4 Phil. 2

[G.R. No. 1184. April 22, 1904]

THE COMPAÑIA AGRICOLA DE ULTRAMAR, PLAINTIFF AND APPELLANT, VS. ANACLETO REYES ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

JOHNSON, J.:

On the 7th day of January, 1902, the representative of the *Compañia Agricola de Ultramar,* a partnership legally organized in Madrid, Spain, domiciled in the city of Manila, presented a complaint in the justice's court of the town of Quingua, Province of Bulacan, against Anacleto Reyes and others, setting forth that the defendants were tenants of the estate called Tabang, San Marcos, and Dampol, the property of the plaintiff company, located in the said town of Quingua, each one of whom were occupying the quantity of land expressed therein without having paid the rent for the years 1899,1900, and 1901, notwithstanding the fact that said payment had been demanded several times at the end of each year. Therefore the plaintiff company prayed that judgment be rendered against said defendants, ordering them to vacate the lands occupied by them and to restore the possession thereof to the plaintiff, with costs against the defendants.

Upon notice, the defendants appeared on the 30th of January of the same year, with the exception of the Chinaman Mariano Yñiguez. After hearing both parties, the justice of the peace, on the 17th of February following, on the supposition that said plaintiff company was a commercial partnership, and subject to the provisions of the Code of Commerce, and had not registered in the commercial registry, denied the petition of the plaintiff, with costs.

An appeal having been interposed by the plaintiff and the parties cited, a hearing was had in the Court of First Instance of Bulacan on the 21st of March,

1902, and the judge, having heard the arguments and petitions of both parties, on the 22d of the same month, rendered judgment confirming the decision of the justice's court of Quingua, and declared the *Compañia Agricola de Ultramar,* a commercial partnership, and therefore that its registry in the commercial register was necessary in order to appear in an action, and adjudged the payment of the costs to the plaintiff.

On the 24th of March the plaintiff company, by petition, prayed that the decision before mentioned should be annulled, and that a new trial be granted in view of the reasons set forth. The judge, on the 27th of September, in the presence of both parties, and for the reasons ex pressed by him, declared that the *Compañia Agricola de Ultramar,* was a civil partnership, to which are applicable the provisions of the Code of Commerce in conformity with article 1670 of the Civil Code, and that said partnership should be registered in the commercial registry before it could appear in an action against the defendants, modifying and revoking that part of the judgment of the 22d of March which did not conform thereto, and confirming that part which agrees with the provisions cited. The plaintiff excepted to this judgment.

In the bill of exceptions appears, among other documents, the articles of incorporation executed on the 6th of February, 1893, before a notary in the court of Madrid, ;Spain, by various residents of the same place, organizing a partnership, entitled *Compañia Agricola de Ultramar,* which, among other things, expressed the organization of the partnership and its statutes, as well as that the parties therein organized a special civil partnership to exploit the agricultural industry in the Philippine Islands and other Spanish colonies, in accordance with the present Civil Code, and under the following statutes:

> "Article 1. The partnership shall be called the *Compañia Agricola de Ultramar,* and shall have its residence in Manila.
>
> "Art. 2. The duration of the partnership shall be for ninety years from the date of its incorporation. Said period may be extended by a resolution of the board of shareholders.
>
> "Art. 3. In order to exploit and develop the agricultural industry in the Philippine Islands and other Spanish colonies, the partnership may acquire any

land, canals, and irrigating marshes or runways, overflows, waterfalls, quarries, and other real estate, and such cattle as may be useful for agricultural exploitation; to exploit or alienate said property, and to rent, by way of a charge, or underlease, as may be convenient for the interests of the partnership, the realty; to establish agricultural colonies and to invest capital at interest with a mortgage upon rural or urban property, and to acquire credits with such guaranties; to grant loans upon crops, cultivated lands, cattle, agricultural machines, and in turn to borrow money on mortgage guaranty;
to lease rural or urban property.

"Art. 4. The capital is four million and fifty thousand pesetas, divided into eighty-one shares of fifty thousand pesetas each. Said capital can be increased or decreased, or subdivided in a proportion of five thousand or more pesetas for each one, by resolution of the board of directors.

"Art. 5. Only the capital invested will answer for the obligations of the company. Neither the organizers nor grantors of shares will in any case and under any consideration be responsible for the debts of the partnership."

"Art. 38. According to the provisions of article three the partnership can loan money upon crops, cultivated land, cattle, and agricultural machinery and implements in general."

In the bill of exceptions presented to this court by the Compania Agricola de Ultramar, plaintiff and appellant, against the decision of the lower court, it appears that the principal object is to obtain a judicial declaration that the plaintiff herein is a civil partnership, and is not therefore under the obligation of registering in the commercial registry in order to have juridical personality with the power to appear in an action against the defendants.

The organizers of the *Compañia Agricola de Ultramar,* stated in the articles of incorporation that by the same they organized a special civil corporation for the purposes and ends expressed therein. Granting, for the sake of argument, without, accepting the doctrine that, the character of an association, whether it be civil or mercantile, is determined solely by the business in which it is engaged and not by the form of its organization, in this

present cause there is no evidence showing the character of the business of the plaintiff save the articles of its association. We must therefore decide whether this plaintiff was a mercantile or a civil corporation by the purposes declared in its articles of association, and the law governing in such cases.

Mercantile associations, purely, are governed by the mercantile code. Civil associations are governed by the Civil Code.

Article 1 of the Code of Commerce provides that :

> "Article 1. The following are merchants for the purposes of this code:
>
> "(1) Those who, having legal capacity to trade, devote themselves thereto habitually.
>
> "(2) Commercial or industrial associations which are formed in accordance with this code."

The Commercial Code for the Philippines does not attempt anywhere, as some other codes do, to define what are commercial transactions. In the absence of proof to the contrary, therefore, we must be governed as to the purposes of the association by the form adopted by its organization and the purposes declared in its articles of association.

Primarily we must determine whether an association is mercantile or civil simply by the form of its organization.

The Commercial Code provides how mercantile associations shall be organized.

Article 116 defines a commercial association and provides that—

> "Articles of association by which two or more persons obligate themselves to place in a common fund any property, industry, or any of these things, in order to obtain profit, shall be commercial, no matter what its nature may be, provided it has been established in accordance with the provisions of this

code.

> "After a commercial association has been established, it shall have the right to operate as a juristic person in all its acts and contracts."

Article 122 provides that commercial associations may become a general or limited copartnership or a corporation, according to the particular form of the organization which it may adopt.

Article 121 provides that all commercial associations shall be governed by the clauses and conditions of their articles of association, and that in cases or conditions not so provided for shall be controlled by the general provisions of the Commercial Code.

Article 17 provides that all commercial associations, established in accordance with the provisions of the code, shall be inscribed in the commercial registry.

Article 16 makes provisions for the establishment of commercial registries in all the capitals of the provinces.

Article 21 provides what facts, concerning commercial associations, shall be recorded in such commercial registries.

Article 119 provides that—

> "Every commercial association, before beginning business, shall be obliged to record its establishment, agreements, and conditions in a public instrument, which shall be presented for record in the commercial registry, in accordance with the provisions of article seventeen.
>
> "Additional instruments which modify or alter in any manner whatsoever the original contracts of the association are subject to the same formalities, in accordance with the provisions of article twenty-five.
>
> "Partners can not make private agreements, but all must appear in the articles of co- partnership."

The supreme court of Spain in an opinion rendered on the 14th day of May, 1884, in the cause of Santiago vs. Bautista et al., held under a similar provision of the Commercial Code in force in Spain, that commercial associations have no right to bring actions in the name of the association until after they have complied with the provisions of the code found in articles 17 and 119.

Articles 125-144 contain the general provisions governing general associations.

Articles 145-150 contain the general provisions governing limited associations.

Articles 151-174 contain the general provisions governing corporations.

Articles 175-243 contain the general provisions governing special classes of corporations or associations.

Article 35 of the Civil Code provides what are juridical persons. Its provisions are as follows :

> "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 legally established.
>
> "(2) Private associations, be they civil, commercial, or industrial, to which the law grants proper personality, independent of that of each member thereof."

Article 36 provides that—

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

nature of the latter."

Article 37 provides that—

> "The civil capacity of corporations shall be governed by the laws which have created or recognized them; that of associations by their by-laws * * *."

Article 88 provides that the general powers and rights of juridical persons are as follows:

> "Juridical persons may acquire and possess property of all kinds, as well as contract obligations and institute civil or criminal actions in accordance with the laws and rules of their organization."

Article 39 provides for the winding up of the business of corporations and associations organized under the Civil Code and for the disposition of their property.

Article 1665 defines a partnership as follows:

> "Partnership is a contract by which two or more persons bind themselves to contribute money, property, or industry to a common fund, with the intention of dividing the profits among themselves.'

Article 1666 provides that such partnerships must have lawful objects, and be established for the common interest of all their members.

Article 1667 provides that such partnerships may be established in any form whatever, except when real property or property rights are contributed, in which case a public instrument shall be necessary.

In the present case the property was contributed and a public instrument was duly executed before Manuel de Bofarull, one of the most famous notaries of all

Europe.

Article 1670 provides that civil partnerships, on account of the; objects to which they are devoted, may adopt all the forms recognized >y the Commercial Code. In such cases its (Commercial Code) provisions shall be applicable in so far as they do not conflict with the provisions of this code.

It will be seen from this provision that whether or not partnerships shall adopt the forms provided for by the Civil or Commercial Codes is left entirely to their discretion. And furthermore, that such civil partnerships shall only be governed by the forms and provisions of the Commercial Code when they expressly adopt them, and then only in so far as they (rules of the Commercial Code) do not conflict with the provisions of the Civil Code. In this provision the legislature expressly indicates that there may exist two classes, of commercial associations, depending not upon the business in which they are engaged but upon the particular form adopted in their organization. The definition of the partnership found in article 1665 clearly includes associations organized for the purpose, of gain growing out of commercial transactions.

Articles 1671-1678 provide for general and particular partnerships, and give the rules governing the division of the profits.

The Commercial Code makes special provisions for the liability of the members of the different associations organized under it. (See the articles contained in sections 2, 3, 4, 5, and 6 of Book II, Title I.)

The Civil Code here again recognizes the existence of civil partnerships, in contradistinction to commercial partnerships, in expressly providing for the liability of their members. (See arts. 1667-1669 of Chap. II of Title VIII.) Chapter III of the same title contains special provisions for the dissolution of civil associations.

If it is held that an association which adopts the. form for its organization provided for by the Civil Code is controlled by the rules requiring registration under the Commercial Code, then by which code shall the courts be governed in applying the rules of the liability of their members and for the dissolution of the same? We are inclined to the belief that the respective codes, Civil and Commercial, have adopted a complete system for the organization, control,

continuance, liabilities, dissolutions, and juristic personalities of associations organized under each.

It will be seen from these provisions of the codes that the Civil Code has expressly provided for the existence of commercial associations, giving them juristic personality and certain rights and privileges. In these provisions no reference is made to the provisions of the Commercial Code. It is contended that notwithstanding this fact, such associations are nevertheless governed by the provisions of the latter code. The Commercial Code was enacted and went info effect on the 1st day of December, 1888. The Civil Code was enacted and took effect on the 31st day of July, 1889. Had it been the-intention of the legislature to provide that all commercial associations, of whatever class, should be governed by the provisions of the Commercial Code, it certainly would not have provided, at a later date, other rules, rights, privileges, and regulations. It is our opinion that associations organized under the different codes are governed by the provisions of the respective codes.

From the articles of association it will be seen that the plaintiff company was organized expressly under the provisions of the Civil Code, on the 6th day of February, 1893.

From the petition of the plaintiff and the bill of exceptions it appears that the defendants failed and refused to pay the rent for the years 1899, 1900, and 1901. It does not appear whether or not the defendants had failed or refused to pay the rent for any of the years previous to 1899. Assuming, without finding it to be a fact, that the defendants had paid the rent for previous years, then they thereby recognized the plain tiff company as an entity and are thereby now estopped from setting up the contrary.

While conditions precedent must always be performed, in order that a corporation may have a legal existence, it does not by any means follow that objection to the existence of a corporation on this ground alone can be raised by any and every person, and in every proceeding. This objection can always, with few exceptions, be raised by the State. (Attorney-General vs. Hanchett, 42 Mich., 436; People vs. Water Co., 97 Cal., 276.)

Persons who assume to form a corporation or business association, and

exercise corporate functions, and enter into business relations with third persons, are estopped from denying that they constitute a corporation. So also are the third persons who deal with such a de facto association or corporation, recognizing it as such and thereby incurring liabilities, estopped, when an action is brought on such obligations, from denying the juristic personality of such corporations or associations. (Scheufler vs. Grand Lodge, 45 Minn., 256; Farmers' Loan and Trust Co. vs. Ann Arbor Ry. Co., 67 Fed. Sep., 49.)

Where there is a corporation de facto, with no want of legislative power to its due and legal existence, when it is proceeding in the performance of a corporate function, andthird persons are dealing with it on the supposition that it is what it professes to be, and the questions are only whether the law has been strictly followed in its organization, it is plainly a dictate alike of justice and public policy, that in controversies between the de facto corporation and those who have entered into contractual relations with it, as corporations or otherwise, such questions should not be suffered to be raised. (Swarthout vs. Michigan, etc., Ey. Co., 224 Mich., 390.)

Where a shareholder of an association is called upon to respond to a liability as such, and where a party has contracted with a corporation and is sued upon the contract, neither is permitted to deny the existence or the legal validity of such corporation. To hold otherwise would be contrary to the plainest principles of reason and good faith. Parties must take the consequences of the position they assume. (Casey *vs.*Galli, 94 U. S., 673;Bliss on Code Pleading, secs. 252-254.)

From the foregoing considerations, the provisions of the articles of association of the plaintiff company, and the quoted provisions of the Civil and Commercial Codes, we are justified in reaching the following conclusions:

First. That the plaintiff company had statutory authority to organize under the Civil Code for the purposes indicated in its articles of association.

Second. That it did effect its organization under the Civil Code in force in these Islands.

Third. The defendants having recognized the existence of the plaintiff as an entity capable of dealing with private persons, they are thereby estopped from

denying that fact.

Fourth. That the plaintiff company, having complied with the forms required for the organization of associations of its class under the Civil Code, is a juristic person recognized by law, and has capacity to maintain the present action.

The judgment of the lower court is therefore hereby reversed, and the cause is hereby ordered to be remanded to the Court of First Instance of the Province of Bulacan, with direction that the defendants be required to appear and answer within the time fixed by law, and upon failure so to do that a judgment be rendered against them by default in accordance with the prayer of the petition filed in said cause.

Cooper and *McDonough, JJ.,* concur.

Mapa, J., did not sit in this case.

CONCURRING

ARELLANO, C. J.

This case presents the much-debated question of the legal personality of a civil partnership in the mercantile form.

The question turns upon the provisions of article 1670 of the Civil Code, which is as follows: “Civil partnerships, on account of the objects to which they are devoted, may adopt all the forms recognized by the Code of Commerce. In such case its provisions shall be applicable in so far as they do not conflict with those of this code.”

The doubt which gives rise to the discussion results on the one hand, from the fact that the partnership, because it is a civil partnership, is by its very nature invested with legal personality from the moment of the execution of the contract, in the absence of a contrary stipulation, and on the other hand from the fact that because it is established in a form recognized by the Code of

Commerce it can not have legal personality until after the execution of a public instrument containing the articles of association, and the inscription of this instrument in the mercantile registry.

The provisions of law which serve as a basis for both aspects of the question are the following:

With respect to the juridical personality of a civil partnership, articles 1679, 1667, 1668, and 1669 of the Civil Code provide:

> "Art. 1679. A partnership begins from the moment of the making of the agreement, if not otherwise stipulated."
>
> "Art. 1667. Civil partnerships may be established in any form whatever, unless when real property or an interest therein should be contributed to the same, in which case a public instrument shall be necessary.
>
> "Art. 1068. Articles of copartnership are void, when real property is contributed to the same, if an inventory of said property is not made, signed by the parties, and which must be attached to the instrument.
>
> "Art. 1669. Partnerships, the articles of which are kept secret among the partners, and in which each one of the latter may contract in his own name with third persons, shall have no juristic personalities. This kind of partnership shall be governed by the provisions relating to property held in common."

As to the juristic personality of a mercantile partnership articles 117,119, 17, and 24 of the Code of Commerce control:

> "Art. 117. Articles of association, executed with the essential requisites of law, shall be valid and binding between the parties thereto, no matter what form, or what conditions and combinations, legal and honest, are embraced therein, provided they are not expressly prohibited by this code."
>
> "Art. 119. Every commercial association before beginning business shall record its establishment, agreements, and conditions in a public instrument,

> which shall be
> presented for record in the commercial registry, in Accordance
> with the provisions of article 17 * * *. Partners can not make private
> agreements, but all must appear in the articles of copartnership."
>
> "Art. 17. The record in the commercial registry shall be optional for private
> merchants and compulsory for associations established in accordance with this
> code or with special laws, and for vessels."
>
> "Art. 24. 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."

From the provisions of law above quoted it follows, first, that the contract of partnership does not require any particular form to give it validity and make it enforceable as between the contracting parties themselves, it being sufficient that the essential requisites for the perfection of the contract concur, with one single exception as to civil partnership; second, that this exception with respect to civil partnerships consists in the fact that the partnership contract shall not be valid, when the real property is contributed to it, if the contract is not recorded in a public instrument, with an inventory of the real property so contributed attached thereto; third, with respect to third persons, (*a*) for the enforcibility of a contract of civil partnership the formality of the public instrument is not required, with the exception of the case above referred to, it being sufficient that the partners do not keep their agreements secret, and that each partner does not undertake to reserve the right to make contracts in his own name with third persons; fourth, that with respect to third persons a partnership which keeps its agreements a secret, or in which each one of the partners contracts in his own name, the partnership will not be a legal entity independent from the personality of each one of the individuals so associated, but would be merely a tenancy in common, and persons so associated, as to third persons, would be mere tenants in common; fifth, that with respect to third persons (*b*) for the enforcibility of the mercantile contract of partnership it is necessary that the contract be evidenced by public instrument, and that this instrument be recorded in the

mercantile registry.

If the members of the *Companies Agricola de Ultramar,* formed in Madrid February 6, 1893, when constituting this partnership expressly with the civil character in accordance with their agreements had contributed capital in cash only "for the purpose of exploiting and developingthe agricultural industry in the Philippine Islands and other Spanish colonies/' and to apply such funds to "(f) leasing such city or country property as may be convenient;" "(*c*) to establish agricultural colonies, to make large plantations for the account of the partnerships or of other persons, to break lands, to make plans for water supplies, to construct and operate such water supplies, and to engage in other similar enterprises;" u(d) to invest money at interest upon the security of mortgages or antichresis upon city or country property, and to purchase credits secured by mortgage or antichresis * * *," and had not divided its capital into shares, or prepared by-laws, or adopted a partnership name, there is no doubt that they might have dispensed with the formality of a public instrument and have recorded these agreements in a private writing. Had they done so nobody could have denied the partnership legal personality as to third persons unless it should be shown that some one of the members contracted for it in his own name. The manager or managers appointed by the partners would beyond doubt have been able to maintain suits in the name of the partnership as a legal entity—maintain, for instance, the action of forcible entry and unlawful detainer in which this question arose.

The necessity for a public instrument arises from the provisions of paragraphs (*a*) and (*b*) of the articles of partnership entered into by the partners with respect to the purpose of the partnership. But this necessary form did not change the status of the association as a civil partnership, because the Civil Code itself requires this formality for all partnerships to which real property or interests therein are contributed, even though the partnership may not partake of the form of a mercantile partnership.

The only ground for doubt remaining undisposed of is found in the following peculiarities of the contract in question: (1) The *anonymous* form of the partnership with its firm name, the division of the capital into shares, and the establishment of by-laws for its government; (2) the operations (*e*)

in which the partnership *might* engage, to wit, "to make loans upon crops, fields, cattle, agricultural machinery and implements * * *," an operation apparently controlled by article 212 of the Code of Commerce as one properly pertaining to agricultural banks. From these premises the inference is apparently to be drawn that as the anonymous form of partnership is one of the forms regulated by the Code of Commerce, and as the object of agricultural banks and associations is to "make loans in money or in kind for a period not exceeding three years upon products, crops, cattle, or any other pledge or special security" (art. 212, par. 1), and as on this account the provisions of the Code of Commerce are applicable to such a partnership (art. 1670, Civil Code), the *Companies Agricola de Ultramar,* would be a civil partnership, but by reason of its form and mercantile purpose would be subject to the provisions of articles 119 and 17 of the Code of Commerce, and consequently until the articles of association are recorded in the mercantile register it would appear that the partnership could not maintain a suit as a legal entity against third persons arising from obligations contracted by them in favor of the partnership.

This conclusion, however, is not a necessary one. The terms of the articles of association are as follows:

> "Art. 3. To exploit and develop the agricultural industry in the Philippine Islands and other Spanish colonies, the partnership (its purpose) may: * * * (*e*) (one of its purposes) make loans upon crops, fields, etc. * * *."
> That which is optional is not obligatory. Not being obligatory, it is not essential. That which is not essential is not one of the constituent elements of the contract. Consequently the *Companies Agricola de Ultramar,* was not constituted as an agricultural bank or agricultural association according to the classification of the Code of Commerce, in article 123, or the definition of this class of banks to be inferred from the provisions of section 12, title 1 of the Code of Commerce under the heading: "Of special rules applicable to banks and agricultural associations."

Taking it for granted that this purpose, among others of a purely civil character, as well as the object of the partnership, were necessary purposes, or

that the *Compania Agricola de Ultramar,* or any other partnership, similarly situated, might some day desire to carry it into effect, it would not for this reason necessarily have to be considered as a mercantile partnership or bound to comply with the formalities necessary to the constitution of a purely mercantile partnership. Article 1 of the Code of Commerce gives us a division of merchants as follows: (1) Those who, having legal capacity to trade, devote themselves thereto customarily; (2) commercial or industrial associations which are formed in accordance with this code.

The *Compania Agricola de Ultramar* was not organized in accordance with this code. It was expressly stated by the gentlemen who signed the contract that "* * * they declare (1) constitution of the partnership; that by this act they constitute a particular civil anonymous partnership for the purpose of exploiting and developing the agricultural industry in the Philippine Islands and other Spanish colonies *in accordance with the Civil Code in force* * * *." (Bill of exceptions, p. 18.)

Furthermore, in accordance with article 2 of the (code of Commerce "commercial transactions, whether those who perform them are merchants or not, and whether such acts are or are not specified in this code, shall be controlled by the provisions contained therein." If the *Compania Agricola de Ultramar* or any other company organized in a similar way should engage in commercial transactions such as, for instance, purchase and sale, commission agencies, mercantile bailments, or mercantile loans, then in accordance with this article of the Code of Commerce which would be applicable to it *ex propio vigore*, and furthermore by the provisions of article 1670 of the Civil Code, without ceasing to be a civil partnership and endowed with legal personality from the time of its commencement, it would be controlled by the provisions contained in that code with respect to the commercial transactions performed by it. Thus, for instance, if it made loans upon crops, fields, cattle, agricultural machinery and implements (object (c) of the articles of association, bill of exceptions, p. 18) then it would be subject to the provisions of article 217, according to which—even considering it for the sake of the argument as a mere agricultural credit association instead of what it is, a civil company for the exploitation and development of the agricultural industry—it would be obliged to apply 50 per cent of its capital to loans which, as well as those referred to, are specified in paragraph 1 of article 212 of the

Code of Commerce.

If neither by reason of one among various purposes, or by reason of any general purpose, is it necessary that one who, like a civil partnership organized in accordance with the Civil Code, is not a merchant, should become a merchant and thereby be subject to all the provisions of the Code of Commerce concerning mercantile companies, and withdrawn absolutely from the scope of the provisions of the Civil Code to which it was the intent of the founders to conform in the exercise of the option conferred upon them by both codes, then neither is it a necessary consequence that a civil partnership, intentionally and deliberately organized in accordance with the Civil Code, should be transformed into a mercantile partnership merely because it has been molded in one of the forms recognized by the Code of Commerce—in this case the anonymous form.

The applicability of the provisions of the Code of Commerce to civil partnerships organized in the form of mercantile associations, such as anonymous partnerships or corporations, does not include all the provisions of that code, nor does it annul by absorption those provisions of the Civil Code which refer to the peculiar organization of the association. The application of these provisions is limited logically to a mere adaptation to those concerning the form adopted by the civil partnership with respect to its control. This is the provision of article 1670 of the Civil Code *ad referendum.* This article is to be understood as though its provisions had been expressed in the following language:

> "Art. 1670. The civil partnership, without ceasing to be civil by reason of its object, may be created in all the forms recognized in the Code of Commerce. It may be a collective or general partnership, a partnership en comandita, or an anonymous partnership. In this case, if it should adopt the form of a general partnership, then the provisions of articles one hundred and twenty-five to one hundred and forty-four, inclusive, would be applicable to it; if it should adopt the form of a partnership *en comandita,* then articles one hundred and forty-five to one hundred and fifty would be applicable; and if the form adopted is that of the anonymous partnership, then the provisions of articles one hundred and fifty-seven to one hundred and seventy-four of the Code of

> Commerce
> would apply in so far as they are not in conflict with the articles of the present code."

If the object of the Civil Code was to authorize a civil partnership to adopt the *forms* of a mercantile partnership but still be controlled by the provisions of the Civil Code— and that such was the purpose is shown by the exception established to the applicability of the articles of the Code of Commerce and to the preponderance given to the provisions of the Civil Code itself—then it is evident that the provisions of the Code of Commerce referred to as being applicable to such a civil partnership in the mercantile form can be none other than those concerning the mercantile form adopted. Any other view would be equivalent to considering the part greater than the whole, and no effect could be given to the exception that the provisions of the Code of Commerce are to be applicable "in so far as they are not in conflict with the provisions of the present code." If this were not the purpose intended, then it would have been sufficient to have said, "in such case they shall be in every respect subject to the Code of Commerce." Then indeed it might have been said that the civil partnership in the mercantile form ceases to be civil and is transformed into a mercantile association. If this conclusion can not be reached, and the partnership continues to be civil, although invested with the mercantile form, then it has legal personality as a corporate being provided the articles are not kept secret among the partners, and that each one of the latter be not authorized to contract in his own name with third persons. (Art. 1669.) Any other application of these provisions would be contrary to the requirements of the Civil Code with respect to the legal personality of a civil partnership.

Even if we examine the historical precedents of article 1670 of the Civil Code, no other conclusion can be reached. Its historical precedent is article 106 of the Portuguese Code of Commerce, which became operative in that country January 1, 1889. The Spanish Civil Code did not become operative in Spain until May of that year, having been published the preceding January, before which date the provisions cited of the Portuguese Code were available, it having been published in June, 1888. According to this article 106, "civil partnerships may be constituted under any of the forms established in the preceding article, they

being, nevertheless, subject to the provisions of the present code, except with respect to matters of bankruptcy and questions of jurisdiction." As the terms of this article are more explicit, it appears more clearly still that a civil partnership in the mercantile form is not converted into a mercantile partnership, and is not identified with a partnership mercantile by its nature merely because it is subject to the provisions of the Code of Commerce. It appears further that while mercantile partnerships are subject to the provisions of the Code of Commerce concerning bankruptcy and the jurisdiction of the commercial court which exists in Portugal, civil partnerships in the mercantile form are not so subject. The Spanish Civil Code is broader. While in the Portuguese Code of Commerce the proviso contained in article 106 is a pure exception, the rule being the applicability to civil partnerships in the mercantile form of the provisions of the Code of Commerce, in the Civil Code of Spain the proviso is not a mere exception, but is the rule, the exception being the applicability of the provisions of the Code of Commerce in subordination to those of the Civil Code, which preponderate. Consequently the direct, primordial, and principal law applicable is the Civil Code, without prejudice to the application of the provisions of the Code of Commerce in so far as they are not in conflict with those of the Civil Code, which are applicable to such partnerships merely subsidiarily. This being so, if the civil partnership from the time the contract is perfected is invested with juridical personality as a corporate being, unless the partners keep their agreements a secret or each one of them contracts in his own name (art. 1669), the *Companies Agricola de Ultramar,* the members of which do not keep their agreements secret, and as to whom it has not been shown that any of them has contracted in his own name, is invested with juridical personality, notwithstanding the fact that under the provisions of article 119 of the Code of Commerce, ,a mercantile partnership is devoid of juridical personality unless its articles of association are recorded in the mercantile registry. This is so because this provision of the Code of Commerce, which refers not to a *matter of form*, but to the existence or essence of a mercantile partnership, is not applicable to a civil partnership in the mercantile form, and second, because even admitting for the sake of argument that it were, then as being clearly in conflict with the provisions of article 1669 it must give way to the rules of the Civil Code .in accordance with the provisions of article l670 thereof. "The provisions of the Code of Commerce will be applicable in so far as they are not in conflict with those of the present

code.” These are the express terms of article 1670 of the Civil Code.

The will of the contracting parties, which is the fundamental law of the contract, can not be disregarded without infringing the principle of the law of contracts established by article 1091 of the Civil Code. It being the express will of the parties to constitute a civil partnership in accordance with the Civil Code, the partnership organized is and can be nothing else than a civil partnership, and this was the conclusion of the court below in its second decision. It is true that contracts are not what the parties may see fit to call them, but what they really are as determined by the principles of law. It is true that the parties are not at liberty to call a contract of loan a bailment, for these two contracts are essentially different, and the essential attributes of things can not be changed. But a civil partnership does not differ essentially from a mercantile partnership. They are not two distinct contracts. Both of them have for their purpose the contribution of property or industry for the purpose of obtaining a profit. As to whether the partnership is to be mercantile or civil, the law makes no specific difference, leaving this to the will of the parties. If the parties organize the partnership in accordance with the provisions of the Code of Commerce, then it would be mercantile. If they organize it in accordance with the provisions of the Civil Code, then it will be civil. As the founders of the company in question have made use of the right of option which the law grants them, it cannot be said that their election, authorized by the law, is rendered ineffectual by the law itself. If there were such a provision of law, no room for doubt would exist. It follows, therefore, that to say that although the parties intended that the partnership should be civil, nevertheless it is mercantile, because the law so provides, is to take the whole case for granted.

The partnership in question is industrial. Industry is one of the objects included within the definition which the Civil Code gives of a civil partnership in article 1665, and also in that of a mercantile partnership, the definition of which is found in article 116 of the Code of Commerce. Manresa says: “This definition also includes mercantile partnerships,” hut adds, “but they will not be considered as mercantile if they are not constituted in accordance with the provisions of the Code of Commerce, in which case they would be civil.” (Vol. I, Manresa’s Commentaries, p. 184.)

For the reasons stated I agree with the result of the majority opinion.

DISSENTING

TORRES, J.

January 7, 1902, counsel for the *Compania Agricola de Ultramar,* an anonymous partnership legally constituted in Madrid, Spain, and domiciled in this city, filed a complaint in the court of the justice of the peace of the municipality of Quingua, Province of Bulacan, against Anacleto Reyes et al., alleging that the defendants are tenants of the haciendas called Tabang, San Marcos, and Dampol, the property of the plaintiff company, situated in the said township of Quingua; that each of the defendants is in possession of the parcels of land described in the complaint; that they have failed to pay the rents due for the years 1899, 1900, and 1901, or that of preceding years, notwithstanding demands made upon them several times at the end of each.year for the payment of the said rents. Upon this statement of facts the plaintiff company prayed for judgment against the defendants for the recovery of possession of the lands occupied by them, with the costs of suit.

Process having been issued, the defendants appeared by their respective counsel on January 30, 1902, with the exception of the Chinaman Mariano Iniguez, as to whom the case was dismissed on motion of plaintiff. After hearing of both parties the justice of the peace, on February 17 following, and upon the ground that the plaintiff company, being a mercantile partnership subject to the provisions of the Code of Commerce, had not proven that its articles were recorded in the mercantile registry, dismissed, the complaint on motion of counsel for the defendants, and imposed upon the plaintiff the costs of suit.

The plaintiff company having appealed, the case was tried in the Court of First Instance of Bulacan, March 21, 1902, and the judge, after hearing the evidence and argument by the respective counsel, on March 22,1902, rendered judgment with the costs against the plaintiif, affirming the decision of the court of the justice of the peace of Quingua, declaring the *Compania Agricola de Ultramar,* to be a mercantile partnership, and that therefore to

enable it to maintain the action it was necessary for the company to show that its articles were recorded in the mercantile registry.

The plaintiff company on March 24,1902, made a motion for a new trial upon the grounds stated in the motion papers, and the court below, after hearing the parties upon the motion, on the 22d of September, 1902, for the reasons stated in its decision, declared that the *Compania Agricola de Ultramar,* was a civil partnership, to which the provisions of the Code of Commerce were applicable in accordance with article 1670 of the Civil Code, and that the said company must record its articles in the mercantile registry before it could maintain the suit against the defendants, thus modifying and reversing its former decision of March 22 in so far as it conflicted with the latter decision, and affirming it in so far as it was in harmony therewith. To this decision the plaintiff duly excepted.

In the bill of exceptions, among other documents, appear the articles of association executed February 6, 1893, before a notary of the city of Madrid, Spain, by several citizens thereof, the founders of the company styled the *Compania Agricola de Ultramar,* which articles among other things recite the organization of the company and its by-laws, and that the contracting parties constituted a private civil partnership for the purpose of exploiting and developing the agricultural industry in the Philippine Islands and other Spanish colonies, in accordance with the Civil Code in force1 and upon the following terms and conditions:

> "Article 1. The company shall be styled *Compania Agricola de Ultramar,* and shall have its domicile in Manila.
>
> "Art. 2. The duration of the company shall be ninety yearn from the date of the articles of association, subject to further extension by the board of shareholders.
>
> "Art. 3. For the purpose of exploiting and developing the agricultural industry, the company may acquire any estates, canals, irrigable lands, salt marshes, waterfalls, quarries, and such other real and personal property as might be of utility for agricultural purposes; to operate or dispose of the said properties, and to let out the real property by lots or emphyteusis, establish

> agricultural colonies, etc.; to invest money at interest upon the security of mortgage's or antichresis on city or country real property, and to acquire credits so secured; to make loans upon (crops, fields, cattle, agricultural machinery, etc., and itself to borrow money upon mortgage security, and to lease city or country property.
>
> "Art. 4. The capital stock is four million and fifty thousand pesetas, divided into eighty-one shares of fifty thousand pesetas each, the company being authorized to increase? or diminish its capital or to subdivide it into shares of five thousand or more pesetas each, by resolution of the general meeting of shareholders.
>
> "Art. 5. The obligations of the company shall be enforceable* against the paid-up capital alone, and consequently neither the original members nor the subsequent holders of shares shall be in any case responsible for the debts of the partnership."
>
> "Art. 38. According to the provisions of article three, the company may lend money upon crops, fields, cattle, agricultural machinery, and implements."

By an instrument executed on the (ith of March, 1899, before a notary public in the city of Madrid, the agent of the religious corporation of Augustinians sold and conveyed in fee simple to the *Compania Agricola de Ultramar,* the nine estates described in the said deed, in consideration of the sum of 8,350,000 pesetas. Among these estates is included the hacienda of Quingua, more commonly known by the name of Danipol and San Marcos, which property is devoted to the cultivation of rice and other grains, and whose area is mentioned in the deed.

In the bill of exceptions presented to this court by counsel for the *Compania Agricola de Ultramar,* against the decision of the judge entered on the 27th of September, 1902, it is contended and this is the principal purpose of the appeal, that this court should hold that the appellant company, by reason of its civil character, is under no obligation to record its articles of association in the mercantile registry, as a condition to its possession of the status of a legal entity entitled to maintain suit as such

against the defendants. It is to be observed that the defendants did not contract with the plaintiff company, but with the Augustinian friars.

Article 2 of the Code of Commerce provides that commercial transactions, whether performed by merchants or others, and whether they are or are not speeded in that code, shall be controlled by its provisions. All contracts and operations provided for in the Code of Commerce, and all others of an analogous character are regarded as commercial acts.

Article 17 of the code reads as follows: “The record in the commercial registry shall be optional for private merchants and compulsory for associations established in accordance with this code or with special laws, and for vessels.”

The last clause of article 21 of the same code provides: “Foreign associations which desire to establish themselves or create branches in the Philippines shall present and have recorded in the registry, besides their statutes and the documents prescribed for Spanish associations, the certificate issued by the Spanish consul stating that said companies have been established and authorized according to the laws of their respective countries.”

From the text of these provisions of the Code of Commerce it is to be inferred that the duty of complying with this requisite of inscription in the registry includes all those engaged in commerce, whether matriculated or not, and to all companies which by reason of their object or purpose and the character of their operations are to be considered as mercantile companies, for the character of the company is to be determined not by its external form or mechanism but by its purpose and object

It is true that the founders of the *Compania Agricola de Ultramar,*stated in the articles of association of February 6, 1893, that they thereby constituted an *anonymous* private civil partnership for the purposes and objects therein expressed. But it is also true that it was the manifest intention of the founders of the company to create an *anonymous partnership* which in every respect falls within the description of the third of the various classes of partnerships provided for by article 122 of the Code of Commerce, they exercising the right conferred upon them by article 1070

of the Civil Code, and therefore the provisions of the Code of Commerce not in conflict with those of the Civil Code should be applied to the plaintiff company.

Article 1670 of the Civil Code, in its last paragraph says: "In such case its provisions shall be applied to them * * *"—that is, the provisions of the Code of Commerce. This provision of the law is obligatory, and it can not be believed that the application of the provisions of the law merchant to partnerships *called* civil, but which by reason of the purposes for which they were created are essentially and actually mercantile companies, is merely optional. If it had been the intention of the legislator to have made the matter one of discretion or option, doubtless unequivocal language to that effect would have been used and the law would have provided that these provisions might be applied to them. By saying that the provisions of the Code of Commerce *shall* be applied to them, it was intended to convey the idea that those provisions of the Code of Commerce *must* be applied.

From a mere perusal of the articles of association, and especially of articles 2, 3, 4, 5, and 38 of the by-laws, it clearly appears that the purpose of the founders was to constitute an anonymous mercantile partnership under the denomination of a civil partnership. In the articles referred to provision is made for the duration of the company, the firm capital is divided into shares, and provision is made as to the liability of the paid-up capital with respect to the obligations of the company, and the business operations proposed to be effected by the company are enumerated. From all this it is unquestionable that the plaintiff company, by reason of its nature and conditions, and its object and purpose, is subject to the provisions of articles 117, 119, 121, 122, 123, 151, 152, and 212 of the Code of Commerce.

The mere fact that a company which by reason of the character of its business is mercantile, and therefore subject to the Code of Commerce, has seen fit to style itself a civil partnership, does not relieve it from the obligation of complying with the provisions of article 17 above cited, and much more so if the company is foreign (art. 21, last paragraph), because such a company or partnership, although it calls itself civil, is beyond the scope of the Civil Code and plainly subject to the law merchant. For this reason the Civil Code, in article 1700, last paragraph, provides: "The partnerships referred to in article

1670 are excepted from the provisions of numbers three and four of this article in cases in which, in accordance with the provisions of the Code of Commerce, they should continue to exist." This paragraph shows that such companies are to be governed by the provisions of the Code of Commerce.

This being so, it is evident that such a company is bound to comply with the provisions of articles 17, 21, and 119 of that code, because if the provisions of the law merchant must be applied to the *Compania Agricola de Ultramar,* there is no mi son of law or public policy which relieves it from the fulfillment of the condition of registration, more especially as the appellant is a foreign company, whose organizers and members are probably all foreigners.

A company organized in the anonymous form, and composed of foreigners, which is established in this country and proposes to engage in business or mercantile operations, is under the unavoidable obligation of informing the public as to who are its founders, what are its articles, the conditions of its organization and existence, the basis of its operations, and the security it gives for the value of the stock issued by it, and of the contents of its articles of association. The only form of publication provided for by the special law controlling the case is by record in tin1 mercantile registry, compliance with which requirement is demanded by public policy.

We are of the opinion that this is the interpretation that should be given to article 1070 of the Civil Code, and for the purpose of dispelling any doubt which may remain, we refer to some pertinent paragraphs of the official preface to the Code of Commerce in force.

> "The principles upon which the projected code has been drawn with respect to the different manners and forms of constituting mercantile companies may be reduced to three: An ample liberty for the associates to organize in such manner as they may deem convenient; the complete absence of Governmental intervention
> in the private affairs of these juristic persons; the publicity of such of the acts of these associations as may be of interest to third persons.
>
> "These general principles having been established in harmony with the law of

> 1869 and the outline drawn by the Government for the drafting of the new Code of
> Commerce, the draft herewith presented includes all companies which, either by their nature or by the character of their operations, are to be considered as mercantile * * *.

The provisions of the Code of Commerce now in force guarantee the principles of liberty of association and of trade, harmonizing them with protection of the rights of third persons by means of the mercantile register.

In order to enforce the performance of the duty of recording, article 24 of the Code of Commerce provides: "Unrecorded articles of association shall be enforceable as between the parties thereto, but shall not prejudice third persons, who nevertheless may make use of them in so far as favorable to them." And article 29 of the same code provides: "Unrecorded powers of attorney shall be binding as between the principal and the agent, but can not be used to the prejudice of third persons, who nevertheless may make use of them in so far as they may be favorable."

If a company, created for a mercantile purpose, could be permitted to elude the obligation of registration simply because is has been denominated a particular civil anonymous partnership in its articles of association, this would authorize a violation of the provisions of article 1670 of the Civil Code and the provisions of the Code of Commerce, and make unavailing the purpose of the legislator, which was to establish for the benefit of the public an efficacious protection for outsiders buying the stock of an anonymous partnership, and the result would be that the purpose of the law in imposing the requirement of publication by means of record in the registry—the sole check imposed upon the otherwise unrestricted right of mercantile association—would be swept away;

It having therefore been demonstrated that the appellant company is under an absolute obligation of recording its articles of association and by-laws in the mercantile register in the manner prescribed by the Code of Commerce, in the absence of proof of compliance with this provision of the law, it follows that the company lacks the legal personality or corporate existence necessary to

maintain this suit, because inscription in the mercantile registry is an indispensable condition to the acquisition by a mercantile company of corporate existence and of capacity as an entity, to maintain suits in courts against third persons.

This legal principle has been confirmed in practice by the decisions of the supreme court of Spain, which we cite, as this case deals with the application of laws of Spanish origin. That court in its decision of May 8, 1885, said: "The court below in allowing the complaint and intervention filed on occasion of the levy of execution, and in basing its decision upon the provisions of article 290 of the Code of Commerce, has violated the provisions of the articles of that code relied upon in this appeal and principally those of article 28 in. connection with articles 22 and 25, because the intervening company could have no legal existence, nor could it avail itself of the provisions of the articles cited to enforce rights against third persons, before its articles of association were recorded in the general register of the province, and this requirement not having been complied with until June 20, 1882, while the attachment in the executive action was ordered on the 10th, and levied on the 13th of that month, it is evident that the articles of association, prepared during the period intervening between this date and that of their registration, could not constitute a bar to the attachment or subsequently affect its validity."

This decision is an affirmance of the doctrine laid down in a former decision of March 1, 1884. If the provisions of the Code of Commerce are applicable to the *Compania Agricola de Ultramar,* then it can not maintain an action in court against third persons as a corporate being until it can show that its articles are recorded in the mercantile registry in compliance with the requirement laid down by the law and emphasized by the courts.

With respect to the appellant's contention based upon the provisions of section 94 of the Code of Civil Procedure, as the demurrer should have been sustained under the provisions of paragraph 2 of section 91 of that code, the provisions of section 101 thereof should be applied to the case.

For the reasons stated, we are therefore of the opinion that the judgment of the court below should be affirmed, and that the appellees should have judgment

for their costs.

Date created: April 23, 2014