

**THE MANILA RAILROAD COMPANY, PLAINTIFF AND APPELLEE, VS.
THE ATTORNEY-GENERAL, REPRESENTING THE INSULAR
GOVERNMENT ET AL., DEFENDANTS AND APPELLANTS.**

G.R. No. L-6287. December 01, 1911

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of the Province of Tarlac dismissing the action before it on motion of the plaintiff upon the ground that the court had no jurisdiction of the subject matter of the controversy.

The question for our consideration and decision is the power and authority of a Court of First Instance of one province to take cognizance of an action by a railroad company for the condemnation of real estate located in another province.

In the month of December, 1907, the plaintiff began an action in the Court of First Instance of the Province of Tarlac for the condemnation of certain real estate, stated by the plaintiff in his complaint to be located in the Province of Tarlac. It is alleged in the complaint that the plaintiff is authorized by law to construct a railroad line "from Paniqui to Tayug in the Province of Tarlac," and it is for the purpose of condemning lands for the construction of such line that this action is brought. The land sought to be condemned is 69,910 square meters in area. The complaint states that before beginning the action the plaintiff had caused to be made a thorough search in the office of the registry of property and of the tax offices of the municipalities for the purpose of determining where the lands sought to be condemned were located and to whom they belonged. As a result of such investigations the plaintiff alleged that the lands in question were located in the Province of Tarlac. The defendants are numerous. Advantage was taken by plaintiff of Act No. 1258 to join as defendants in one action all of the different owners of or persons otherwise interested in the 69,910 square meters of land to be condemned. After filing and duly serving the complaint the plaintiff, pursuant to law and pending final determination of the action, took possession of and occupied the lands described in the complaint, building its line and putting the same in operation. During the progress of the action a commission to appraise the value of the lands was duly appointed, which, after taking oral testimony, amounting to 140 typewritten pages when transcribed, and after much labor and prolonged consideration made a report consisting of about 55 typewritten pages, resolving the question submitted to it. On the coming in of this report the court, by order entered the 27th of September, 1909, set the 11th day of October following for the hearing thereon.

On the 4th day of October the plaintiff gave notice to the defendants that on the 9th day of October a motion would be made to the court to dismiss the action upon the ground that the court had no jurisdiction of the subject matter, it having just been ascertained by the plaintiff that the land sought to be condemned was situated in the Province of Nueva Ecija, instead of the Province of Tarlac, as alleged in the complaint. This motion was heard and, after due consideration, the trial court dismissed the action upon the ground presented by the plaintiff. This

appeal is taken from said judgment of dismissal.

The decision of the learned trial court was based entirely upon the proposition, already referred to, that in condemnation proceedings, and in all other proceedings affecting title to land, the Court of First Instance of a given province has no jurisdiction, power or authority where the land is located in another province, and that no such power, authority, or jurisdiction can be conferred by the parties.

Sections 55 and 56 of Act No. 136 of the Philippine Commission confer jurisdiction upon the Courts of First Instance of these Islands with respect to real estate in the following words:

"Sec. 55. Jurisdiction of Courts of First Instance.- The jurisdiction of Courts of First Instance shall be of two kinds:

"1. Original; and

"2. Appellate.

"Sec. 56. Its original jurisdiction. - Courts of First Instance shall have original jurisdiction:

* * * * *

"2. In all civil actions which involve the title to or possession of real property, or any interest therein, or the legality of any tax, impost, or assessment, except actions of forcible entry into, and detainer of lands or buildings, original jurisdiction of which is by this Act conferred upon courts of justice of the peace."

It is apparent from the wording of these sections that it was the intention of the Philippine Commission to give to the Courts of First Instance the most perfect and complete jurisdiction possible over the subject matters mentioned in connection therewith. Such jurisdiction is not made, to depend upon locality. There is no suggestion of limitation. The jurisdiction is universal. Nor do the provisions of sections 48, 49, 50, 51, and 52 at all militate against the universality of that jurisdiction. Those provisions simply arrange for the convenient and effective transaction of business in the courts and do not relate to their power, authority, or jurisdiction over the subject matter of the action. While it is provided in these sections that a particular court shall hold its sessions in the province to which it has been assigned and in which it habitually sits and, inferentially, that it can not hold sessions in any other province (except under certain specified conditions), the assertion is nevertheless true that the jurisdiction of a particular court is in no wise and in no sense limited; and it is nowhere suggested, much less provided, that a Court of First Instance of one province, regularly sitting in said province, may not under certain conditions take cognizance of an action arising in another province or of an action relating to real estate located outside of the boundaries of the province to which it may at the time be assigned.

Certain statutes confer jurisdiction, power, or authority. Others provide for the procedure by which that power or authority is projected into judgment. The one class deals with the powers of the court in the real and substantive sense; the other with the procedure by which such powers are put into action. The one is the thing itself; the other is the vehicle by which the thing is transferred from the court to the parties. The whole purpose and object of procedure is to make the powers of the court fully and completely available for justice. The most perfect procedure that can be devised is that which gives opportunity for the most complete and perfect exercise of the powers of the court within the limitations set by natural justice. It is that one which, in other words, gives the most perfect opportunity for the powers of the court to transmute themselves into concrete acts of justice between the parties before it. The purpose of such a procedure is not to restrict the jurisdiction of the court over the subject matter, but to give it effective facility in righteous action. It may be said in passing that the most salient objection which can be urged against procedure today is that it so restricts the exercise of the court's powers by technicalities that that part of its authority effective for justice between the parties is many times an inconsiderable

portion of the whole. The purpose of procedure is not to thwart justice. Its proper aim is to facilitate the application of justice to the rival claims of contending parties. It was created not to hinder and delay but to facilitate and promote the administration of justice. It does not constitute the thing itself which courts are always striving to secure to litigants. It is designed as the means best adapted to obtain that thing. In other words, it is a means to an end. It is the means by which the powers of the court are made effective in just judgments. When it loses the character of the one and takes on that of the other the administration of justice becomes incomplete and unsatisfactory and lays itself open to grave criticism.

The proper result of a system of procedure is to insure a fair and convenient hearing to the parties with complete justice between them as a result. While a fair hearing is as essential as the substantive power of the court to administer justice in the premises, and while the one is the natural result of the other, it is different in its nature and relates to a different thing. The power or authority of the court over the subject matter existed and was fixed before procedure in a given cause began. Procedure does not alter or change that power or authority; it simply directs the manner in which it shall be fully and justly exercised. To be sure, in certain cases, if that power is not exercised in conformity with the provisions of the procedural law, purely, the court attempting to exercise it loses the power to exercise it legally. This does not mean that it loses jurisdiction of the subject matter. It means simply that he may thereby lose jurisdiction of the person or that the judgment may thereby be rendered defective for lack of something essential to sustain it. There is, of course, an important distinction between person and subject matter with reference to jurisdiction. Jurisdiction of the person and jurisdiction of the subject matter are both conferred by law. As to the subject matter, nothing can change the jurisdiction of the court over it. None of the parties to the litigation can enlarge or diminish it or dictate when it shall attach or when it shall be removed. That is a matter of legislative enactment which none but the legislature may change. On the other hand, the jurisdiction of the court over the person is, in some instances, made to depend, indirectly at least, on the party's volition. As we have said, jurisdiction of the subject matter does not depend on the consent or objection, on the acts or omissions of the parties or any of them. Jurisdiction over the person, however, may be conferred by consent, expressly or impliedly given, or it may, by an objection, be prevented from attaching or removed after it has attached.

In the light of these observations, we proceed to a consideration of those provisions of the law which the plaintiff claims are decisive of his contention that a Court of First Instance of one province has no jurisdiction of the subject matter of an action by a railroad company to condemn lands located in another province. The plaintiff relies for the success of its cause upon section 377 of the Code of Civil Procedure and upon the special laws relating to the condemnation of lands by railroad corporations. We take up first the section of the Code of Civil Procedure referred to.

The fact that such a provision appears in the procedural law at once raises a strong presumption that it has nothing to do with the jurisdiction of the court over the subject matter. It becomes merely a matter of method, of convenience to the parties litigant. If their interests are best subserved by bringing in the Court of First Instance of the city of Manila an action affecting lands in the Province of Ilocos Norte, there is no controlling reason why such a course should not be followed. The matter is, under the law, entirely within the control of either party. The plaintiff's interests select the venue. If such selection, is not in accordance with section 377, the defendant may make timely objection and, as a result, the venue is changed to meet the requirements of the law. It is true that this court has more than once held that an agreement to submit a controversy to a court which, under the procedural law, has not been selected as the appropriate court, generally speaking, to hear such controversy, can not be enforced. This means simply that either party to such a contract may ignore it at pleasure. The law will not compel the fulfillment of an agreement which deprives one of the parties to it of the right to present his cause to that court which the law designates as the most appropriate. But the principle asserted in the cases which hold thus is no

authority for the proposition that two persons having a controversy which they desire to have decided by a competent tribunal may not, by appropriate procedure, submit it to any court having jurisdiction in the premises. In the one case the relation is contractual to be enforced over the objection of one of the contracting parties. In the other the relation is not contractual because not between the parties; but, rather, between the parties and the court. In the one case it is a contract to be enforced; in the other, a condition to be met.

This being so, we say again, even though it be repetition, that after jurisdiction over real property in the Islands has been conferred so generally and fully by Act No. 136, it is not to be presumed or construed that the legislature intended to modify or restrict that jurisdiction when it came to frame a Code of Civil Procedure the object of which is to make that jurisdiction effective. Such modification or restriction should be held only by virtue of the clearest and most express provisions.

The wording of that section should be carefully examined. It reads as follows:

"Sec. 377. Venue of actions. - Actions to confirm title to real estate, or to secure a partition of real estate, or to cancel clouds, or remove doubts from the title to real estate, or to obtain possession of real estate, or to recover damages for injuries to real estate, or to establish any interest, right, or title in or to real estate, or actions for the condemnation of real estate for public use, shall be brought in the province where the land, or some part thereof, is situated; actions against executors, administrators, and guardians touching the performance of their official duties, and actions for account and settlement by them, and actions for the distribution of the estates of deceased persons among the heirs and distributees, and actions for the payment of legacies, shall be brought in the province in which the will was admitted to probate, or letters of administration were granted, or the guardian was appointed. And all actions not herein otherwise provided for may be brought in any province where the defendant or any necessary party defendant may reside or be found, or in any province where the plaintiff or one of the plaintiffs resides, at the election of the plaintiff, except in cases where other special provision is made in this Code. In case neither the plaintiff nor the defendant resides within the Philippine Islands and the action is brought to seize or obtain title to property of the defendant within the Philippine Islands, the action shall be brought in the province where the property which the plaintiff seeks to seize or to obtain title to is situated or is found: Provided, That in an action for the foreclosure of a mortgage upon real estate, when the service upon the defendant is not personal, but is by publication, in accordance with law, the action must be brought in the province where the land lies. And in all cases process may issue from the court in which an action or special proceeding is pending, to be enforced in any province to bring in defendants and to enforce all orders and decrees of the court. The failure of a defendant to object to the venue of the action at the time of entering his appearance in the action shall be deemed a waiver on his part of all objection to the place or tribunal in which the action is brought, except in the actions referred to in the first sixteen lines of this section relating to real estate, and actions against executors, administrators, and guardians, and for the distribution of estates and payment of legacies."

Leaving out of discussion for the moment actions and proceedings affecting estates of deceased persons, they resting upon a different footing being governed by special laws, it is to be observed that the section contains no express inhibition against the court. It provides simply that certain actions affecting real estate "shall be brought in the province where the land, or some part thereof, is situated." The prohibition here is clearly directed against the one who begins the action and lays the venue. The court, before the action is commenced, has nothing to do with either. The plaintiff does both. Only when that is done does the section begin to operate effectively so far as the court is concerned. The prohibition is not a limitation on the power of the court but on the rights of the plaintiff. It is not to take something from the court but to grant something to the defendant. Its wording clearly deprives the court of nothing which it had, but gives the defendant, as against the plaintiff, certain rights which he did not have. It establishes a relation not between the court and the subject matter, but between the plaintiff and the defendant. It relates not to jurisdiction but to trial. It touches convenience, not substance. It simply gives to

defendant the unqualified right, if he desires it, to have the trial take place where his land lies and where, probably, all of his witnesses live. Its object is to secure to him a convenient trial. If it had been the intention of the lawmakers by section 377 to put a limitation to the jurisdiction of the court, how easy it would have been to say so squarely. "No Court of First Instance shall have or take jurisdiction of an action touching title to or interest in real property lying wholly in a province other than that in which such court is authorized to hold sessions," or a similar provision, would have been sufficient. This would have been clearly a limitation on the court rather than the party. There would have been no room for doubt. The legislature, however, did not do so. It, rather, chose to use language which imposes a limitation on the rights of the plaintiff.

In saying this we do not desire to force construction. Courts should give to language its plain meaning, leaving the legislature to take care of the consequences. The Philippine Commission having, in fullest phrase, given the Courts of First Instance unrestricted jurisdiction over real estate in the Islands by Act No. 136, we are of the opinion that that jurisdiction ought not to be held to be withdrawn except by virtue of an Act equally express, or so clearly inconsistent as to amount to the same thing. The fact that section 377 is not such Act, that it is found in a Code of Procedure rather than in the substantive law, that it deals with the relative procedural rights of parties rather than the power of the court, that it relates to the place rather than to the thing, that it composes the whole of a chapter headed simply "Venue," lead us to hold that the Court of First Instance of Tarlac had full jurisdiction of the subject matter of this action at the time when it was dismissed.

That it had jurisdiction of the persons of all the parties is indisputable. That jurisdiction was obtained not only by the usual course of practice that is, by the process of the court - but also by consent expressly given, is apparent. The plaintiff submitted itself to the jurisdiction by beginning the action. (*Ayers vs. Watson*, 113 U. S., 594; *Fisher vs. Shropshire*, 147 U. S., 133.) The defendants are now in this court asking that the action be not dismissed but continued. They are not only not objecting to the jurisdiction of the court but, rather, are here on this appeal for the purpose of maintaining that very jurisdiction over them.

Nor is the plaintiff in any position to ask for favors. It is clearly guilty of gross negligence in the allegations of its complaint, if the land does not lie in Tarlac as it now asserts. It alleged in its complaint:

"4. That, according to the information secured after a minute investigation in the offices of the land registry and of the land-tax record of the municipalities within whose jurisdiction lie all the parcels composing the tract of land in question, the owners and occupants of the same, with their names as they appear on the plan, are as follows."

At the time it commenced the action it was possessed of every fact which a complete knowledge of the location of the lands sought to be condemned required. It had the map of its entire line from Paniqui to Tayug, showing the provinces and the various municipalities through which it runs. Not only that: Before beginning its action it had to know the name of every necessary defendant, the land he owned, and the extent of that portion to be condemned. The investigation required to ascertain these facts would of necessity force into plaintiff's mind the knowledge required to bring the action in the proper court. That the plaintiff at the time it commenced this action did not know in what province its proposed stations and terminals were is difficult to believe. That it did not know in what province the land lay which it was about to make the subject of so important a proceeding is still more difficult to believe. In spite of all this, however, it deliberately laid the venue in a province where no part of the land lay, took possession of the land in controversy, constructed its line, switches, and stations, and after nearly two years of litigation, accompanied with great trouble to the court and trouble and expense to the parties, calmly asks the dismissal of the case for the reason that it did not know where its own railroad was located. Under such circumstances a dismissal of the action over the objection of the defendants ought not to be permitted except upon absolute necessity and then only on payment of the costs and expenses of the defendants and of the action. (*Ayers*

vs. Watson and Fisher vs.. Shropshire, supra.)

There is no equitable ground, then, upon which the plaintiff may claim that it has not yielded itself to the jurisdiction of the court. Nor, as we have seen, is there a legal ground. As we have already said, the plaintiff, having brought the action, of necessity submitted itself to the jurisdiction of the court. It took advantage of the situation it itself created to take possession of the lands described in the complaint, construct its lines, switches, stations, yards and terminals, and to carry the cause through two years of expensive litigation. It now attempts to make all this go for naught alleging its own negligence as a reason for such attempt. (Ayers vs. Watson and Fisher vs. Shropshire, supra.)

While the latter part of section 377 provides that "the failure of a defendant to object to the venue of the action at the time of entering his appearance in the action shall be deemed a waiver on his part of all objection to the place or tribunal in which the action is brought," except, among other things, in actions affecting real estate, we apprehend that it was not intended that a defendant can not waive such objection in such excepted cases. Nor do we believe that such provision is controlling in this case. In the first place, the application is restricted to "the time of entering his appearance in the action." There is no prohibition against his waiving it later. It might well have been in the mind of the lawmakers that, at the time of entering his appearance in the action, the defendant would not ordinarily be fully informed of all the facts of the case, at least not sufficiently to warrant his being held to a waiver of important rights; whereas, later in the cause, as when he files his answer or goes to trial, being fully informed, he might justly be held to have waived his right to make such objection. For this reason it might well be that the Legislature purposely refrained from extending the time for his protection beyond the "time of entering his appearance in the action." Moreover, there is, in said clause, no prohibition against an express waiver of his rights by the defendant. The general rule of law is that a person may renounce any right which the law gives unless such renunciation is expressly prohibited or the right conferred is of such a nature that its renunciation would be against public policy. This right of renunciation is so thoroughly established, and was at the time of the enactment of the Code of Civil Procedure, that its exercise by a defendant in relation to the venue of the action will not be held to have been abridged by section 377 without very clear provision therein to that effect. There is no part of that section clear enough to warrant such a holding. Even though the terms of said section were much clearer than they are in this respect, we should still hold, if they were much short of express, that the right of renunciation is not abridged, founding ourselves not only upon the principles already laid down but also upon that proposition of general law embodied in section 294 of the Code of Civil Procedure which provides that:

"When a statute or instrument is equally susceptible of two interpretations, one in favor of natural right and the other against it, the former is to be adopted."

Moreover, it should be noted that this prohibition, if it be such, against waiver refers exclusively to the defendant. The plaintiff is given no rights respecting it. Yet it is the plaintiff who is here calling for the application of the provision even against the declared will of the person who is expressly named as the sole beneficiary. We will not by interpretation extend this provision so as to contravene the principles of natural rights. We will not construe it so as to make the will to enforce it rest with one who is neither, included in its terms nor named as its beneficiary. But even if the plaintiff were entitled to invoke the aid of the provision he is estopped from so doing. (Wanzer vs. Howland, 10 Wis., 7; Babcock vs. Farewell, 146 Ill. App., 307; White vs. Conn. Mutual Life Ins. Co., 4 Dill (U. S.), 183; Shutte vs. Thompson, 15 Wall., 159; Beecher vs. Mill Co., 45 Mich., 103; Tomb vs. Rochester R. R. Co., 18 Barb., 585; Ferguson vs. Landram, 5 Bush (Ky.), 230; State vs. Mitchell, 31 Ohio State, 592; Counterman vs. Dublin, 38 Ohio State, 515; McCarthy vs. Lavasche, 89 111., 270; Ricketts vs. Spraker, 77 Ind., 371; Strosser vs. City of Fort Wayne, 100 Ind., 443). Section 333 of the Code of Civil Procedure reads:

"Conclusive presumptions. - The following presumptions or deductions, which the law expressly directs to be

made from particular facts, are deemed conclusive:

"1. Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he can not, in any litigation arising out of such declaration, act, or omission, be permitted to falsify it."

(Rodriguez vs. Martinez, 5 Phil. Rep., 67, 69; Municipality of Oas vs. Roa, 7 Phil. Rep., 20, 22; Trinidad vs. Ricafort et al., 7 Phil. Rep., 449, 453; Macke et al vs. Camps, 7 Phil. Rep., 553, 555.)

The fact is, there are very few rights which may not be renounced, expressly or impliedly. (Christenson vs. Charleton, 37 Atl., 226, 227, 69 Vt., 91; Donahue vs. Windsor County Ins. Co., 56 Vt., 374, 382; Ward vs. Metropolitan Life Ins. Co., 33 Atl., 902, 904, 66 Conn., 227, 50 Am. St. Rep., 80; Hoxie vs. Home Ins. Co., 32 Conn., 21, 40; Fitzpatrick vs. Hartford Life & Annuity Ins. Co., 56 Conn., 116, 134, 17 Atl., 411, 7 Am. St. Rep., 288; Lewis vs. Phoenix Mut. Life Ins. Co., 44 Conn., 72, 91; State vs. Hartley, 52 Atl., 615, 617, 75 Conn., 104; First Nat. Bank vs. Hartford L. & A. Ins. Co., 45 Conn., 22, 44; Johnson vs. Schar, 70 N. W., 838, 839, 9 S. D., 536; Corey vs. Bolton, 63 N. Y. Supp., 915, 917, 31 Misc. Rep., 138; Mason's Supply Co. vs. Jones, 68 N. Y. Supp., 806, 809, 58 App. Div., 231; Monroe Waterworks Co. vs. City of Monroe, 85 N. W., 685, 688, 110 Wis., 11; Fraser vs. Aetna Life Ins. Co., 90 N. W., 476, 481, 114 Wis., 510; Cedar Rapids Water Co. vs. Cedar Rapids, 90 N. W., 746, 749, 117 Iowa, 250; Kennedy vs. Roberts, 75 N. W., 363, 366, 105 Iowa, 521; Shaw vs. Spencer, 100 Mass., 382, 395, 97 Am. Dec. 107, 1 Am. Rep., 115; West vs. Platt, 127 Mass., 367, 372; Fulkerson vs. Lynn, 64 Mo. App., 649, 653; Michigan Savings & Loan Ass'n. vs. Missouri, K. & T. Trust Co., 73 Uo. App., 161, 165; Perm vs. Parker, 18 N. E., 747, 748, 126 Ill., 201, 2 L. R. A., 336, 9 Am. St. Rep., 571; Keller vs. Robinson & Co., 38 N. E., 1072, 1075, 153 Ill., 458; Star Brewery Co. vs. Primas, 45 N. E., 145, 148, 163 Ill., 652; United Firemen's Ins. Co. vs. Thomas (U. S.), 82 Fed., 406, 408, 27 C. C. A., 42, 47 L. R. A., 450; Rice vs. Fidelity & Deposit Co. (U. S.), 103 Fed., 427, 43 C. C. A., 270; Sidway vs. Missouri Land & Live Stock Co. (U. S.), 116 Fed., 381, 395; Cable vs. United States Life Ins. Co. (U. S.), 111 Fed., 19, 31, 49 C. C. A., 216; Peninsular Land Transp., etc., Co. vs. Franklin Ins. Co., 35 W. Va., 666, 676, 14 S. E., 237; Dey vs. Martin, 78 Va., 1, 7; Liverpool & L. & G. Ins. Co. vs. T. M. Richardson Lumber Co., 69 Pac, 938, 951, 11 Okl., 585; Livesey vs. Omaha Hotel, 5 Neb., 50, 69; Cutler vs. Roberts, 7 Nebr., 4, 14, 29 Am. Rep., 371; Warren vs. Crane, 50 Mich., 300, 301, 15 N. W., 465; Portland & R. R. Co. vs. Spillman, 23 Oreg., 587, 592, 32 Pac, 688, 689; First Nat. Bank vs. Maxwell, 55 Pac, 980, 982, 123 Cal., 360, 69 Am. St. Rep., 64; Robinson vs. Pennsylvania Fire Ins. Co., 38 Atl., 320, 322, 90 Me., 385; Reed vs. Union Cent. Life Ins. Co., 61 Pac, 21, 21 Utah, 295; Dale vs. Continental Ins. Co., 31 S. W., 266, 269, 95 Tenn., 38; Supreme Lodge K. P. vs. Quinn, 29 South., 826, 827, 78 Miss., 525; Bucklen vs. Johson, 49 N. E., 612, 617, 19 Ind. App., 406.)

We have delayed until this moment the citation of authorities relative to the proposition that venue is not jurisdictional as to subject matter and that defendant's rights in respect thereto are such that they may be waived, expressly or by implication, for the reason that We desired that the principles which rule the case should first be discussed and presented in the abstract form. In the case of First National Bank of Charlotte vs. Morgan (132 U. S., 141), it was held that the exemption of national banks from suits in State courts in counties other than the county or city in which the association was located was a personal privilege which could be waived by appearing in such suit brought in another county, but in a court of the same dignity, and making a defense without claiming the immunity granted by Congress. The court said:

"This exemption of national banking associations from suits in State courts, established elsewhere than in the county or city in which such associations were located, was, we do not doubt, prescribed for the convenience of those institutions, and to prevent interruption in their business that might result from their books being sent to distant counties in obedience to process from State courts. (First Nat. Bank of Bethel vs. National Pahquioque Bank, 14 Wall., 383, 394; Crocker vs. Marine Nat. Bank, 101 Mass., 240.) But, without indulging

in conjecture as to the object of the exemption in question, it is sufficient that it was granted by Congress, and, if it had been claimed by the defendant when appearing in the superior court of Cleveland County, must have been recognized. The defendant did not, however, choose to claim immunity from suit in that court. It made defense upon the merits, and, having been unsuccessful, prosecuted a writ of error to the supreme court of the State, and in the latter tribunal, for the first time, claimed the immunity granted to it by Congress. This was too late. Considering the object as well as the words of the statute authorizing suit against a national banking association to be brought in the proper State court of the county where it is located, we are of opinion that its exemption from suits in other courts of the same State was a personal privilege that it would waive, and, which, in this case, the defendant did waive, by appearing and making defense without claiming the immunity granted by Congress. No reason can be suggested why one court of a State, rather than another, both being of the same dignity, should take cognizance of a suit against a national bank, except the convenience of the bank. And this consideration supports the view that the exemption of a national bank from suit in any State court except one of the county or city in which it is located is a personal privilege, which it could claim or not, as it deemed necessary."

In the case of *Ex parte Schollenberger* (96 U. S., 369), the court said:

"The Act of Congress prescribing the place where a person may be sued is not one affecting the general jurisdiction of the courts. It is rather in the nature of a personal exemption in favor of a defendant, and it is one which he may waive. If the citizenship of the parties is sufficient, a defendant may consent to be sued anywhere he pleases, and certainly jurisdiction will not be ousted because he has consented. Here, the defendant companies have provided that they can be found in a district other than that in which they reside, if a particular mode of proceeding is adopted, and they have been so found. In our opinion, therefore, the circuit court has jurisdiction of the causes, and should proceed to hear and decide them."

In the case of *St. Louis and San Francisco Railway Co. vs. McBride* (141 U. S., 127), the court used the following language:

"The first part of section 1 of the Act of 1887, as amended in 1888, gives, generally, to the circuit courts of the United States jurisdiction of controversies between citizens of different States where the matter in dispute exceeds the sum of two thousand dollars exclusive of interest and costs. Such a controversy was presented in this complaint. It was therefore a controversy of which the circuit courts of the United States have jurisdiction. Assume that it is true as defendant alleges, that this is not a case in which jurisdiction is founded only on the fact that the controversy is between citizens of different States, but that it comes within the scope of that other clause, which provides that 'no civil suit shall be brought before either of said courts, against any person, by any original process or proceeding, in any other district than that whereof he is an inhabitant,' still the right to insist upon suit only in the one district is a personal privilege which he may waive, and he does waive it by pleading to the merits. In *Ex parte Schollenberger* (96 U. S., 369, 378), Chief Justice Waite said: 'The Act of Congress prescribing the place where a person may be sued is not one affecting the general jurisdiction of the courts. It is rather in the nature of a personal exemption in favor of a defendant, and it is one which he may waive.' The Judiciary Act of 1789 (sec. 11, Stat., 79), besides giving general jurisdiction to circuit courts over suits between citizens of different States, further provided, generally, that no civil suit should be brought before either of said courts, against an inhabitant of the United States, by any original process, in any other district than that of which he was an inhabitant, or in which he should be found. In the case of *Toland vs. Sprague* (12 Pet., 300, 330), it appeared that the defendant was not an inhabitant of the State in which the suit was brought, nor found therein. In that case the court observed: 'It appears that the party appeared and pleaded to issue. Now, if the case were one of a want of jurisdiction in the court, it would not, according to well-established principles, be competent for the parties by any acts of theirs to give it. But that is not the case. The court had jurisdiction over the parties and the matter in dispute; the objection was that the party defendant, not being an inhabitant of Pennsylvania, nor found therein, personal process could not reach him. * * * Now, this was a personal privilege or exemption, which it was competent for the party to waive. The cases of *Pollard*

vs. Dwight (4 Cranch., 421) and Barry vs. Foyles (1 PL, 311) are decisive to show that, after appearance and plea, the case stands as if the suit were brought in the usual manner. And the first of these cases proves that exemption from liability to process and that in case of foreign attachment, too, is a personal privilege, which may be waived, and that appearing and pleading will produce that waiver.' In Lexington vs. Butler (14 Wai., 282), the jurisdiction of the circuit court over a controversy between citizens of different States was sustained in a case removed from the State court, although it was conceded that the suit could not have been commenced in the first instance in the circuit court. See also Claflin vs. Commonwealth Ins. Co. (110 U. S., 81 [28:76].)

"Without multiplying authorities on this question, it is obvious that the party who in the first instance appears and pleads to the merits waives any right to challenge thereafter the jurisdiction of the court on the ground that the suit has been brought in the wrong district. (Charlotte Nat. Bank vs. Morgan, 132 U. S., 141; Fitzgerald E. M. Const. Co. vs. Fitzgerald, 137 U. S., 98.)"

In the case of the Interior Construction and Improvement Co. vs Gibney (160 U. S., 217), the court held as follows:

"The circuit courts of the United States are thus vested with general jurisdiction of civil actions, involving the requisite pecuniary value, between citizens of different States. Diversity of citizenship is a condition of jurisdiction, and, when that does not appear upon the record, the court, of its own motion, will order the action to be dismissed. But the provision as to the particular district in which the action shall be brought does not touch the general jurisdiction of the court over such a cause between such parties; but affects only the proceedings taken to bring the defendant within such jurisdiction, and is a matter of personal privilege, which the defendant may insist upon, or may waive, at his election; and the defendant's right to object that an action within the general jurisdiction of the court is brought in the wrong district, is waived by entering a general appearance, without taking the objection. (Gracie vs. Palmer, 8 Wheat., 699; Toland vs. Sprague, 12 Pet., 300, 330; Ex parte Schollenberger, 96 U. S., 369, 378; St. Louis & S. F. R. Co. vs. McBride, 141 U. S., 127; Southern Pacific Co. vs. Denton, 146 U. S. 202, 206; Texas & Pacific Railway Co. vs. Saunders, 151 U. S., 105; Central Trust Co. vs. McGeorge, 151 U. S., 129; Southern Express Co. vs. Todd, 12 U. S. App., 351.)"

In the case of Central Trust Co. vs. McGeorge (151 U. S., 129), the court disposed of the case as follows:

"The court below, in holding that it did not have jurisdiction of the cause, and in dismissing the bill of complaint for that reason, acted in view of that clause of the Act of March 3, 1887, as amended in August, 1888, which provides that 'no civil suit shall be brought in the circuit courts of the United States against any person, by any original process or proceeding, in any other district than that whereof he is an inhabitant;' and, undoubtedly, if the defendant company, which was sued in another district than that in which it had its domicile, had, by a proper plea or motion, sought to avail itself of the statutory exemption, the action of the court would have been right.

"But the defendant company did not choose to plead that provision of the statute, but entered a general appearance, and joined with the complainant in its prayer for the appointment of a receiver, and thus was brought within the ruling of this court, so frequently made, that the exemption from being sued out of the district of its domicile is a personal privilege which may be waived and which is waived by pleading to the merits."

(Improvement Co. vs. Gibney, 16 Sup. Ct., 272, 160 U. S., 217, 40 L. ed., 401; Walker vs. Windsor Nat. Bank, 5 C. C. A., 421, 56 Fed., 76, 5 U. S. App., 423; Von Auw. vs. Chicago Toy & Fancy Goods Co., 69 Fed., 448; McBride vs. Grand de Tour Plow Co., 40 Fed., 162; Black vs. Thorne, Fed. Cas. No. 1, 495 (10 Blatchf., 66, 5 Fish. Pat. Cas., 550); Norris vs. Atlas Steamship Co., 37 Fed., 279; Hoover & Allen Co. vs. Columbia Straw Paper Co., 68 Fed., 945; Blackburn vs. Railroad Co., Fed. Cas. No. 1, 467 (2 Flip., 525); Vermont Farm Mach. Co. vs. Gibson, 50 Fed., 423.)

In the case of *Security Loan and Trust Co. vs. Kauffmah* (108 Cal., 214), the court said:

"The constitution, Article VI, section 5, declares that, 'All actions for the enforcement of liens shall be commenced in the county in which the real estate or some portion thereof is situated; and at the time this action was 'commenced' the property was situate within the boundaries of San Diego. The constitution does not, however, require that the action shall be 'tried' in the country in which the property is situated, and the statutory provision in section 392 of the Code of Civil Procedure, that actions 'for the foreclosure of liens and mortgages on real property' must be tried in the county in which the subject of the action, or some part thereof, is situated, 'subject to the power of the court to change the place of trial shows that 'the place of trial is not an element going to the jurisdiction of the court, but is a matter of legislative regulation. The provision for the transfer of certain actions to the superior court of the county of Riverside, which is contained in section 12 of the act providing for the organization of that county, shows the extent of this regulation which the legislature deemed necessary, and implies that only the actions there designated were to be transferred for trial."

In the case of *Chouteau vs. Allen* (70 Mo., 290), the court held as follows:

"The statutory provision in respect to personal actions is more emphatic, requiring that 'suits instituted by summons, shall, except as otherwise provided by law, be brought: First, when the defendant is a resident of the State, either in the county within which the defendant resides, or in the county within which the plaintiff resides, and the defendant may be found,' and yet it was held in reference to this statute in the case of *Hembree vs. Campbell* (8 Mo., 572), that though the suit was brought in the county in which the plaintiff resided, and service had upon the defendant in the county of his residence, unless a plea in abatement to the jurisdiction of the court over the person of the defendant, was interposed in the first instance, the objection on the score of lack of jurisdiction could not subsequently be successfully raised. And this, upon the generally recognized ground that the court had jurisdiction over the subject matter of the suit, and that the defendant's plea to the merits acknowledged jurisdiction over his person, and precluded objection on account of absence of regularity in the instituting of the action. So also, in *Ulrici vs. Papin* (11 Mo., 42), where the then existing statute required 'suits in equity concerning real estate, or whereby the same may be affected, shall be brought in the county within which such real estate or a greater part thereof is situate/ and by demurrer to the bill it was objected that the suit was not brought in the proper county in conformity with the statutory provision, Judge Scott remarked: 'That it does not clearly appear where the greater part of the lands lie. This objection, if tenable, should have been raised by a plea to the jurisdiction.' And the same learned judge remarks, in *Hembree vs. Campbell*, supra, 'No principle is better established than that a plea in bar is a waiver of all dilatory matter of defense. That the matter of abatement was apparent upon the writ can make no difference. Such matters are and should be pleaded.' And pleas to the jurisdiction are as necessary in local as in transitory actions. (1 Tidd. Prac, 630.)

"It is not meant to convey the idea that the mere failure to plead to the jurisdiction of the court would have the effect to confer jurisdiction where none existed before for it is well settled that even consent of parties can not confer jurisdiction. (*Stone vs. Corbett*, 20 Mo., 350.) But all circuit courts have a general jurisdiction over the foreclosure of mortgages."

In the case of *Armendiaz vs. Stillman* (54 Texas, 623), the court disposed of the question involved in the following words:

"In our opinion, however, these common law rules respecting local and transitory actions have no more to do in determining with us where a suit can be brought and maintained, than the like rules in respect to the form and names of actions; but this is solely regulated by and dependent upon the proper construction of the constitution and statutes of the State, In the first, it is emphatically declared in the bill of rights as a fundamental principle of government, 'All courts shall be open, and every person for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law.' Now a party may not have an action in rem for or concerning land in a foreign jurisdiction, because redress can not be given or had by such proceeding in due course of law; but personal damages may be given for such injury and enforced by due

process of law within the State. 'And it would seem if the State failed to give to one of its citizens a remedy against others for injuries of this kind, it would fail in the pledge made in the constitution as plainly as if the injury had been in a foreign jurisdiction to one's goods or person.'

"There is, as Judge Marshall himself says, no difference in principle in giving redress for injuries to land in the jurisdiction where the defendant is found, which may not be equally applicable in other cases. He says, speaking of the fiction upon which transitory actions are sustained, where the cause of action occurred out of the jurisdiction where they are brought: They have (i. e., the courts), 'without legislative aid, applied this fiction to all personal torts, wherever the wrong may have been committed, and to all contracts wherever executed. To this general rule contracts respecting lands form no exception. It is admitted that on a contract respecting lands, an action is sustainable wherever the defendant may be found. Yet in such case every difficulty may occur that presents itself in an action of trespass. An investigation of title may become necessary, a question of boundary may arise, and a survey may be essential to the full merits of the case. Yet these difficulties have not prevailed against the jurisdiction of the court. They are countervailed by the opposing consideration, that if the action be disallowed, the injured party may have a clear right without a remedy in a case where a person who has done the wrong, and who ought to make the compensation, is within the power of the court. That this consideration loses its influence where the action pursues anything not in the reach of the court is inevitably necessary, but for the loss of its influence, where the remedy is against the person, and is within the power of the court, I have not yet discovered a reason, other than a technical one, which can satisfy my judgment.' "

In the case of *De La Vega vs. League* (64 Texas, 205), the court said:

"Our statutes in force at the time the reconvention was filed provided that suits for the recovery of land should be brought in the county where the land or a part thereof is situated. This is one of the exceptions to the general rule requiring suits to be brought in the county of the defendant's residence. This requirement is not a matter that affects the jurisdiction of the district courts over the subject matter of controversies about the title or possession of lands. Every district court in the State has cognizance of such suits; the requirement as to the county in which the suit may be brought is a mere personal privilege granted to the parties, which may be waived like any other privilege of this character. (*Ryan vs. Jackson*, 11 Tex., 391; *Morris vs. Runnells*, 12 Tex., 176.) A judgment rendered by the district court of Galveston County, when the parties had submitted to the jurisdiction, would settle the title to land in McLennan County as effectually as if rendered in its own district court. Jurisdiction of causes may be obtained by defendants in counties other than those in which the statute requires them to be brought, in other ways than by express consent or by failure to claim the personal privilege accorded by law. A suit upon a monied demand, brought in the county of a defendant's residence by a resident of another county, may be met with a counter demand against the plaintiff, and a recovery may be had upon the counter demand, though if suit had been originally commenced upon it, the county of the plaintiff's residence would have had exclusive jurisdiction. And so with other cases that might be supposed. A 'plaintiff calling a defendant into court for the purpose of obtaining relief against him invites him to set up all defenses which may defeat the cause of action sued on, or any other appropriate and germane to the subject matter of the suit, which should be settled between the parties before a proper adjudication of the merits of the cause can be obtained. He grants him the privilege of setting up all such counterclaims and cross actions as he holds against the plaintiff which may legally be pleaded in such a suit.

"This is particularly the case in our State, where a multiplicity of suits is abhorred, and a leading object is to settle all disputes between the parties pertinent to the cause of action in the same suit. The question of the original right to bring the cross action in the county where the suit is pending can not be raised; otherwise this design would, in a large number of cases, be defeated, and the various matters which could well be settled in the cause might have to seek a number of different counties, and be asserted in a number of different suits, before the controversy between the parties could be settled. The plaintiff must be considered as waiving any privilege to plead to the jurisdiction in such cross actions, and as consenting that the defendant may assert in the suit any demands which he could plead were it commenced in the county where such demands were

properly suable. The question then is, could La Vega have set up the matters pleaded in his answer in reconvention had the land sought to be partitioned been situated in Galveston County? This question must be determined by the solution of another, viz, can a defendant to a partition suit who claims through the title under which the partition is sought set up a superior title to the whole land? It is doubtless true that, in a partition suit, a court of equity will not entertain any controversy as to the legal title, whether it arises between the part owners as to their respective interests, or by reason of a claim set up by one or more of them to the entire land by title superior to the one under which the partition is asked to be decreed. In our State, where there is no distinction between law and equity in the determination of causes, an action to settle disputed titles, whether legal or equitable, may be combined with one to partition the land between the plaintiff and defendant. Hence there can be no objection to determining any questions as to title between the co-owners in a partition suit in our State, and the strict rules of chancery do not prevail."

In the case of *Kipp vs. Cook* (46 Minn., 535), the court made use of the following language:

"1. The appellant contends that the district court for the county of Sibley, and of the eighth judicial district, was without jurisdiction, and could not properly determine the rights or interests of either litigant to lands located in Sherburne County, which is in the seventh judicial district; but this question was passed upon many years since, in the case of *Gill vs. Bradley* (21 Minn., 15), wherein it was held that, although the proper place for the trial of an action to recover real property, or for the determination, in any form, of a right or interest therein, was, by virtue of an existing statute - now found as Gen. St. 1878, c. 66, par. 47 - in the county wherein the lands were situated, the district court of the county designated in the complaint had jurisdiction over the subject matter, and had power to proceed, unless a demand for a change of venue was made before the time for answering expired, in accordance with the express provisions of another section now section 51 - of the same chapter, and the place of trial had actually been changed by order of the court or by consent of parties."

In the case of *the West Point Iron Co. vs. Reymert* (45 N. Y., 703), the court said:

"The action was tried in the county of Dutchess, and by the court without a jury, without objection on the part of the defendants. If the trial should have been in Putnam, and by a jury, it was for the defendants to assert their rights at the trial; and by not then claiming them, they waived them, and must be regarded as having assented to the place and mode of trial."

We transcribe the following from decisions of the supreme court of Spain:

"Considering, further, that Pedrosa, instead of immediately objecting to the jurisdiction of the court and asking for a change of venue, sued for recovery of title, thereby submitting himself to the jurisdiction of the court of first instance, which reserved its decision thereon until plaintiff had presented the petition in due form." (Judgment of May 30, 1860, 5 Civ. Jur., 465.)

"Considering that although other proceedings were had in the said court (Salvador de Granada) and in the courts of first instance of Sagrario and Guerra of said city subsequent to the death of the count, the truth of the matter is that his daughter, the countess, the only party now claiming relief, not only had the proceedings taken in the first of said courts dismissed but asked the court of first instance of Castilla de la Nueva to accept, and the court accepted, her express submission to its jurisdiction:

"Considering that far from objecting, as she might have objected, to the jurisdiction of the court, the countess acknowledged such jurisdiction as did the other coheirs when they asked the court to proceed with the testamentary proceedings, thus creating a jurisdictional situation perfectly in harmony with the respective claims of the parties and so binding upon them that they are now absolutely estopped from denying its importance or legal force." (Judgment of May 30, 1860, 5 Civ. Jur., 465.)

"He who by his own acts submits himself to the jurisdiction of a court shall not thereafter be permitted to question such jurisdiction." (Judgment of December 30, 1873, 29 Civ. Jur., 64.)

"According to article 305 (of the Ley de Enjuiciamiento Civil) the plaintiff shall be presumed to have tacitly submitted himself to the jurisdiction of the court by the mere act of filing his complaint therein, and in the case of the defendant where the latter after appearing in the action takes any step therein other than to object to such jurisdiction." (Judgment of September 21, 1878, 40 Civ. Jur., 232.)

"Plaintiff and defendant are presumed to have submitted themselves to the jurisdiction of the court, the former by the mere act of filing his complaint therein and the latter by his answering the same and taking any step other than demurring to such jurisdiction as provided in articles 56 to 58 of the Ley de Enjuiciamiento Civil." (Judgment of July 27, 1883, 52 Civ. Jur., 511.)

"In order that a tacit submission based upon the mere act of filing the complaint may be valid the court must be one of ordinary jurisdiction as provided in article 4 of the Ley de Enjuiciamiento Civil." (Judgment of August 27, 1864, 10 Civ. Jur., 14.)

The following language is taken from The Earl of Halsbury's Laws of England (vol. 1, p. 50):

"The old distinction between 'local' and 'transitory' actions, though of far less importance than it was before the passing of the judicature acts, must still be borne in mind in connection with actions relating to land situate outside the local jurisdiction of our courts. 'Transitory' actions were those in which the facts in issue between the parties had no necessary connection with a particular locality, e. g., actions in respect of trespass to goods, assault, breach of contract, etc.; whilst 'local' actions were those in which there was such a connection, e. g., disputes as to the title to, or trespasses to, land.

"One importance of this distinction lay in the fact that in the case of local actions the plaintiff was bound to lay the venue truly, i. e., in the county (originally in the actual hundred) in which the land in question lay. In the case, however of a transitory action, he might lay it wherever he pleased, subject to the power of the court to alter it in a proper case. Local venues have now been abolished, and, therefore, so far as actions relating to land in England are concerned, the distinction may be disregarded.

"It is, however, important from another point of view, viz, that of jurisdiction as distinct from procedure. In the case of real actions relating to land in the colonies or foreign countries the English courts had, even before the judicature acts, no jurisdiction; and, therefore, the removal by those acts of a difficulty of procedure viz, the rule as to local venue - which might have stood in the way, if they had had and wished to exercise jurisdiction, did not in any way confer jurisdiction in such cases. The lack of jurisdiction still exists, and our courts refuse to adjudicate upon claims of title to foreign land in proceedings founded on an alleged invasion of the proprietary rights attached thereto, and to award damages founded on that adjudication; in other words, an action for trespass to, or for recovery of, foreign land can not be maintained in England, at any rate if the defendant chooses to put in issue the ownership of such land"

There is no decision of the Supreme Court of the Philippine Islands in conflict with the principles laid down in this opinion. In the case of *Serrano vs. Chanco* (5 Phil. Rep., 431), the matter before the court was the jurisdiction of the Court of First Instance over the actions and proceedings relating to the settlement of the estates of deceased persons. The determination of that question required the consideration of section 602 of the Code of Civil Procedure rather than section 377 of that code. The argument of the court touching the last-named section, is inapplicable to the case at bar and would not affect it if it were. The reference to the jurisdiction of the court made in that argument based on section 377 was unnecessary to a decision of the case.

The case of *Molina vs. De la Riva* (6 Phil. Rep., 12), presented simply the question whether or not an agreement between parties to submit themselves to the jurisdiction of a particular court to the exclusion of the court provided by law as the appropriate court in the premises could be enforced. As we have before intimated, it touched no question involved in the litigation at bar.

In the case of *Molina vs. Be la Riva* (7 Phil. Rep., 302), the action was one to foreclose a mortgage upon real and personal property. In discussing the matter before it the court said:

"The demurrer was also based upon the ground that this was an action to foreclose a mortgage and by the provisions of sections 254 and 377 of the Code of Civil Procedure it should have been brought in the Province of Albay where the property was situated. The action is clearly an action to foreclose a mortgage, lien, or incumbrance upon property, but it will be noticed that section 254 relates only to mortgages on real estate. This contract covered both real and personal property, and while, perhaps, an action could not be maintained in the Court of First Instance of Manila for the foreclosure of the alleged mortgage upon the real estate situated in Albay, yet so far as the personal property was concerned, we know of no law which would deprive that court of jurisdiction."

As will readily be observed, the court in the remarks above quoted was not discussing or deciding the question whether or not an action could be maintained in the Court of First Instance of the city of Manila to foreclose a mortgage on real estate located in Albay; but, rather, whether or not an action could be maintained in the Court of First Instance of the city of Manila to foreclose a mortgage on personal property located in the Province of Albay. The remark of the court that perhaps the former action could not be maintained was not intended to be decisive and was not thought at the time to be an indication of what the decision of the court might be if that precise case were presented to it with full argument and citation of authorities.

The case of *Castano vs. Lobingier* (9 Phil. Rep., 310), involved the jurisdiction of the Court of First Instance to issue a writ of prohibition against a justice of the peace holding his court outside the province in which the Court of First Instance was sitting at the time of issuing the writ. The determination of that question presented different considerations and different provisions of law from those which rule the decision of the case at bar.

We, therefore, hold that the terms of section 377 providing that actions affecting real property shall be brought in the province where the land involved in the suit, or some part thereof, is located, do not affect the jurisdiction of Courts of First Instance over the land itself but relate simply to the personal rights of parties as to the place of trial.

We come, now, to a consideration of the special laws relating to the condemnation of land by railroad companies upon which also plaintiff relies. Of those laws only one is of importance in the decision of this case. That is Act No. 1258. In it are found these provisions:

"SECTION 1. In addition to the method of procedure authorized for the exercise of the power of eminent domain by sections two hundred and forty-one to two hundred and fifty-three, inclusive, of Act Numbered One hundred and ninety, entitled 'An Act providing a Code of Procedure in civil actions and special proceedings in the Philippine Islands/ the procedure in this Act provided may be adopted whenever a railroad corporation seeks to appropriate land for the construction, extension, or operation of its railroad line.

* * * * *

"Sec. 3. Whenever a railroad corporation is authorized by its charter, or by general law, to exercise the power of eminent domain in the city of Manila or in any province, and has not obtained by agreement with the owners thereof the lands necessary for its purposes as authorized by law, it may in its complaint, which in each case shall be instituted in the Court of First Instance of the city of Manila if the land is situated in the city of Manila, or in the Court of First Instance of the province where the land is situated, join as defendants all persons owning or claiming to own, or occupying, any of the lands sought to be condemned, or any interest therein, within the city or province, respectively, showing, so far as practicable, the interest of each defendant and stating with certainty the right of condemnation, and describing the property sought to be condemned. Process requiring the defendants to appear in answer to the complaint shall be served upon all occupants of the land

sought to be condemned, and upon the owners and all persons claiming interest therein, so far as known. If the title to any lands sought to be condemned appears to be in the Insular Government, although the lands are occupied by private individuals, or if it is uncertain whether the title is in the Insular Government or in private individuals, or if the title is otherwise so obscure or doubtful that the company can not with accuracy or certainty specify who are the real owners, averment may be made by the company in its complaint to that effect. Process shall be served upon residents and nonresidents in the same manner as provided therefor in Act Numbered One hundred and ninety, and the rights of minors and persons of unsound mind shall be safeguarded in the manner in such cases provided in said Act. The court may order additional and special notice in any case where such additional or special notice is, in its opinion, required.

"Sec. 4. Commissioners appointed in pursuance of such complaint, in accordance with section two hundred and forty-three of Act Numbered One hundred and ninety, shall have jurisdiction over all the lands included in the complaint, situated within the city of Manila or within the province, as the case may be, and shall be governed in the performance of their duties by the provisions of sections two hundred and forty-four and two hundred and forty-five, and the action of the court upon the report of the commissioners shall be governed by section two hundred and forty-six of Act Numbered One hundred and ninety."

The provisions of the Code of Civil Procedure referred to in these sections are, so far as material here, the following :

"SEC. 241. How the right of eminent domain may be exercised. - The Government of the Philippine Islands, or of any province or department thereof, or of any municipality, and any person, or public or private corporation having by law the right to condemn private property for public use, shall exercise that right in the manner herein-after prescribed.

"SEC. 242. The complaint - The complaint in condemnation proceedings shall state with certainty the right of condemnation, and describe the property sought to be condemned, showing the interest of each defendant separately.

"SEC. 243. Appointment of Commissioners. - If the defendant concede that the right of condemnation exists on the part of the plaintiff, or if, upon trial, the court finds that such right exists, the court shall appoint three judicious and disinterested landowners of the province in which the land to be condemned, or some portion of the same, is situated, to be commissioners to hear the parties and view the premises, and assess damages to be paid for the condemnation, and to report their proceedings in full to the court, and shall issue a commission under the seal of the court to the commissioners authorizing the performance of the duties herein prescribed."

We are of the opinion that what we have said in the discussion of the effect of section 377 relative to the jurisdiction of Courts of First Instance over lands is applicable generally to the sections of law just quoted. The provisions regarding the place and method of trial are procedural. They touch not the authority of the court over the land but, rather, the powers which it may exercise over the parties. They relate not to the jurisdictional power of the court over the subject matter but to the place where that jurisdiction is to be exercised. In other words, the jurisdiction is assured, whatever the place of its exercise. The jurisdiction is the thing; the place of exercise its incident.

These special laws contain nothing which in any way indicates an intention of the legislature to alter the nature or extent of the jurisdiction of Courts of First Instance granted by Act No. 136. As we said in discussing the provisions of section 377 of the Code of Civil Procedure, we can not hold that jurisdiction to be limited unless by express provision or clear intendment.

We have thus far drawn an analogy between section 377 of the Code of Civil Procedure and section 3 of Act No. 1258, asserting that neither the one nor the other was intended to restrict, much less deprive, the Courts of First Instance of the jurisdiction over lands in the Philippine Islands conferred upon them by Act No. 136. We have

extended that analogy to include the proposition that the question of venue as presented in the Acts mentioned does not relate to jurisdiction of the court over the subject matter, it simply granting to the defendant certain rights and privileges as against the plaintiff "relative to the place of trial, which rights and privileges he might waive expressly or by implication. We do not, however, extend that analogy further. On reading and comparing section 377 of the Code of Civil Procedure with section 3 of Act No. 1258, both of which are herein set forth, a difference is at once apparent in the wording of the provisions relating to the place of trial. Section 377 stipulates that all actions affecting real estate "shall be brought in the province where the land, or some part thereof, is situated." Section 3 of Act No. 1258 provides that in an action brought by a railroad corporation to condemn land for its uses the plaintiff "may in its complaint, which in each case shall be instituted * * * in the Court of First Instance of the province where the land is situated, join as defendants all persons owning, etc. * * * land within the city or province * * * ." Section 1 of that Act, as we have already seen, says that: "In addition to the method of procedure authorized for the exercise of the power of eminent domain by sections two hundred and forty-one to two hundred and fifty-three" of the Code of Civil Procedure, "the procedure in this Act may be adopted whenever a railroad corporation seeks to appropriate land * * * ."

From these provisions we note, first, that the procedure expressly made applicable to actions for the condemnation of land by railroad corporations is not that contained in section 377 but that found in sections 241 to 253 of the Code of Civil Procedure. Section 377 is nowhere expressly mentioned in Act No. 1258 nor is it anywhere touched or referred to by implication. The procedure embodied in that Act to consummate the purposes of its creation is complete of itself, rendered so either by provisions contained in the Act itself or by reference to specific sections of the Code of Civil Procedure which by such reference are made a part thereof.

In the second place, we observe that, so far as venue is concerned, Act No. 1258 and section 377 are quite different in their wording. While the latter provides that the actions of which it treats shall be commenced in the province where the land, or some part thereof, lies, Act No. 1258, section 3, stipulates that the action embraced in its terms shall be brought only in the province where the land lies. This does not mean, of course, that if a single parcel of land under the same ownership, lying partly in one province and partly in another, is the subject of condemnation proceedings begun by a railroad corporation, a separate action must be commenced in each province. Nor does it mean that the aid of section 377 is required to obviate such necessity. The situation would be met and solved by the general principles of law the application of which to every situation is an inherent or implied power of every court. Such, for example, are the prohibition against multiplicity of actions, the rule against division of actions into parts, and the general principle that jurisdiction over a subject matter singly owned will not be divided among different courts, the one in which the action is first brought having exclusive jurisdiction of the whole. The provisions of these two laws, section 377 and Act No. 1258, differ in the manner indicated because they refer to subjects requiring inherently different treatment, so different, in fact, as to be in some respects quite opposite. While it is true that section 377 speaks of actions for the condemnation of real estate, nevertheless it was intended to cover simply the ordinary action affecting title to or interest in real estate, where the land involved is comparatively speaking, compact together. Its provisions were not intended to meet a situation presented by an action to condemn lands extending contiguously from one end of the country to the other. Act No. 1258 is a special law, enacted for a particular purpose, and to meet a particular exigency. The conditions found in an action for the condemnation of real estate by a railroad company might and generally would be so different that the application of the provisions of section 377 permitting the venue to be laid in any province where any part of the land lies would work a very great hardship to many defendants in such an action. To hold that a railroad company desiring to build a line from Ilocos Norte to Batangas, through substantially the whole of the Island of Luzon, might lay the venue in Batangas, it being a province in which a part of the land described in the complaint was located, would be to require all the parties defendant in Ilocos Norte and

intervening provinces, with their witnesses, to go to Batangas, with all the inconvenience and expense which that journey would entail, and submit the valuation of their lands not only to the Court of First Instance of Batangas but to a commission appointed in that province. The hardship to such defendants under such a holding is so manifest that we are of the opinion that it was not intended that section 377 of the Code of Civil Procedure should apply to actions for condemnation. Under the provisions of that section, the defendant has no right to ask for a change of venue if the land involved in the litigation, or any part thereof, is located in the province where the court sits before which the action has been commenced. When, therefore, an action such as is detailed above is begun by a railroad company in Batangas against persons whose lands lie in Ilocos Norte, there being also involved lands lying in Batangas, such defendants would have no right under section 377, if it were applicable, to demand that the trial as to their lands take place in the Province of Ilocos Norte. We do not believe that this was intended. We believe, rather, that under the provisions of the special laws relating to the condemnation of real estate by railroad companies, the defendants in the various provinces through which the line runs may compel, if they wish, a separate action to be commenced in each province in order that they may have a fair and convenient trial not only before the court but also before commissioners of their province who are not only conveniently at hand, but who are best able to judge of the weight of testimony relative to the value of land in that province.

We, therefore, hold that section 377 of the Code of Civil Procedure is not applicable to actions by railroad corporations to condemn lands; and that, while with the consent of defendants express or implied the venue may be laid and the action tried in any province selected by the plaintiff, nevertheless the defendants whose lands lie in one province, or any one of such defendants, may, by timely application to the court, require the venue as to their, or, if one defendant, his, lands to be changed to the province where their or his lands lie. In such case the action as to all of the defendants not objecting would continue in the province where originally begun. It would be severed as to the objecting defendants and ordered continued before the court of the appropriate province or provinces. While we are of that opinion and so hold it can not affect the decision in the case before us for the reason that the defendants are not objecting to the venue and are not asking for a change thereof. They have not only expressly submitted themselves to the jurisdiction of the court but are here asking that that jurisdiction be maintained against the efforts of the plaintiff to remove it.

The principles which we have herein laid down we do not apply to criminal cases. They seem to rest on a different footing. There the people of the state is a party. The interests of the public require that, to secure the best results and effects in the punishment of crime, it is necessary to prosecute and punish the criminal in the very place, as near as may be, where he committed his crime. As a result it has been the uniform legislation, both in statutes and in constitutions, that the venue of a criminal action must be laid in the place where the crime was committed. While the laws here do not specifically and in terms require it, we believe it is the established custom and the uniform holding that criminal prosecutions must be brought and conducted, except in cases especially provided by law, in the province where the crime is committed.

For these reasons the judgment below must be reversed and the cause remanded to the trial court with direction to proceed with the action according to law. So ordered.

Torres, Johnson, Carson, and Trent, JJ., concur.

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