CHUA KIONG, AS SPECIAL ATTORNEY-IN-FACT FOR CHUA YU, PLAINTIFF AND APPELLEE, VS. PHILIP C. WHITAKER ET AL., DEFENDANTS. PHILIP C. WHITAKER, APPELLANT.

G.R. No. 22388. December 02, 1924

Ponente: OSTRAND, J.

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OSTRAND, J.:

On June 7, 1922, Chua Kiong, as attorney-in-fact for Chino Chua Yu, brought an action against Philip C. Whitaker and Venancio Concepcion on the following document, alleging that of the amount therein mentioned only the sum of P3,903.16 has been paid leaving a balance still due from said defendants to the plaintiff in the sum of P11,640.06:

"CENTRAL PALMA
"Hog, Negros Occidental,
"I. F.

> "Whitaker y Concepcion,
> "Propietarios.
>
> "Recibi del chino Chua Yu de Hog la cantidad de quince mil quinientos cuarenta y tres pesos con 22/100 (P15,543.22) como prestamo sin interes por cuenta de la 'Central Palma.'
>
> "Ilog, 29 de junio de 1921.
>
> 'CENTRAL PALMA.'
>
> (Sgd.) "Por TIMOTEO LAUREANO
>
> "Cajero
>
> (Sgd.) "S. CONCEPCION

"Gerente"

The defendants answered by a general denial but did not appear at the trial of the case and judgment was rendered against them and in favor of the plaintiff for the sum of 911,640.06, with legal interest from June 13, 1922, and with the costs. From this judgment the defendant Philip C. Whitaker appealed.

After the case had been docketed in this court the plaintiff presented a motion to amend his complaint by changing the title of the case to read as follows:

> "CHUA YU, represented by his special attorney-in-fact, CHUA KIONG, plaintiff, vs. PHILIP C. WHITAKER and VENANCIO CONCEPCION, defendants."

The appellant filed an opposition to the motion on technical grounds but did not allege that he had a good defense and did not present an affidavit of merit. The writer, then on duty as Vacation Justice, therefore overruled the objection and granted the appellee's motion under the provisions of section 110 of the Code of Civil Procedure.

The defendant-appellant has now presented a motion asking that the case be reopened for the sole purpose of receiving his evidence. The motion is accompanied by an affidavit to the effect that said defendant-appellant did not appear at the trial of the case, for the reason that the action was commenced and prosecuted and decision rendered therein in the name of "Chua Kiong, as special attorney-in-fact for Chua Yu;" that he was informed that an action so commenced, prosecuted, and decided, could in no way affect his interests and that it was not necessary for him to appear at the trial or present any defense whatsoever and, acting on that information, he did not appear at the trial nor present any defense; that he has a good and valid defense consisting in this: that Severiano Concepcion had absolutely no authority to borrow the money referred to in the complaint and that the power of attorney executed by defendant-appellant in favor of said Severiano Concepcion prohibited him from borrowing money in excess of P1,000. The affidavit is accompanied by a copy of said power of attorney.

Counsel for the defendant-appellant intimates that the aforesaid amendment to the complaint was improperly allowed by this court and very confidently and rather emphatically asserts that this court never applied the provisions of section 110 and allowed the amendment of the pleadings. In this counsel is mistaken; in the case of Alonso vs. Villamor (16 Phil., 315), the complaint was amended by substituting one party-plaintiff for another even after the case had been submitted to this court for decision upon the merits. In that case the court, speaking through Mr. Justice Moreland, says:

> "It is undoubted that the bishop of the diocese or the Roman Catholic Apostolic Church itself is the real party in interest. The plaintiff personally has no interest in the cause of action. Section 114 of the Code of Civil Procedure requires that every action must be prosecuted in the name of the real party in interest. The plaintiff is not such party."

After quoting sections 110 and 503 of the Code of Civil Procedure, the court continues:

> "We are confident under these provisions that this court has full power, apart from that power and authority which is inherent, to amend the process, pleadings, proceedings, and decision in this case by substituting, as party plaintiff, the real party in interest. Not only are we confident that we may do so, but we are convinced that we should do so. Such an amendment does not constitute, really, a change in the identity of the parties. The plaintiff asserts in his complaint, and maintains that assertion all through the record, that he is engaged in the prosecution of this case, not for himself, but for the bishop of the diocese—not by his own right, but by right of another. He seeks merely to do for the bishop what the bishop might do for himself. His own personality is not involved. His own rights are not presented. He claims no interest whatever in the litigation. He seeks only the welfare of the great church whose servant he is. He gladly permits his identity to be wholly swallowed up

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> in that of his superior. The substitution, then, of the name of the bishop of the diocese, or the Roman Catholic Apostolic Church, for that of Padre Alonso, as party plaintiff, is not in reality the substitution of one identity for another, of one party for another, but is simply to make the form express the substance. The substance is there. It appears all through the proceedings. No one is deceived for an instant as to whose interests are at stake. The form of its expression is alone defective. The substitution, then, is not substantial but formal. Defect in mere form cannot possibly prejudice so long as the substantial is clearly evident. Form is a method of speech used to express substance and make it clearly appear. It is the means by which the substance reveals itself. If the form be faulty and still the substance shows plainly through, no harm can come by making the form accurately expressive of the substance."

Numerous decisions both from Federal and State courts are cited in support of the opinion.

As a matter of fact, amendments to pleadings are frequently allowed after the case has been entered upon the docket. It is true that such matters are usually disposed of by minute-orders which do not appear in the reports, but there is enough in the reports to show that it is never safe for a party in a civil action to rely on purely technical defenses; under our liberal Code of Civil Procedure but scant consideration is ordinarily given such defenses by this court. In the present case counsel for the defendant-appellant in resisting the amendment of the complaint gave the court no intimation that his client had any defense on the merits nor was there anything in the record showing such defense. In these circumstances the court was fully justified in authorizing the amendment in question, and might well decline to entertain the motion now under consideration. It seems evident that counsel deliberately refrained from calling the attention of the court below to the mistake of his adversary, apparently with the intention of lying in ambush until the proceedings had reached a stage where the error would be beyond correction. Such practice leads only to delay in the administration of justice and is no longer encouraged by the courts.

We feel, however, that under the circumstances of the present case the client should not be made to suffer for the mistake of his counsel and that he should be afforded another opportunity for his day in court.

The case will therefore be remanded to the court below for the reception of the evidence of the defendant-appellant and such additional evidence as the plaintiff may offer and for judgment upon all of the evidence. No costs will be allowed in this instance. So ordered.

Johnson, Street, Avancena, Villamor, Johns, and Romualdez, JJ., concur.
Malcolm, J., concurs in the result.
Case remanded with instructions.

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