3 Phil. 114

[G.R. No. 1403. December 29, 1903]

JOSE E. ALEMANY ET AL., PETITIONERS, VS. JOHN C, SWEENEY, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, RESPONDENT.

D E C I S I O N

WILLARD, J.:

This is an original action in this court in which a demurrer to the complaint having been overruled (1 Off. Gaz., p. 857),[1] the defendant has answered. The plaintiff now moves to strike this answer out on the ground that it neither admits nor denies the facts seUout in the complaint, nor does it allege any new facts. An examination of the answer shows that it is open to the objections contained in the motion. It states some of the facts in the complaint, denies none of them, and is devoted principally to a discussion of the legal questions involved in the case.

Section.94 of the Code of Civil Procedure contains the following provision :

> "* * * A material allegation of the complaint which is neither generally nor specificalty denied in the answer shall be deemed to have been admitted."

The answer in view of this provision must be construed as tacitly admitting all of the allegations of the complaint. Such a tacit admission is the legal equivalent of an express admission. An answer which contains an express admission of all the allegations of a complaint can not be stricken out as irrelevant under section 107 of the same code. Nothing could be more relevant to a suit than an admission of the facts stated in a pleading.

This is a motion to strike out the whole answer and not a part of it. It is not necessary to consider, therefore, whether that portion which contains the legal argument is subject to attack under said section 107.

The plaintiff might have demurred to this answer under section 99. But in this case, and generally in all cases when the answer states no defense, the most expeditious method would be to have the case placed on the calendar for trial on its merits. On such trial the only question for determination would be whether on tlie facts stated in the complaint the plaintiff was or was not entitled to judgment. The motion is denied.

Arellano, C. J., Torres, Cooper, Mapa, McDonough, and *Johnson, JJ.,* concur.

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[1] 2 Phil. Rep., 654:

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