

5 Phil. 11

[G.R. No. 1875. September 09, 1905]

**RUDOLPH WAHL, PLAINTIFF AND APPELLEE, VS. DONALDSON SIM & CO.,
DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

This action was brought by the plaintiff on the 4th of March, 1902, upon a contract made between the parties in December, 1900, and the question is, Who was the real defendant in the case? Was it the partnership of Donaldson Sim & Co., or was it James C. Donaldson Sim, an individual? In the complaint in the case the defendant is designated as Donaldson Sim & Co., and it is alleged, in the complaint that the defendant is a juridical person and a collective partnership duly organized in accordance with the provisions of the Code of Commerce, and duly inscribed in the mercantile registry of the city of Manila.

When the summons was served upon the defendant it failed to answer, and a judgment by default was entered against it. Upon the motion of the defendant this judgment was vacated, and the defendant allowed to answer. Instead of answering, the defendant presented a demurrer to the complaint, which was sustained by the court below, The plaintiff appealed from the resulting judgment to this court which reversed it. (Wahl, Jr., et. al., partners, etc., vs.. Donaldson Sim & Co.,^[1] 1 Off. Gaz., 441.) The case was remanded to the court below, and was received in the clerk's office thereof on the 1st of June, 1903. The defendant again failed to answer, and on the 30th of July the plaintiff moved for judgment by default. The defendant appeared and asked permission to answer. A hearing was had upon both of these motions on

the 6th day of August, and the application of defendant for leave to answer was denied, and the application of the plaintiff for judgment by default was granted and the 8th day of August was assigned for the taking of evidence. On that day the defendant again appeared and presented another motion, asking that the default be set aside, and it be allowed to answer, and present a counterclaim. It accompanied this motion with a copy of its proposed answer and a large amount of documentary evidence in support of its proposed counterclaim. The hearing of the motion was continued from time to time until the 25th day of August, 1903, when the court made an order denying the application of the defendant for leave to answer and present a counterclaim, and assigned the 5th day of September for the taking of evidence in support of the plaintiffs' claim. On that day Mr. J. W. Haussermann appeared as attorney for Rita Donaldson Sim, as the administratrix of James C. Donaldson Sim, and stated that the latter had died on the 28th day of August, 1903. Further hearing of the case was postponed until the 2d day of October, 1903, when the administratrix again appeared and presented a motion asking that the case be dismissed on the ground that the only defendant in it was James C. Donaldson Sim as an individual, and that his death had terminated the proceeding, and it was the duty of the plaintiff to present his claim before the commissioners appointed in his estate in accordance with the provisions of section 686 of the Code of Civil Procedure.

It was stated in the motion that James C. Donaldson Sim and Henry Edwards Higginbotham, on the 1st of October, 1897, entered into a collective partnership for the period of one year, which was afterwards extended to the 1st day of October, 1903; that in October, 1900, Higginbotham retired from the company, and transferred all of his interests therein to James C. Donaldson Sim, and that after that day Donaldson Sim was the sole owner of all of the property of the company, and since that time he had been carrying on business under the fictitious name of Donaldson Sim & Co. This motion or statement was not sworn to by anyone, and no proof whatever was offered to show that the statements made therein were true, and they can not, therefore, be taken as facts in the case. This motion was denied by the court on the

9th of October, 1903, and the 15th day of October was assigned for the receiving of evidence and proof of damages, and on the last-named day the court below entered judgment against the defend- and for the sum of 19,554.13 pesos. From this judgment Rita Donaldson Sim has appealed.

The facts stated in the motion of Rita Donaldson Sim not having been proved, there is no evidence in the case to show that the defendant was not such a partnership as is stated in the complaint. On the contrary, the whole record shows that Donaldson Sim himself, and his lawyers, always considered that the defendant was a partnership.

It will have been noticed that the contract between the plaintiff and the defendant was made in December, 1900, after the alleged dissolution of the partnership. Notwithstanding this, the attorneys for the defendant who made the first motion in August, 1903, for leave to answer, refer to the defendant as the defendant partnership. Donaldson Sim, in his affidavit which accompanied one of the motions, stated that he was the principal member of the partnership of Donaldson Sim & Co. The proposed answer which Donaldson Sim caused to be presented in connection with the second application made in August for leave to answer, contains the following clause:

“Que la demandada es actualmente, y lo ha sido en todas las fechas aqui mas adelante mencionadas una sociedad colectiva, debidamente organizada y en existencia bajo y en virtud de las leyes de las Islas Filipinas, y debidamente registrada para dedicarse el comercio en el Registro Mercantil de la ciudad de Manila, Islas Filipinas.”

We hold that the record shows that the defendant in this case was a collective partnership, organized under the provisions of the Code of Commerce, and was therefore a juridical person, under article 116 of the Code of Commerce and under article 35 of the Civil Code. According to the latter article it had a personality distinct from that of each one of the partners. To such persons section 110 of the Code of Civil Procedure has no application; the death of Donaldson Sim dissolved the partnership but the liquidation of its affairs is by law (art. 229 of the Code of Commerce) intrusted, not to the executors of the deceased

partner, but to the surviving partners or to liquidators appointed by them. This may be inferred also from the provisions of sections 664 and 665 of the Code of Civil Procedure.

Appellant claims also that the court below erred in refusing to set aside the default and allowing the answer to be made. There is nothing in the case to show that the court committed such error. The defendant had already been once in default, and had been allowed to answer, notwithstanding its default.

It is claimed by the appellee that Rita Donaldson Sim, as administratrix, had no standing in the court below to take an appeal. We have not considered this question, but without deciding it have assumed that she had such right.

For the reasons above stated the judgment of the court below is affirmed, with the costs of this instance against the appellant. After the expiration of twenty days judgment will be entered in conformity herewith, and the cause will be returned to the lower court for execution.

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

^[1] 2 Phil. Rep., 301.