

5 Phil. 545

[G.R. No. 2253. January 19, 1906]

MARIANO GARCIA MARTINEZ, PLAINTIFF AND APPELLANT, VS. CORDOBA & CONDE, DEFENDANTS AND APPELLEES.

D E C I S I O N

WILLARD, J.:

In 1902 and 1903 the partners in the defendant firm, Cordoba & Conde, were Luciano Cordoba and Angel Conde. Prior to the month of September, 1902, the plaintiff had been employed by the defendant firm in the store which it then had on the Escolta, in Manila. In that month Cordoba returned from a visit to Spain. At his return a disagreement arose between the partners in connection with their business. At an interview between the parties Conde stated to Cordoba that he wished to discharge the plaintiff. Cordoba stated that he did not wish to have him discharged. Conde then told the plaintiff not to return to the store again as an employee of the firm. Cordoba told him to return the next day. On the next morning he presented himself at the store, and Conde refused him admission, while Cordoba told him to enter. He thereupon seated himself in a chair near the door, stayed there that day, and returned and occupied the same position every day for thirteen months thereafter. During this time he rendered no service whatever to the firm. He has now brought this action against the firm to recover the value of his services during that time.

Judgment was entered against Cordoba by the court below for P1,350. Judgment was also entered against the plaintiff and in favor of Conde. From this judgment Cordoba has not appealed, but from the judgment in favor of Conde plaintiff has appealed.

The articles of partnership contained the following clause:

“Primera: La sociedad que en este acto se constituye sera mercantil colectiva, girara bajo la razon de ‘Cordoba y Conde’ y en ella la gerencia y el uso de la

firma social correra a cargo de ambos socios Don Luciano Cordoba y Pascual y Don Angel Conde y Moreno, cada uno de los cuales indistintamente tanto en juicio como fuera de el y cualquier punto en que se encuentren, tendran la plena representacion de la sociedad.”

The contract of employment existing between plaintiff and the firm prior to September, 1902, was for no definite time. By the terms of article 302 of the Code of Commerce the firm had the right to discharge the plaintiff at any time. By the terms of the contract of partnership which made each one of the partners a manager, Conde had the right to discharge the plaintiff at any time. He did discharge him at the interview above referred to. This discharge was in no sense the making of a new contract, as is claimed by the appellant in his brief. If it be claimed that by the terms of the articles of partnership Cordoba had the right to and did employ the plaintiff again immediately upon his discharge by Conde, it is also true that Conde at once discharged him, and as often as Cordoba employed him, Conde dismissed him. He was therefore never in the employ of the firm, and the evidence shows that he rendered no service to the firm.

The defendant in this case is the partnership of Cordoba & Conde, a juridical person. Conde appeared and presented an answer as one of the partners. The prayer of this answer is as follows:

“Por esta razon suplica al Juzgado se sirva dictar sentencia absolviéndole de la demanda por la parte que a el le corresponde como socio de la sociedad demandada condenando en costas al demandante.”

The appellant claims in this court that the judge below committed an error in considering the answer of Conde as the answer of the partnership. This contention can not be sustained.

The judgment is affirmed, with the costs of this instance against the 5 Phil. 545 plaintiff, and after the expiration of twenty days judgment should be entered in accordance herewith and the case remanded to the court below for execution. So ordered.

Arellano, C. J., Mapa, Johnson, and Carson, JJ., concur.

