

**ALDECOA & CO., IN LIQUIDATION, PLAINTIFF AND APPELLANT,
VS. WARNER, BARNES & CO. (LTD.), DEFENDANT AND
APPELLANT.**

G.R. No. 8853. March 22, 1915

Ponente: TORRES, J.

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TORRES, J.:

This is the second time this case has been brought before this court on appeal. This court, in deciding the first appeal in its decision of August 6, 1910 (16 Phil. Rep., 423, 439), set aside the judgment appealed from and ordered the holding of a new trial, with the following directions:

"First, the defendant shall be advised that it must, within a fixed period, render an account verified by vouchers, of its management of the business of the joint-account partnership with the plaintiff, pertaining to the months from December 1, 1898, to June 29, 1899, and to the twelve months of the year 1903, unless it shall prove in a satisfactory manner that the said partnership began on June 30, 1899, contrary to the averment of the plaintiff supported by evidence that it commenced on December 1, 1898, in which case the said rendering of account shall be restricted to the twelve months of the year 1903, in the accounts of which last period must be included all the property that is found to belong to the said partnership; second, in the examination of the accounts that may be found to; have been rendered, the parties may allege and prove facts conducive to their revision or approval besides availing themselves of the evidence already adduced at trial; and, third, with respect to the accounts corresponding to the period from June 30, 1899, to December 31, 1902, already approved, the trial court shall proceed in accordance with law, duly considering the errors, omissions, mistakes and fraudulent or deceitful acts that have been alleged or may specifically be alleged in rejecting the said approved accounts, as well as the evidence introduced by both parties, and it shall be careful to decide in its final judgment all the issues raised between the parties in the course of this litigation and to provide such remedies as are proper in regard to their respective claims."

The complaint that instituted the suit wherein the above decision was rendered, is contained in the petition dated September 26, 1907, and Aldecoa & Co., in liquidation, alleged therein as a cause of action:

"That on December 1, 1898, the plaintiff company became interested in the business of Warner, Barnes & Co. (Ltd.), in Albay, in the purchase of hemp in the pueblos of Tabaco and Legaspi, and formed with them a joint-account partnership whereby Aldecoa & Co., were to share equally in the gains and losses of the business in Albay; that Warner, Barnes & Co. (Ltd.) acted and continued to act as manager (gestora) of said joint-account partnership and as such manager was obliged to render accounts supported by proofs, and to liquidate the business; that defendant not only had not done this, in spite of the demand made upon it, but has expressly denied the right of plaintiff to examine the vouchers, contenting itself with forwarding to the latter copies of the entries in defendant's books, which entries contained errors and omissions that hereinafter will be mentioned; that said entries, moreover, show the partnership to have commenced on June 30, 1899, whereas its operations should have commenced and did commence on December 1, 1898, on which date the joint-account partnership was formed; that, said operations having been closed on December 31, 1903, Warner, Barnes & Co. (Ltd.), the defendant, has not realized upon the assets of the firm by selling the property which constitutes

its capital; that the directors and managers of the defendant company, unlawfully, maliciously, and criminally conspired with the persons who were managing the commercial firm of Aldecoa & Co. during the years 1899, 1900, 1901, 1902, and 1903, to defraud the latter of its interest in the said joint-account partnership, buying the silence of its managers with respect to the operations of the joint-account partnership during the time comprised between December 1, 1898, and June 30, 1899, as well as with respect to the errors and omissions in the accounts relating to the second semester of 1899 and those relating to 1900, 1901, 1902, and 1903; that said fraudulent acts were not known to the partner of the plaintiff firm until the managers who acted in collusion with the managers of the defendant firm had ceased to hold their positions, to wit, until after December 31, 1906; that by reason of this conspiracy to defraud the plaintiff the defendant had been benefited; that the errors and omissions found in the entries of the books kept by the defendant firm as manager of the joint-account partnership are those expressed in detail here below:

"(a) It appears that between the 10th of July and the 26th of December, 1899, 43,934 piculs of hemp arrived in Manila for the joint-account partnership, which were purchased in Legaspi and Tabaco at 13 pesos per picul, and, after charging against this hemp excessive expenses for collection, storage, freight, fire, marine, and war insurance, personnel, etc., the defendant, Warner, Barnes & Co., as manager of the joint-account partnership and commission agents of their joint-account partners, claim that they purchased the said hemp for themselves, but do not give the price received from the sale thereof and merely credit it at 13 pesos a picul, when the average market price at that time was 16.50 pesos a picul; defendant thereby injuring plaintiff to the amount of P76,884.50.

"(b) Striking a balance from the amount of hemp debited and that credited, there results a difference of 4,332.96 piculs not credited which, at 24 pesos a picul, the market price at the time, represents an injury to plaintiff amounting to P51,995.52, the said deficit, with respect to the hemp, pertaining to the period beginning with December 31, 1899, in the manner shown by the following table:

Invoices &

Dr.

Cr.

1899. Dec. 31	-----
1900. Apr. 30	-----
1900, Dec. 31	-----
1901. Dec. 31	-----
1902, Dec. 31	-----
1903. Dec. 31	-----

Lacking -----

Piculs.

86,534.18
13,063.97
67,892.56
101,253.31
98,074.52
66,482.49

433,307.03

433 307.03

Piculs.

43,934

50,261.78

71,277

100,342

94,279.20

68,880.09

428,974.07

4,332.96

433,307.03

"(c) In 1900, on April 30, Messrs. Warner, Barnes y Co. (Ltd.) give credit for 5,485 piculs of hemp, at 16 pesos a picul, when the market price at that time, according to themselves, was P23.78 ½; thereby injuring the plaintiff in the sum of P21,350.36.

"(d) In 1901, on the date of January 31, Messrs. Warner, Barnes & Co. (Ltd.), give credit for 4,600 piculs of hemp at 8.93 pesos a picul, when, according to themselves, the market price at that time was 11.50 pesos a picul; thereby injuring plaintiff in the sum of P5,911.

"(e) One of the sources of profit of the joint-account partnership between Aldecoa & Co. and Warner, Barnes & Co. (Ltd.), was from the pressing of hemp, which profit is to be credited to the partnership joint-accounts when the hemp is realized in Manila, and from this source there are due to the plaintiff P149,084.12, in which sum it has been injured by the defendant. The said credit for pressing is omitted from the books of Warner, Barnes & Co. (Ltd.), and should be entered as follows:

1899

21,968

bales, at P1.25.....

P27,460.00

1900 to April 30.....

25,130

bales, at 1.25.....

31,412.50

1900, May 10 to Dec. 31....

35,639

bales, at 1.25.....

44,548.75

1901.....

50,151

bales, at 1.25.....

62,688.75

1902 to July 31.....

26,825

bales, at 1.25.....

33,531.25

Aug. 1 to Dec. 31.....

20,314

bales, at 1.75.....

35,549.50

1903

34,440

bales, at 1.75.....

60,270.00

214,467

bales.....

295,460.75

2,166

bales lacking, at 1.25....

2,707.50

216,633

bales

298,168.25

20

loose.

216,653

bales.

"(f) Another error found in the books of Warner, Barnes & Co. (Ltd.), relates to the outstanding accounts which are debited in the sum of P52,510.36, while only P2,769.24 are credited in the manner set out in the following statement:

DR.

1899, July 31 W. B. & Co., Tabaco, transferred to net account their account sale 92.25 piculs hides

by Kongsee

P1,149.46

1899, Dec. 31 For transfer account to cover business this semester without statement.....

16,100.57

1900, Feb. 28 As transferred account items noted page 114 daybook

18,635.08

1900, Feb. 28 To cover war insurance, January.....

14,000.00

1900, Feb. 28 To cover outstanding accounts.....

2,625.25

P52,510.36

CR.

1900, Feb. 28 As transferred accounts items noted page 113 daybook

P2,769.24

There remain, therefore.....

49,741.12

of which one-half, that is, 24,870.56 belongs to the plaintiff.

"(g) In 1900, there is unduly included an item of a lot from Nato, which should be stricken out, as it does not pertain to this business. This item is the following: 1900.

June 30 To Miguel Estela. For transfer made to his account of 5 per cent commission on his hemp, which, according to agreement, should not be paid
P870.75

Half of this sum, P435.37, should be credited to the plaintiff.

"(h) On the date of December 26, 1899, Messrs. Warner, Barnes & Co. (Ltd.), deduct from the profits which they show as belonging to Aldecoa & Co., the sum of P7,400, as an insurance premium, and they delivered that sum to the plaintiff's managers with whom they conspired, for the purposes of the collusion alleged in paragraph 7 of the complaint, in this manner failing to observe the truth in their statement of the facts. Aldecoa & Co., therefore, claim this amount, P7,400.

"(i) On December 31, 1903, on a capital of P50,000 brought in by Aldecoa & Co. and to whom it should bear 5 per cent interest from the 8th of June, 1900, the interest is unduly credited to the joint-account, thereby injuring the plaintiff in the sum of P8,750.

"(j) On December 31, 1902, Aldecoa & Co. are charged with six months' interest, amounting to P736.46, on a balance debited against them for alleged losses, and on June 30, 1903, they are charged with P1,818.58 for a like reason. These two items should be stricken out, because the accounts when correctly made show no losses, but profits. By such debits the plaintiff has been injured in the sum of P1,277.52.

"(k) In the entries corresponding to the years 1902 and 1903, Warner, Barnes & Co. (Ltd.), give the price of 'corriente buena' (current good) to the grade which, according to the mark, was classified as 'abaca superior' (superior hemp) ; the price of 'corriente ordinario' (current ordinary) to the hemp marked under the classification of 'corriente buena' (current good); the price of 'segunda superior' (second superior) to what is 'corriente' or 'current,' and so on successively; whence results a difference of price to the value of P233,102.18 in 1902, and P75,274.90, in 1903, one- half of which differences should be credited to Aldecoa & Co., that is, P153,688.54.

"(l) The value of the properties brought in by Warner, Barnes & Co. (Ltd.) to the joint-account, instead of cash capital, is omitted from the accounts. These properties are the following:

"Those purchased from Mariano Riosa, consisting of one galvanized-iron-roofed warehouse, with hemp press; one house of strong materials and the lot on which it stands, in Tabaco, P12,000.

"That purchased from Juan a Riosa, which is one small warehouse of strong materials, in Tabaco, worth about P2,500.

"Those purchased from D. Manuel Zalvidea, situated in Tabaco, which are: One warehouse of strong materials, with press; another warehouse of strong materials; and two houses of strong materials, together with the lots on which they are built; P22,000.

"Those purchased from D. Marcos Zubeldia, in Legaspi, which are: Four warehouses with three hemp presses, and one house of strong materials, with their corresponding lots, P50,000.

"Total cost: P86,500.

"The complaint further sets forth that if the entries made by defendant in its books show in themselves the foregoing errors and omissions, plaintiff has good grounds for believing that, if the vouchers were examined, still greater errors would be found, as to which plaintiff can not formulate its claims with exactness until defendant renders it an account, accompanied by vouchers; that defendant, as manager of the joint-account partnership with Aldecoa & Co., neglected to comply with the provisions contained in article 243 of the Code of Commerce, as a duty inherent to its position as manager of the joint-account partnership, which is that of rendering an account with vouchers, and that of liquidating the said business, for it refuses to furnish plaintiff the documents required for their examination and verification, and also refuses to realize the firm assets by selling the warehouses, houses, presses and other property, which constitute the capital; that, as defendant refuses to do the things above related, plaintiff has no other easy, expeditious and suitable remedy than to petition the court to protect it in its rights and to issue the said mandamus, ordering it, within a date set for this purpose, to render to the court an account, accompanied by invoices, receipts and vouchers of the Albay business, beginning the said business as of December 1, 1898, the date on which the partnership was formed, and correcting in it the errors and omissions related in paragraph 9 of this complaint; that defendant credit and pay to plaintiff the sums alleged in that paragraph to be due plaintiff, with interest at the legal rate upon the sums omitted, and for the difference between the amounts incorrectly debited and credited, from the respective dates on which they" should appear, if correctly entered; that after the said accounts have been rendered and discussed, judgment be entered for any balance which may appear in plaintiff's favor, including the sums

claimed and legal interest thereon. Plaintiff also prays that the writ of mandamus fix a term within which defendant is to liquidate the business, selling the property aforementioned and distributing the proceeds between both the litigants, and that defendant be adjudged liable for costs of suit, and plaintiff be granted such other and further relief as may be found just and equitable."

In an amended answer, the firm of Warner, Barnes & Co. (Ltd.), the defendant, states that it admits the allegations of paragraph 1, 2, and 3 of the complaint. In answer to the allegations of paragraphs 4 to 12 of the complaint, it admits that on June 30, 1899, a joint-account partnership was formed between plaintiff and defendant for the operation of a business in Albay, the principal transactions of which were the purchase of hemp in Legaspi and Tabaco, of which business one-half of the results, whether profits or losses, appertained to plaintiff. Defendant also admits that the said business continued under the management of the defendant company, as manager of the said joint-account partnership, until December 31, 1903; but it denies all the other allegations contained in the said paragraphs. For its first special defense, defendant alleges that during the period that the said joint-account partnership existed, the manager thereof, the defendant, rendered to the plaintiff just and true accounts of its transactions as manager of the said partnership, which accounts were approved by plaintiff, with the exception of those relating to the year 1903, and as to the latter, that the same were objected to by the plaintiff firm solely upon the grounds mentioned in clause (k) of paragraph 9 of the complaint, which objections are wholly unfounded. As its second special defense, defendant alleges that more than four years have expired between the time the alleged right of action accrued to the plaintiff and the date of the filing of the complaint. For all the reasons set forth in this amended answer, defendant prayed that it be absolved from the complaint, with the costs against the plaintiff.

In accordance with the instructions of this court, the record in this case was remanded to the court of origin and a rehearing was held before the Honorable Judge Yusay and afterwards before the Honorable Judge Del Rosario, in which both parol and documentary evidence was introduced by both parties.

In view of that evidence, the Honorable S. del Rosario, judge, on March 4, 1913, rendered judgment whereby he absolved the defendant firm of Warner, Barnes & Co. (Ltd.) (1) from rendering accounts of the business of the joint-account partnership, as demanded, pertaining to the period from December 1, 1898, to June 30, 1899, when there was no juridical relation between the parties, and (2) from revising the accounts, as demanded, pertaining to the years from July 1, 1899, to December 31, 1902; and sentenced the defendant firm of Warner, Barnes & Co. (Ltd.) (1) to pay to Aldecoa & Co., in liquidation, the sum of P28,064.85, which is one-half of the amount of the claims presented against the 1903 account and allowed by the trial court; (2) to deliver to plaintiff one-half of the properties acquired from Juana Riosa and Marcos Zubeldia (described under Nos. 2 and 4 of page 87 of the judgment) or one-half of their present value, in case they could not be divided, after deducting one-half of the amount of the land tax paid thereon up to the date of the division; and (3) to restore to plaintiff one-half of the P500 that represents the difference in the amount of the interest at five per cent per annum charged against the P50,000 in the entry of December 26, 1899, Exhibit F, instead of against the P40,000 which, according to the instrument above mentioned, was the total cost of the buildings purchased from Marcos Zubeldia; without express finding as to costs.

On March 7, 1913, the same judge supplemented his previous judgment by an order directing the firm of Warner, Barnes & Co. (Ltd.) to pay to the plaintiff Aldecoa & Co., in liquidation, not only the amounts mentioned in the said judgment, but also the sum of P478.79, which is the balance shown to be due the plaintiff firm in the balance sheet struck on March 12, 1904, Exhibit M, and presented by the plaintiff.

Both parties by written motion prayed for the annulment of the judgment and the supplementary order. The plaintiff, Aldecoa & Co., alleged that absolution of the defendant, Warner, Barnes & Co. (Ltd.), from rendering accounts prior to the year 1903, was openly and manifestly contrary to law; and the defendant, that the said

judgment and order were contrary to law and to the evidence. After the hearing and arguments on these motions, the court issued an order on March 19, 1913, overruling them and at the same time modifying the dispositive part of his said judgment in the sense that the plaintiff, upon receiving one-half of the properties acquired from Juana Riosa and Marcos Zubeldia, or one-half of their present value in case they could not be divided, should pay to defendant one-half of the value of plaintiff's acquisition, which was P42,000, according to the public instruments executed.

Both parties excepted to this order denying a new trial and filed the proper bills of exception, which were approved, certified and forwarded to the clerk of this court.

For the proper determination of the questions presented by both appellants in the present suit, this court has deemed it advisable specially to consider the errors assigned by each party in its respective brief, commencing with an examination of those assigned to the judgment appealed from by the plaintiff.

The first error consists in that the trial judge, upon weighing the evidence, held that the joint-account partnership formed between plaintiff and defendant began on June 30, 1899, as the latter claimed it did, and not on December 1, 1898, as maintained by Aldecoa & Co.

If the contract of the joint-account partnership made by and between the litigants had been set forth in a public or a private instrument, the date when the joint-account business began between both parties would have been clearly and positively shown; but, as the agreement was not recorded in writing, it was necessary for each of the litigants to produce parol and documentary evidence for the purpose of showing the exact date on which the said business began; and the court, after having carefully and duly examined the evidence introduced by the parties, in accordance with the rules of sound judgment and common sense, came to the conclusion, and so held, that the business of the joint-account partnership stipulated between Aldecoa & Co., in liquidation, and Warner, Barnes & Co. (Ltd.) began on July 1, 1899.

It is regrettable that the witness James Macleod, who stated that he was a special agent in Albay of the firm of Warner, Barnes & Co. (Ltd.), was unable to exhibit the letter which he declared he had received from Warner relative to the joint-account partnership proposed and agreed upon by and between both parties, and merely produced his memorandum book in which he had made a record of his having said, on November 30, 1898, to Marcos, who must have been Marcos Zubeldia, that the business would begin on December 1 in joint-account with Aldecoa & Co. and that it was necessary to close the accounts of the old company and begin the new business with fresh books. Although this witness, Macleod, stated on cross-examination that it was on the 15th or the 16th that he first learned of the proposal to organize a joint-account partnership between the parties, he added in his answer that he received from Alexander Macleod the first information of the organization of the said partnership between the two firms. This subsequent statement of his raises doubt as to whether it was Alexander Macleod or Warner, manager of Warner, Barnes & Co. (Ltd.), who first informed him of the organization of the said partnership.

The fact that this witness ordered or advised Zubeldia on November 30 of that year to close the accounts in the books and commence the business with new books on the following day, December 1, is not conclusive proof that, as a special agent of the firm of Warner, Barnes & Co. (Ltd.), he received an explicit order from the manager of this company informing him that the business of the joint-account partnership would begin on the said first of December. Although it were true that the witness Marcos Zubeldia received an order or request from Macleod with reference to a letter received from the manager Warner, it is strange that, instead of corroborating Macleod's statement, he should have said something different, to wit, that the joint-account business began in January, 1900—a statement not in accord with that made by James Macleod.

As the witness Macleod was unable to exhibit that letter and order which he testified he had received from the manager Warner, fixing the date on which the joint-account business was to begin, and as he did not take part in the agreement, either as an interested party or as a witness, it cannot be established that the business in question began on December 1, 1898, merely upon his testimony that it did, even though that testimony was supported by entries made in his memorandum book, precisely because such entries make no reference to any order or communication whatsoever from any of the contracting parties and because his said testimony was not corroborated by the witness Zubeldia.

The desire or the proposal to have a share and interest in the business of dealing in hemp from Legaspi and Tabaco, of the Province of Albay, was originally expressed by the firm of Aldecoa & Co., and the managers of this company must have conceived such a purpose in November or December, 1898, inasmuch as it is stated in the note of November 21, 1898, written by Macleod in his book and copied on page 1,163 of the sixth part of the record, that if Aldecoa & Co. should obtain a part of the Legaspi and Tabaco business, he believed that a quid pro quo should be given in the Catanduanes business. This note was written by him after he had received, on November 16th or 20th, the letter from Warner informing him of the organization of the joint-account partnership. It is not strange, therefore, that the witness James Macleod should have received the first notice of the plan of Aldecoa and Co.'s associating themselves with Warner, Barnes & Co, (Ltd.), for the purpose of carrying on the said business, from Alexander Macleod, one of the managers of Aldecoa & Co., as testified by James Macleod, page 56 of his sworn testimony, in answer to the questions addressed to him by defendant's counsel on cross examination. This being so, the statement made by the witness Macleod relative to the actual date of the commencement of the joint-account business cannot be conclusive of the point in controversy, inasmuch as the person who gave him the first notice with respect to the day on which the business actually began, was a manager of the firm interested in the plan of organizing the joint-account partnership, and not a manager of the other contracting firm, Warner, Barnes & Co. (Ltd.), for, until this latter firm had given its consent, no contract existed, nor was the said partnership formed; and, on account of Warner, Barnes & Co. (Ltd.) being the other contracting party, its positive statement officially communicated to the witness Macleod as defendant's special agent is the only one that could be considered as proof decisive of the point in question.

It has already been said that unfortunately the letter from Warner, referred to by the witness Macleod in his sworn testimony, page 33 of the record, was not exhibited at the trial. The witness Macleod, in stating that the joint-account business began on December 1, 1898, according to the said letter, inasmuch as the manager Warner did not communicate the notice to him verbally or in person, but by the said letter which was not exhibited, tried to corroborate the truth of its contents by means of the note of November 30, written by himself in his memorandum book, though said note makes no reference whatever to the aforementioned letter from the manager Warner.

As against the statement made by the witness Macleod to the effect that the manager Warner mentioned in his said letter, which was not exhibited, the date of December 1, 1898, as that on which the joint-account business would begin, two letters are shown to have been introduced in evidence. One of these, Exhibit X-34, was addressed on July 31, 1899, by Barnes to Warner, both managers of the firm. In this letter Barnes, after informing Warner that, with respect to the Albay business, Messrs. Don A. and Don M., who must be Alexander Macleod and Miguel Osorio, had been importuning him the previous Saturday with regard to what Warner, Barnes & Co. (Ltd.) had done and expected to do, stated that Warner, Barnes & Co. (Ltd.) had closed its books up to June 30, preceding, and that it was a matter definitely terminated; but further on in the same letter Barnes says that he agreed with them that the joint-account should begin on the 1st of July aforementioned; that Aldecoa & Co. should have one-half of the profits accruing from the business in Legaspi and Tabaco; that the management of the partnership should pertain to Warner, Barnes & Co. (Ltd.); that none of the parties should receive any

commission, and Aldecoa & Co. should furnish one-half of the necessary capital; that, in consideration of the agreement made, all the hemp from Albay, Catanduanes, Lagonoy, etc., which might be consigned to Aldecoa & Co., was to be delivered to Warner, Barnes & Co. (Ltd.) at the current market price, should it suit the latter firm to accept such delivery; and that, in so far as possible, Warner, Barnes & Co. (Ltd.) was to have preference in the purchase, at the current market prices, of all the rest of the hemp which Aldecoa & Co. might receive, although the latter firm, according to its managers, would have to sell a little hemp from time to time to Smith, Bell & Co. in order that this company might not enter into competition with them.

The other letter, Exhibit X-35, dated November 28th, of the same year, 1899, and addressed by Barnes to Aldecoa & Co., recites that, with respect to the Albay business, on the first of July, preceding, the writer proposed to the firm of Aldecoa & Co., for the purpose of meeting the extraordinary conditions of trade due to the war and to the revolution, that Warner, Barnes & Co. (Ltd.) would engage to pay to Aldecoa & Co., in total settlement for the one-half of the profits pertaining to the latter and obtained from July 1 to October 31 of that year, 1899, the sum of 80,000 pesos, Mexican currency; but, in case it should be necessary to renew the war insurance after the 31st of the following December, Aldecoa & Co. would pay its proportional share of the premiums on one-half of the estimated amount of stock of hemp and merchandise, which renewal of insurance would be made for the amount and the period to be agreed upon later; that, in case of the destruction of the hemp by fire, war, public disturbance, or any other cause of a like nature, the agreement would be rescinded and the accounts would be liquidated up to December 31st of that year; that the 80,000 pesos above mentioned would be delivered after the arrival in Manila of the purchased hemp; and that this agreement should not effect the result of the operations carried on in the months of November and December of that same year and said operations would be liquidated in conformity with the existing agreement as soon as possible after December 31st of that year.

These two letters show in an unimpeachable manner that the joint-account business between the said two commercial firms began on July 1, 1899; and, as the said two letters were not challenged or assailed as false, either civilly or criminally there is no substantial ground or legal reason why their contents should fail to produce their consequences as regards the certainty of the fact therein assured, to wit, that the business between Aldecoa & Co. and Warner, Barnes & Co. (Ltd.) began, not on December 1, 1898, but on July 1, 1899. Furthermore, the managers of Aldecoa & Co. received the said letter of November 28, 1899, fixing the date of the beginning of the joint-account business, and it is not shown that they protested or made any remark whatever to the effect that the date therein specified was not the one agreed upon.

The lengthy testimony of C. I. Barnes, given during the trial, confirms the certainty and authenticity of the said two letters and also establishes the fact that the business of the joint-account partnership began on July 1, 1899. (Page 422 of the stenographic notes.)

The judge who decided the case, after a lengthy reasoning of the matter, said in recapitulation:

"It must be concluded, therefore, that the evidence presented by plaintiff to prove that the joint-account partnership it entered into with defendant began on December 1, 1898, is completely overthrown by that introduced by the latter, which shows that said joint accounts began, not on the date just mentioned, but on July 1, 1899."

As proof that the joint-account partnership already existed on December 31, 1898, the plaintiff, Aldecoa & Co., alleges that on December 11, 1899, a correction was made in the books of Warner, Barnes & Co. (Ltd.), Exhibit F, of an error of accounts through the entry of an excessive amount in the account current for Legaspi and Tabaco, on December 31, pertaining to an invoice of 8,130.51 piculs of hernj), instead of 2,446.02 piculs, etc., which correction, plaintiff maintains, must refer to December of the previous year, 1898, and that this overentry was made in connection with the joint-account, because the partnership already existed on that date, December 31,

1898.

In order to decide whether in fact said correction was made to rectify an error in the private account of Warner, Barnes & Co. Ltd., as this firm alleges that it was or to correct a mistake in the accounts of the joint-account partnership between Warner, Barnes & Co. (Ltd.) and Aldecoa & Co., it must be remembered that since the middle of October, 1898, the firm of Warner, Barnes & Co. (Ltd.) had an agency established for the purchase of hemp in the pueblos of Legaspi and Tabaco, and that in one of the entries written on June 30, 1899, in the firm's ledger, of the operations of the business, an error was made by setting down, as appears in the first item of the account, Exhibit F, page 450 of the 3rd part of the record, a stock of 43,769.50 piculs of hemp, when it should have been only 38,085.01 piculs, which erroneous entry of an excessive amount of hemp was not discovered until six months later, to wit, on December 11, 1899, whereupon the correction was immediately made to avoid any detriment such as might have resulted from showing a larger amount of hemp than that which was actually received by the Legaspi and Takyaco agency.

However, as dealing in hemp obtained from the said two pueblos was the principal object of the joint-account partnership, whose operations began on July 1, 1899, after the private accounts of Warner, Barnes & Co. (Ltd.) had been closed on June 30th of the preceding year, and as the stock of hemp from these two pueblos which Warner, Barnes & Co. (Ltd.), one of the two partners, had in storage, became the property of the new joint-account partnership, it was necessary, in order to make the true facts appear, to correct the error in the book of Warner, Barnes & Co. (Ltd.) by entering therein the true amount of the stock of hemp which on July 1, 1899, became the property of the joint-account partnership, so that Aldecoa & Co. would not be prejudiced by such erroneous entry; for this reason the error made in the account-book of Warner, Barnes & Co. (Ltd.) had to be corrected on its books of the new account, which it afterwards kept of the joint-account partnership. Therefore, the correction made in the new account carried for the joint-account partnership by the firm of Warner, Barnes & Co. (Ltd.), in its capacity of manager, of an error made by it in its private account, on December 31, 1898, is not a proof that the joint-account partnership existed and was in operation in the said month, for the reason that the stock of hemp erroneously entered in its books by Warner, Barnes & Co. (Ltd.) became, as it had come from Legaspi and Tabaco, the property of the new joint-account partnership, from July 1, 1899, and the rectification was made in order to avoid injury to Aldecoa & Co.

With respect to the second error assigned to the judgment appealed from, that is, the finding that there was a contract of sale with regard to the 1899 profits which was held to be independent and distinct from the joint-account contract, the only one stipulated between the parties, it is of the utmost importance to state that in our opinion there was no contract whatever of sale of the profits derived from the business during the second semester of 1899, independent and distinct from the principal joint-account contract, but only a stipulation or special agreement with respect to the said profits of the aforementioned last semester.

After the organization of the joint-account partnership had been agreed upon by the managers of the two firms, they deemed it convenient, in view of the disorder that prevailed in Albay, the ports of which were closed by the revolution, to stipulate in the said principal contract that the profits of the four months from July to October, 1899, afterwards including the November and December profits, should be fixed at P160,000, calculated as those that might be obtained from the business in spite of the revolution, and in virtue of this special agreement Warner, Barnes & Co. (Ltd.) agreed to pay to Aldecoa & Co. one-half of the said sum, whatever might be the results obtained from the business, whether favorable or adverse, and Aldecoa & Co. in turn, in exchange for the guaranty against losses in an adverse case, waived its right to any larger share of the profits that the partnership business might produce and contented itself with the amount stipulated.

Aldecoa & Co. received the said letter, Exhibit X-35, of the date of November 28, 1899, the contents of which

appear to have been fully confirmed by Barnes in his aforementioned testimony. Aldecoa & Co., the plaintiff, far from rejecting the contents of that letter and objecting to the statements made therein as being the agreement stipulated, addressed a letter to the managers of Warner, Barnes & Co. (Ltd.), on February 12, 1900, wherein, after giving notice of the departure of Miguel Osorio, a former manager of the plaintiff firm, on January 1st of that year, it informed the said managers of Warner, Barnes & Co. (Ltd.) that two-sevenths of the P80,000 which it had been agreed that Warner, Barnes & Co. (Ltd.) should pay to Aldecoa & Co., belonged to Osorio, and that this gentleman would give them instructions in the matter.

It is unquestionable that there was a special agreement between the two contracting parties relative to the amount of the profits of the business during the said six months, and if Warner, Barnes & Co. (Ltd.) assumed the risk of paying P80,000 to Aldecoa & Co., though the business might not produce that amount, Aldecoa & Co., on its part, was satisfied to receive the P80,000 although the joint-account business might yield greater profits—a special stipulation they undoubtedly covenanted, on account of the unfavorable circumstances which then prevailed in the Province of Albay; and further, the fact that it was not known exactly what amount of hemp there was in that province, owing to the lack of regular communication between Albay and Manila. Such an agreement was not a sale of profits, but a special stipulation whereby the amount of the profits was fixed before seeing the results obtained by the joint-account business to be transacted during the said six months.

If it is clear and manifest that the litigants made the said special agreement in the partnership contract that was binding between the parties, neither of them can attack the validity and force of that agreement, since Aldecoa & Co. has not proved that any error, fraud, deceit, or intimidation was committed in the act of the execution of the same. That agreement as a contract contains the essential requisites provided in article 1261 of the Civil Code, and, according to article 1278, contracts shall be binding, whatever may be the form in which they may have been executed, provided the essential conditions required for their validity exist and they are not contrary to law, morality and public order.

"It is an established doctrine of law and sustained by the settled practice of the courts, that a man obligates himself to do that to which he promises to be bound, because that which is agreed to in a contract is the law between such contracting parties." (Alcantara vs. Alinea, 8 Phil. Rep., 111.)

"The true rule by which to decide the questions arising from a contract is the very contract itself made with the requisites established by law." (Icaza vs. Perez, 5 Phil. Rep., 166.)

With regard to the third error relative to the finding that the action brought by the plaintiff has prescribed, the record shows that petition was expressly made in the complaint that the defendant, Warner, Barnes & Co. (Ltd.) be compelled by means of a writ of mandamus to render an account, accompanied by invoices and vouchers, of the Albay business in which Aldecoa & Co. was a joint-account partner, from the 1st of December, 1898, together with such other and further relief as might be found just and equitable; and no action whatever for nullity was brought, such as might prescribe within the period of four years fixed by article 1301 of the Civil Code.

Article 949 of the Code of Commerce provides:

"Right of action against the managing or directing members of companies or associations shall terminate at the end of four years, to be counted from the time they cease to manage the same for any reason whatsoever."

So that, considering the action brought in this suit by Aldecoa & Co. as comprised within the general terms of the aforecited article of the Code of Commerce, the period within which it should be exercised is to be counted from the date when Warner, Barnes & Co. (Ltd.) ceased to manage the joint-account business, to wit, December 31, 1903, and from then to September 26, 1907, the said period had not elapsed and, therefore, the action has not prescribed as alleged.

The fourth error is relative to the alleged non-compliance by the trial judge with the order of this court to proceed in accordance with law should it be proved that there were errors, omissions, or fraudulent or deceitful acts in connection with the accounts pertaining to the period between 1899 and 1903.

In order to determine whether the trial court did in fact err by his failure to order, notwithstanding the evidence, a revision of the accounts pertaining to the years mentioned, we must enter into an examination of each one of the points specified by the plaintiff in which it alleges the error or fraud claimed to have been committed by the defendant, consists. As the trial court in his judgment refused to allow a revision of the accounts pertaining to 1902, since he held that an account had been rendered by Warner, Barnes & Co. (Ltd.), and approved by Aldecoa & Co., and as the latter in its brief on appeal has not assigned any error to the judgment of the lower court for his refusal to allow a revision of the said 1902 account, it would not be proper for us now to consider the same, nor can we review the said judgment with respect to this matter, on account of the defect mentioned, pursuant to the provisions of Rule 20 of the Rules of the Supreme Court.

We shall, then, in this decision concern ourselves with the errors, omissions and fraudulent acts which the appellant partly alleges were incurred or committed both in the approved accounts corresponding to the years 1900, 1901 and 1902 and in those pertaining to 1903. It is not possible, however, nor would it be proper to discuss the accounts for the six months from July to December, 1899, inasmuch as it was stipulated between the said two firms that the profits for this period should be estimated at P160,000, and Aldecoa & Co. had already collected its one-half share of the same, or P80,000.

In clause A of paragraph 9 of the complaint, as set forth on page 42 of the appellant's brief, it is alleged that in the acquisition by the joint-account partnership of 43,769.50 piculs of hemp, and not 43,934 piculs as per the correction made on December 11, 1899, Aldecoa & Co. was injured to the amount of P76,884.50, inasmuch as the said hemp was purchased in Albay at P13 per picul and was sold in Manila to Warner, Barnes & Co. (Ltd.) at the same price, after it had been charged with the expenses for collection, freight, fire, marine, and war insurance, personnel, etc., and it was so proved at the trial.

But, as hereinabove stated, when the joint-account partnership was formed and began business, Aldecoa & Co. did not immediately bring into the company the P50,000 agreed upon, nor any hemp whatever. All the hemp shown in the first entry of the account, Exhibit F, belonged to Warner, Barnes & Co. (Ltd.), and this firm, as manager of the joint-account partnership, loaned to the latter or furnished it with the said P43,769.50 piculs of hemp, entering the same on the debit side of the joint-account. The purpose of this loan or accommodation was to enable the partnership to have a stock of hemp on July 1, 1899, with which to carry on the business. Taking into consideration the agreement made between the parties relative to the profits of the joint-account business during the six months from July 1 to December 31, 1899, and there being no reason for holding 'that this agreement was not valid and effective, it must be accepted as the sole law governing the adjustment of all the questions comprised within the said agreement. Therefore, as the purchase and sale of the said P43,769.50 piculs of hemp were operations effected during the period of the said six months, the profits accruing to the joint-account partnership from the realization of the aforementioned lot or parcel of hemp is comprised within the amount the contracting parties fixed as profits, one-half of which Aldecoa & Co. had already collected, according to the receipt, Exhibit X-12.

For the foregoing reason, be whatever it may the price at which the said lot of hemp was sold, this operation can in no wise concern Aldecoa & Co., because the ownership of the hemp and the profit, large or small, that may have been obtained therefrom pertains solely to Warner, Barnes & Co. (Ltd.), which obligated itself to pay to the plaintiff, as it did, one-half of the profits derived from the business during the said six months. It is to be observed that on the credit side of the account, Exhibit F, mentioned by the appellant, there appears no entry of any sale

during the months of November and December, 1899, and therefore the said lot of hemp, entered on June 30, 1899, was disposed of and sold by the joint-account partnership within the four months from July 1 to October 31 of the same year, and the profit derived therefrom is covered by the stipulation above referred to.

With respect to clause B of paragraph 9 of the complaint, wherein it is charged that there is an omission prejudicial to the plaintiff in the account from December 31, 1899, to December 31, 1903, and consisting of P51,995.52 at the rate of P24 for each picul of hemp, in order to decide the question raised it must be taken into consideration, in the first place, that the table given in the said paragraph and composed of six items comprises accounts from December 31, 1899, to December 31, 1903, some of them approved and the last one unapproved. It must also be borne in mind that the first six months of the business, or the second semester of 1899, are comprised within the agreement relating to profits, and that no sale was effected during the last two months, November and December, of the same semester, inasmuch as no entry of any sale whatever of hemp was made on the credit side of the account, Exhibit F, until the last day of December, 1899. Therefore, with the exception of the P80,000 received by Aldecoa & Co. as its one-half of the profits, there were no other profits to which it was entitled. It is for this reason that, in the receipt Exhibit X-12, page 831 of the 4th part of the record, one signed by Aldecoa & Co. for the amount therein mentioned it is stated that this latter amount and another one specified form the sum of P80,000 which they had agreed should go to Aldecoa & Co. as profits for the preceding year, 1899, for its 50% share in the business of Warner, Barnes & Co. (Ltd.) in the Province of Albay. All of this clearly shows that, besides the P80,000 received as profits of the last semester of 1899, Aldecoa & Co. was not entitled to any other profit whatever derived from the sale of hemp, and therefore no injury could have been occasioned it up to December 31, 1899, both because, as aforesaid, no business was transacted in the last two months of that year, and because the plaintiff had already collected the profits pertaining to the first four months of the second semester.

It becomes necessary to enter upon a discussion of details in order to establish the conclusion that no prejudice was caused to Aldecoa & Co. through the management of the joint-account partnership by Warner, Barnes & Co. (Ltd.).

With regard to the invoice of April 30, 1900, of 13,069.97 piculs of hemp which was carried on the debit side of the account, and also of another lot of 50,261.78 piculs of hemp, these two lots pertain to the private account of Warner, Barnes & Co. (Ltd.), which account erroneously appears below the account Exhibit F, and therefore these two lots of hemp could in no wise concern the plaintiff, nor did they have to be included in the accounts rendered by Warner, Barnes & Co. (Ltd.).

The mistake of having entered private accounts of Warner, Barnes & Co. (Ltd.) below the accounts pertaining to the joint-account partnership, is shown by the following testimony:

John Grive, a bookkeeper, an accountant of Warner, Barnes & Co. (Ltd.) testified that he made the document Exhibit F by order of the heads of the said firm, after first examining the proper books, and directed a clerk to copy certain pages of these latter and immediately thereafter, without checking what had been written, sent the original document to Aldecoa & Co., and did not notice the error he had made, for the entries on page 3 of the document Exhibit F, beginning with the figures "1900" to the end of the page, do not pertain to the joint-account, but concern the firm of Warner, Barnes & Co. (Ltd.). This witness knew that the document Exhibit F was for Aldecoa & Co.

D. M. Fleming, an accountant appointed by Aldecoa & Co., admitted the authenticity of the document Exhibit X-19) as an exact and genuine photographic copy of page 192 of the ledger of Warner, Barnes & Co. (Ltd.), the said page containing a private account of this firm, which does not concern the joint-account partnership. He

testified furthermore that the photographic copy Exhibit X-20 was taken from page 216 of the ledger of the joint-account. So that the entries which appear at the end of the account Exhibit F pertain to the private account of Warner, Barnes & Co. (Ltd.) and was erroneously copied from this firm's ledger, as shown by the said Exhibit X-19. Juan T. Figueras and the expert accountant of Warner, Barnes & Co. (Ltd.), Henry Hunter Bayne, who examined the books of this firm, both corroborated the testimony given by Fleming, the accountant of Aldecoa & Co. Figueras further testified that there were two accounts, one called the "old" and the other the "new" account, and that the Exhibit X-19, a photographic reproduction made from the ledger of Warner, Barnes & Co. (Ltd.), is a copy of the private account of this firm and not of the joint-account. Henry Bayne also testified that the Exhibit X-19 is a photograph of page 192 of the ledger of Warner, Barnes & Co. (Ltd.), and that the document Exhibit G comprises accounts of the joint-account partnership, as the trial judge held, on pages 104 and 105 of the judgment appealed from.

So that Warner, Barnes & Co. (Ltd.), as manager of the joint-account partnership is not obliged to account to Aldecoa & Co. for the two lots of hemp which as items of debit and credit were taken up in the summary which corresponds to the 31st of December, 1899, and the 30th of April, 1900; nor is it obliged to render the plaintiff accounts of the profits obtained from the said two lots of hemp, as these do not pertain to the joint-account partnership. They exclusively belonged to the defendant, as was proved by the parol and documentary evidence above-mentioned showing that the material mistake made by an employee of the firm of Warner, Barnes & Co. (Ltd.), in copying Exhibit F below the accounts of the joint-account partnership, was recognized by the very expert appointed by Aldecoa & Co., who corroborated the testimony of the expert accountant of Warner, Barnes & Co. (Ltd.) and that of the witnesses called by the defendant, none of which testimony was refuted by Aldecoa & Co.

Dismissing, then, from further consideration the two lots of hemp which are debited and credited in the statement given by plaintiff in clause 13 of paragraph 9 of its complaint (p. 6 of the bill of exceptions), there still remain to be examined four debit and credit items of the same statement, page 6 of clause B, all of which pertain to the same month and day, December 31st, of the years 1900, 1901, 1902 and 1903.

In the said clause B, paragraph 9 of the complaint (p. 5 of the bill of exceptions), it is charged there is a shortage of 4,332 piculs and 96 cates of hemp, comprising also the two aforementioned discarded lots of December 31, 1899, and April 30, 1900, which 4,332.96 piculs of hemp, sold at P24 a picul, amount to P51,995.52, the sum it is alleged Warner, Barnes & Co. (Ltd.) owe to Aldecoa & Co.

So then, after exclusion of the said two lots of December, 1899, and April 30, 1900, and a careful examination of the accounts, Exhibits G, H, I, and J, documents presented by the plaintiff itself as copies taken from the books of Warner, Barnes & Co. (Ltd.) the following result is shown:

Debit.

Credit.

Difference.

1900
1901
1902
1903

77,850.56

101,149.76

98,074.52

66,462.49

343,537.32

80,678.91

107,838.00

94,279.20

66,909.65

349,605.76

343,537.32

6,068.44

2,728.36 in f. j.-acct.

6,688.24 in f. j.-acct.

3,765.32 against j.-acct.

447.16 in f. j.-acct.

9,863.76 in f. j.-acct.

3,795.32 against j.-acct.

6,06.44 in f. j.-acct.

From the foregoing figures it is seen that, instead of the deficit or shortage charged by Aldecoa & Co., there is a difference between the debits and credits in favor of the latter of 6,068.44 piculs of hemp in stock, carried as assets in the joint-account, and there does not appear to be any large shortage of hemp as alleged by the plaintiff.

The detailed statement or table herein-above given of the lots of hemp handled in the business operations of the joint-account partnership during the years 1900 to 1903, differs largely from that contained in the complaint, with the exclusion of course of the first two lots of 1899, December 31, and 1900, April 30. The table given in this decision also differs from the one drawn up by the trial judge and set forth in his judgment, page 80 to 81. It is to be noticed that in the account, Exhibit H, of the year 1901 two lots of hemp are credited, under date of March 30th, one of them from Tabaco of 3,296 "pressed F" and the other from Legaspi of 4,200 "F." The letters "F" placed after the figures in the entries of these two lots means, in our opinion, that each lot consisted of the number of bales [fardos] expressed by the figures, and as the equivalent number of piculs was not set down immediately after each entry, as was done in the other entries of hemp, in the debit and credit columns of the accounts Exhibits G, H, I and J, we have, in drawing up the statement contained in this decision, reduced to piculs the two lots of hemp aforementioned of March 30, 1901, at the rate of two piculs for each bale, for the purpose of unifying the weight of all the items of debit and credit of hemp pertaining to the four years referred to. Consequently, converting into piculs the 7,496 bales and adding the number of piculs thus obtained to the other items of credit, there results as aforesaid a difference in favor of the joint-account partnership of 6,068.44 piculs, of hemp.

With regard to the injury in the amount of P21,350.36, alleged in clause C, paragraph 9 of the complaint (p. 6 of the bill of exceptions), the record discloses no satisfactory proof that the 5,485 piculs of hemp credited to Warner, Barnes & Co. (Ltd.), at the rate of P16 per picul, on April 30, 1900, could have been sold at P23.78 a picul, as held by the trial judge on page 96 of the judgment appealed from, for, in the absence of proof by the plaintiff, this latter, in approving the accounts of that year, 1900, must have understood and been sufficiently convinced that it

was correct and just to enter on the credit side of the joint- account the value of this hemp at the rate of P16 per picul.

The only reason alleged by the plaintiff to prove that it was occasioned an injury estimated at P21,350.36, is based on the fact that a lot of hemp received by Warner, Barnes & Co. (Ltd.), to the amount of 8,125 piculs and 78 cates, from Albay and gathered previously in 1899 and prior to January, 1901, appears in the document Exhibit X-19 as received on the same date as the lot of hemp credited in the joint-account at the rate of P16 per picul, and yet the lot received by Warner, Barnes & Co. (Ltd.), for itself, is entered in the same account Exhibit X-19 at the price of P23.78 per picul.

The explanation of this difference of price is found in the certificate issued by the expert accountant, Fleming, a witness for the plaintiff (see Exhibit X-6, page 816 of the 4th part of the record) and also in the testimony given by Juan T. Figueras, a witness for the defendant. From both said certificate and testimony it appears that the price of P23.78 was entered for each picul of the lot of 8,125 piculs and 78 cates of hemp belonging to Warner, Barnes & Co. (Ltd.) as their private property, for the sole purpose of balancing and closing the old private account of this firm. With this account Aldecoa & Co. had nothing whatever to do and, therefore, was occasioned no injury at all by the fixing and crediting in the joint-account of the just and true price of P16 for each picul of the 5,485 piculs of hemp sold in behalf of the joint-account partnership.

The said expert, Fleming, states in his aforementioned certificate that from an examination of the accounts of Warner, Barnes & Co. (Ltd.), of April 30, 1900, he finds that the price of P23.78, fixed for the lot of hemp of its private account, was entered in the old account for the purpose of offsetting the debits and credits of the same, and therefore was not the true market price of the hemp on the date indicated. These statements are corroborated by the witness Figueras in his affidavit.

As regards the injury to the plaintiff Aldecoa & Co. in the amount of P5,911, as alleged in clause D, paragraph 9, of the complaint, defendant explains the difference of prices between two lots of hemp, one of 2,580 piculs of hemp from Ijegaspí and another of 4,600 piculs from Tabaco, by means of the affidavit by its witness, Juan T. Figueras, for, aside from the difference in the number of bales, the lot of 2,580 piculs showed an average price of P11.50 per picul, and the lot of 4,600 piculs, an average of P8.93. This difference in the average price of the two lots is due to the different quality of the hemp, which the witness just above mentioned proves with details in his said affidavit, page 334 of the stenographic notes, and he adds in conclusion that the prices are almost the same although one lot has a much larger proportion of high grades than the other; that the first lot contains about 2,000 piculs at P12, while the other has only 240 piculs of this value. Therefore, the hemp being of different grades and qualities, although it appear as credited at the same price, if the proportion of each grade is not the same in each lot, it is natural that the average price also should not be the same.

Fleming, plaintiff's expert accountant, upon an examination of the books of Warner, Barnes & Co. (Ltd.) and after making a numerical statement of the respective prices of the two aforesaid lots of different grades of hemp, certified, Exhibit X-2, that the sum of P29,644.48 and P41,076.40, the respective prices of the total of each of the said two lots of hemp, were duly credited in the account of hemp from Legaspi and Tabaco in the ledger of Warner, Barnes & Co. (Ltd.), on January 31, 1901. The contents of the said certificate of the expert accountant Fleming shows why the summary of prices of each lot is different and this fact appears to be corroborated by the witness Figueras. Therefore no injury was caused to the plaintiff Aldecoa & Co.

It is alleged in clause E of said paragraph 9 that by the failure to credit to the joint-account the amounts collected for the pressing of the hemp of the joint-account partnership, the plaintiff was defrauded of one-half of the profits from this source, amounting to P149,084.12. In answer to this charge defendant says that, with regard to the

proceeds obtained from the pressing of hemp in Legaspi and Tabaco, a separate account was kept of such operations; that the sums obtained as income from the amounts charged for pressing were credited in a separate account, and that the balances show the net profit derived from these operations, which profit was carried to the credit of the joint-account, as affirmed by Fleming, plaintiff's witness, in his report Exhibits 3-A and X-4, or he says that special accounts were opened in the books of Warner, Barnes & Co. (Ltd.), between the dates of June 30, 1899, and December 31, 1903, and that to these accounts were credited the sums obtained from the pressing of hemp, as per the bales and quantities specified in the said certificate, which shows a balance of P93,603.68 to the credit of the joint-account, an amount verified by comparison with the sum of various entries of the accounts Exhibits F to J.

The witness Figueras confirmed the certified statements of the expert accountant Fleming. He testified that the price for pressing was credited in a separate account kept in the books of Warner, Barnes & Co. (Ltd.) under the titles "Legaspi Press" and "Tabaco Press," and that this was done in order to make the bookkeeping clearer and avoid confusion in the accounts.

So that the record evidences that the proceeds derived from the pressing of the Leg-aspi and the Tabaco hemp were credited in the partnership accounts, and it is not true that any injury whatever was caused plaintiff through deceit and fraud, or even by any omission or error in bookkeeping.

The charge made in clause F of the said paragraph 9 of the complaint consists in that credit was not given for P49,741.12 in the joint-account as it appears in the books of Warner, Barnes & Co. (Ltd.), wherein no record is made of the one-half of this sum, or P24,870.56, that is alleged to belong to plaintiff.

From the five items specified as debits in the said clause F, which amount to P52,510.36, plaintiff, subtracting the credit of P2,769.24, obtains the total sum aforementioned, the half of which it claims. The first of these items is the sum of P1,149.46, the amount of the loss from the sale of 92.25 piculs of hides shipped by the steamer Kongsee. Plaintiff claims that this sum figures in the outstanding accounts, but defendant denies that it does or ever did; and as plaintiff has not proved its allegation, the only explanation of this item of the account lies in the testimony of the witness Figueras, who stated that this sum of P1,149.46 was shown in the books of Warner, Barnes & Co. (Ltd.) as a loss in the sale of the said lot of hides, according to the account authorized by this firm's agent in Legaspi, J. H. Workman, on July 31, 1899 (p. 337, stenographic notes), and it also so appears in the debit side of the account Exhibit F.

It is to be noted that the said loss in the sale of hides is comprised within the agreement relative to the profits of the business during the second semester of 1899.

The other four remaining items pertain to the private account of Warner, Barnes & Co. (Ltd.), both because the first of them falls within the agreement as to profits, as recognized by Aldecoa & Co. in the document Exhibit X-12, and because the other three items are of the exclusive private account of Warner, Barnes & Co. (Ltd.), according to Exhibit X-19, in which the sum of P2,762.24 figures as a credit. Therefore Aldecoa & Co. has absolutely no right to claim the sum set forth in the said clause F.

Although not a subject matter of the complaint, it was disclosed by the evidence and especially by the account Exhibit X-19 that in this latter an entry was made of the sum of P10,000, under the heading of "Commission of agent, Tabaco," which sum, according to the affidavit of Salustiano Zubeldia, the latter never received; wherefore plaintiff specifies it as a sum of which it was defrauded by reason of it being retained from the joint-account partnership without being credited to the partnership or without having been paid by Warner, Barnes & Co. (Ltd.)

The trial judge held that no such fraud was committed upon the plaintiff, since the latter had nothing whatever to

do with the private accounts of Warner, Barnes & Co. (Ltd.) and it is undeniable that the said entry is noted in the account Exhibit X-19, which is of the exclusive concern of Warner, Barnes & Co. (Ltd.) and was as has already been shown, erroneously copied in Exhibit F.

In clause G of said paragraph 9 of the complaint plaintiff claims that an incorrect entry was made and unduly included in defendant's books, on June 30, 1900, of a shipment from Nato. In explanation of this entry there appears in the record the testimony of the witness Figueras, who stated that Miguel Estela, although a resident of Nato, had transactions and accounts with the Tabaco agency. This latter debited him with the balance which he owed, and, on account of Estela having paid duties in the time of the revolution on hemp exported from Legaspi and Tabaco, which duties should have been paid by the joint- account partnership, he was therefore credited with that payment and the balance was transferred to the Albay account. As against this statement the record shows no proof whatever in rebuttal by Aldecoa & Co.

In clause II of paragraph 9 of the complaint it is alleged that defendant, Warner, Barnes & Co. (Ltd.) deducted from the profits of the business the sum of P7,400, under the guise of an insurance premium, and, delivered this sum to plaintiff's managers, with whom they conspired to defraud Aldecoa and Co. in the manner alleged in paragraph 7 of the complaint, in this manner failing to observe the truth in the statement of the facts. Aldecoa & Co., therefore, claims reimbursement of the said sum.

It is true that in the account Exhibit F, dated December 26th, there appears the following:

For transfer account proportional share profits.....

P80,000

For transfer account proportional share profits..... P80,000

To deduct:

For insurance, proportional share, its acct. 740.00 [7,400].

7,400

P72,600

It having been agreed by and between the two firms forming the joint-account partnership that the profits of the business during the last six months, or the last semester of 1899, should be estimated at P160,000, Warner, Barnes & Co. (Ltd.) thereupon debited the partnership accounts under profits and losses with the sum of P152,600, P80,000 of which pertained to Aldecoa & Co., and afterwards deducted from this latter amount, as proportional share of insurance, the sum of P7,400, leaving a remainder of P72,600. This same entry was made on the credit side of the private account which Warner, Barnes & Co. (Ltd.) kept for Aldecoa & Co., and, on May 28, 1900, by transfer of account there was credited the balance of P7,400, in the latter's favor for war insurance, which amount, added to the P72,600, makes the total of the P80,000 credited to Aldecoa & Co. (Exhibit X-9).

At the end of and following the said private account the accountant Fleming certified that the sum of P7,400 which had been deducted on December 26, 1899, from the profits of Aldecoa & Co., when the latter had not yet brought in the P50,000 of capital, and was afterwards credited, on May 28, 1900, was not a cash payment, nor was

it paid to or collected by any person, but was entered as an amount "in suspense" to meet any outstanding account and was subsequently cancelled when the true assets of the joint- account partnership had been determined. (Exhibit X-9.)

Taking into consideration the agreement respecting the profits for the last six months of 1899, which agreement cannot be denied by plaintiff, the record shows it to have been fully proven that Warner, Barnes & Co. (Ltd.) paid the sum of P80,000, one-half of the estimated profits of the business for the last semester of 1899, in full and that Aldecoa & Co. received the said sum in partial payments and in the following manner:

The receipt dated June 8, 1900, and signed by Aldecoa & Co. (Exhibit X-12) is of the following tenor:

"We have received from Messrs. Warner, Barnes & Co. (Ltd.) the sum of P57,142.06, which, added to the P22,857.14, which they paid to D. M. Osorio, makes the sum of P80,000 which as we agreed pertained to us as profits of the past year, 1899, by reason of our fifty per cent share in the business conducted by those gentlemen in the province of Albay.—Manila, June 8, 1900.—(Signed) Aldecoa & Co."

Osorio was paid, pursuant to the letter of February 12, 1900, addressed, months before the date of the preceding receipt, Exhibit X-11, by Aldecoa & Co. to Warner, Barnes & Co. (Ltd.), and the payment made to him was two-sevenths of the said P80,000, one-half of the sum agreed upon between the two firms. Miguel Osorio acknowledged receipt of the said two-sevenths of the P80,000 mentioned, that is, of the sum of P22,857.14, according to the letter Exhibit X-13, of the same day February 12, 1900.

This amount, added to the P57,142.86, makes the sum of P80,000 received by Aldecoa & Co. from Warner, Barnes & Co. (Ltd.), according to the said receipt Exhibit X-12.

As Aldecoa & Co. in turn had not yet delivered to Warner, Barnes & Co. (Ltd.), on the aforesaid date of February 12, 1900, the P50,000, one-half of the capital of the joint- account partnership, in spite of the fact that the company's business commenced on July 1, 1899, Warner, Barnes & Co. (Ltd.), upon paying the greater part of the said P80,000, first deducted the P50,000 which Aldecoa & Co. had not yet paid in; and accordingly Warner, Barnes & Co. (Ltd.) issued the receipt, Exhibit R, of the date of June 8, 1900, which is of the following tenor:

"We have received from Messrs. Aldecoa & Co. the sum of P50,000 on account of their share in the business in the Province of Albay.—Manila, June 8, 1900. For Warner, Barnes & Co. (Ltd.), (Sgd.) C. I. Barnes, Manager. Amount: P50,000, Mexican currency."

Upon an examination of the record for the purpose of ascertaining whether the statement made by the plaintiff is or is not true relative to the alleged fact that the managers of Warner, Barnes & Co. (Ltd.) conspired with those of Aldecoa & Co. and bought their silence in order that these latter might tolerate certain abuses committed by the former, we find that in fact the said managers of Aldecoa & Co. drew against the current account of the plaintiff firm with the Hongkong Bank three checks for the total value of P50,000, that is, two checks of P22,857.14 each and another check of P4,285.72, in the stubs of which they set forth that the checks had been issued in favor of Warner, Barnes & Co. (Ltd.), on account of the Albay business; but an investigation made in this matter disclosed that the checks were drawn in favor of Messrs. Alvarez Perez, Macleod and Gargollo, managers of Aldecoa & Co., to whom the amount of each of the said checks was paid directly by the Hongkong Bank. Warner, Barnes & Co. (Ltd.) never came into possession of these checks nor received the respective amounts thereof, as may be seen by the stub book, Exhibit S, and its Nos. 570, 501; 570, 502; and 670, 503, in which respective stubs it appears that the checks were drawn in favor of Warner, Barnes & Co. (Ltd.); however, by subsequent investigations made in connection with a complaint for estafa filed against the said managers of Aldecoa & Co. and by the affidavit of the receiver, Urquhart, it was disclosed that the checks were issued in favor of the said Alvarez Perez, Macleod and Gargollo, to whom the Hongkong Bank paid the amounts set forth therein, and that it was not true that

Warner, Barnes & Co. (Ltd.) collected or received the sum of P50,000 as the value of the said checks.

These operations were made by the managers of Aldecoa & Co., without recording them in the books of this firm, nor does any such record appear therein of the P80,000 profits from the joint-account business, which amount they acknowledged receiving, according to Exhibit X-12; neither did the said managers make any record of the payment of the P50,000 which Aldecoa & Co. was obligated to contribute to the business and which, pursuant to Exhibit R, Warner, Barnes & Co. (Ltd.) acknowledged had been paid and received. In the documents Exhibits T and U, which are copies made from the books of Aldecoa & Co., it is shown that at that time, to wit, in June, 1900, the said managers of Aldecoa & Co. made no memorandum whatever of the receipt of the P80,000 of profits paid in by Warner, Barnes & Co. (Ltd.), of the P50,000 paid by Aldecoa & Co. to Warner, Barnes & Co. (Ltd.), of the allowance of two-sevenths of the P80,000 of profits to Miguel Osorio, of the payment of P57,142.8G by Warner, Barnes & Co. (Ltd.) to Aldecoa & Co., nor of the issuance of the three checks against the current account of Aldecoa & Co., with the Hongkong Bank in favor of the said three managers, notwithstanding that in the check stubs they appear as issued in favor of Warner, Barnes & Co. (Ltd.). From all this it is concluded that in the books it appears that Aldecoa & Co. paid the P50,000, one-half of the capital, to Warner, Barnes & Co. (Ltd.) by means of the said three checks the amounts of which were not collected by the latter firm, but by the said three managers of Aldecoa & Co.; and that, besides, according to the receipt Exhibit R, Warner, Barnes & Co. (Ltd.) received from Aldecoa & Co. another P50,000, it thus appearing that Warner, Barnes & Co. (Ltd.) collected this sum twice, which it did not do, for the first P50,000 did not pass into the funds of Warner, Barnes & Co. (Ltd.), although they came out of those of Aldecoa & Co. This voluminous record furnishes no proof whatever in contro-version of these established facts.

With regard to the claim in clause I, paragraph 9 of the complaint, for P8,750 as interest on the capital of P50,000 at the rate of 5% from June 8, 1900, plaintiff's expert accountant, Fleming, answering under oath the questions put to him by defendant's counsel and upon examination of the account Exhibit X-10, exhibited with plaintiff's consent, recognized the veracity of this account and of the certificate he had made at the end thereof wherein he stated that instead of the defendant Warner, Barnes & Co. (Ltd.) owing the plaintiff Aldecoa & Co. the sum of P4,229.93, it was the latter which owed the former this amount.

The said account Exhibit X-10, presented by the defendant Warner, Barnes & Co. (Ltd.), was kept by this firm and covered its transactions with Aldecoa & Co. from June 30, 1900, to December 31, 1903. At the end of it is a note of the balance of indebtedness amounting to P4,229.93 due to Warner, Barnes & Co. (Ltd.) by Aldecoa & Co., and following this is the certificate issued by the said accountant, Fleming, which, translated into Spanish, reads as follows:

"I hereby certify that the above account, showing a balance of indebtedness amounting to P4,229.93 due to Warner, Barnes & Co. (Ltd.) by Messrs. Aldecoa & Co., includes the correct amounts debited and credited in the Legaspi-Tabaco joint-account for losses and profits and the debit items for interest as shown in the working account of this business, and that the amount of P9,424.43 debited in the last item agrees with the statement shown me which is made up and signed by the agent at Legaspi of Messrs. Warner, Barnes & Co. (Ltd.) Mr. J. R. Calder Smith, and dated 30th September, 1907."

The said account Exhibit X-10 and its certificate has not been controverted nor assailed as false and, being an exact copy taken from the books of Warner, Barnes & Co. (Ltd.), in accordance with the provisions of article 48 of the Code of Commerce, is evidence as between this firm and that of Aldecoa & Co., and therefore, pursuant to its contents, we must conclude that Warner, Barnes & Co. (Ltd.) is not indebted to Aldecoa & Co. in the sum of P8,750 as interest at the rate of five per cent on the capital of P50,000, and that this latter firm is not entitled to claim payment of the said sum, but, on the contrary, according to the said account, that plaintiff is indebted to

defendant in a larger sum, for which, however, it does not appear that Warner, Barnes & Co. (Ltd.) has made any claim.

With respect to the clauses J, K and L of said paragraph 9 of the complaint, inasmuch as the claims therein made by plaintiff are comprised within the principal question relative to whether Warner, Barnes & Co. (Ltd.) credited in favor of the joint-account partnership prices adequate to the qualities of the hemp acquired by it from the latter, whether there were losses and gains and whether in the accounts rendered by Warner, Barnes & Co. (Ltd.) there should have been included the value of the properties acquired by this firm, these points will be decided when we examine the errors assigned by defendant in connection therewith.

As for the rest, upon examination of the evidence introduced at trial, it is concluded from the same taken as a whole that no frauds, omissions, or errors were committed to the prejudice of Aldecoa & Co., and that, therefore, no legal reason whatever exists by virtue of which a revision may lawfully be had of the approved accounts pertaining to the years 1900, 1901 and 1902, since, pursuant to the agreement concerning the profits of the last semester of 1899, Warner, Barnes & Co. (Ltd.) was not obliged to render accounts of the business during this last semester of 1899, inasmuch as whatever might have been the result, favorable or adverse, of the management of Warner, Barnes & Co. (Ltd.) in handling the business of the joint-account partnership, the agreement made between the parties would have to be fulfilled, to wit, that the profits of the business during the said six months should be P160,000, one-half of which amount had already been collected by Aldecoa & Co. during the first semester of 1900.

Having herein-above treated of the errors assigned by plaintiff to the judgment appealed from, we now take up those assigned by defendant to the same judgment.

The latter, in setting forth the first error, refers to the 1903 account, but in supporting its allegation states that the trial court erred in permitting plaintiff to make objections to the 1902 account.

This account has already been approved and it was so held to have been in our previous decision. The trial judge also held likewise, as may be seen on page 106, last paragraph, of his judgment. Therefore in this decision we shall confine ourselves to an examination of the questions raised by defendant-appellant, which relate solely to the account rendered, and not approved, pertaining to 1903.

In ruling on errors Nos. 2, 3 and 4, assigned by defendant to the judgment of the lower court, it is necessary to treat them at one and the same time and not separately, inasmuch as the reasoning on which we base our decision whether or not each one of these three alleged errors is or is not reasonable and founded on law, has an intimate bearing upon all the questions in such wise that the affirmative or the negative conclusion that may be reached with respect to one of them will essentially affect the nature and unity of the questions relative to the others and the decision of one will decide the rest. Therefore, refraining from dealing with them separately, we propose to pass upon them as a whole, since the principal question at issue especially concerns the facts whether Warner, Barnes & Co. (Ltd.), upon acquiring lots of hemp belonging to the joint-account partnership, bought them for less than the current market price to the prejudice of its partner, Aldecoa & Co., or whether, on the contrary, the acquisition or purchase of the said lots of hemp was made for a just and equitable price, without fraud or deceit prejudicial to the interests of Aldecoa & Co.; and whether such procedure on the part of Warner, Barnes & Co. (Ltd.), in one sense or the other, appears to be justified in this suit. In the resolution of these questions there is impliedly involved the one raised between the parties as to whether any given mark used when gathering hemp denotes a certain determinate quality of fiber, in such manner that a mark usually reputed to indicate a superior quality necessarily implies this quality and can never represent an inferior one, in accordance with the commercial custom observed in this city.

It is a fact fully proved by the uniform testimony of witnesses of each of the parties, that the classification of hemp can never be made nor has it ever been based upon the mark stamped by a provincial agency on each bale of the hemp sent in lots to this city, but has always been determined in accordance with the result obtained from the examination and inspection specially made in each case by the experts designated by the firm to which the hemp is consigned or by the one interested in its exact valuation. Some of these witnesses, explained how between various bales of hemp a notable difference of quality was often found, notwithstanding that the bales bore the same mark.

The judgment of the lower court accepts the theory of the defendant that the mark borne by a bale of hemp from Albay, though it indicates approximately the quality of the fiber therein contained, does not however always constitute an invariable and sure sign of the grade of the hemp as determinative of its price, for the classification is customarily made by a special inspection of the fiber, and it was for this reason that Warner, Barnes & Co. (Ltd.) addressed letters to its agents in Legaspi and Tabaco in regard to the classification of the hemp, complaining of the bad classification of that forwarded to this city, as evidenced by the letters Exhibit X-38 and those following, to Exhibit X-64. Like complaints or claims were made by the importing houses of London and New York, as shown by the letters addressed to Warner, Barnes & Co. (Ltd.), Exhibits X-65 to X-68.

As regards the classification of the hemp transferred through sale by the joint-account partnership to Warner, Barnes & Co. (Ltd.), as agreed upon by and between both firms in the year 1903, it is charged in clause K, paragraph 9 of the complaint, that in the entries pertaining to the said year this firm gave the price of "corriente buena" (current good) to the bales that bore the mark classified for superior hemp; the price of "corriente ordinario" (current ordinary), to the bales marked under the classification of "corriente buena" (current good); the price of "segunda superior" (second superior) to the bales classified as "corriente" or "current," and so on successively; whence there resulted a difference of price to the value of P75,274.90 in 1903, one-half of which amount should be credited to Aldecoa & Co. Defendant, after setting forth its reasons, concluded by saying that the trial court erred in holding that the prices at which Warner, Barnes & Co. (Ltd.) took over the hemp of the joint-account partnership in 1903 were lower than the prices that corresponded to the quality of this hemp.

In order to prove that the prices at which Warner, Barnes & Co. (Ltd.) acquired different lots of hemp belonging to the joint-account partnership, during the year 1903, were lower than the current market prices at that time, counsel for plaintiff presented as a witness Urquhart, receiver of Aldecoa & Co., who while giving testimony exhibited the statement or list Exhibit NN, which witness made by taking the data therein contained partly from the day-book of sales of Aldecoa & Co. A large part of them were furnished him by William Macleod. This witness testified that the data taken from the day-books and sales-book were defective, but that the said Macleod furnished him with data from his (Macleod's) very extensive and complete day-book, together with daily quotations.

From these statements it is to be seen that the testimony given under oath by the receiver Urquhart, in support of the list presented by him, Exhibit NN, is hearsay evidence, inadmissible according to law, inasmuch as the information he had acquired for the purpose of preparing the said list or statement of the prices of hemp on the dates therein specified is based on the declarations made to him by other persons, for the witness Urquhart was unable to say positively that of his own knowledge he knew of the said prices of hemp, mentioned in that statement Exhibit NN.

Section 276 of the Code of Civil Procedure prescribes:

"A witness can testify to those facts only which he knows of his own knowledge; that is, which are derived from his own perceptions, except in those few express cases in which his opinions or inferences from the declarations of others, as hereinafter stated, are admissible."

The witness Urquhart testified, not from his own knowledge based on the experience he had acquired in the matter of the current price of hemp in the Manila market during the year 1903, but in conformity with the data that had been furnished him by other persons, and therefore his testimony must be rejected as markedly hearsay.

For the same purpose of proving that Warner, Barnes & Co. (Ltd.) acquired at a low price the hemp sold to it by the joint-account partnership, the following certificates were presented by plaintiff:

The certificate, Exhibit QQ, subscribed by the commercial firm of Gutierrez Hermanos, which document was identified and recognized by Miguel Gutierrez, who stated under oath, as seen on page 696 of the 4th part of the record, that his firm, of which he was a charter member, dealt in hemp in 1902 and 1903, and that the said certificate contained entries of hemp sales effected in Manila by his firm during the two years aforementioned; and that notwithstanding the fact that he was absent in Spain during those same years, he signed that certificate for the reason that it contained notes taken from the books of the firm of Gutierrez Hermanos.

The other certificate, Exhibit RR, issued by the commercial firm of Smith, Bell & Co., was identified and recognized by Frank Jones, one of the members of the said firm, who stated under oath that the said certificate contained entries taken from the firm's commercial diary, in which record was made of the prices of hemp during the years 1902 and 1903; and that the prices stated in the certificate were taken from the said diary. Witness did not say, however, that it was he himself who wrote the diary, nor that he knew of his own knowledge the hemp prices therein recorded, for he merely copied from the diary the prices mentioned in the certificate RR.

The certificate UU, issued by Urrutia & Co., was identified and recognized by one of its members, Juan Camahort, who stated under oath that the firm of Urrutia & Co. was engaged in buying and selling hemp during the years 1902 and 1903 and authorized by its signature the said certificate as containing data on hemp prices, taken from the firm's books. But it is not shown that this witness testified that he himself purchased or sold hemp, nor that of his own knowledge he knew of the transactions made and in such wise that he might have been able to explain the respective prices recorded during the year 1903, which were copied in the said certificate.

The certificate Exhibit 3-C, issued by Ker & Co., which gives the prices of hemp during the years 1902 and 1903, was identified and recognized by James M. Beattie, who testified that its contents were taken by him from the books of the said firm, which dealt in hemp on a large scale. He added, however, that the data contained in the certificate were not based on prices obtained in actual transactions, but that he fixed the prices in relation with other similar classes sold on their respective dates. But he did not state whether he had personal knowledge regarding the said prices set forth in Exhibit 3-C, and it is to be noted that the witness added that in 1903 he was away from the Islands.

There was also presented the certificate Exhibit 3-F, prepared and subscribed by Charles Henry Knight, together with his deposition (pp. 32 to 76 of the 1st part of the record), in which this witness stated that the certificate contained prices approximate to those obtained for the hemp, according to its quality, in the years 1902 and 1903, and that he believed them to be correct, although he did not positively say that he had personal knowledge regarding the current prices in the Manila market during the said years. He further testified that he had been engaged in the hemp business for the past seventeen years and had been employed by several commercial firms which dealt in hemp.

From the foregoing statements comprising the testimony of witnesses who affirmed that the five certificates mentioned are authentic, it is concluded that the contents of at least four of them were copied from the books of the commercial firms which authorized the said certificates, and none of the said witnesses was able to assert positively that they had acquired and had personal knowledge of the prices of hemp contained in the said certificates, nor that they had personally taken any part in the transactions nor in the recording of the prices of

hemp in the original books of those firms. There is also this point, that the witness James M. Beattie testified that the prices which he had fixed in the certificate of Ker & Co. were not based on prices obtained in actual operations, but that he had fixed them in connection with other similar classes of hemp that were sold on their respective dates.

The witness who identified the certificate Exhibit TT is William Macleod, a member of the firm of Macleod & Co., who stated under oath that, as that firm had dealt in hemp during the years 1902 and 1903, he personally had bought and sold hemp during the said years and that the prices paid and obtained therein were recorded in the firm's books and appeared in the certificate Exhibit TT; that, as he himself helped to keep the books, he had personal knowledge of the transactions effected and of the prices therein obtained; that in the majority of cases he entered these prices in the books himself in his own handwriting, especially from May, 1902, to the end of 1903; and that such entries were made by Lane prior to that time. The nature of this testimony is different from that of the preceding testimony.

However, even admitting the data contained in the certificate TT as authentic on account of their having been copied from the books of the firm of Macleod & Co., most certainly these books cannot serve as evidence, with regard to their contents, against third persons, like the commercial firm of Warner, Barnes & Co. (Ltd.) which had nothing whatever to do with the entries of the books of the firm of Macleod & Co., for no valuable consideration, contract, or obligation of any kind whatever united Warner, Barnes & Co. (Ltd.) with Macleod & Co., with respect to the prices fixed by this latter firm in its books, and therefore the contents of such books cannot serve as evidence in the suit pending between Aldecoa & Co. and Warner, Barnes & Co. (Ltd.) in such manner that by virtue thereof the latter firm may be obligated toward the former in accordance with the price fixed by Macleod & Co. in its books.

It is a well-settled rule in the courts of the United States that merchants' books do not constitute proof against disinterested third parties, except under certain requirements, because, as a general rule, were the entries of such books admitted without the said requirements, they would upset the doctrine of *res inter alios acta*. This principle of law appears to be confirmed in the decision rendered by the Federal Supreme Court, in the case of *Chaffee vs. United States* (18 Wall., U. S., 516; 21 L. ed., 908), where it is said:

"Entries made by private parties are not admissible in evidence, unless they were made contemporaneously with the facts to which they relate, by parties having personal knowledge of the facts; and are corroborated by their testimony, if living and accessible, or by proof of their handwriting, if dead, insane or beyond reach.

"Certificate books of canal collectors are not admissible to show the quantity of distilled spirits produced from defendant's distillery and shipped over the canal."

In the case of *Chandler vs. Pomeroy* (87 Fed. Rep., 262, 268), wherein the plaintiff sought to make the defendants liable for the value of certain letters of credit which appeared by the books of King's Sons of New York to have been drawn to the defendants' order, the said books were produced to prove the facts, and the appeal court, after holding that these books were improperly presented, said:

"Books of account are *prima facie* evidence only between the parties, and to a limited extent."

In the case of *Treat vs. Barber* (7 Conn., 274), an action for the recovery of a sum of money, an attempt was made to prove by means of the testimony of the witness D that the value of a certain promissory note appeared as an entry in a certain company's books and these books were duly produced. The court held that the testimony of D and the books themselves were inadmissible; the former being in the nature of hearsay, and further exceptionable as going to show the contents of a writing, and the latter being *res inter alios acta*. Continuing, the court said:

"A case may be supposed, in which the above-mentioned books would be good evidence against Amos Treat and the Industry Manufacturing Company as being their recognized act and declaration. But as against a third person, the books are no more admissible than the parol declarations of the company or of Treat. They are res inter alios acta. It is almost superfluous to say, that those books are not public records, to serve as the memorial of facts; but they are the private entries of the company."

So, the testimony given under oath by William Macleod with respect to the respective prices obtained for the hemp concerned in the dealings in this article conducted by the commercial firm of Macleod & Co., of which William Macleod was a member during the year 1903, may be taken into account on the hypothesis that he personally intervened in those transactions and knew of his own knowledge of the price of the hemp in the purchases and sales effected by the firm of Macleod & Co. in order to determine whether Warner, Barnes & Co. (Ltd.) in taking over the hemp of the joint-account partnership during the said year, really effected the same at exceedingly low prices to the fraud and prejudice of Aldecoa & Co., inasmuch as in the transactions referred to by the witness William Macleod and in which the prices were fixed that are set forth in the Exhibit TT, he personally intervened during the greater part of the year 1902 v and throughout the year 1903 and had a personal knowledge of the nature and conditions of the purchases and sales of hemp made by the firm of Macleod & Co. as well as of the respective prices set for the hemp according to its quality in each operation.

Nevertheless, in consideration of the fact that the price of hemp in the Manila market has always been governed, according to the custom therein observed, not by the mark given to it by the dealers, but by the result of the examination and inspection constantly made of the fiber, whereby its quality and condition are determined, aside from various other circumstances that may attend each operation of trade, circumstances sometimes originated by the engagements and needs of the vendor, and others derived from the special ones that may prevail in the locality, it is impossible in the natural order and ordinary course of affairs that on any given day the purchase and the sale price of hemp in the Manila market be uniform, without variation or difference. The vendor who through pressing need finds himself obliged to sell his hemp to a purchaser who did not urgently need to acquire it must have had to sell it at a lower price than that obtained by another vendor who, having hemp of the same grade and quality, was not forced to dispose of it. In this latter and very different circumstance, the vendor might have sold his hemp to someone who had great need of it, at a little higher price, owing to an urgent engagement, a contract pending fulfillment, or to the necessity of completing the loading of a boat, so it might leave port as soon as possible. In these cases, completely different from and diametrically opposed to each other, it could have happened that several parcels of hemp of the same quality sold or purchased in the market of Manila obtained different prices in accordance with the needs and conveniences of the purchasers and vendors and the divers circumstances surrounding each transaction in obedience to the irresistible laws of supply and demand.

It is neither just nor equitable to admit the scale of prices given by the receiver of Aldecoa & Co. in his report Exhibit NN, as a fixed basis for the holding that Warner, Barnes & Co. (Ltd.) had always rated the hemp it purchased for itself from the joint-account partnership during the year 1903 at those prices, for the reason that the brands W-BB and W-BD did not always and invariably represent "current" or "superior" hemp, nor does the record show that Warner, Barnes & Co. (Ltd.) always and systematically acquired hemp from the joint-account partnership at a much lower price than the other commercial firms that dealt in hemp.

It is fully proved by the record that the brands of the hemp do not constitute decisive and positive proof of the quality of the fiber. The price obtained for hemp in the Manila market was graded by the commercial firms in accordance with the result of the examination and inspection of each lot or each bale concerned in a transaction, which result determined the grade of quality of the article and its quotation price; the price fluctuated constantly, in accordance with the needs of the vendor or of the purchaser, the rules governing supply and demand and the circumstances that prevailed in the case of each transaction.

Of the 183 entries of lots of hemp acquired by Warner, Barnes & Co. (Ltd.) from the joint-account partnership during the year 1903, the trial court found that the valuation of the hemp referred to in seventy of the said entries was correct, and proceeded to examine only 113 entries relating to an equal number of parcels of hemp, the price and valuation of which is relatively less than the prices given in the six certificates presented as proof by the plaintiff, and taking as a basis the prices contained in each one of these certificates he came to the conclusion that in fact Warner, Barnes & Co. (Ltd.) acquired at a lower price the parcels of hemp obtained from the joint-account partnership and held that the said Warner, Barnes & Co. (Ltd.) was liable for the difference of P28,064.85.

If in this voluminous record it had been conclusively shown that the quality of the hemp purchased by Warner, Barnes & Co. (Ltd.) on any day of the year 1903 was the same as that of the hemp purchased by any of the firms that issued the said certificates, and that Warner, Barnes & Co. (Ltd.) had nevertheless fixed and paid a lower price than that fixed by the said firms as the market price of the hemp sold on a given day or on the days immediately prior or subsequent to that on which Warner, Barnes & Co. (Ltd.) acquired the hemp at a lower price from the joint-account partnership, then it could rightly and justly be affirmed that Warner, Barnes & Co. (Ltd.) injured and defrauded Aldecoa & Co. in the transaction, even admitting in this case as sufficient proof the result of the said certificates; but, as the evidence does not offer satisfactory proof that the hemp acquired by the defendant, with the marks on the bales thereof, was of the same grade and identical quality as that of the hemp whose valuation was to be given to the hemp purchased by Warner, Barnes & Co. (Ltd.) it is neither proper nor just to hold that this firm, in acquiring it at a lower price, defrauded Aldecoa & Co., for the reason that the hemp of the different lots bought and sold by the various dealers being of a like quality, it should ordinarily have the same prices, in the absence of the circumstances afore- mentioned.

This finding of the court appears to be sustained by the result of other operations performed by the defendant in which it acquired hemp from the joint-account partnership at the same or a greater price than that fixed by a majority of the said commercial firms from which the said certificates came, and it is not to be believed that hemp even of the same quality obtained in the market the same price when in each transaction divers circumstances might have occurred to influence the fluctuation in value of the article in the market, not only during several days, but also within twenty-four hours, its price varying from fifty centavos to five pesos and a fraction, according to the needs and conveniences of the interested parties and the natural and ordinary laws governing the supply and demand of the article in the market.

If in many cases the hemp purchased by Warner, Barnes & Co. (Ltd.) was acquired at a lower price than that acquired by the other dealers, the record also shows that in other cases it paid the same or a greater price for the hemp; that the difference in the purchases made at a lower price was due to the fluctuation in value of hemp, and in none of the first mentioned unfavorable cases was such difference in price greater than six pesos, and that this lower price was on account of the inferior quality of the hemp from Tabaco and Legaspi.

The prices stated by the receiver Urquhart in the statement or list Exhibit NN do not appear to be properly supported by evidence in this case, and it was not shown why during the year 1903 all the prices at which Warner, Barnes & Co. (Ltd.) acquired hemp from Legaspi and Tabaco belonging to the joint-account partnership should have been so high.

After having resolved the complex question raised between the parties, relative to the prices of the hemp which in various lots was taken over by Warner, Barnes & Co. (Ltd.) during the year 1903, in the manner aforesaid, it must be stated at the outset, in examining the errors 2, 3 and 4 assigned by the defendant to the judgment appealed from, that, outside of the objections made by Aldecoa & Co. to the 1903 account, the plaintiff has no further objections to make to the said account of the last year of the business of the joint-account partnership, else it would have expressly so stated, as it did with respect to the prices of the hemp acquired by Warner, Barnes & Co.

(Ltd.).

It, then, having been decided in the preceding paragraphs hereof that there is no proof that the prices given by Warner, Barnes & Co. (Ltd.) to the hemp of the joint-account partnership which it took over, were not just and correct, inasmuch as it was not duly proved that the quality of certain parcels of hemp of the joint-account partnership which obtained relatively low prices, was the same as that of other parcels of hemp purchased or sold by other commercial firms of this city and which obtained more or less high prices, from the procedure as a whole followed by Warner, Barnes & Co. (Ltd.) with respect to the different prices for which it acquired the hemp of the joint-account partnership, in accordance with the fluctuations in value of hemp during the said year, it cannot be concluded that this firm systematically valued the hemp at lower prices prejudicial to the joint-account partnership and, consequently, to Aldecoa & Co., nor is it possible to hold, without proof and in accordance with the rules of common sense, that Warner, Barnes & Co. (Ltd.) acted with deceit and bad faith, defrauding the interest of its partner firm by always and constantly acquiring all the hemp of the joint-account partnership at a low price, inasmuch as the record shows that, if in some cases it purchased cheaper than the other hemp-purchasing firms, in other cases it purchased or acquired at the same or at higher prices; and such procedure would not warrant a finding that it acted in bad faith.

The account of profit and loss pertaining to the year 1903 (Exhibit M, page 362 of the 2d part of the record) which was sent by Warner, Barnes & Co. (Ltd.) to Aldecoa & Co. and was presented in evidence by the latter at the trial, shows at the end thereof, as the result of a balance struck on March 12, 1904, a remainder of P478.79, which sum was the subject of a supplementary order of the court of the date of March 7, 1913, and, the defendant says, has always been at the disposal of the plaintiff who, on account of the pending suit has not wished to collect it, because, had it done so, it might have meant its acquiescence to the whole account for 1903. This balance of P478.79 is one of the subjects of the present litigation, and this court, on ordering the delivery of the said sum to the plaintiff, should at the same time order the defendant to pay the legal interest thereon from September 26, 1907, when the complaint was filed, up to the date of payment. Warner, Barnes & Co. (Ltd.) has kept the said amount from 1904 to date, and it would not be just that Aldecoa & Co., who for a substantial reason could not collect it, should be deprived of the interest due thereon. (Article 1108 of the Civil Code and section 510 of the Code of Civil Procedure.)

With regard to the real property in Albay acquired by Warner, Barnes & Co. (Ltd.) the judgment appealed from orders the delivery to Aldecoa & Co. of one-half of the properties obtained from Juana Riosa and Marcos Zubeldia and described in paragraphs 2 and 4 of the complaint, or of their present value in case they can not be divided, after deducting one-half of the amount of the land tax assessed against the said properties up to the date of the judgment, and further orders the defendant to restore to Aldecoa & Co. one-half of the P500, the difference of the interest at five per cent per annum charged on the P50,000 in the entry of December 26, 1899, Exhibit F, instead of on P40,000 which, according to the instrument above mentioned, was the cost of the buildings purchased from Marcos Zubeldia.

Counsel for the plaintiff alleged as the fifth error in the judgment rendered by the trial court, that it did not decree to belong to the joint-account partnership all the properties which, according to the testimony of James Macleod, were purchased for the partnership, but only some of them.

The defendant in turn, for the purpose of sustaining its appeal, assigned three errors specified under Nos. 5, 6 and 7, which it claims the trial court committed: the fifth, in holding that Aldecoa & Co. had a share in the real estate acquired in the province of Albay by Warner, Barnes & Co., (Ltd.); the sixth, in holding that the existence of the joint-account partnership between the plaintiff and the defendant prevented Warner, Barnes & Co., (Ltd.), from purchasing and holding free of any share by the plaintiff the real properties that were utilized in connection with

the business of the joint-account partnership; and the seventh, in holding that the registration of the properties in accordance with the Land Registration Act, does not terminate any real right that might affect the registered properties and which was not recognized in the decree of registration.

In clause L of the said paragraph 9 of the complaint of Aldecoa & Co. it is stated that the value of the properties brought in by Warner, Barnes & Co., (Ltd.), to the joint- account, instead of cash capital, is omitted from the accounts, which properties are the following:

"One galvanized-iron warehouse, with hemp press, and one house of strong materials, including the lots on which these buildings stand, in Tabaco, purchased from Mariano Riosa for P12,000.

"One small warehouse of strong materials with the lot on which it stands, situated in Tabaco, acquired from Juana Riosa for P2,500.

"One warehouse of strong materials, with hemp press; another warehouse of strong materials; two houses also of strong materials; together with the lots on which these buildings stand. These properties are situated in Tabaco and were purchased from Manuel Zalvidea for P22,000.

"Four warehouses with three hemp presses and one house of strong materials, with their corresponding lots. These properties are situated in Legaspi and were purchased from Marcos Zubeldia for P50,000.

"Total value of the above mentioned properties, P86,500."

The question to be decided is whether the said properties acquired by Warner, Barnes & Co. (Ltd.) do or do not belong to the joint-account partnership, notwithstanding that in the title deeds Warner, Barnes & Co. (Ltd.) alone appears as the purchaser thereof.

On page 382 of the second part of the record there is a letter marked Exhibit BB, of the date of February 19, 1903, addressed to Warner, Barnes & Co. (Ltd.) by Aldecoa & Co. This letter reads in part as follows:

"In order to reach a final settlement of our accounts, we likewise need to have a valuation set on the properties purchased from Messrs. Zalvidea and Zubeldia, in accordance with their present value. These properties, the last of which belonged as you know to Messrs. Zubeldia and Alverid, agents, the last named, of ours, were acquired in joint partnership with us, of which fact Mr. Osorio is aware as he made the first purchase while he was still at the head of our firm. We claim no share in the purchase made from Messrs. Villanueva, since it was made by you people directly without counting upon us, as we believe you should have done, since it concerned a business which was so equally con-, ducted by both parties from its beginning."

Warner, Barnes & Co. (Ltd.) replied to the foregoing letter by one of May 21, 1903, Exhibit CC, in which appears among other statements, the following:

"What was, naturally, the principal cause of our delay in replying to this letter, was the erroneous idea undoubtedly held by Mr. Macleod in requesting of us a valuation of the properties purchased from Messrs. Zalvidea and Zubeldia, for these properties were acquired purely and exclusively by this firm, without its being possible for you people even to think of being coowners in them with us, and we are certain that Mr. Alvarez, then present, will remember about this and also the fact that Mr. Osorio, now with us, was by chance one of those who at that time intervened in the negotiations connected with this sale, when he had the honor to belong to your firm."

In the preinserted paragraphs of the said two letters it is at once observed that Aldecoa & Co. claimed since February, 1903, tenancy in common in some of the said properties, and since then the opposition of Warner, Barnes & Co., (Ltd.), who had acquired the same in its own name, to that right of tenancy in common alleged by the plaintiff, was evident.

This voluminous record discloses no proof of any kind whatever of its having been stipulated that the joint-account partnership should acquire any real properties even for the use of the said partnership in the business in which it was to engage, to wit, dealings in hemp in the pueblos of Legaspi and Tabaco, Albay, nor does it show any evidence that Aldecoa & Co. delivered any sum whatever as capital for the acquisition of such real properties; wherefore, Warner, Barnes & Co. (Ltd.) having denied that Aldecoa & Co. had any share in the said realty, notwithstanding that the defendant acquired some of it during the existence of the joint-account partnership, it would not be proper to recognize that Aldecoa & Co. had any share or coownership in the properties purchased by Warner, Barnes & Co. (Ltd.) prior or subsequent to July 1, 1899.

In the deeds drawn up in connection with the acquisition of the properties in litigation it was made to appear that the firm of Warner, Barnes & Co. (Ltd.) purchased them for itself and not in the name of the joint-account partnership with Aldecoa & Co. and paid for them with its own money, and it was not stated in the said deeds that even a part of their price came from Aldecoa & Co. For the sole reason that both firms were associated together for the purpose of dealing in hemp from Tabaco and Legaspi, it cannot be held that Aldecoa & Co. did in fact acquire coownership and copartner rights in the real properties privately acquired by Warner, Barnes & Co. (Ltd.), unless it be proved that the defendant acquired them for the joint-account partnership with the consent and special charge of the plaintiff and paid for them out of funds belonging to the partnership.

In the four notarial deeds setting forth the acquisitions of the properties referred to by clause L of the said paragraph 9 of the complaint, it appears that they were all purchased by the firm of Warner, Barnes & Co. (Ltd.) on its own account, and that their respective prices, aggregating the sum of P86,500, were paid out of its own funds, and no mention is made in these deeds of their having been bought in the name and for the account, even partially, of Aldecoa & Co. The record shows that the transfer of ownership of the said properties was respectively entered in the property registry in the name of Warner, Barnes & Co. (Ltd.) and it does not disclose that any share therein was held or any claim with respect thereto was made by Aldecoa & Co. Therefore, if the purchaser is the only party who appears in the said deeds and in the registration of the titles in the property registry, no one except such purchaser may be deemed by law to be the owner of the properties in question. (Sees. 38, 39, 45, 46, 47 and 48 of Act No. 496.)

There is no law that prohibited Warner, Barnes & Co. (Ltd.) as the active partner in the joint-account partnership with Aldecoa & Co., from acquiring real estate, as none of the five articles of Title 2, Book 2, of the Code of Commerce contains such a prohibition; and article 137 of the Code of Commerce, cited in the judgment appealed from, is not applicable to the case at bar, since a joint-account partnership is not essentially and really a mercantile company or Arm, nor does it comprise the conditions requisite in the latter, and therefore does not in itself constitute a juridical entity like the other ordinary associations recognized by law. Consequently Warner, Barnes & Co. (Ltd.), could have acquired the real properties in question for itself without violating any law, positive or moral, nor thereby having prejudiced Aldecoa & Co.

As regards the eighth error assigned to the judgment appealed from, it is necessary to recall to mind that, pursuant to the agreement between the two partner firms, the profits pertaining to the last semester of 1899 were estimated at P160,000, whether the business during the said semester were profitable or not, all expenses and losses being comprised within the said stipulated sum. One-half of this sum Aldecoa & Co. had already collected. Therefore this firm has now no right whatever to collect further sums for any other reason, nor must it suffer losses, which, according to the agreement, were assumed solely by Warner, Barnes & Co. (Ltd.). Consequently Aldecoa & Co. is not entitled to collect the sum of P250 as interest, which Warner, Barnes & Co. (Ltd.) was unduly ordered to pay in the judgment appealed from.

For all the foregoing reasons some of the errors assigned by both parties to the judgment appealed from have been

fully refuted, as well as the additions thereto in so far as i they have not been sustained in this decision. We therefore hold: (1) That there is no ground for the issuance of the writ of mandamus for the purposes specified in the complaint; (2) that the business between the joint-account partnership of Warner, Barnes & Co. (Ltd.), and Aldecoa & Co. began, according to the agreement between the parties, on July 1, 1899, wherefore the defendant is not obliged to render accounts for the seven months prior to the said date; (3) that it was stipulated between the partner firms that the profits from the business during the last semester of 1899 should be only P160,000, one-half of which Aldecoa & Co. collected, and therefore the manager of the partnership, Warner, Barnes & Co. (Ltd.) had no need to render accounts pertaining to the said semester of the year 1899; (4) that upon filing the complaint on September 26, 1907, the term of four years required for prescription had not elapsed since January 1, 1904; (5) that no revision may be had of the accounts pertaining to the years 1900 to 1902, for the reason that they were approved and because it has not been proven in this case that the managing firm of the joint-account partnership committed any fraud, incurred in any error or made any omission prejudicial to Aldecoa & Co., aside from the fact that the plaintiff alleged no error against the order of denial of the trial court; (6) that, furthermore, it was not proved that any fraud was committed or any error or omission incurred prejudicial to AMecoa & Co. by the fact that Warner, Barnes & Co. (Ltd.) fixed the prices of the hemp acquired by it on various dates, wherefore it can not be sentenced to the payment of P28,064.86; (7) that the defendant, Warner, Barnes & Co. (Ltd.) by reason of its not being indebted in the sum of P8,750 referred to in clause (i) of paragraph 9 of the complaint, is not obliged to pay this sum to the plaintiff, Aldecoa & Co.; (8) that the real properties acquired by Warner, Barnes & Co. (Ltd.) belong to it and not to the joint-account partnership, and therefore Aldecoa &, Co. has no share and no cotenancy rights in the said properties and is not entitled to claim any interest therein; (9) that Warner, Barnes & Co. (Ltd.), is not obliged to pay one-half of the interest at the rate of five per cent on the price of the property referred to in the entry of December 26, 1899, of the account, Exhibit F; and, (10) that Warner, Barnes & Co. (Ltd.) must pay to the plaintiff, Aldecoa & Co., P478.79, together with the interest thereon at the rate of six per cent per annum from September 26, 1907.

We therefore reverse the judgment and the decisions ap pealed from and absolve the defendant, Warner, Barnes & Co. (Ltd.), from the complaint and other claims presented by Aldecoa & Co. The defendant is hereby ordered to pay to the plaintiff the sum of P478.79 with interest thereon at the rate of 6 per cent per annum from September 26, 1907, until the date of payment; without special finding as to costs. So ordered.

Arellano, C. J., Johnson, Moreland, and Trent, JJ., concur.

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