

[G.R. No. 3082. November 08, 1906]

**RAMONA TARROSA, PLAINTIFF AND APPELLANT, VS. P. A. PEARSON,
DEFENDANT AND APPELLEE.**

D E C I S I O N

ARELLANO, C.J.:

On the 2d day of June, 1905, the plaintiff brought an action of ejectment in the justice court of the city of Manila to recover the possession of a certain house occupied by the defendant as a tenant and the rent then due for the use and occupation of the said building. (Bill of exceptions, pp. 1, 2.) At the bottom of page 2 the following statement appears: "The defendant having appealed from the decision of the justice court, the plaintiff, through her attorney, renewed her complaint hereinbefore quoted, and filed in part 3 of the Court of First Instance of the city of Manila, presided over by the honorable John O. Sweeney, a judge of said court, the following pleading."

The pleading referred to is the new complaint filed by the plaintiff in the Court of First Instance setting out the same facts alleged in the complaint presented to the justice court.

The defendant demurred to the complaint in the Court of First Instance upon the following grounds: (1) That the court had not original jurisdiction of the action for the reason that the action originally brought in the justice court of the city of Manila had not yet been finally decided; and (2) that the complaint did not state facts sufficient to constitute a cause of action. The court overruled the demurrer and the defendant was allowed five days within which to answer.

The defendant did not do so but filed a motion asking that the action be dismissed upon the same grounds on which the demurrer was based. The court then, not for any of the reasons alleged by the defendant, but because the provisions of section 81 of the Code of Procedure in Civil Actions require that a complaint filed in the justice court shall be verified by the

oath of the plaintiff, or his agent or attorney, and certified by the justice of the peace before whom the action is instituted, dismissed the action of the plaintiff with costs against plaintiff.

From this order of the court dismissing plaintiff's action the latter appealed to this court by bill of exceptions. Section 112 of the Code of Civil Procedure provides: "When a perfected appeal from a judgment of the justice of the peace has been duly entered in the Court of First Instance, new pleadings shall be filed in the action in that court, and the pleadings in such action shall be in all respects governed by the same rule as though the action had been originally commenced in the Court of First Instance, but the plaintiff may, if he so elects, rely upon his complaint as originally filed before the justice of the peace instead of filing a new one.

The plaintiff in this case elected to do the former. She filed a new complaint setting out the same cause of action as in the justice court, and this new complaint need not be verified by the oath of the plaintiff as held by the court below. The verification referred to in section 81 is only required on a complaint filed in a justice court. If the plaintiff had elected to do the latter by relying upon her complaint as originally filed in the justice court, then the question raised by the order of the court below, from which the appeal was taken, to wit, whether an action may be dismissed upon the ground that the complaint was not verified in accordance with the provision of section 81 of the Code of Civil Procedure, might be properly considered.

But this not being the question here, since the plaintiff filed a new complaint in the Court of First Instance in accordance with the provisions of section 90, there is nothing upon which the order of the court could be based, and it can not, therefore, be sustained. The order of the court below overruling the demurrer and granting to the defendant five days within which to answer is therefore in full force and effect.

The order of the court below from which this appeal was taken is accordingly set aside, without special condemnation as to costs, and it is hereby directed that under the order of the 16th of September, 1905, the defendant be allowed five days within which to answer. After the expiration of ten days from the date of final judgment the case will be remanded to the court below for execution. So ordered.

Torres, Mapa, Carson, Willard, and Tracey, JJ., concur.

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

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