

7 Phil. 405

[G.R. No. 3150. February 01, 1907]

**CIRILA DOMINGO, PLAINTIFF AND APPELLANT, VS. ANTONIO OSORIO,
DEFENDANT AND APPELLEE.**

D E C I S I O N

ARELLANO, C.J.:

This is an appeal from the order of the court below sustaining the defendant's demurrer to the complaint on the ground that plaintiff's action was barred by the statute of limitations, and to which said order the plaintiff duly excepted.

The complaint was filed on the 1st of August, 1905, and subsequently amended on the 22d of December following, the pertinent facts alleged therein being:

"I. That between the 1st of January, 1895, and the 16th of July, 1896, plaintiff, at defendant's request, furnished the material and performed the work necessary for the repair of several vehicles;

"II. That the value of the material and work in the repairs mentioned in the preceding paragraph is one thousand forty-one pesos and forty-five cents, Mexican currency;

"III. That of the money mentioned in Paragraph II the defendant in or about the month of July, 1897, paid the sum of one hundred pesos (100), Mexican currency;

"IV. That there remains a balance due from the said defendant of nine hundred and forty-one pesos and forty-five cents (941.45), Mexican currency, which the defendant refuses to pay, although payment has been duly demanded."

And the plaintiff seeks to recover this sum, or its equivalent in Philippine currency, with

legal interest thereon from the 16th of July, 1896, and the costs. (Bill of exceptions, p. 6.)

To this complaint the defendant demurred upon the following grounds:

- I. That the amended complaint does not state facts sufficient to constitute a cause of action.
- II. That the alleged cause of action is barred by the provisions of article 1967 of the Civil Code.

On the 16th of January, 1906, the court below decided the demurrer as follows: "Being of the opinion that the demurrer is well founded, it is hereby sustained and the complaint of the plaintiff is dismissed, and considering that the cause of action is barred by the statute of limitations, it is ordered that the action of the plaintiff be dismissed and that the defendant, Antonio Osorio, recover from the plaintiff, Cirila Santiago, the costs of this action." (Bill of exceptions, p. 7.) The errors assigned by the appellant are as follows: "I. That the court below erred in sustaining defendant's demurrer to the complaint; II. That the court below erred in dismissing plaintiff's amended complaint on the ground that 'plaintiff's cause of action is barred by the statute of limitations.'"

As to the merits of the case, the appellant in support of her second specification of error contends that the prescription of three years provided in article 1967 of the Civil Code for all actions for services rendered and for goods sold and delivered is not applicable to the case at bar, for this is not an action to recover the daily wage of a mechanic, servant, or day laborer, nor the value of supplies furnished by the latter, but the cost of certain repairs made to some of defendant's vehicles by the plaintiff, by direction and at the request of the former, and that this action is an action *in personam* arising from a contract for services included within the provisions of article 1964 of the Civil Code, which provides for a prescriptive period of fifteen years.

Plaintiff's appeal can not be sustained upon this second assignment of error. According to article 1967, paragraph 3, all actions for the fulfillment of obligations "for the payment of mechanics, servants and laborers the amounts due for their services and for the supplies or disbursements they may have incurred with regard to the same," prescribe in three years. It is not, therefore, the obligation to pay the wages of the mechanic but the obligation to pay the value of his services, that is to say, the value of the work and the value of the material furnished for the repair of the vehicles, according to the complaint and the provisions of the

Civil Code, above quoted, which is sought to be recovered in this action. That the cause of action alleged in the complaint arises from the services rendered by a mechanic and the disbursements made and material supplied in connection with the same is conclusively shown by the definition of the word "mechanic" and the legal precedent for the article of the code above quoted. The word "mechanic," according to all dictionaries, and particularly that of the Spanish Academy, means "he who earns his livelihood with his hands" and by extension, any artisan, whether apprentice or master (Joaquin Dominguez Dictionary); and the legal precedent is no other than law 10, title 11, book 10 of the *Novisima Recopilacion*, which provides a prescriptive period of three years for actions for the recovery of wages of servants, which provision is therein extended to "pharmacists and jewelers and other mechanics, dealers in spices, confectioners and other persons conducting the sale of food stuffs, who after the lapse of three years can not recover the value of that which they have sold at their stores or of work done by them." This law was subsequent to another law providing for the same prescriptive period as to actions for the recovery of the fees of lawyers and attorneys. Consequently the defense set up by the defendant, that plaintiff's action was barred by the statute of limitations under article 1967 of the Civil Code, is in accordance with law.

But, as to the question of procedure, we hold that the objection that the action is barred by the statute of limitations can not be taken by demurrer, but must be set up as a defense in the answer to the complaint. American authorities differ upon this question and we shall not, therefore, resort to them in determining the proper construction that should be given to the provisions of the Code of Civil Procedure now in force. Paragraph 5 of section 91 of the Code of Civil Procedure does not authorize the objection of prescription to be taken by demurrer. That paragraph relates to the objection "that the complaint does not state facts sufficient to constitute a cause of action." But the facts alleged in the complaint constitute *per se* a cause of action. According to the allegations of the complaint, which must be assumed to be true for the purpose of the demurrer, there existed an obligation arising from a contract between the parties, which it is sought to enforce. Prescription, which is a legal and not a natural cause of the extinguishment of an obligation, can not be set up as a ground for demurrer by mere inference from the only facts alleged in the complaint, which facts were in themselves sufficient to show that the plaintiff had a perfect right to maintain an action for the enforcement of such obligation. In order to do so it would be necessary to assume facts which are not alleged in the complaint.

The law of criminal procedure now in force, General Orders, No. 58, contains a provision similar to that of paragraph 5 of section 91 of the Code of Civil Procedure, paragraph 4 of

section 21 of the aforesaid General Orders reading, "That the facts charged do not constitute a public offense" may constitute a ground for demurrer. Paragraph 5 of the same section provides the same if it appear: "That it (the complaint or information) contains averments which, if true, would constitute a legal justification or excuse." There is nothing similar to this last-quoted provision in the Code of Civil Procedure.

We are of the opinion that the appeal should be sustained upon the first assignment of error, and accordingly hereby reverse the order of the court below without special provision as to costs. After the expiration of twenty days let judgment be entered in accordance herewith and ten days thereafter the record be remanded to the court below for execution. So ordered.

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