

STRACHAN & MACMURRAY, PLAINTIFFS AND APPELLEES, VS. SEGUNDO EMALDI, DEFENDANT AND APPELLANT.*G.R. No. 5935. March 22, 1912*

Ponente: CARSON, J.

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The complaint in this action alleges that the original plaintiff is a partnership doing business under the firm name of Strachan & MacMurray, and duly registered in accordance with the laws in force in the Philippine Islands. The record discloses that an irregular unregistered commercial partnership doing business under the firm name of Strachan & MacMurray sold to the defendant a traction engine and various accessories; that the members of this partnership were William MacMurray and John Young; and that there is still due and unpaid on this engine the sum of P3,878.50. Judgment was rendered in favor of William MacMurray and John Young, the individual members of the complaining partnership, for the amount due the firm, together with the costs of the action. The cause is now before this court upon a duly approved bill of exceptions.

The allegation of the complaint that the firm of Strachan & MacMurray is a duly registered partnership under the laws in force in the Philippine Islands is not supported by the evidence. One of the partners, William MacMurray, admits that it was not so registered, and it does not appear that the partnership ever was organized in due form.

Counsel for appellant insists that the plaintiff in this action being an irregular, unregistered commercial partnership doing business under the firm name of Strachan & MacMurray, was without juridical personality to institute or maintain this action. It appears from the record, however, that the defendant had a number of business transactions with this irregular unregistered commercial partnership doing business under the firm name of Strachan & MacMurray, covering a period of several years. It further appears that Messrs. MacMurray, Strachan, and Young were at one time associated together in business, with offices at Iloilo. But the court below, upon the pleadings and the evidence, found that William MacMurray and John Young were the actual parties doing business under the firm name of Strachan & MacMurray at the time when the transaction in question was had, and that they were the real plaintiffs in this action, and entitled to recover judgment upon the proof adduced at the trial; we must assume, therefore, that although the complaint was not formally amended, it was taken to be amended so as to show these parties the real plaintiffs before judgment was actually entered.

If the question of the juridical personality of the plaintiffs had been duly raised by demurrer or answer, the complaint might have been and doubtless would have been amended, and such an amendment would properly have been allowed at the conclusion of the trial had a formal motion for that purpose been filed by the real parties plaintiff, who de facto maintained the action in the court below. If the failure to order a formal amendment was error, it was at most error not prejudicial to the real rights of the defendant, and we do not believe that the judgment should be reversed for a mere technical defect which did not reach the issues, involved, and in no wise prejudiced the rights of the appellant.

We have frequently held that while an irregular unregistered commercial partnership has no juridical personality

as such to maintain a suit and recover judgment in the partnership name, nevertheless the individual members of such a firm may maintain a suit jointly, and persons dealing with the partnership are estopped from denying the right of the members of the partnership .so to do. (Prautch & Scholes vs. Jones, 8 Phil. Rep., 1; Yu Bunuan vs. Marcaida, 10 Phil. Rep., 265; Ang Seng Quen vs. Te Chico, 12 Phil. Rep., 547.)

Upon full consideration of the whole case, we find no error prejudicial to the rights of the appellant, and hold that the defect in the complaint assigned as error by the appellant was cured by the proceedings and judgment in the court below. The judgment appealed from should be affirmed, with the costs of the appeal in this instance against the appellant. So ordered.

Torres, Mapa, Johnson, and Trent, JJ., concur.

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