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[G.R. No. 2124. October 07, 1905]

SIMEON DU-YUNGCO, PLAINTIFF AND APPELLANT, VS. MACARIO BARRERA, DEFENDANT AND APPELLEE.

D E C I S I O N

TORRES, J.:

On the 30th day of March, 1904, a Chinaman, Simeon Du-Yungco, brought an action for damages in the justice court of the municipality of Langaran, Province of Misamis, against the defendant, Macario Barrera, the customs inspector at the port of that province. Judgment was entered on the 10th of May, of the same year directing that the defendant pay to the plaintiff the sum of 551.25 pesos, from which judgment the defendant appealed to the Court of Customs Appeals on the 13th of the same month, under Act No. 355 of the Civil Commission, after giving the necessary bond.

On the 16th of July, 1904, the plaintiff, Simeon Du-Yungco, presented a motion to the Court of First Instance of Misamis asking that the case be remanded to the justice court from whence it came, for the reason that the appeal had not been taken in accordance with the law. This motion was overruled on the same day on the ground that the law did not authorize an appeal from the justice court to the Court of Customs Appeals, but to the Court of First Instance, and the court held that this error did not vitiate the notice of appeal and that the appeal could properly be considered by the Court of First Instance. To this ruling of the court, the defendant excepted. On the 18th of July of the same year, 1904, Simeon Du-Yungco filed a complaint in the Court of First Instance, which was a reproduction of the one formerly filed in the justice court of Langaran, against the defendant, Macario

Barrera, alleging that he was a resident of the said town, and that the defendant was a customs subinspector of the same; that on the 28th day of March of the same year there arrived at Langaran a *baroto* loaded with goods belonging to the plaintiff, the total value of which was 460.25 pesos, Mexican currency; that the defendant maliciously and without reasonable ground therefor, taking, advantage of his office, refused to allow the plaintiff to land his goods, which in consequence thereof got wet and became a total loss, and that he had thereby suffered damages to the extent of 500 pesos, Philippine currency, and prayed that judgment be entered against the defendant for the sum of 500 pesos, Philippine currency, with costs, and for such other and further relief as might be just and equitable.

The defendant, in his answer, alleged that about 4 o'clock p.m., on the said 28th day of March there arrived at Langaran a boat, the *Armario*, loaded with goods consigned to the plaintiff; that he, the defendant, by reason of his office as customs inspector at that port, and in performance of his duty, detained the said boat on the ground that it had violated the customs regulations relating to coastwise trade; that it is absolutely false that all of the goods described in the complaint were lost on account of having gotten wet, and that, assuming that part of the goods loaded on said boat, as aforesaid, had been damaged, it was due ,to the negligence of the plaintiff, or of his agents or to a fortuitous accident; and he therefore prayed that judgment be entered, dismissing the complaint with costs against the plaintiff.

The brief filed by the appellant in this court contains no assignment of errors. It is therein alleged, however, that the court committed an error of law in considering as sufficient the appeal taken by the defendant from the judgment of the justice court, so as to give the court of First Instance of Misamis the necessary jurisdiction ,,to take cognizance of the case, notwithstanding the fact that the appeal was actually taken to the Court of Customs Appeals, which was a competent tribunal under Act No. 355 above cited. The appellant contends that the judgment of the court below was null and void, and asks the court to reverse the same with ,the direction that the judgment of the justice court be executed.

Section 20 of the rules of this court provides:

> "No error not affecting the jurisdiction over the subject-matter will be considered unless stated in the assignment of error and relied upon in the brief."

Under the above-quoted section of our rules, the error alleged in that brief—to wit, that the order of the court below, made and entered on the 16,th of July, 1904, overruling plaintiff's motion to remand the case to the justice court for the reason that the appeal had not been taken in accordance with the law, was erroneous, and hence that the exception taken by the plaintiff, and the judgment of the trial court can not be sustained—is the only error which can be considered in the final disposition of this case.

An appeal may be taken from a judgment rendered in an action in a justice court to the Court of First Instance of the province in which it is rendered. (Section 74 of the Code of Civil Procedure.)

When a party to an action appeals from an order or judgment which he believes prejudicial to his interests it is not absolutely necessary that he should state to what court he appeals, because such an appeal must be understood to be to the court empowered by law to take cognizance of the matter on appeal.

Neither Act No. 355 nor any other act provides that a party may appeal from a judgment of a justice of the peace to the Court of Customs Appeals; and in the case at bar it is evident that it was the defendant's intention to appeal from the judgment of the justice court, although he was mistaken in his belief that he should take his appeal to the aforesaid special tribunal created by said act. Assuming that this was an error on the part of the appellant—that is, that it was his intention to appeal from the judgment of the justice court—it would not be just to hold that he must abide by the judgment of the said justice of the peace and that he had waived his right to appeal therefrom, since it appears very clear that it was his express intention to appeal

from that decision, and that he took his appeal in due time. This appeal should be always understood to be to the Court of First Instance mentioned in the Code of Civil Procedure, under the provisions of which this case was tried. The error committed by the appellant in designating the court to which he appealed does not affect the appeal taken by him, or make it necessary to vacate the judgment appealed from under section 75 of the Code of Civil Procedure.

Furthermore, the mere statement of a party that he appeals from the judgment of the justice of the peace, without naming the court to which the appeal is taken, should under all circumstances be understood to have been taken to the Court of First Instance as provided by law, for the reason that the statute does not designate any other court. It is not even necessary to refer to section 2 of the Code of Civil Procedure relating to the construction of the provisions of that code, for the reason that the provisions of sections 71 to 79, inclusive, of the same code are very plain.

It is true that the plaintiff and appellee excepted to the order overruling his motion to dismiss, and that he thereafter excepted to the final judgment entered in the case. But it is none the less true that he filed a complaint in the Court of First Instance of Misamis, a reproduction of the complaint filed by him in the justice court, and that he prosecuted this new action to final judgment. This judgment was in accordance with the law.

For the reasons above stated the exception to the order of the court below, dated the 16th of July, 1904,. can not be sustained, and the said order is hereby affirmed, as is also the judgment of the 21st of the same month, with the costs against the appellant Simeon Du-Yungco.

After the expiration of twenty days let judgment be entered in accordance herewith, and let the record be remanded to the Court of First Instance for execution. So ordered.

Arellano, C. J., Mapa, Johnson, and *Carson, JJ.*, concur.
Willard, J., dissents.

Date created: April 28, 2014