

FEDERICO LOPEZ ET AL, PLAINTIFFS AND APPELLEES, VS. YU SEFAO AND BEHN, MEYER & CO., DEFENDANTS. YU SEFAO, DEFENDANT AND APPELLANT.*G. R. No. 9393. August 20, 1915*

Ponente: JOHNSON, J.

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This was an action commenced in the Court of First Instance of the Province of Samar by the plaintiff to recover of the defendants a boat or lanchon, or its value, alleged to be P1,000, together with damages in the sum of P4,680. The defendant, Yu Sefao, at first presented a demurrer, which was overruled. Later, he presented a general and special defense. Still later, he asked permission to withdraw his counterclaim and instead thereof to present the defense that the plaintiffs were without legal capacity to sue. The defendants, Behn, Meyer & Co., presented a general denial. Later, Behn, Meyer & Co., were absolved from all liability under the complaint.

After hearing the evidence adduced during the trial of the cause, the Honorable Ramon Avanceña, in a carefully prepared opinion, reached the conclusion: (a) That the plaintiffs had legal capacity to sue; and (b) rendered a judgment in favor of the plaintiffs and against the defendant, Yu Sefao, in the sum of P990.

From that judgment, after presenting a motion for a new trial, the defendant, Yu Sefao, appealed to this court. The only assignment of error made by the appellant here is that the lower court committed an error in deciding that the plaintiffs had legal capacity to sue. The defendant and appellant argues that the plaintiffs had been doing business under the name of Lopez Hermanos; that they had not been organized as a society, in accordance with the provisions of the Commercial Code, and that, therefore, they were not authorized to sue and cited decisions of this court in support of that conclusion. Evidently the defendant and appellant had not examined the complaint presented by the plaintiffs. An examination of the complaint would have shown the defendant that the present action was not commenced in the name of Lopez Hermanos, but in the individual names of the persons constituting the alleged society or mercantile association. We find nothing in the procedure in the present case which is in conflict with the decisions cited by the appellant. The plaintiffs in the present case, even granting that the society called Lopez Hermanos was not authorized to sue in the name of said society for the reason that it had not been properly organized, yet, nevertheless, they were permitted to "sue in their individual names. (Prauch vs. Jones, 8 Phil. Rep., 1; Strachan & MacMurray vs. Emaldi, 22 Phil. Rep., 295.)

The appellant having presented no question here except the one above discussed, and it having been found that the plaintiffs had legal capacity to sue, we must affirm the decision of the lower court. The same is, therefore, hereby affirmed with costs. So ordered.

Arellano, C. J., Torres, Carson, Trent, and Araullo, JJ., concur.

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