

**INTERNATIONAL FILMS (CHINA), LTD., PLAINTIFF AND APPELLANT,
VS. THE LYRIC FILM EXCHANGE, INC., DEFENDANT AND APPELLEE.***G. R. No. 42465. November 19, 1936*

Ponente: VILLA-REAL, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-42465/>**VILLA-REAL, J.:**

This is an appeal taken by the plaintiff company International Films (China), Ltd. from the judgment of the Court of First Instance of Manila dismissing the complaint filed by it against the defendant company the Lyric Film Exchange, Inc., with costs to said plaintiff.

In support of its appeal, the appellant assigns six alleged errors as committed by the court a quo in its said judgment, which will be discussed in the course of this decision.

The record shows that Bernard Gabelman was the Philippine agent of the plaintiff company International Films (China), Ltd. by virtue of a power of attorney executed in his favor on April 5, 1933 (Exhibit 1). On June 2, 1933, the International Films (China), Ltd., through its said agent, leased the film entitled "Monte Carlo Madness" to the defendant company, the Lyric Film Exchange, Inc., to be shown in Cavite for two consecutive days, that is, on June 1 and 2, 1933, for 30 per cent of the receipts; in the Cuartel de España for one day, or on June 6, 1933, for F45; in the University Theater for two consecutive days, or on June 8 and 9, 1933, for 30 per cent of the receipts; in Stotsenburg for two consecutive days, or on June 18 and 19, 1933, for 30 per cent of the receipts; and in the Paz Theater for two consecutive days, or on June 21 and 22, 1933, for 30 per cent of the receipts (Exhibit C). One of the conditions of the contract was that the defendant company would answer for the loss of the film in question whatever the cause. On June 23, 1933, following the last showing of the film in question in the Paz Theater, Vicente Albo, then chief of the film department of the Lyric Film Exchange, Inc., telephoned said agent of the plaintiff company informing him that the showing of said film had already been finished and asked, at the same time, where he wished to have the film returned to him. In answer, Bernard Gabelman informed Albo that he wished to see him personally in the latter's office. At about 11 o'clock the next morning, Gabelman went to Vicente Albo's office and asked whether he could deposit the film in question in the vault of the Lyric Film Exchange, Inc., as the International Films (China) Ltd. did not yet have a safety vault, as required by the regulations of the fire department. After the case had been referred to O'Malley, Vicente Albo's chief, the former answered that the deposit could not be made inasmuch as the film in question would not be covered by the insurance carried by the Lyric Film Exchange, Inc. Bernard Gabelman then requested Vicente Albo to permit him to deposit said film in the vault of the Lyric Film Exchange, Inc., under Gabelman's own responsibility. As there was a verbal contract between Gabelman and the Lyric Film Exchange, Inc., whereby the film "Monte Carlo Madness" would be shown elsewhere, O'Malley agreed and the film was deposited in the vault of the defendant company under Bernard Gabelman's responsibility.

About July 27, 1933, Bernard Gabelman severed his connection with the plaintiff company, being succeeded by Lazarus Joseph. Bernard Gabelman, upon turning over the agency to the new agent, informed the latter of the deposit of the film "Monte Carlo Madness" in the vault of the defendant company as well as of the verbal contract

entered into between him and the Lyric Film Exchange, Inc., whereby the latter would act as a sub-agent of the plaintiff company, International Films (China) Ltd., with authority to show the film "Monte Carlo Madness" in any theater where said defendant company, the Lyric Film Exchange, Inc., might wish to show it after the expiration of the contract Exhibit C. As soon as Lazarus Joseph had taken possession of the Philippine agency of the International Films (China) Ltd., he went to the office of the Lyric Film Exchange, Inc., to ask for the return not only of the film "Monte Carlo Madness" but also of the films "White Devils" and "Congress Dances". On August 13 and 19, 1933, the Lyric Film Exchange, Inc., returned the films entitled "Congress Dances" and "White Devils" to Lazarus Joseph, but not the film "Monte Carlo Madness" because it was to be shown in Cebu on August 29 and 30, 1933. Inasmuch as the plaintiff would profit by the showing of the film "Monte Carlo Madness", Lazarus Joseph agreed to said exhibition. It happened, however, that the bodega of the Lyric Film Exchange, Inc., was burned on August 19, 1933, together with the film "Monte Carlo Madness" which was not insured.

The first question to be decided in this appeal, which is raised in the first assignment of alleged error, is whether or not the court a quo erred in allowing the defendant company to amend its answer after both parties had already rested their respective cases.

In *Torres Viuda de Nery vs. Tomacruz* (49 Phil., 913, 915), this court, through Justice Malcolm, said:

"Sections 109 and 110 of the Philippine Code of Civil Procedure, relating to the subjects of Variance and Amendments in General, should be equitably applied to the end that cases may be favorably and fairly presented upon their merits, and that equal and exact justice may be done between the parties. Under code practice, amendments to pleadings are favored, and should be liberally allowed in furtherance of justice. This liberality, it has been said, is greatest in the early stages of a lawsuit, decreases as it progresses, and changes at times to a strictness amounting to a prohibition. The granting of leave to file amended pleadings is a matter peculiarly within the sound discretion of the trial court. This discretion will not be disturbed on appeal, except in case of an evident abuse thereof. But the rule allowing amendments to pleadings is subject to the general but not inflexible limitation that the cause of action or defense shall not be substantially changed, or that the theory of the case shall not be altered. (21 R. C. L., pp. 572 et seq.; 3 Kerr's Cyc Codes of California, sections 469, 470, and 473; *Ramirez vs. Murray* [1855], 5 Cal., 222; *Hayden vs. Hayden* [1873], 46 Cal., 332; *Hackett vs. Bank of California* [1881], 57 Cal., 335; *Hancock vs. Board of Education of City of Santa Barbara* [1903], 140 Cal., 554; *Dunphy vs. Dunphy* [1911], 161 Cal., 87; 38 L. R. A. [N. S.], 818.)"

In the case of *Gould vs. Stafford* (101 Cal., 32, 34), the Supreme Court of California, interpreting section 473 of the Code of Civil Procedure of said State, from which section 110 of our Code was taken, stated as follows:

"The rule is that courts will be liberal in allowing an amendment to a pleading when it does not seriously impair the rights of the opposite party—and particularly an amendment to an answer. A defendant can generally set up as many defenses as he may have. Appellant contends that the affidavits upon which the motion to amend was made show that it was based mainly on a mistake of law made by respondent's attorney; but, assuming that to be so, still the power of a court to allow an amendment is not limited by the character of the mistake which calls forth its exercise. The general rule that a party cannot be relieved from an ordinary contract which is in its nature final, on account of a mistake of law, does not apply to proceedings in an action at law while it is pending and undetermined. Pleadings are not necessarily final until after judgment. Section 473 of the Code of Civil Procedure provides that the court may allow an amendment to a pleading to correct certain enumerated mistakes or a mistake in any other respect and 'in other particulars.' The true rule is well stated in *Ward vs. Clay* (82 Cal., 502). In the case at bar evidence of the lease was given at the first trial; and we cannot see that the amendment before the second trial put plaintiff in a position any different from that which he would have occupied if the amendment had been made before the first trial."

In the case of *Ward vs. Clay* (82 Cal., 502, 510), the Supreme Court of said State stated:

"The principal purpose of vesting the court with this discretionary power is to enable it to mold and direct its proceedings so as to dispose of cases upon their substantial merits/ when it can be done without injustice to either party, whether the obstruction to such a disposition of cases be a mistake of fact or a mistake as to the law; although it may be that the court should require a stronger showing to justify relief from the effect of a mistake in law than in case of a mistake as to matter of fact. The exercise of the power conferred by section 473 of the code, however, should appear to have been 'in furtherance of justice and the relief, if any, should be granted upon just terms.'"

Lastly, in the case of *Simpson vs. Miller* (94 Pac., 253), the said Supreme Court of California said:

"In an action to recover property which had vested in plaintiff's trustee in bankruptcy prior to the suit, an amendment to the answer, made after both parties had rested, but before the cause was submitted, pleading plaintiff's bankruptcy in bar to the action, was properly allowed in the discretion of the court."

Under the above-cited doctrines, it is discretionary in the court which has cognizance of a case to allow or not the amendment of an answer for the purpose of questioning the personality of the plaintiff to bring the action, even after the parties had rested their cases, as it causes no injustice to any of the parties, and this court will not interfere in the exercise of said discretion unless there is an evident abuse thereof, which does not exist in this case.

The second question to be decided is whether or not the defendant company, the Lyric Film Exchange, Inc., is responsible to the plaintiff, International Films (China) Ltd., for the destruction by fire of the film in question, entitled "Monte Carlo Madness".

The plaintiff company claims that the defendant's failure to return the film "Monte Carlo Madness" to the former was due to the fact that the period for the delivery thereof, which expired on June 22, 1933, had been extended in order that it might be shown in Cebu on August 29 and 30, 1933, in accordance with an understanding had between Lazarus Joseph, the new agent of the plaintiff company, and the defendant. The defendant company, on the other hand, claims that when it wanted to return the film "Monte Carlo Madness" to Bernard Gabelman, the former agent of the plaintiff company, because of the arrival of the date for the return thereof, under the contract Exhibit C, said agent, not having a safety vault, requested Vicente Albo, chief of the film department of the defendant company, to keep said film in the latter's vault under Gabelman's own responsibility, verbally stipulating at the same time that the defendant company, as subagent of the International Films (China) Ltd., might show the film in question in its theaters.

it does not appear sufficiently proven that the understanding had between Lazarus Joseph, second agent of the plaintiff company, and Vicente Albo, chief of the film department of the defendant company, was that the defendant company would continue showing said film under the same contract Exhibit C. The preponderance of evidence shows that the verbal agreement shad between Bernard Gabelman, the former agent of the plaintiff company, and Vicente Albo, chief of the film department of the defendant company, was that the said film "Monte Carlo Madness" would remain deposited in the safety vault of the defendant company under the responsibility of said former agent and that the defendant company, as his subagent, could show it in its theaters, the plaintiff company receiving 5 per cent of the receipts up to a certain amount, and 15 per cent thereof in excess of said amount.

If, as it has been sufficiently proven in our opinion, the verbal contract had between Bernard Gabelman, the former agent of the plaintiff company, and Vicente Albo, chief of the film department of the defendant company, was a sub-agency or a submandate, the defendant company is not civilly liable for the destruction by fire of the film in question because, as a mere submandatary or subagent, it was not obliged to fulfill more than the contents of the mandate and to answer for the damages caused to the principal by his failure to do so (art. 1718, Civil

Code). The fact that the film was not insured against fire does not constitute fraud or negligence on the part of the defendant company, the Lyric Film Exchange, Inc., because as a subagent, it received no instruction to that effect from its principal and the insurance of the film does not form a part of the obligation imposed upon it by law.

As to the question whether or not the defendant company having collected the entire proceeds of the fire insurance policy of its films deposited in its vault, should pay the part corresponding to the film in question which was deposited therein, the evidence shows that the film "Monte Carlo Madness" under consideration was not included in the insurance of the defendant company's films, as this was one of the reasons why O'Malley at first refused to receive said film for deposit and he consented thereto only when Bernard Gabelman, the former agent; of the plaintiff company, insisted upon his request, assuming all responsibility. Furthermore, the defendant company did not collect from the insurance company an amount greater than that for which its films were insured, notwithstanding the fact that the film in question was included in its vault, and it would have collected the same amount even if said film had not been deposited in its safety vault. Inasmuch as the defendant company, The Lyric Film Exchange, Inc., had not been enriched by the destruction by fire of the plaintiff company's filmv it is not liable to the latter.

For the foregoing considerations, we are of the opinion and so hold: (1) That the court a quo acted within its discretionary power in allowing the defendant company to amend its answer by pleading the special defense of the plaintiff company's lack of personality to bring the action, after both parties had already rested their respective cases; (2) that the defendant company, as sub-agent of the plain- tiff in the exhibition of the film "Monte Carlo Madness", was not obliged to insure it against fire, not having received any express mandate to that effect, and it is not liable for the accidental destruction thereof by fire.

Wherefore, and although on a different ground, the appealed judgment is affirmed, with the costs to the appellant. So ordered.

Avanceña, C. J., Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.