

1 Phil. 63

[G.R. No. 439. November 11, 1901]

**GERMANN & CO., PLAINTIFFS AND APPELLEES, VS. DONALDSON, SIM & CO.,
DEFENDANTS AND APPELLANTS.**

D E C I S I O N

LADD, J.:

This is an incident of want of personality of the plaintiff's attorney. The action is to recover a sum claimed to be due for freight under a charter party. It was brought by virtue of a general power for suits, executed in Manila October 27, 1900, by Fernando Kammerzell, and purporting to be a substitution in favor of several attorneys of powers conferred upon Kammerzell in an instrument executed in Berlin, Germany, February 5, 1900, by Max Leonard Tornow, the sole owner of the business carried on in Berlin and Manila under the name of Germann & Co. The first-named instrument was authenticated by a notary with the formalities required by the domestic laws. The other was not so authenticated. Both Tornow and Kammerzell are citizens of Germany. Tornow is a resident of Berlin and Kammerzell of Manila.

The defendants claim that the original power is invalid under article 1280, No. 5, of the Civil Code, which provides that powers for suits must be contained in a public instrument. No claim is made that the document was not executed with the formalities required by the German law in the case of such an instrument. We see no reason why the general principle that the formal validity of contracts is to be tested by the laws of the country where they are executed should not apply. (Civil Code, art. 11.)

The defendants also claim that the original power can not be construed as conferring upon Kammerzell authority to institute or defend suits, from which contention, if correct, it would of course follow that the delegated power is invalid. In support of this contention reliance is placed upon article 1713 of the Civil Code, by which it is provided that "an agency stated in general terms only includes acts of administration," and that "in order to compromise,

alienate, mortgage, or to execute any other act of strict ownership an express commission is required.”

It has been argued by counsel for the plaintiffs that these provisions of the domestic law are not applicable to the case of an agency conferred, as was that in question, by one foreigner upon another in an instrument executed in the country of which both were citizens. We shall not pass upon this question, since we are clearly of opinion that the instrument contains an explicit grant of a power broad enough to authorize the bringing of the present action, even assuming the applicability of the domestic law as claimed by the defendants.

By this instrument Tornow constitutes Kammerzell his “true and lawful attorney with full power to enter the firm name of Germann & Co. in the Commercial Registry of the city of Manila as a branch of the house of Germann & Co. in Berlin, it being the purpose of this power to invest said attorney with full legal powers and authorization to direct and administer in the city of Manila for us and in our name a branch of our general commercial business of importation and exportation, for which purpose he may make contracts of lease and employ suitable assistants, as well as sign every kind of documents, accounts, and obligations connected with the business which may be necessary, take charge in general of the receipt and delivery of merchandise connected with the business, sign all receipts for sums of money and collect them and exact their payment by legal means, and in general execute all the acts and things necessary for the perfect carrying on of the business committed to his charge in the same manner as we could do ourselves if we were present in the same place.”

We should not be inclined to regard the institution of a suit like the present, which appears to be brought to collect a claim accruing in the ordinary course of the plaintiff’s business, as properly belonging to the class of acts described in article 1713 of the Civil Code as acts “of strict ownership.” It seems rather to be something which is necessarily a part of the mere administration of such a business as that described in the instrument in question and only incidentally, if at all, involving a power to dispose of the title to property.

But whether regarded as an act of strict ownership or not, it appears to be expressly and specially authorized by the clause conferring the power to “exact the payment” of sums of money “by legal means.” This must mean the power to exact the payment of debts due the concern by means of the institution of suits for their recovery. If there could be any doubt as to the meaning of this language taken by itself, it would be removed by a consideration of the general scope and purpose of the instrument in which it occurs. (See Civil Code, art.

1286.) The main object of the instrument is clearly to make Kammerzell the manager of the Manila branch of the plaintiff's business, with the same general authority with reference to its conduct which his principal would himself possess if he were personally directing it. It can not be reasonably supposed, in the absence of very clear language to that effect, that it was the intention of the principal to withhold from his agent a power so essential to the efficient management of the business entrusted to his control as that to sue for the collection of debts.

Arellano, C. J., Torres, Cooper, Willard, and Mapa, JJ., concur.

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