

ing of the complaint will show that both Timoteo Villegas, predecessor-in-interest of the plaintiffs and Santos Belarmino, one of the defendants, purchased from the Bureau of Lands two lots each, the former Lot No. 400 containing an area of 83,579 sq. m., and the latter Lot No. 3211 containing an area of 61,578 sq. m.; that Lot No. 400 included the triangular portion now in question, and not Lot No. 3211, and that since the date of its sale to Timoteo Villegas, the latter had been in possession of Lot No. 400, including the triangular portion; that, in a re-survey made of those lots in accordance with the cadastral law, Lot No. 3211 was subdivided into lots 3211-N, 4639, and 4640; that the original area of Lot No. 3211 was 61,578 sq. m., but after its subdivision into three lots, their total area was increased to 67,808 sq. m., or a difference of 6,230 sq. m., with the result that the area of Lot No. 400 became 76,591 sq. m. instead of its original area of 83,579 sq. m.; that defendants know all the time that the triangular portion in question was included in the sale made way back in 1910 by the Bureau of Lands to Timoteo Villegas and not in the sale made in the same year by said Bureau to Santos Belarmino, as they likewise well knew that the lot bought by Timoteo Villegas, including the triangular portion, had always been in continuous, open, public, notorious, and adverse possession of the plaintiffs and their predecessors-in-interest as exclusive owners.

The foregoing facts unmistakably show: (1) that the lot bought by plaintiffs' predecessors-in-interest included the triangular portion in dispute; (2) that said triangular portion was erroneously included in the lot bought by Santos Belarmino in a re-survey made by the Bureau of Lands years later; (3) that defendants knew, or had actual or constructive knowledge, of such mistake; and (4) defendants never claimed any right of ownership or of possession of said portion until after the issuance of the title issued to them in 1952. Under these facts, it is obvious that defendants cannot claim to be purchasers in good faith of the portion in question even if they had paid the consideration therefor with the sanction of the Bureau of Lands. (Cui & Joven v. Henson, 51 Phil. 606; Legarda & Prieto, 31 Phil. 590; Angeles v. Samia, 66 Phil. 444.) It should be borne in mind that the complaint was dismissed not because of any evidence presented by the parties, or as a result of the trial on the merits, but merely on a motion dismiss filed by the defendants. Such being the case, the sufficiency of the motion should be tested on the strength of the allegations of facts contained in the complaint, and on no other. If these allegations show a cause of action, or furnish sufficient basis by which the complaint can be maintained, the complaint should not be dismissed regardless of the defenses that may be averred by the defendants. It has been said that the test of the sufficiency of the facts alleged in a complaint, to constitute a cause of action, is whether or not, admitting the facts alleged, the court could render a valid judgment in accordance with the prayer of said complaint. (Paninsan v. Costales, 28 Phil. 487; Blay v. Batangas Transportation Co., 45 O. G. Supp. to No. 9, p. 1.) In our opinion, the allegations of the instant complaint are of this nature, and so the lower court erred in dismissing it.

Wherefore, the order appealed from is set aside. The Court orders that this case be remanded to the lower court for further proceedings, without pronouncement as to costs.

*Paras, Pablo, Bengzon, Padilla, Montemayor, A. Reyes, Jugo, Labrador and Concepcion, J.J. concur.*

#### X

*Teodoro Vaño, Petitioner, vs. Hipolito Alo, as Judge of the Court of First Instance of Bohol, Pedro Dumadag and Esmenio Jumanay, Respondents, G. R. No. L-7220, July 30, 1954, Labrador, J.*

1. PARTIES; IMPEADING OF REAL PARTIES, APPLICABLE TO PARTIES PLAINTIFF ONLY. — The rule requiring real parties to be impleaded is applicable to parties plaintiffs, not to parties defendant.
2. ID.; ID.; PLAINTIFF CAN CHOOSE CAUSE OF ACTION AND PARTIES HE DESIRES TO SUE WITHOUT IMPOSI-

TION BY COURT OR ADVERSE PARTY. — It is the absolute prerogative of the plaintiff to choose the theory upon which he predicates his right of action, or the parties he desires to sue, without dictation or imposition by the court or the adverse party. If he makes a mistake in the choice of his right of action; or in that of the parties against whom he seeks to enforce it, that is his own concern as he alone suffers therefrom.

3. ID.; ID.; ID.; REMEDY OF OFFICERS SUED WHO DESIRE TO IMPEAD MEMBERS OF UNREGISTERED CORPORATION—THIRD PARTY COMPLAINT. — Where the plaintiff sued the officers alone, and the latter desire to implead the members of the unregistered corporation and make them equally responsible in the action, their remedy is by means of a third party complaint, in accordance with Rule 12 of the Rules of Court. But they can not, compel the plaintiff to force his defendants. He may not, at his own expense, be obliged to implead any one who, under adverse party's theory, is to answer for the defendants' liability. Neither may the court compel him to furnish the means which defendants may avoid or mitigate their liability.
4. ID.; ID.; ID.; INDISPENSABLE PARTY AND PARTY JOINTLY OR ULTIMATELY RESPONSIBLE FOR OBLIGATION WHICH IS SUBJECT OF ACTION, DISTINGUISHED. —Where the complaint specifically alleged that the defendants, purporting to be the president and general manager of an unregistered corporation, entered into the contract by themselves, the presence of the members of the association is not essential to the final determination of the issue presented, the evident intent of the complaint being to make the officers directly responsible. (Article 287, Code of Commerce, *supra*.) The alleged responsibility of the members for the contract to the officers, who acted as their agents, is not in issue and need not be determined in the action to fix the responsibility of the officers to plaintiff's intestate, hence said members are not indispensable in the action instituted.

*Roque R. Luspo* for the petitioner.

*Victoriano Tirol* for the respondents.

#### D E C I S I O N

LABRADOR, J.:

Petitioner instituted this action of certiorari to reverse an order of the Court of First Instance of Bohol refusing to admit his fourth amended complaint. The record discloses the following facts and circumstances as a background for the petition:

Around the year 1947 respondents herein Pedro Dumadag and Esmenio Jumanay, purporting to be the president and general manager, respectively, of an unregistered corporation or association denominated APBA Cinematographic Shows, Inc., leased certain theatrical equipments from the late Jose Vaño at an agreed monthly rental of ₱200. Jose Vaño having died, his administrator, the present petitioner, filed an action in the Court of First Instance of Bohol for the return of the theatrical equipments and the payment of the agreed rentals. The original complaint was filed in September, 1947. Upon the filing of this complaint the association was dissolved. Counsel for the defendants below, respondents herein, appears to have insisted that all the members of the association should be made parties defendants, but petitioner was not inclined to do so. On January 28, 1953, the court ordered petitioner's counsel to submit a fourth amended complaint. This complaint in part alleges:

2. That in or about February 1947, defendant purporting to be the president and general manager respectively of the so-called "APBA" Cinematographic Shows Inc., leased from the late Jose Vaño, the aforementioned theatrical Equipments at an agreed monthly rental of TWO HUNDRED (200.00) PESOS, and that he (Jose Vaño) shall pay the expenses in the installation, for the same shall be returned on his demand;

3. That said Theatrical Equipments mentioned in para-

graph 1, had been completely installed at the beginning of the month of February, 1947, at the "APBA" building Calape, Bohol, and since then the said show house began its operation;

4. That upon inquiry, the plaintiff was informed and so allege that the "APBA" Cinematographic Shows Inc., has never been registered, hence Dumadag and Jumamuy who acted as the president and general manager respectively are the once made as party defendants;

Plaintiff did not include the members of the unregistered corporation as parties defendants, and so they were not summoned. On September 14, 1953, the court *a quo* entered the order complained of, which is as follows:

The association represented by defendants Pedro Dumadag and Esmenio Jumamuy, is not included as party defendant in the fourth amended complaint. It is a legal requirement that any action should be brought against the real party in interest.

In view of the opposition filed by the defendants Pedro Dumadag and Esmenio Jumamuy, the court denies the admission of plaintiff's fourth amended complaint dated February 17, 1953, and objected to on the date of the trial.

The fourth amended complaint (paragraph 2, *supra*) alleges that defendants, purporting to be the president and general manager of the unregistered corporation, leased the theatrical equipments from the plaintiff, petitioner herein. Said defendants, according to the complaint, did not enter into the contract in the name or on behalf of the corporation; consequently, the law applicable is Article 287 of the Code of Commerce, which provides;

Art. 287. A contract entered into by the factor in his own name shall bind him directly to the person with whom it was made; but if the transaction was made for the account of the principal, the other contracting party may bring his action either against the factor or against the principal.

The opposition of the respondents to the admission of the fourth amended complaint is procedural in nature, i.e., that notwithstanding the fact that the APBA was not registered, all its members should be included as parties defendants as provided in section 15 of Rule 3 of the Rules of Court. The trial court was of the opinion that the inclusion of the members was necessary as it considered them as "real parties in interest." In this respect, the trial court committed an error as the rule requiring real parties to be impleaded is applicable to parties plaintiffs, not to parties defendants.

It is the absolute prerogative of the plaintiff to choose the theory upon which he predicates his right of action, or the parties he desires to sue without dictation or imposition by the court or the adverse party. If he makes a mistake in the choice of his right of action, or in that of the parties against whom he seeks to enforce it, that is his own concern as he alone suffers therefrom. Granting that the members of the unregistered corporation may be held responsible, partly or wholly, for the agreement entered into by the officers who acted for the corporation, the fact remains that the plaintiff in the case at bar chose not to implead them, suing the officers alone. If the officers desire to implead them and make them equally responsible in the action, their remedy is by means of a third party complaint, in accordance with Rule 12 of the Rules of Court. But they can not compel the plaintiff to choose his defendants. He may not, at his own expense, be forced to implead any one who, under adverse party's theory, is to answer for the defendants' liability. Neither may the court compel him to furnish the means by which defendants may avoid or mitigate their liability. This was in effect what counsel for respondents wanted to compel the petitioner to do, and which the court was persuaded to do force the plaintiff to include the members of the unregistered corporation as parties defendants and when plaintiff refused to do so, it registered his fourth amended complaint.

The court's order, in so far as it demands the inclusion of the members of the unregistered corporation, has evidently been induced by a confusion between an indispensable party and a party jointly or ultimately responsible for the obligation which is the subject

of an action. The members of the unregistered corporation could be responsible for the rental of the equipments jointly with their officers. But the complaint specifically alleges that said officers entered into the contract by themselves, hence the presence of the members is not essential to the final determination of the issue presented, the evident intent of the complaint being to make the officers directly responsible. (Article 287, Code of Commerce, *supra*.) The alleged responsibility of the members of the corporation for the contract to the officers, who acted as their agents, is not in issue and need not be determined in the action to fix the responsibility of the officers to plaintiff's intestate, hence said members are not indispensable in the action instituted.

We find that the trial court abused its discretion in refusing to admit plaintiff's fourth amended complaint. The writ prayed for is hereby granted, the order complained of reversed, and the complaint ordered admitted, and the court *a quo* is hereby directed to proceed thereon according to the rules. With costs against respondents Pedro Dumadag and Esmenio Jumamuy.

*Paras, Pablo, Bengzon, Padilla, Montemayor, Alex Reyes, Jugo, Bautista Angelo, Concepcion and J. B. L. Reyes, J.J., concur.*

## XI

*The People of the Philippines, Plaintiff-Appellee, vs. Antonio Samaniego y Young alias Sy Liang Bok alias Tony, Defendant-Appellant, No. L-6085, June 11, 1954, Concepcion, J.*

*The People of the Philippines, Plaintiff-Appellee, vs. Ong Ing alias Crescencio Ong, and Alfredo Torres y Sagunson, Defendant-Appellant, No. L-6086, June 11, 1954, Concepcion, J.*

1. EVIDENCE; "RES INTER ALIOS ACTA". — The testimonies of peace officers for the prosecution in other criminal cases which were dismissed upon the ground that the confessions obtained by them, in connection with those cases, were tainted with irregularities are *res inter alios acta* and are not admissible in evidence.

2. ID.; ID.; ALIBI. — The uncorroborated testimony of one of the appellants that he was sick at home, when the offense charged was committed, cannot offset the positive testimony of witnesses who saw him near the scene of the crime.

3. ID.; CRIMINAL PROCEDURE; NEW TRIAL; NEWLY DISCOVERED EVIDENCE. — Where the alleged newly discovered evidence merely tends to corroborate appellants' alibi to the effect that they were not present at the scene of the crime and could not have participated in its commission, the motion for new trial should be denied.

4. ID.; ID.; ID.; EVIDENCE INSUFFICIENT TO OFFSET THAT FOR THE PROSECUTION WHICH HAS BEEN POSITIVELY ESTABLISHED. — The testimony of the new witness for the appellants to the effect that they were the authors of the crime charged and that no other persons could have committed it can not offset the positive testimonies of two unbiased witnesses for the prosecution that they have seen the appellants at the place of the occurrence at about the time of the perpetration of the offense charged, testimonies which were partly corroborated by one of the appellants himself.

*Sixto S. J. Carlos, Guillermo S. Santos, Eleuterio S. Abad, and Constantino B. Acosta* for the defendants and appellants.

*Gaudencio C. Cabacungan* for defendant Antonio Samaniego.  
*Solicitor General Juan E. Litwag and Assistant Solicitor General Francisco Carreon* for the plaintiff and appellee.

## D E C I S I O N

CONCEPCION, J.:

On April 28, 1950, at about 11:00 p.m., the dead body of Ong Tin Hui was found gagged and blindfolded in the Oxford Shoe