

**C. E. SALMON AND PACIFIC COMMERCIAL COMPANY, PETITIONERS,
VS. CHINO TAN CUECO, VICENTE JOCSO, JUDGE OF THIRTEENTH
JUDICIAL DISTRICT, ANTONIO BABASA, PROVINCIAL SHERIFF OF
BATAN...**

G.R. No. 12286. March 27, 1917

Ponente: MORELAND, J.

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MORELAND, J.:

This is a petition for a writ of certiorari directed to the Court of First Instance of the Thirteenth Judicial District to obtain a review of a judgment entered by that court against the plaintiffs which, it is alleged, was entered without jurisdiction and is void on the ground that the applicants here were not served with process and were not at any time parties to the action.

It appears from the record that on the 21st day of February, 1916, a complaint was duly filed in the Court of First Instance of the Thirteenth Judicial District in an action entitled Chino Tan Cueco vs. Antonio Babasa, sheriff of the Province of Batangas, Agapito E. Garcia, attorney-in-fact of the Pacific Commercial Company, and C. E. Salmon, defendants. The action went to a judgment in favor of the plaintiff and against the defendants. Execution was issued and was about to be levied and executed when this proceeding was begun and a preliminary injunction issued by this court to prevent further proceedings until this court could pass upon the validity of the judgment.

It is unquestioned that the petitioner, the Pacific Commercial Company, did not appear in the action; and that the only evidence of service of the summons and complaint upon it is a certificate of the deputy sheriff to the following effect: "I have this day served a copy of the within complaint and process upon Agapito E. Garcia personally."

As to the applicant the Pacific Commercial Company there can be no question that the judgment obtained below is void. According to the record, not only was the Pacific Commercial Company not served with summons, but it was not even named in the process or pleadings as a party to the action. The title of the case shows that the company was not a party. The making of Agapito E. Garcia, attorney-in-fact of the Pacific Commercial Company, a party defendant does not make the company a party defendant. Section 114 of the Code of Civil Procedure requires an action to be brought in the name of the real party in interest; and a corollary proposition requires that an action shall be brought against the persons or entities which are to be bound by the judgment obtained therein. An action upon a cause of action pertaining to his principal cannot be brought by an attorney-in-fact in his name (Arroyo vs. Granada and Gentero, 18 Phil. Rep., 484); nor can an action based upon a right of action belonging to a principal be brought in the name of his representative (Lichauco vs. Limjuco and Gonzalo, 19 Phil. Rep., 12). Actions must be brought by the real parties in interest and against the persons who are to be bound by the judgment obtained therein.

As to the applicant Salmon we have a different situation. It appears from the record that on April 12, 1916, he appeared by Booram & Mahoney and answered the complaint by a general denial. On the 15th of August Booram

& Mahoney withdrew their appearance and, on the same day, Cyrus J. Francis appeared for Salmon. As to the defendant Salmon, then, the court obtained jurisdiction over him by virtue of his general appearance and answer and, on his failure to appear at the trial, judgment was entered against him by default. The court having jurisdiction of the subject-matter and the person, its judgment was valid and cannot be attacked in this proceeding.

As to the applicant Salmon, the proceedings are dismissed with costs. As to the Pacific Commercial Company the judgment to which these proceedings refer, namely, that obtained in the case entitled Chino Tan Cuevo vs. Antonio Babasa, sheriff of the Province of Batangas, Agapito E. Garcia, attorney-in-fact of the Pacific Commercial Company, and C. E. Salmon, is declared void and of no effect as against the said company, with costs against Chino Tan Cuevo. So ordered.

Torres, Carson, Trent, and Araullo, JJ., concur.

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