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[G.R. No. 3429. December 06, 1906]

CASTLE BROS., WOLF & SONS, PLAINTIFF AND APPELLANT, VS. GO-JUNO, DEFENDANT AND APPELLEE.

D E C I S I O N

JOHNSON, J.:

This was an action begun by the plaintiff to recover of the defendant the sum of P8,652.60, being the price of 961 8/20 tons of Australian coal alleged to have been sold by the plaintiff to the defendant between the 14th and 25th days of August, 1904.

To the petition of the plaintiff the defendant answered: First. By a general denial, denying all and each of the facts alleged in the complaint; and

Second. By a special denial, alleging that on the 15th day of August, 1904, the plaintiff contracted to sell and obligated itself to sell to the defendant the balance of the cargo of coal of the ship Coulsden, of about 2,000 tons, at P9 per ton. The defendant set up other defenses under his special denial which were in the nature of a counterclaim. Under the view which we take of the case it is unnecessary to refer to this part of the defense.

After hearing the evidence adduced during the trial of said cause, the lower court found that there was no privity of contract between £he parties to the action, and therefore dismissed the same without making any finding as to the costs. From this decision the plaintiff appealed to this court and made the following assignments of error: First. The court erred in rendering judgment dismissing the plaintiff’s complaint.

Second. The court erred in not rendering judgment for the plaintiff as prayed.

Third. The court erred in not making a nnding of facts. Fourth.. The court erred in denying plaintiff’s motion for a new trial.

A motion for a new trial was made in the lower court, based upon the provisions of paragraph 3 of section 497 of the Code of Procedure in Civil Actions, evidently for the purpose of having the facts reviewed by this court. The evidence, however, was not made a part of the record in this court; we are therefore unable to examine the same and must confine ourselves to the facts stated in the judgment of the lower court, together with the admissions made in the pleadings, for our conclusions.

From the evidence adduced during the trial of said cause, among other facts, the court found the following to be true:

First That the sale of the coal in question was made under a Avritten contract in the words and figures following :"

"Manila, *August 15,1904.*

> "I have this day bought from Edward T. Miles the balance of the cargo of the S. S. *Coulsden*, New Lanston coal, about two thousand (2,000) tons, more or less, at (9 pesos) nine dollars, Conant, per ton, ex ship. Cash on delivery. Weights to be taken on board the ship.

"G. JUNO,

"E. C. THOMAS."

Second. That the sale of said coal was not made to the defendant by the plaintiff, but by Edward T. Miles, and that at the time the sale was made no mention whatever was made of the plaintiff.

Under these general findings of fact the lower court, relying upon the provisions of the Commercial Code, decided that the plaintiff could not recover the amount demanded under the complaint and held that even though Miles in the sale of said coal had acted as the agent of the plaintiff—this fact not being disclosed to the purchaser of said coal—his principal could not recover.

Article 245 of the Code of Commerce provides that— "The agent may discharge the commission acting in his own name or that of the principal."

Article 246 provides that—

> "When the agent transacts business in *his own name* it shall not be necessary for him to state who is the principal and *he shall be directly liable* as if the business were for his own account to the persons with whom he transacts the same, the said persons not having any right of action against the principal, *nor the latter against the former*, the liabilities of the principal and of the agent to each other always being reserved."

Article 247 provides:

> "If the agent transacts business in the name of the principal he must state that fact; and if the contract is in writing he must state it therein of in the subscribing clause, giving the name, surname, and domicile of his principal."

By said article 246 it is clear that under the provisions of the Commercial Code in force in these Islands, one who deals as an agent, without disclosing his principal, fails to acquire any rights which his principal might enforce against the persons with whom such agent deals.

We make no declaration concerning the effect which section 114 of the Code of Procedure in Civil: Actions has upon the above-quoted provisions of the Commercial Code. It is true that said article 114 gives the real party in interest the right to maintain the action; however, there is nothing in the record brought to this court which shows that the plaintiff has in any way succeeded to the rights acquired by Miles under the said contract.

The foregoing rule as to the right of an undisclosed principal to enforce contracts made by an agent is the same as that established in the United States when the contract made with such agent is under seal, in cases where the contract is required to be under seal. (Huntington *vs*. Knox, 7 Gushing (Mass.), 374; Mechem on Agency, sec. 702.)

The rule established by the Commercial Code, however, is contrary to the general rule in the United States as to undisclosed principals in cases where the contracts need not be executed under seal. (Briggs *vs*. Partridge, 64 N. Y., 357, 21 American Reports, 617; Ford *vs*. Williams, 21 How. (U. &), 289; Borcherling *vs*. Katz, 37 N. J. Eq., 150; Mechem on

Agency, sees. 695-701.)

The plaintiff in his brief, however, alleges that the defendant in his special denial admits a privity of contract existing between the defendant and the plaintiff. It is true that the defendant interposed a general denial which placed upon the plaintiff the proof of every material allegation of his complaint and set up a special denial in which he did admit the privity of contract between himself and the plaintiff. This raises the question whether or not, under this general and special denial, the plaintiff was obliged to prove all of the material facts of his complaint. Section 95 of the Code of Procedure in Civil Actions provides that—

> "The defendant may set forth by answer as many defenses and counterclaims as he may have, Avhatever their nature. They must be separately stated and the several defenses must refer to the causes of action which they are intended to answer in a manner by which they may be intelligibly distinguished. The defendant may also answer one or more of the several causes of action stated in the complaint and demur to the residue."

Under the provisions of this section, may a defendant set up inconsistent defenses in his answer? The section permits the defendant to "set forth as many defenses as he may have, whatever their nature."

Upon comparison of the foregoing section with section 441 of the Code of Civil Procedure of California, we find that the only difference in the two sections is the phrase "whatever their nature." This phrase would seem to imply that the defendant may set up defenses, if he has them, of a different nature or character. Inasmuch as this section 95 is taken bodily from the California Code of. Procedure, we feel justified in following the decisions of the supreme court of California in the interpretation of the same. The supreme court of California in the case of Bell m. Brown (22 Cal., 678), in interpreting that provision, held that the defendant may plead as many defenses as he pleases; each must be consistent with itself, but need not be consistent with the others, (Wilson *vs*. Cleavland, 30 Cal., 192; Buhne *vs*. Corbett, 43 Cal., 204.)

This seems to be the general rule in the different code States of the United States. (Pomeroy's Code Pleading, see. 722 and notes; Smith *vs*. Wells, 2.0th Howard's Practice (N. Y.), 158; Weston rs. Lumley, 33 Indiana, 486; Bliss on Code Pleading (3d ed.), sec. 344; Goodwin *vs*. Wethemier, 99 N. Y., 149.)

The admissions in one defense do not affect the .denials in another. It is not a waiver of a fact denied, to set up uew or affirmative facts. (Billings *vs*. Drew, 52 Cal., 565.) The defendant has a right to set up a negative defense in one answer and an affirmative answer in another, in the same action, and the affirmative matter pleaded in a separate defense does not operate as a waiver or a withdrawal in another portion of his answer. (Buhne *vs*. Corbett, *supra*.)

Neither will the admissions made in the affirmative defense relieve the plaintiff from the necessity of proving matters denied by the defendant. (Miles *vs*. Woodward, 115 Cal., 308.)

The right of the defendant to set up numerous defenses in his answer in separate and distinct paragraphs is a very important one. The Code of Procedure in Civil Actions gives him this absolute right and the principle is not a new one. It was allowed at common law. The defendant may fail to prove one defense by reason of the loss of papers, absence, death, or want of recollection of his witnesses, and jet he ought not thereby to be precluded from proving another defense equally sufficient to defeat the action of the plaintiff. In many cases it would be a denial of justice if the defendant should be shut out from setting up several defenses.

The plaintiff assigns as error the fact that the lower court failed to make a finding of facts in his decision. Section, 133 of the Code of Procedure in Civil Actions requires the trial court to make a finding of facts in writing. The lower court did make the finding of facts above stated, which was sufficient to support his conclusions. The evidence was not made a part of the record; we are consequently unable to say whether this finding of facts was manifestly contrary to the evidence or not; we must therefore admit it as true and supported by the proof presented to the lower court.

After an examination of the facts contained in the record we are of the opinion that the plaintiff can not recover against the defendant. The judgment of the lower court is therefore hereby affirmed with the costs of this instance. After the expiration of twenty days let judgment be entered in accordance herewith and ten daj’s thereafter let the cause be remanded to the lower court for proper procedure. So ordered.

Arellano, C, J., Torres, Mapa, Carson, Willard, and *Tracey, JJ.,* concur.

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