

[G.R. No. 3351. February 25, 1907]

ANG SENG QUEN ET AL., PLAINTIFFS AND APPELLANTS, VS. JUAN TE CHICO ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

WILLARD, J.:

On the 24th of September, 1900, the plaintiffs and one Ang Bang Guan signed articles of partnership for the purpose of transacting a commercial business in Manila under the name of Hoc Jua Bee & Company. These articles were never recorded in the mercantile registry. Being a commercial partnership, the company, therefore, never became a juridical person and never acquired any personality distinct from the personality of the individuals who composed it. (Bourns vs. Carman,^[1] No. 2800, decided Dec. 4, 1906; Hung-Man-Yoc vs. Kieng-Chiong-Seng,^[2] No. 2888, decided Oct. 23, 1906.) It is probable that for this reason this action was commenced not in the name of the company, Hoc Jua Bee & Company, but in the names of the individual members of the partnership. Why Ang Bang Guan was omitted does not appear. The defendants in the case are Juan Te Chico, Trinidad J. Te Quim Jua, Cu Ung Jeng, and Uy Su Liong, doing business under the firm name of Sam Jop Jim & Company.

On December 22, 1902, the defendants, Te Chico and Cu Ung Jeng, and the plaintiff, Ang Bang Gui, signed articles of partnership for the transaction of a commercial business at Iloilo under the firm name of "Te Chico, partnership *en comandita*." It was stated in these articles that the business had been carried on since 1899 under the name of Sam Jop Jim, and the partnership articles were given a retroactive effect so as to include the time elapsed since 1899. The partnership was one *en comandita* devoted exclusively to commercial purposes. These articles were never recorded in the mercantile registry and the partnership, therefore, never acquired a juridical personality.

It was alleged in the complaint that the defendant Te Quim Jua was a partner in the defendant company, was in charge of its branch in Manila, and that as such partner and

manager he had bought merchandise from the plaintiffs, and that on account of such purchases there remained due from the defendant company to the plaintiff company on the 4th day of September, 1905, the sum of 15,401.58 pesos.

At the trial there was offered in evidence a written document signed by the defendant, Te Quim Jua, and dated August 10, 1905, in which an indebtedness in favor of the plaintiff firm to the amount of 15,401.58 pesos was admitted. The manager of the plaintiff company also testified that the defendant firm owed the plaintiff firm this amount of money; that he had compared the books of the plaintiff firm with the books of the defendant firm kept in Manila; that they agreed, and that they showed this balance.

While it was denied by the defendants, other than Te Quim Jua, that he was a partner in the enterprise, yet it was admitted by them that he was in charge of their branch at Manila and was authorized to buy goods on their account.

It appears from the evidence that the defendant Te Chico came to Manila, bringing with him the books of the defendant partnership which were kept at Iloilo. Believing that there was some mistake in the alleged balance due the plaintiffs, a comparison of the books kept in Iloilo and the books kept in Manila, both belonging to the defendant firm, was commenced. Mistakes were discovered and it was agreed that the books should be examined by third persons. This examination was commenced but not completed, and the books, both those kept at Iloilo and those kept in Manila, passed into the hands of the plaintiff, Ang Bang Bi, it being alleged by the plaintiffs in their complaint that Ang Bang Bi was also a partner in the defendant concern. During the trial inquiries were made by the defendants of the witnesses for the plaintiffs as to the whereabouts of these books and some of the witnesses of the plaintiffs testified that they did not know. On the last day of the trial, the plaintiffs produced twenty-seven books of account of the defendant firm, seventeen of them having been kept at Iloilo and ten having been kept at Manila. The daybook of the Manila house was not produced.

The case was decided in the court below in favor of the defendants upon the grounds, first that the suit could not be maintained by the plaintiffs suing in behalf of themselves as plaintiffs and suing themselves as defendants, it being assumed by the court that Ang Bang Bi and Ang Bang Gui, plaintiffs in the action, were members of the defendant firm. The other ground for the decision, as we understand it, was that the plaintiffs had concealed the books of the defendant and thereby had suppressed evidence which the law presumes was prejudicial to them.

The plaintiffs, having moved for a new trial upon the ground of the insufficiency of the evidence, have brought the case here for review.

There was evidence in the court below tending to prove the allegations of the complaint against some at least of the defendants, which evidence made out a *prima facie* case in favor of the plaintiffs. The decision of the court below must have proceeded upon the ground that this *prima facie* case was overthrown by the concealment of the books of account of the defendants by the plaintiffs. In view of some of the evidence offered at the trial, we do not think that this conclusion can be sustained. The action was commenced on the 27th of November, 1905. Prior to the commencement of the action, and on the 30th day of October, 1905, at the request of the defendant Te Chico, a notary public of this city made a formal demand upon Ang Bang Bi for the production and delivery to Te Chico of the books of account above referred to. To that demand Ang Bang Bi made an answer in writing in which he stated that he had the books in his possession but refused to deliver them. It thus appears that before the commencement of the action, and more than three months before the trial of the case, the defendants knew where these books were, but it does not appear that they took any steps to have them produced after this notarial demand made in October, 1905. In view of these circumstances, the judgment of the court below can not be sustained as to all of the defendants.

As to the defendant Uy Su Liong there was no legal evidence in the case showing that he was a member of the defendant partnership or that he was in any way interested therein. There was no evidence to show that he was in any way liable for the payment of any sum due to the plaintiffs. As to him the judgment of the court below must be affirmed.

It appears that at least as far as Ang Bang Gui is concerned he was a member of the plaintiff firm and also a member of the defendant firm. It therefore appears that he may be responsible, in part at least, for any sum which the plaintiff may recover. He was made a plaintiff in the suit, but was not made a defendant. The objection is not that Ang Bang Gui appears both as plaintiff and defendant, for he does not. The real objection is that one person who is responsible with the other defendants does not appear in the complaint as a defendant. If the one thus omitted was a third person, entirely unconnected with the plaintiffs, there might be force in the contention that there was a defect of parties defendant, but when it appears that the person omitted is a plaintiff in the action, the objection loses its force. He is before the court. Any judgment which may be rendered in this case will be binding upon him. It will be proper and within the power of the court below to determine his liability as a defendant as well as his interest in the recovery as a plaintiff.

The fact that he appears as plaintiff instead of defendant is not material, and we hold that the circumstance of his being bound with the defendants and also entitled to participate in the recovery against them does not prevent the maintenance of this suit in view of the fact that he appears as a plaintiff. The result is that as to the defendant Uy Su Liong the judgment of the court below is affirmed. As to the other defendants it is reversed, and the case is remanded to the court below for a new trial. No costs will be allowed to either party in this court. After expiration of twenty days let judgment be rendered in accordance herewith and ten days thereafter let the case be returned to the court from whence it came for proper action. So ordered.

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

^[1] Page 117, *supra*.

^[2] 6 Phil. Rep., 498.
