1 Phil. 705

[G.R. No. 910. February 10, 1903]

PRAUTCH, SCHOLES & COV PLAINTIFFS AND APPELLEES, VS. DOLORES HERNANDEZ DE GOYENECHEA, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

The plaintiff in this case is Prautch, Scholes & Co. This appears from the complaint and from the judgment. The fact stated in the, complaint that the recovery is for the use of A. W. Prautch does not make him the plaintiff.

The court below having allowed Prautch, Seholes & Co. as a juridical entity to recover, the defendant objected to the judgment on this ground, and has assigned as error in this court such ruling.

This partnership was engaged in the business of buying and selling cows, woods, bricks, and the products of the country. The proofs show that it never attempted to comply with any of the requirements of the Code of Commerce. If it had complied with that Code it would have been a juridical person. (Article 116.) Assuming, without deciding, that civil partnerships are also juridical persons, did Prautch and Scholes not having complied with the Code of Commerce nevertheless become a civil partnership and thus acquire a personality of its own?

Article 35 of the Civil Code provides that the following are juridical persons:

1. The corporations, associations, and institutions of public interest recognized by law.

Their personality begins from the very instant in Which, in accordance with law, they are validly established.

2. The associations of private interest, be they civil, commercial, or industrial, to which

> the law may grant proper personality, independent of each member thereof.

Article 36 is a follows:

> "The associations referred to in No. 2 of the foregoing article, shall be governed by the provisions of their articles of associations, according to the nature of the latter."

It becomes necessary to know what partnerships are civil and what ones are mercantile in order to know in a particular case by what provisions of law the partnership there in question is governed. Is a commercial partnership distinguished from a civil one by the object to which it is devoted or by the machinery with which it is organized? We think that the former distinction is the true one. The Code of Commerce of 1829 distinctly provided that those partnerships were mercantile which had for their object an operation of commerce. (Art. 264.) The present Code has not in our opinion made any radical change in this respect. Article 123 provides that mercantile partnerships may be of any class provided that their agreements are lawful and *their object industry or commerce*.

Article 1, 2, declares that *mercantile and industrial* partnerships are merchants. It does not say that all partnerships are merchant even if organized under this Code. It is true that article 118 provides that the *contract* of partnership shall be mercantile whatever may be its class provided it is organized in conformity with the requirements of the Code. Whatever this may mean it can not be construed as indicating that a partnership organized for a purpose not connected at all with industry or commerce shall be a mercantile partnership, thus rendering useless the whole of article 123, and unnecessary the words "mercantile and industrial" in article 1, 2. The present Code does not therefor allow partnerships not included in article 123 to organize under it. That permission is, however, given td'them by article 1670 of the Civil Code.

This article 1670 is entirely inconsistent with the idea that civil and mercantile partnership are distinguished only by the methods of their organization. (1) Its language is: "Civil partnerships, on account of the objects to which they are devoted." (2) If article 116 of the Code of Commerce is to be so construed that all partnerships organized in conformity with that Code are mercantile no matter to what ends they are devoted then this article of the Civil Code is unnecessary and useless. If, however, the true distinction is found as we believe in the objects to which the partnerships are devoted, this article can have effect.

The Code of Commerce declares the manner in which commercial partnerships can be organized. Such organization can be effected only in certain well-defined ways. The provisions of this Code were well known when the Civil Code was adopted. The author of that Code when writing article 1667, having in mind the provisions of the Code of Commerce, did not say that a partnership may be organized in any form, which would have repealed the said provisions of the Code of Commerce, but did say instead that a civil partnership may be organized in any form.

If that section includes commercial partnerships then such a partnership can be organized under it selecting from the Code of Commerce such of its provisions as are favorable to the partners and rejecting such as are not, and even including in its articles of agreement the right to do things which by that Code are expressly prohibited. Such a construction would allow a commercial partnership to use or dispense with the Code of Commerce as best suited its own ends.

For example a partnership is organized for commercial purposes. It fails to state its agreements in a public document. The managers are sued by a third person with whom the partnership has contracted, and it is claimed that each of such managers is liable for the whole debt, they having violated article 119 of the Code of Commerce. Their answer is that although they are organized for commercial purposes, they have intentionally omitted to comply with said article 119, and consequently they are a civil partnership, to the managers of which article 120 declaring such liability does not apply.

Another case may be supposed. A partnership is organized for commercial purposes. It fails to comply with the requirements of article 119. A creditor sues the partnership for a debt contracted by it, claiming to hold the partners *severally*. They answer that their failure to comply with the Code of Commerce makes them a civil partnership and that they are in accordance with article 1698 of the Civil Code only liable *jointly*. To allow such liberty of action would be to permit the parties by a violation of the Code to escape a liability which the law has seen fit to impose upon persons who organized commercial partnerships; "Because it would be contrary to all legal principles that the nonperformance of a duty should redound to the benefit of the person in default either intentional or unintentional." (Mercantile Law, Eixala, fourth ed., p. 145.)

Of the commentators writing since the promulgation of the Civil Code Blanco thus defines the difference between a civil and a mercantile partnersip: "If we can define the contract of partnership in general by saying that it is one by virtue of which several persons bring their

property or industry into a common fund for the attainment of a common purpose by common means, then a mercantile partnership will be one in which two or more persons put their property or industry in common or both, applying them to commercial transaction for the purpose of obtaining some profit to be divided among them." (2 Blanco, Mercantile Law, 332.)

Estasen says: "Companies, in order to be regarded asd mercantile, must have for their object the realization of some mercantile act either as a means or an end." (7 Mercantile Law, 122.)

Aramburo says: "Artificial persons of private interest: We shall have but little to say of these persons, because we have said enough in speaking of the laws by which they are governed. These same laws are those which govern their capacity, and thus civil partnerships will be governed by the provisions of the Civil Code (1) mercantile partnerships by the provisions of the Code of Commerce (2) and industrial partnerships, according to their nature, will be subject to the provisions relative to one or the other of the former classes of partnerships." (P. 457.) "In effect, we have observed that there are three classes of artificial persons of private interest; that the essential purpose of mercantile partnerships is the earning of a profit; that industrial partnerships may have the characteristics of mercantile or 'civil partnerships, according to whether they have been established in accordance with the requirements of the Code of Commerce or without regard to. the latter; and finally that the civil partnership is the result of the contract of this name entered into by persons who undertake to devote to a common purpose either money, property, or labor with the intention of dividing the profits between themselves." (Civil Capacity, 407-432.)

Manresa's statement that if partnerships are. not organized under the Code of Commerce they become civil partnerships clearly refers to industrial partnerships as distinguished from mercantile, and his opinion thus agrees entirely with that of Aramburo above stated. (1 Manresa, Spanish Civil Code, 184.)

It is not necessary in this case to attempt to define an indusfrial partnership or to distinguish between it and a civil partnership on one hand and a commercial partnership on the other. The partnership of Prautch, Scholes & Co. was a typical commercial partnership buying personal property with the purpose of reselling it in the same form at a profit.

Article 1697 of the Italian Civil Code is substantially the same as article 1665 of our Civil Code. Supino in his commentaries on the Commercial Law of Italy, referring to article 1697,

says: “This definition is in general applicable even to mercantile partnerships which are those which are established with the, view to effecting one or more commercial operations. (Art. 76.) It is therefore the purpose which determines the character of a partnership as civil or mercantile. The mercantile form assumed by a partnership whose purposes are of a civil nature is not sufficient to give it the character of a mercantile partnership ; it will be governed by the provisions of the Code of Commerce, except with respect to bankruptcy and jurisdiction. (Art. 229.) (Mercantile Law, p. 168).”

We have found no opinion holding the contrary doctrine except a note (p. 44) by the translator of Supino’s work, which is as follows: “(a) Our Code provides that inscription in the Mercantile Registry is obligatory upon companies and partnerships. (Art. 17.) Upon this inscription and the will of the partners clepend the character, civil or mercantile, as the Civil Code does not establish any essential difference (art. 1665) between the two classes, and authorizes civil partnerships (art 1670) to organize with all the formalities prescribed by the Code of Commerce. (T. N.)”

The following note also occurs in the work of Don Ramon Marti de Eixala (p. 259): “(b.) Text writers have discussed the question as to whether the division of the social capital into shares is peculiar to commercial associations. This is denied by Troplong (No. 143 of the Commentaries of the Contract of Partnership), who maintains that a company of partnership is to be classified as civil or mercantile according to its object and not according to its mechanism. But other writers support the contrary view.”

We hold then on principle and authority that the contract of partnership between Prautch and Scholes was in its nature commercial; that under article 36 of the Civil Code said partnership was governed by the provisions of the Code of Commerce; that its failure to comply with the requirements of that Code did not make it a civil partnership, and thus give it legal personality, which we have assumed such partnerships have.

Having seen that the partnership in question is governed by the Code of Commerce, it remains to ascertain what are the consequences of the failure of the partners to comply with the requirements of the Code.

Article 116 provides that the partnership shall have personality if it is organized in accordance with the Code. This impliedly denies to it personality unless it is so organized. The partners are required to state their agreements in a public writing, and to record them in the Mercantile Registry. (Art.119, 17.)

Article 24 is as follows:

> "Articles constituting associations not recorded shall be binding between the members who execute the same but they shall not prejudice third persons, who, however, may make use thereof in so far as advantageous."

That a commercial partnership which has not recorded its articles of agreement can not maintain an action in its firm name is well settled by the authorities.

"We see, then, that with respect to both classes of artificial persons (civil and mercantile) certain formalities must be observed in order that their constitution result in legal effects." (1 Mucius Scaevola, Com. Civil Code, p. 317.)

> "It is also the fact that a mercantile partnership can not legally exist nor avail itself of the sanction of article 296 of the Code of Commerce (reference is made to the old Code) in enforcing its right against a third person until articles are recorded in the Provincial Registry."
>
> "It has also been declared that although under the provisions of article 284 of the Code of Commerce all contracts of commercial partnerships must be evidenced by public instrument executed with all the legal formalities, and although the failure to comply with this requirement results in the nullity of the contract and makes it unenforceable for the purposes of bringing action under the general provisions of article 236 of the same Code, nevertheless persons who, conjointly and under a firm name or without it, but without being organized with the formalities required, have entered into contracts with third persons they may in their individual capacity bring suit upon actions resulting from such contracts." (3 Estasen, Mercantile Law, 36, 37.)

The decisions of the Supreme Court deny legal personality to mercantile partnerships whose articles of agreement are not recorded. (Judgments of May 8, 1885; March 12, 1888; November 23, 1883.)

It would be strange if this principle were not found in the positive law. When several persons unite for a common end and desire to transact their joint business in the name of a

new artificial being which they create, they should notify the public who the persons are that are responsible for the acts of this new entity. That notice can be given in no better way than by requiring them to file their articles in the Mercantile Registry, a public record.

The firm of Prautch, Wholes & Co. had no legal personality, and this action can not be maintained in its name.

2. No motion for a new trial was made in the court below, and it is therefore said that article 497 of the Code of Civil Procedure prevents us from examining the evidence.

Except in the three cases therein specified this court can not examine or retry questions of fact. But it can examine and decide any question of law that is properly presented by the record.

Whether there is any evidence in the case to support a finding of fact is always a question of law. And whenever it is claimed that there is no evidence to support a particular finding we have a right to examine the record, and if we find no evidence at all upon which as a matter of law such finding could be based it is our duty to so declare and to reverse the judgment for error of law. If, on the contrary, we should find some evidence to support it and a large amount of evidence against it we could not disturb it though we might be convinced that the court below had erred in estimating the weight of the testimony.

In all cases it must appear either expressly by the certificate of the judge or impliedly from the bill of exceptions that it contains all of the evidence in the case having any bearing upon the point at issue. We must have before us all that the judge below had before him when he made the finding in question. If we do not we can not say that there was no evidence to support it.

It sufficiently appears from the bill of exceptions in this case that it contains all of the evidence except the conr tract between the defendant and Poizart, a letter from Prautch to Poizart, and one from Poizart to Prautch. None of these could have any bearing at all upon this question of personality.

3. We have stated that the plaintiff is Prautch, Scholes & Co., but even on the assumption that the plaintiff is Prautch and not the firm of Prautch, Scholes & Co., the judgment can not be sustained. The court finds that Prautch succeeded to all the rights of the firm. There is no evidence to support this finding. The only testimony on this point is the following by Prautch: “Who succeeded to the firm name and signature? I.” This

statement is insufficient as a matter of law to show that Prautch had acquired by assignment the interest of Scholes in this contract of lease. It is entirely consistent with the idea that Scholes still retained his rights in the assets of the extinct partnership.

On the supposition that Prautch might recover the whole of the claim for the benefit of the firm the judgment would have to be reversed, for it allows a recovery in the name of the firm for the sole benefit of Prautch.

4. Of the points made by the plaintiff in its brief, Nos. 1, 2, and 8 refer to the question of personality. The proposition (1) that Prautch and Scholes brought with them from the United States the law there, in force relating to partnership and should be governed by it here does not meet with our assent.

The claim (2) that the defendant is stopped from alleging this want of personality because she has dealt with the partnership is not borne out by the record. The only contract which she made with them was the lease. That was signed by them as individuals and not with any firm name. Prautch in his testimoy gives this as a reason for not notifying the defendant of the dissolution.

The claim (8) that the decision in this case takes away from" Prautch and Scholes rights which they now have can not be sustained. We simply hold that they can not exercise such rights by an action in the name of Prautch, Scholes & Co.

The judgment is reversed and a new trial granted with costs of the second instance against the appellee. So ordered.

Arellano, C, J., Torres, and *Ladd, JJ.,* concur.

MAPA, J.:

I concur with the result of this decision.

DISSENTING

COOPER, J.:

I dissent from the decision of the court in this case. By the express provisions of section 497

of the Code of Civil Procedure, 1901, in hearings of bills of exceptions in civil actions and special proceedings, it is provided that the Supreme Court shall not review the evidence taken in the court below, nor retry the questions of fact, except as in this section provided: These exceptions are:

(1) When assessors sat with the judge in the hearing in the court below, and both the assessors were of the opinion that the findings of fact and judgment in the action are wrong and have certified in writing their dissent therefrom.

(2) On the grounds of newly discovered evidence.

(3) Where the excepting party filed a motion in the Court of First Instance for a new trial upon tlfe ground that the findings of fact were plainly and manifestly against the weight of evidence, and the judge overruled said motion and due exception was taken to his overruling the same.

There was no motion for a new trial made in the court below, nor does the case fall within either of the other exceptions. The statute is mandatory and should be followed.

The additional exception ingrafted upon the statute that where there is no evidence to sustain the findings of facts by the court that in such case it is a question of law, and that this court will in such case review the evidence taken in the court below and retry the questions of fact, is in contravention both of the letter and of the spirit of the statute.

The adoption of such a rule will necessitate the bringing up the evidence in a large number of cases to this court for a review and retrial of the facts, which was intended to be prevented by this section.

It is true that in jury trials it is the practice in courts of the United States where there is no evidence to support an issue to direct the finding of a verdict against the party who has failed to make the necessary proof, or for the court to review the facts and set aside the verdict; there are no jury trials in our courts and such practice is inapplicable to our system of trials. At least, no such exception is contained in our statute. Besides, an examination of the evidence discloses that there was some proof that Prautch succeeded to all the rights of the firm of Prautch, Scholes & Co. Prautch in his testimony states that he succeeded the name and signature of the firm, which was equivalent to; saying that he had acquired the interest of Scholes in the contract of lease.

There was no objection taken in the court below by demurrer or answer to the legal capacity of the plaintiff to sue, or that there was a defect or misjoinder of parties.

By the provisions of section 93, if no objection is taken to the complaint either by demurrer or answer, the defendant shall be deemed to have waived the objection that plaintiff has not the legal capacity to sue, or that there was a defect or misjoinder of parties, plaintiff or defendant

In taking this view of these questions it will be unnecessary to consider whether the partnership of Prautch, Scholes & Co. had juridical personality or not, and I express no opinion upon this question.

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