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[G.R. No. 2153. November 23, 1905]

H. FRANKEL AND W. L. WRIGHT, PLAINTIFFS AND APPELLANTS, VS. M. A. CLARKE, DEFENDANT AND APPELLEE.

D E C I S I O N

JOHNSON, J.:

This was an action to recover the sum of $150, United States currency, for certain printing or advertising alleged to have been done by the plaintiffs for the defendant under contract. The defendant claims that the contract of printing or advertising was done by the "*Philippine Purchasing, Forwarding and Express Company,*" and that these plaintiffs can not maintain this action.

The evidence adduced during the trial shows that these plaintiffs had in contemplation the organization of the "*Philippine Purchasing, Forwarding and Express Company,*" and by virtue thereof entered into a contract with the defendant in the name of such express company, to publish certain advertisements, concerning the defendant's business, in a mercantile directory to be published by the said alleged company. The evidence also shows that the defendant was informed, at the time he signed tnese contracts, that the plaintiffs herein were the only persons interested in said express company.

The advertisement or advertising matter was published by the plaintiffs, as they allege, in conformity with this contract.

The plaintiffs also allege that they presented to the defendant, at the time the contract was entered into, a "*dummy,*" representing the form of the mercantile directory to be published, and that said mercantile directory was published exactly in accordance with this form or "*dummy.*"

The plaintiffs brought this action in their individual names, without any reference to the fact that the contracts were made with the said express company. During the trial they offered in evidence these contracts. The court refused to admit the contracts in evidence for the reason that such contracts show upon their face that they were made or entered into between the said express company and the defendant and not between the plaintiffs and the defendant. The defendant admitted that he entered into the contract with the said company; that he was informed at the time that these plaintiffs were the only persons interested in the company and that the advertising matter which he furnished was published, but alleged and undertook to show by proof that the directory published was not the kind of directory that the plaintiffs undertook to publish.

While the contract was actually made between the *"Philippine Purchasing, Forwarding and Express Company,"* it was clearly shown by proof during the trial that these plaintiffs were the real parties in interest. Section 114 of the Code of Civil Procedure provides that every action must be prosecuted in the name of the real party in interest. The fact that these plaintiffs were the real parties in interest in the contracts should have been set out in the complaint, however, the failure to allege their relation to the contracts sued upon was cured by the evidence adduced during the trial. The plaintiffs were permitted during the trial to prove that they were the only parties in interest, as against the defendant, in said contracts. By proving that they were the only parties in interest in said contracts, they thereby made the contracts marked "Exhibits B, C, and D" admissible as evidence, even though such contracts appeared upon their face to have been executed by other obligees. The proof admitted during the trial that they were the real parties in interest, even in the absence of an allegation in the petition to that effect, made the contracts admissible in evidence.

We are therefore of the opinion that these parties had a right to maintain the action in their individual names and that the contracts offered in evidence marked "*Exhibits B, C, and D*" should have been admitted.

The original "*dummy*" was not introduced in evidence; neither was the "*directory*" as published made a part of the bill of exceptions. There is nothing, therefore, in the record to show whether the directory published by the plaintiffs was in conformity with the contract between the defendant and the alleged company or not. We have, however, the findings of the judge who tried this cause in the inferior court, upon that question, which is as follows:

> "The proof shows that this is not a mercantile directory, but merely an advertising pamphlet. It is not in any way like it was represented to the defendant it would be for inducing him to subscribe."

In the absence of other proof to the contrary in the bill of exceptions, we accept this finding of the inferior court. Our conclusion is, therefore, that the plaintiffs did not comply with their contract with the defendant and are, therefore, not entitled to recover.

The judgment of the inferior court is therefore affirmed, and after the expiration of twenty days judgment will be entered in accordance herewith and the case remanded to the court below. So ordered.

Arellano, C.J., Torres, Mapa, and *Carson, JJ.*, concur.

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