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[G.R. No. 1133. March 29, 1904]

RAFAEL REYES ET AL., PLAINTIFFS AND APPELLEES, VS. THE COMPAÑIA MARITIMA, A CORPORATION, DEFENDANT AND APPELLANT.

D E C I S I O N

MAPA, J.:

In January, 1895, in the city of Manila, there were five steamship companies, represented respectively by Messrs. Aldecoa & Co., Macleod & Co., and Francisco L. Roxas, and by the, plaintiffs, Don Rafael Reyes and Don Francisco Reyes. These companies owned among others the steamships *Bauan, Espana, Saturnus, Bilbao, Serantes, Herminia, Francisco Reyes, Chispa, Uranus, Venus, Taurus, Brutus, Aeolus, Romulus, Butuan, Bolinao, Taal, Nuestra Senora del Rosario, Nuestra Senora de Loreto, Nuestra Senora del Carmen, Luzon, Salvadora,* and *Castellano.*

The partners or stockholders of these firms having resolved to pool their respective interests in the said steamers for the purpose of forming an anonymous partnership or corporation under the name of "Compania Maritima," for the purpose of carrying this agreement into effect, they executed a public instrument on January 23, 1895, by which they organized the said company for a term of twenty years, with a capital of 2,500,000 pesos, divided into 5,000 nominal shares of the par value of 500 pesos each. Part of this capital, up to the sum of 1,508,000 pesos, represented the estimated value of the said steamers which the parties to the agreement in question contributed to the new company, transferring to it the ownership of the vessels to the extent of their respective participation therein and receiving in payment therefor 3,600 shares of the 5,000 which represented the entire capital stock. The plaintiffs were among the founders of the Compania Maritima.

Don Rafael Reyes contributed the steamers *Luzon* and *Salvadora* at a valuation of 138,410 pesos, and an interest to the value of 4,341.47 pesos in the steamer *Espana,* valued at 73,000 pesos. Don Francisco Reyes
contributed his interest in the steamers *Castellano, Nuestra Senora del Rosario, Nuestra Senora del Carmen, and Espana,*
his interest in the first of which was valued at 17,037.61 pesos, in the second at 18,031.48 pesos, in the third at 19,616.66 pesos, and in the latter at 12,114 pesos.

The company was organized subject to the terms and conditions included in its articles of incorporation, among which appear the following:

> "(*a*) The Compania Maritima shall be governed by its by-laws and by the Code of Commerce in force in the Philippine Islands." (Art. 1.)
>
> "(*b*) The complete exercise of the management and administration of this company, as a corporate entity, corresponds to the shareholders sitting in general committee. For the immediate exercise of these rights a board of directors is established which shall have the character of an agent of the company." (Art. 18.)
>
> "(*c*) General meetings shall be held on the date designated with such shareholders as may be present, whatever may be the number and value of the stock they represent. From this rule are excepted meetings called for the purpose of modifying or dissolving the company, extending the period of its duration, or of reducing or increasing the capital stock, which meeting shall be held if the shareholders present in person or by proxy represent two-thirds of the shareholders in the company and two-thirds or more of the nominal value of the capital stock." (Art.22.)
>
> "(*d*) The general meeting, legally constituted, shall represent all the shareholders, and resolutions adopted thereby in accordance with the

provisions of these articles shall be binding upon all." (Art. 25.)

"(*e*)
The failure of shareholders to attend general meetings shall deprive them of the right to oppose resolutions parsed by the majority, provided that the resolution be not contrary to the articles of this company." (Art. 26.)

"(*f*) A majority vote shall be binding." (Art. 32.)

"(*g*) The general meeting shall be empowered * * * to modify the regulations or articles of the company." (Art. 33.)

"(*h*) The board of directors of this company shall consist of live directors, to be appointed by the general meeting." (Art. 36.)

At the end of the general articles, and under the heading of " transitory provisions," the articles of incorporation contain the following clauses:

"(1) The first board of directors of this company shall be composed of five directors, the board being exceptionally empowered to appoint another member.

"(2) For each new company joining this company, one director shall be added if so resolved by the board of directors.

"(3)
These officers shall be distributed among the five steamship companies which have come together for the purpose of forming this company, so that each office of director shall be held by one of the members of each one of the said steamship companies.

"(4) The period of duration of this first board shall be eight years from the date of the organization of the company.

"(5)
For the first period of eight years the directors shall be: His

Excellency Mr. Zoilo Ybafiez de Aldecoa, Mr. Alejandro Macleod, His Excellency Mr. Francisco L. Roxas, Mr, Rafael Reyes, and Mr. Francisco Reyes.

"(6) The directors appointed for the first period may at any time and for any reason be substituted by members or attorneys in fact of the organizing firms, to be designated by them.

"(7)
After the expiration of the first eight years the general meeting of stockholders shall appoint the five directors referred to in article 36—one for a year, another for two years, and so on successively up to five years, three of whom at least shall be selected from among, the members of the former board.

"(8) The remuneration to be received by the first board of directors shall be 2 1/2 per cent of the total receipts.

"(9)
The first financial half year of the company shall commence on the day of its organization and expire on the 30th of June, 1895.

"(10)
The steamship companies which have contributed vessels to the organization of this company shall have the option to continue supplying the vessels respectively contributed by them with tackle and provisions, provided that this be done at the most advantageous prices in the market. After the expiration of the said term of eight years the board of directors shall be at liberty to determine this matter at will."

By virtue of the appointment made in the fifth transitory provision, the plaintiffs at once became directors of the Compania Maritima, together with the three other gentlemen named therein.

In a general meeting of shareholders held September 10, 1895, it was resolved to add one more director to the five already in office, and to

confer upon him the powers of the general administrator of the company. Mr. John T. Macleod was appointed to this office.

February 22, 1897, another general meeting of shareholders was held. In this meeting among other things it was resolved (1) to reduce to five the number of directors, one of them to act as administrator or manager of the company; (2) to reduce to 1 per cent of the total receipts the compensation to be paid the board of directors, the sum to be divided among the five directors in equal parts; (3) to eliminate all the transitory provisions inserted at the end of the general articles of the company; and (4) to immediately remove from office the gentlemen who at that time composed the board of directors of the company.

This resolution was passed by a majority vote. The plaintiffs voted against it, and the minutes show a protest made by Don Rafael Reyes to the effect that he would not assume any of the responsibility which might devolve upon the company by reason of the said resolution.

In consequence of the resolution to remove the gentlemen who at that time composed the board of directors, a taken for the election of those who were to succeed them in the office. The vote resulted in the appointment as directors of Messrs. Aldecoa & Co., Macleod & Co. (as attorneys in fact of Don Neil Macleod), Echeita & Portuondo, Ynchausti & Co., and Don Juan T. Macleod, the latter to be also the manager of the company. The result was that two years and a month after the plaintiffs had been appointed to the office of directors of the company, which office they were to hold for a term of eight years, they were removed therefrom.

Upon the facts stated, the truth of which was admitted by both parties to the suit, the plaintiffs brought this action in the Court of First Instance, praying for judgment against the Compania Maritima for payment to each one of them, as damages, of one-half of 1 per cent of the total receipts of the said company during the years 1897, 1898, 1899, 1900, 1901, and 1902, which should have been paid them as compensation assigned to the first board of directors appointed when

the company was organized, and which they would have received had they not been deprived illegally and unjustly, as they allege, of the enjoyment of their offices as directors, which they contended they were entitled to continue to hold during the said six years until the expiration of the period of eight years for which they had been appointed by virtue of the transitory provisions contained in the articles of incorporation of the said company.

The court below considered that the principal question at issue was whether the general meeting of shareholders had or had not authority to rescind and set aside the transitory clause by which the plaintiffs were appointed directors of the Compañia Maritima for a period of eight years, or, in other words, whether the plaintiffs were entitled to compel the company to respect and maintain their appointments during the said period of time in conformity with the terms of the transitory provisions. This question the court below decided in favor of the plaintiffs and rendered judgment against the Compañia Maritima for the payment of the amount demanded in the complaint, and of the costs of suit.

The court based his decision in part upon the conclusion that the transitory provisions referred to constituted a lawful and binding agreement between the parties who executed the articles of incorporation of the Compañia Maritima, and also between the plaintiffs and the company, and that they could not therefore be altered without the consent of all concerned; that according to a decision of the supreme court of Spain dated June 30, 1888, the by-laws and regulations of an anonymous mercantile company or corporation constitute a special law which regulates and determines the rights and obligations of each and everyone of the shareholders, and that therefore in order that the resolutions passed by the general meeting of stockholders be valid and binding upon the members, it is an indispensable requisite that such resolutions conform in every respect to the terms and conditions of the partnership agreement, which is to be strictly construed.

The defendant excepted to the judgment of the court below. No motion was made for a new trial and consequently this court can not review the

evidence or retry the issues of fact, its jurisdiction being limited solely to deciding the questions of law raised in the bill of exceptions. (Code of Civil Procedure, sec. 497.)

In its assignment of errors the appellant company contends in the first place that the judgment of the court below is contrary to the provisions of articles 117 and 122, paragraph 3, and article 151 of the Code of Commerce in force in the Philippines.

Article 117 reads as follows: “The contract of a mercantile partnership, entered into with the essential legal requisites, shall be valid and binding upon the parties thereto, whatever may be the form, conditions, and lawful and honest combinations subject to which the contract is entered into, provided they are not expressly prohibited in this code.”

The judgment appealed is not contrary to the provisions of this article. It does not disregard the validity of the contract of partnership by which the Compañia Maritima was created. On the contrary, the judgment is based upon the assumption that it was a valid and binding contract, and declares that the transitory provisions included in the articles of incorporation of the company are valid and binding upon those who took part in the execution of that contract, and upon the defendant company itself.

Nor is the judgment contrary to the provisions of paragraph 3 of article 122, as erroneously contended by the defendant company. We are referred to this provision of the law by the defendant in support of its contention that the administrators of anonymous partnerships or corporations are under the law removable agents, and that in consequence they may be removed from office whenever the company may deem such action necessary or conformable to its interests. According to this theory the removal of a director is an act which is wholly discretionary and which may be performed at any time by the company by which he may have been appointed.

The removability of managers of anonymous partnerships or

corporations is not a new principle in the law merchant. The doctrine contained in the present Code of Commerce upon this point is also to be found in the former Code of 1829, which was extended to these Islands by royal cedula of July 26, 1832. Article 265 of this code provided that such administrators might be removed "at the will of the partners." Notwithstanding the breadth of the wording of the law—which by the way has been stricken from the text of article 122 of the present code—it has never been considered that the partners could remove the administrators at their caprice, whenever they might see fit to do so; it has always been considered necessary that there should be some lawful cause justifying the removal.

In corroboration of this doctrine we refer to article 27 of the royal decree and regulations of February 17, 1848, for the execution of the law of January 28 of the same year concerning mercantile stock companies, a decree which, although no longer in force, may nevertheless serve as a guide in reaching a proper conclusion upon the point under discussion. This article read as follows:

> "As provided in article 265 of the Code of Commerce (of 1829), the administrators of anonymous stock companies are removable at the will of the partners when there are just and legal grounds for removal, or in accordance with whatever may have been agreed upon in this respect in the articles of the company."

This provision, which to a certain extent was an explanation of the true legal meaning of the removability of the administrators of anonymous partnerships or corporations, is in itself sufficient to show that the power vested in the shareholders to remove such administrators from office is not and should not be considered as being omnipotent and arbitrary, but limited solely to cases in which some cause for removal exists.

Sr. Eixala, in his work entitled *Instituciones del Derecho Mercantil de Espana,* also lays down the rule that administrators of anonymous partnerships may be removed "when there is just cause therefor."

The rule could not be otherwise upon consideration of the provisions of the Code of Commerce itself. The directors or administrators of anonymous partnerships in many respects stand on the same footing as mercantile agents, as both of them act by virtue of a commercial agency. Sr. Eixala in his work above cited, says expressly "that the administrators of anonymous societies should be considered as factors." This doctrine is fully confirmed by judgment of the supreme court of Spain dated April 2, 1862, in which the court declares that "the managing director of a manufacturing establishment [the case concerns a director of a manufacturing corporation denominated 'The Barcelona Bronze and Metal Foundry'] can in law be regarded in no other light than as a factor."

Article 283 of the Code of Commerce is explicit upon this point. "The manager," it says, "of a manufacturing establishment or commercial concern, authorized to manage it and to make contracts connected therewith with such limited or extended powers as the owner may have seen fit to confer upon him [and this is unquestionably the status of the directors or administrators of anonymous partnerships] shall be regarded in law as a factor, and shall be subject to the provisions contained in this section." (Sec. 2, title 3, book 2, of the Code of Commerce.)

In accordance with the provisions of articles 299 to 302, inclusive, contained in the section above cited, a factor whose contract with his principal has been made for a fixed period can not without just cause be discharged before the expiration of the term agreed upon, under penalty, in case of wrongful discharge, of payment by the principal to him of such damage as he may have suffered thereby. For the reasons which we have stated we consider this provision applicable to managing directors of anonymous partnerships or corporations, and consequently we hold that they can not be removed before the expiration of the period for which they were appointed without *just cause therefor,*
There is no reason for considering such administrators as less advantageously situated than are factors, in view of the analogy existing between them, which we have demonstrated.

The Compañia Maritima, as appears from its answer (p. 17 of the bill of exceptions), passed a resolution which resulted in the removal of the plaintiffs from the offices as directors of the company before the expiration of the agreed period of eight years "upon consideration of the damage which would result to all the shareholders if the former condition of affairs were to continue, by reason of the considerable disproportion existing between the compensation of the directors and the profits upon the capital, and between the compensation and the service rendered in consideration thereof." There is no proof of any other ground which might have justified the removal, nor is it even alleged. The only reason was one of convenience. It is very obvious that the mere convenience of one of the contracting parties is not and can not be a just cause for the rescission of the contractual obligations assumed in favor of the other, and the premature removal of the plaintiffs from their office was in effect a rescission of the contract.

Nor is the judgment appealed in conflict with article 151 of the Code of Commerce. The submission to the vote of the majority of the stockholders in general meeting provided hy that article is limited solely to such matters *as may be proper for the deliberation* of that meeting, and the limitation is expressly stated in the article cited.

The defendant company alleges that the removal of the plaintiffs was merely a consequence of the modification of the articles of the company resolved by the general meeting of shareholders, and that this modification constituted a matter proper for its deliberation, both because this is to be inferred from paragraph 3 of article 168 of the Code of Commerce, and because article 33 of the articles of in corporation of the Compania Maritima expressly empowers the general meeting of shareholders to modify those articles.

Assuming the existence of this power, which in truth may be regarded as unquestionable, the question is reduced to determining its scope and the limitations imposed upon it by the law. The defendant company contends that this power implies or rather is equivalent *to the power to change the nature of the company, the condition of its*

existence, its organization, its purpose, and modus operandi. We can not assent to this interpretation. The share-holders of an anonymous company or corporation could not, for example, resolve by a majority vote that it should be changed into a general partnership and bind the minority to submit to such a resolution which, by making them general partners, would necessarily result in increasing their liability for the company debts. Nor could such a majority, against the will of the minority, change-the principal purpose for which the company was formed, as, for instance, by investing in mining operations the capital of the company, which, according to the second of the articles of incorporation in this case, was to be used exclusively for purchasing and chartering vessels, in writing marine insurance, and entering into other contracts and business operations proper to maritime commerce.

The reason for this is that in every contract of partnership there is always something fundamental and unalterable which is beyond the power of the majority, and which, constituting the rule controlling their resolutions, prevents the will of the greater number from becoming the absolute arbiter of the interests of the minority. Without this necessary limitation the power of members in anonymous partnerships, in which to a certain extent it may be said that numbers are everything, would be absolute and irresistible, and might easily degenerate into an arbitrary tyranny. The minority would be completely wiped out and their rights would be wholly at the mercy of the abuses of the majority, for they would have no means whatever of defending themselves against its impositions if the resolutions of the majority, as contended for by the appellant, were in every case to be binding, even though manifestly unjust and injurious to the interests of the minority. This rule, which must be observed, this limit which can not be passed by the mere will of the majority and upon which it acts as a veto, is to be found in the essential compacts of the partnership which have served as a basis upon which the members have united and without which it is not probable that they would have entered the association.

In speaking of anonymous partnerships in his work already cited, Sr. Eixala says: ” The resolutions of the boards passed by a majority vote

are valid * * * *and their authority for passing such resolutions is unlimited; provided that the original contract is not broken by them, the partnership funds not devoted to foreign purposes, or the partnership transformed, or changes made which are against public policy or which infringe the rights of third persons."*

Article 7 of the royal decree and regulations of February 17, 1848, again cited here as a legal precedent, also provided as follows: "The regulations of stock companies shall comprise provisions relative to the administrative control of the enterprise and the management of its operations, *in conformity with the basis established in the articles of association."*
If the articles or regulations must respect this conformity, it follows that the modification, the mere modification of them, must also be always subordinate to this rule, for otherwise the legal requirement of this conformity would' be wholly illusory.

The judgment of
the supreme court of Spain of June 30, 1888, cited by t]ie court in its decision, fully confirms the doctrine expressed by declaring that in order that "resolutions passed by a general meeting of stockholders be valid and binding upon dissenting members, it is an indispensable requisite that they *conform absolutely to the compacts and conditions of the articles of association, which are to be strictly construed."*

In the second conclusion of law contained in that decision, the court says further that "the power conferred by the articles [and it might have been added by the Code of Commerce] to renew the company by a resolution of the general meeting of shareholders *can not be considered as including the power to alter in whole or in part the essential basis of its constitution* * * * because that would be equivalent to an essential *novation of the original contract, which consequently could on'ly be binding upon such of the shareholders as had consented thereto."*

The supreme court of Spain, in a decision of June 8, 1875, held also that "the clear and express provisions of the articles of a company can not be altered by a subsequent resolution of the members to the

prejudice of those who did not consent to such resolutions."

As the court below correctly stated in overruling the demurrer to the complaint: "It is to be supposed that the defendants contributed their vessels in consideration of the benefits conceded to them by the articles of association, and that without these benefits they would not have become partners, nor would they have contributed their vessels to the enterprise. No one can complain of the appointment of administrators during the first period of eight years, for this was the agreement between the founders of the company, which was assented to by those who subsequently became interested therein."

The appellant admits this conclusion of the court below to be correct, as may be seen on page 14 of its brief, which contains the following statement: "It is said that they are special compacts [referring to the transitory provisions which contain the appointment of the plaintiffs] and without denying that this is so, we would add still further that perhaps they were necessary conditions for the association of the five companies and to the existence of the Compañia Maritima." This being so, and the appointment of the plaintiffs to the office of directors of the company for a period of eight years being an essential condition and a fundamental basis of the company, it is evident that it could not be set aside or disregarded upon the pretext of a modification of the articles because the power to modify these articles does not and can not be made to include that of altering the fundamental compacts and conditions upon which the association rests, to the prejudice of some of the members, without their consent and against their will. Such an alteration would not be a simple modification of the articles, but would be an essential novation of a part of the contract, and from this point of view the majority is without legal power to coerce and bind the minority.

And, taking into consideration another phase of the question, it also appears to be evident that if the managing directors can not be removed from their offices without just cause, as above stated, the general meeting of shareholders was without authority to direct, as it did, the removal of the plaintiffs without just cause. From this point

of view it may be said that this removal as effected was not, nor could it be, legally speaking, subject-matter for the deliberations of that meeting.

From this it follows that the judgment below is not in conflict with the articles of association of the Compañia Maritima, or of its articles or resolutions legally passed, as alleged by the appellant, in the second assignment of error. Far from it; the court on the contrary has strictly followed the agreement expressed in the contract by refusing to enforce a resolution of the general meeting of shareholders arbitrarily removing the plaintiffs from office, because the court considered it to be contrary to the stipulations contained in that contract.

The defendant in its third assignment of error contends that the judgment appealed is at variance with the facts established, the allegations, and the proof.

This supposed variance is presented by the appellant in the following argument: “The plaintiffs are given one per cent of the gross, or total receipts, each defendant being given one-half of 1 per cent as though on the 22d of February, 1897, there had been only five directors of the Compañia Maritima, the fact being, and it was so alleged, that the directors were seven in number, and they were to receive among them all 2 1/2 per cent of the gross receipts; and consequently the share of each one would not be one-half of 1 per cent. Furthermore, the directors were only entitled to receive this compensation if they were present at the meetings of the board and in proportion to the number of times that they were so present, and the court does not find in his decision that the plaintiffs were present at all the meetings of the board of directors, which was the service for which the compensation of 5 per cent was to be paid, which compensation was not to be given to each director individually, much less to the Messrs. Reyes in particular.”

Without going into the contrary allegations of the parties with respect to the number of directors which the Compañia Maritima had, and

which according to the seventh paragraph of the complaint was seven, while in the answer only six were mentioned, the sixth being Mr. John T. Macleod, as to whom the appellees say in their brief (p. 40) that he was appointed with the condition of not being given any participation in the compensation of the board of directors-—without going into this the plaintiffs stated in paragraph 12 of the complaint the following: "And as those who acquired these rights were five, and the board of directors of the company was reduced to five, among whom the remuneration fixed for the board was to be distributed, at the time the plaintiffs were removed, their participation in this compensation, fixed by paragraph 8 of the transitory provisions, and of which they were deprived, must necessarily be one-half of 1 percent each of the total receipts, or 1 per cent for both."

It was the province of the court below in making his findings upon the evidence introduced to find the facts to be as alleged ill that part of the complaint. And such was doubtless the conclusion upon which he based the amount of the damages for which he gave judgment against the appellant, and upon this allegation, which certainly was not denied in the answer, it follows, therefore, that the judgment is not at variance with the facts alleged in the complaint.

It is true that the judgment does not express the finding that the plaintiffs were present at all the meetings of the board of directors, but it was not necessary to make such a finding because this fact would naturally be presumed, the contrary not having been proven or even alleged. At all events the burden would have been upon the defendant to prove the impossibility of their being present, because this is not to be presumed but proven.

There having been no motion for a new trial in the court below, we are without jurisdiction to review the evidence introduced at the trial. Consequently we can not take into consideration or make any finding as to the alleged variance between the judgment and the proof, even if the evidence were what the appellant contends it is.

The fourth assignment of error rests upon a false assumption. In

this assignment it is stated that “the judgment is erroneous in that it condemns the Compañia Maritima to the payment of damages by reason of the nullity or invalidity of a resolution passed by a general meeting of shareholders, there having been no action brought concerning the nullity of such resolution, and there being no judgment declaring it null or invalid, and furthermore because this resolution, even if null, has been confirmed by the plaintiffs themselves.” The judgment does not say a single word about the nullity of that resolution, but simply rests upon the breach by the defendant of the conditions stipulated in the contract of partnership to the prejudice of the plaintiffs. This breach, disregarding entirely the question of the validity or nullity of the resolution in question, is sufficient legal ground to support a judgment for damages under the provisions of article 1101 of the Civil Code.

The decision contains no finding whatever as to acts performed by the plaintiffs which might be interpreted as a confirmation by them of the resolution by which they were removed. For the reasons stated above, we can not review the evidence upon this point nor take it into consideration in deciding the case. The only fact alleged in the answer upon this point is that the plaintiffs, after the 22d of February, 1897, withdrew from the vaults of the company the stock there deposited by them as security for the discharge of their duties as directors. This fact has been denied by the plaintiffs (p. 41 of their brief), who state that they did not withdraw the said stock, but that it was returned to them when they were removed from office. Be this as it may, the fact remains that this act can not be interpreted as a waiver of their right to impugn the resolution by which they were removed, for it was a mere consequence of the cessation—certainly not imputable to them—of the causes which had made that deposit necessary. As the sole purpose of this deposit was to guarantee the performance by them of their duties as directors, there certainly was no reason why the security should subsist after the plaintiffs had ceased to exercise the office, even though their removal therefrom was against their will and as a result of an arbitrary and unjust resolution of the majority of the shareholders of the company.

With what we have stated the second question of law raised in the judgment as to whether the appointment of the plaintiffs as directors under the transitory provisions was personal to them or a right granted to the companies they represented is no longer of importance. However this may be, it is certain that the plaintiffs and not the company they represented were entitled to receive and did receive personally that part of the compensation which corresponded to them as members of the board of directors. Consequently they were directly and personally damaged by their removal from the office by which they were deprived of that remuneration. If damage exists, and that damage affects them directly and personally as stated, it is very clear that they can not be denied their right to maintain an action for the reparation of that damage, even supposing that the damage might also have affected, in a different way, the companies in question, because it is a matter of justice that any person unjustly damaged is entitled to recover compensation for the damage suffered from the person by whom it has been caused. The different firms, whether they were the ones which founded the Compania Maritima, or whether they were mercantile companies represented in this city by the directors of the Compania Maritima as alleged in the appellant's brief, might perhaps have considered themselves as entitled to demand that any vacancy in the board of directors caused by the withdrawal of the plaintiffs should be filled by some one or more of their members during the first period of eight years, in accordance with the provisions of transitory clauses 3 and 6. But that is not the question in this case. The question to be determined here is whether the general meeting of shareholders of the Compania Maritima had a right to remove the plaintiffs from the board of directors without just cause before the expiration of the period of eight years fixed in the articles of association. This presents the question from an entirely different point of view

The decision of these questions necessarily involves that of the exception taken by the defendant to the order of the court overruling the demurrer, which exception was relied upon in this instance solely with respect to the second ground of the demurrer, *to the effect that the facts alleged in the complaint do not constitute a cause of action in*

favor of the plaintiffs.

The questions raised upon this point go to the merits of the case and are those which have been already determined. The complaint states facts sufficient to constitute a cause of action in favor of the plaintiffs. We therefore declare that the court below did not err, but on the contrary acted in accordance with the law in overruling the demurrer upon this ground.

For the reasons stated, the judgment below is affirmed with the costs of this instance against the appellant. Judgment will be entered accordingly twenty days from the date of the filing of this decision, and the case remanded to the trial court for execution thereof. So ordered.

Arellano, C. J., Torres, Cooper, Willard, and *McDonough, JJ.,* concur.

Johnson, J., did not sit in this case.

Date created: January 22, 2019