"That the defendant organized a corporation under the laws of the Philippine Islands on the 10th day of February, 1910, and caused articles of incorporation to be recorded,

"That the plaintiff was aware that such corporation had been duly created, but it does not appear that there was ever any real organization by election of officers, or otherwise, though the defendant assumed to act as president and manager of the corporation, and appointed a secretary, but there appear to have been no other officers.

"The plaintiff testified that he was unaware that the said corporation had gone into business, and that when he furnished the supplies, while he knew the defendant was organizer of the corporation, he did not sell any supplies furnished in his capacity as agent or manager of the corporation, but to him personally, and it does not appear except by far drawn inference that the defendant advised the plaintiff when purchasing the goods that he was acting for the corporation, or disclosed in any way his agency.

"The secretary of said corporation testified that he was acting for the defendant when a part of the goods was received, and that nothing was said as to whom the goods were being purchased by, or by the plaintiff to whom they were sold, but that he supposed it was on account of the business known as the 'American Undertaking Company.'

"I can but conclude from a preponderance of the evidence, that the plaintiff sold the merchandise in question to the defendant in his personal capacity, and that the defendant having failed specifically to disclose his agency became personally responsible for the merchandise in question."

There is a strong conflict of evidence in this case, the plaintiff asserting and testifying positively that under the contract of sale the articles which are the subject of this suit were sold and delivered to the defendant personally and not to the corporation in question, while the defendant asserts and testifies with equal positiveness that the contract of sale was between the plaintiff and the corporation which the defendant claims to have represented at the time.

This court will reverse a judgment of the trial court upon the facts only when it appears that it is against a fair preponderance of the evidence. We do not feel that we can assert from a careful reading of the evidence in the case that the judgment in question has that vice. Taking into consideration the conflict of evidence and also the fact, which we regard as of considerable importance, that, prior to the sales and services involved in suit, there had never been a meeting of the stockholders of the corporation, that no officers had ever been elected, that no one had ever been authorized to act for said corporation and that if the defendant was acting as agent for the corporation he was an official de facto and not de jure, we are constrained to the conclusion that we would not be warranted in disturbing the conclusion of the trial court.

The judgment of the court below is affirmed, without special finding as to costs.

Torres, Mapa, Johnson, and Carson, JJ., concur.

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