

[G.R. No. 3064. March 13, 1907]

**ARTHUR W. PRAUTCH AND JAMES H. SCHOLES, PLAINTIFFS AND APPELLEES,
VS. HENRY M. JONES, DEFENDANT AND APPELLANT.**

D E C I S I O N

CARSON, J.:

This is an appeal from a judgment in favor of the plaintiffs in an action to recover 1,453.47 pesos, Mexican currency, the unpaid balance of the purchase price of certain lumber delivered to the defendant, in accordance with the terms of a contract with the plaintiffs, who at the time of the making and execution of the contract were partners trading under the firm name of Prautch, Scholes and Company.

Counsel for the appellant insist that the courts have no jurisdiction to enforce this contract because Prautch, Scholes and Company, with whom the alleged contract was made, was not a juridical entity, not being registered in accordance with the provisions of the Commercial Code. But this court, following the doctrine laid down by the supreme court of Spain, has frequently declared that while unregistered partnerships and associations have no juridical entity, and as such can not maintain an action in the partnership name or in the name of one or more of the members on behalf of his or their associates, nevertheless the individual members may sue jointly as individuals, and persons dealing with them in their joint capacity will not be permitted to deny their right to do so. (*Compañía Agrícola de Ultramar vs. Reyes*,^[1] 2 Off. Gaz., 567; *Prautch, Scholes & Co. vs. Dolores Hernandez de Goyenechea*, 1 Phil. Rep., 705; *Smith and Reyes vs. Lopez et al.*,^[2] 4 Off. Gaz., 518; and *Ang Seng Quen et al., vs. Juan Te Chico et al.*,^[3] 5 Off. Gaz., 217.)

It is further contended that there were other members of the firm with which the defendant contracted whose names do not appear as plaintiffs, but the only evidence on this point is the testimony of the plaintiff Prautch, who stated that the plaintiffs were the only members of the partnership at the time of the execution of the contract with the defendant, and that

while it was true that several months prior thereto there had been a third member in the firm, that member had wholly severed his relations therewith long before the contract was made and had no connection with the company then or at any time thereafter.

It is alleged that the plaintiff Scholes did not authorize the institution of this action in his name, and that when the complaint was filed neither his coplaintiff Prautch nor the counsel who appeared for him had any authority whatever to proceed on his behalf. But however this may be, such lack of authority, if in fact it existed, was cured during the pendency of the trial by the receipt of a letter, filed with the record, wherein Scholes fully ratified and affirmed the action of Prautch and his counsel in instituting the action in his name and duly authorized them to proceed with the case. The "real rights of the defendant" were not prejudiced and can not be prejudiced by the alleged lack of formal authority at the institution of the proceedings, and judgment can not be reversed on such grounds. (Sec. 503, Code of Civil Procedure.^[1])

There is no question as to the execution of the contract as alleged by the plaintiff or as to its terms, but defendant denies that he received the amount of lumber which the plaintiffs allege they delivered.

It is not denied that in or about the month of May, 1900, the plaintiffs delivered to the defendant large consignments of lumber, and it appears that the defendant paid the plaintiffs 5,703.40 pesos on account thereof. Defendant insists that this payment was in full for all lumber received, and while not denying that had he received the 77,153 board feet which the plaintiffs allege they delivered, the contract price for which would be 7,157.37 pesos, he claims that plaintiffs failed to deliver this amount and that they failed to prove delivery of such an amount at the trial.

Prautch testified that he turned over to the defendant bills of lading for shipments of lumber consigned to his firm, which together with a small amount delivered from his yard amounted to 77,153 feet; that the bills of lading showed on their face the amounts which were contained in each consignment; that the defendant accepted the lumber in accordance with these bills of lading; that the consignments of lumber represented thereby were taken over by him; that the defendant never complained of any shortage until action was instituted against him for the balance due on his account, when Prautch for the first time heard of this shortage from the witnesses called for the defense; that after the delivery of the lumber, and before the institution of legal proceedings, Prautch on many occasions presented his bill for the lumber furnished and had many personal interviews with the defendant, but that on

none of these occasions did the defendant suggest or intimate that there had been a shortage in the amount of lumber which the plaintiffs claimed to have delivered and which appeared on the face of the bills of lading; that no steps were taken to verify the existence or nonexistence of the alleged shortage, because plaintiffs never heard of it until so long after the delivery of the lumber that it was impossible to secure the necessary measurements; and that the defendant had induced the plaintiffs to delay the institution of legal proceedings for many months after the cause of action accrued by giving them to believe that the only reason for delay in the payment of the balance of the account was lack of funds.

The defendant in his testimony contradicted the plaintiff Prautch, and declared that on the day that the lumber was delivered to his yard he told Prautch that a shortage existed and repeated his claim on various occasions and at every interview he had with him in regard to the account. One or the other of the statements of these witnesses is untrue. The trial judge, who saw the witnesses testify, accepted the statement of the witness Prautch, and we can not say that his finding in this respect is against the weight of the evidence. (Act No. 1596 of the Philippine Commission.)^[1]

The plaintiff introduced a number of witnesses who testified to the delivery of a large quantity of lumber to the defendant on the bills of lading turned over to him by Prautch, and the defendant offered no satisfactory evidence in support of his allegation of a shortage other than his own unsupported statement that such a shortage existed.

We think that in view of all the circumstances, the defendant must be deemed to have accepted the lumber in accordance with the face of the bills of lading, and to be bound for the payment of the full contract price therefor.

The judgment of the trial court should be affirmed, with the costs of this instance against the appellant, and it is so ordered. After twenty days let judgment be entered in accordance herewith and ten days thereafter let the case be returned to the court wherein it originated for proper action.

Torres, Mapa, and Willard, JJ., concur.

Arellano, C. J., and Tracey, J., concur in the result.

^[1] 4 Phil. Rep., 2.

^[2] 5 Phil. Rep., 78.

^[3] 7 Phil. Rep., 541.

^[1] I Pub. Laws, 465.

^[1] VI, Pub. Laws.

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