

DOMINGO AURRECOECHEA, PLAINTIFF AND APPELLANT, VS. KABANKALAN SUGAR CO., INC. DEFENDANT AND APPELLEE.

G.R. No. L-551. September 11, 1948

Ponente: TUASON, J.

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TUASON, J.:

This is an appeal from a judgment of the Court of First Instance of Manila dismissing the action with costs against the plaintiff. The purpose of the suit is to recover money, and the complaint contains the prayers:

- Under the first cause of action, to pay plaintiff the sum of P49, 088.45 with 8 interest thereon per annum compounded annually from December 31, 1941;
- Under the second cause of action, to pay plaintiff the sum of P12,920.00 as part of his salary from March, 1942 to May, 1945 with 8 interest thereon per annum compounded annually from March, 1942; and to pay P380.00 per month from May, 1945 until the contract of employment is terminated;
- Under the third cause of action, to pay plaintiff the sum of P800.00 with 8% interest thereon per annum from July 21, 1942 compounded annually until paid;

It appears that for some years before 1942, plaintiff was employed by defendant corporation, a sugar central in Occidental Negros, as administrator of defendant's San Juan Estate situated in the municipality of Kabankalan of that province. Defendant accepted cash, deposits from its employees and paid six and eight per cent yearly interest thereon. Plaintiff was one of those who took advantage of this arrangement.

On October 16, 1941, plaintiff notified defendant of his intention to withdraw all his deposit. Under the term of the agreement which required six months' notice in advance of any withdrawal, plaintiff was to get his money on April 16, 1942. Because of the outbreak of war, action on that application was not acted upon, defendant's office being in Manila and plaintiff in Negros.

Plaintiff came to Manila in April, 1943 to stay. On October 11, 1943, defendant handed him a statement of his account bearing the same date, a statement which showed a balance of P55, 957.75 in his favor. On the 18th defendant sent plaintiff a check for the above balance, drawn on the Philippine National Bank, along with, a receipt for his signature. On the same date plaintiff received the check and signed the receipt. The receipt stated that the amount of P was in full payment of the balance as of October 11, 1953 and that it accorded with the liquidation or extract of plaintiff's current account. The next day, the 19th, plaintiff opened an account with the Philippine National Bank and deposited the check in his name. By the time of liberation the account had been closed.

So far the facts are not in dispute. But plaintiff testified that he accepted the check and signed the receipt under duress and did not read the statement of his account. He testified that by that time he had lost interest in withdrawing his deposit. He said he was afraid he would be taken to Port Santiago if he refused, and that it was one Valentin Vidarte who brought him the check at Hotel Cantabria in Intramuros where he was staying and made

the threat.

Against plaintiff's testimony, Pascual Pagola, vice-president of defendant corporation, swore that Valentin Vidarte was the cashier of Lizarraga Hermanos but had no connection with the Kabankalan Sugar Company. He said that In April, 1943 defendant arrived in Manila from Occidental Negros for the first time since the advent of the Japanese occupation; that in his (witness) presence plaintiff required Tirso Lizarraga, president of Lizarraga Hermanos and Kabankalan Sugar Company, to pay his deposit; that Tirso Lizarraga protested that there was no money; that plaintiff returned to Tirso Lizarraga's office in May and reiterated his demand, that as Tirso Lizarraga again pleaded lack of funds, plaintiff reduced the amount of his request to P6,000.00 that Lizarraga replied that even that amount he was not a position to pay; that finally Lizarraga and plaintiff agreed that the latter should be paid P500.00 monthly and the balance as soon as the defendant was able to do so.

To corroborate Pascual Pagola's testimony that plaintiff Insisted on being given his money back, Jose Azparren, an employee of Elialde & Co., testified that at the Casino Español, in October, 1943, he, plaintiff and one Ignacio de Oliarte sat around a domino table; that plaintiff complained that Tirso Lizarraga's refusal to give him his money was keeping him from going into business, and made offensive remarks against Lizarraga.

Ignacio de Oliarte corroborated the testimony of Jose Azparren and added that, being assistant manager of Lissar & Co., of which Tirso Lizarraga was president, he, witness, the next day told, Lizarraga what he had heard the plaintiff say.

This conflict of evidence resolves itself into the veracity of the witnesses and is the issue around which the whole case revolves. There is an overwhelming support for the trial court's finding. Disregarding the personal interest of plaintiff and the serious contradictions in his testimony, some of which are pointed out in appellee's brief, plaintiff's assertion that he was forced against his will to accept the check and sign the receipt does not next with his subsequent conduct and other attending circumstances.

These facts speak for themselves: We have seen that after depositing the check, with which he opened a bank account the day following its receipt, plaintiff withdrew on that account "poco a poco", and when the present action was brought there was none of the deposit left. Exactly what he did with the money can not be made out from his contradictory statements, but there is enough admission on his part to permit the assurance that he spent part of it "to live" and invested some in business. He admits that he had wines which were burned or destroyed during the fighting for liberation. The large quantity of these liquors gives weight to the conclusion that they had been bought for the purpose of resale.

On plaintiff's own showing the alleged coercion is utterly untenable. All that Vidarte told plaintiff, according to him, was this, and we quote:

"P. What was it that the cashier said when he delivered the check to you and which made you fear and thereafter made you accept the check?

R. Me dijo que si no firmaba dicho vale que tendria las consecuencias; que como Vd. comprendera si dieran parte a las fuerzas militares japonesas, me meterian en el Puerte Santiago, lo mas natural."

To the next question whether anything more was said plaintiff answered no.

This supposed threat was not one to inspire genuine fear in a man of plaintiff's position "Consequences" is susceptible of various meanings. A matured man, Intelligent and well educated, as we gather from his personal circumstances, it is unbelievable he could have been Impressed by such vague innuendo as that quoted above. Certainly it could not have overawed and overwhelmed him to the point of making him helpless to reason or talk with Tirso Lizarraga or other officers of the defendant corporation before signing the receipt and accepting the

check.

This observation proceeds on the assumption that Vidarte made the remarks attributed to him. There is room for serious doubt of the truth of the Imputation. Vidarte, who had been killed by the Japanese, was cashier of Lizarraga Herinanos, not of Kabankalan Sugar Co., and had no personal or official interest in the matter. As for Tirso Lizarraga, who had also suffered the same fate as Vidarte, if he had anticipated any objection to the payment by plaintiff and he had intended to force it on the latter, he would have undertaken the forcing himself, and the payment would have been made in cash instead of by check since by the last method the payee might refrain from cashing the instrument and thereby frustrate defendant's object of ridding itself of its obligation to plaintiff. All of this Tirso Lizarraga had a chance to do in his own office a few days before the payment was made, when plaintiff was handed a statement of his account.

Incidentally, plaintiff's silence on that occasion is at war with his alleged unwillingness to withdraw his deposit. If, as he says, he did not read the statement because he did not have his eye-glasses with him, there is no pretense that he was not aware that his account was being settled and that he was to be paid in Japanese war notes. Knowing this, there is likewise no pretense that he told anybody connected with defendant corporation that he desisted from his application to withdraw his money.

Defendant has shown by Exhibit 5-C that upon liberation it had a long list of employees and other creditors to whom it owed a total of , ranging from , and to whom it did not make any attempt to pay during the Japanese occupation, although, according to plaintiff, defendant had an abundance of Japanese currency. Defendant had no cause to single plaintiff out. On the contrary, being a former trusted employee, defendant had reason to be more considerate and sympathetic toward him.

Even if it be admitted that plaintiff was opposed to being paid in Japanese war notes, by his subsequent actions he unequivocally ratified the payment. If he was intimidated into accepting the check, no compulsion was used to make him spend its proceeds. By leaving the check untouched he could have saved himself from the alleged danger he dreaded and at the same time preserved his credit.

The "Micky Mouse" had value. It does not require any argument to show the falsity of plaintiff's assertion that they were worthless. Indeed, we take judicial notice of the fact that in October, 1943, they had as much purchasing power, if not more, than the Victory notes had at the time the plaintiff filed his suit in April, 1945 at least as regards local foodstuffs and products. The very evidence of plaintiff says he used the notes to survive.

We refrain from considering whether the Japanese notes were legal tender. This question does not enter into this case. The point might be material if the plaintiff had avoided a tendered payment in those notes, or if he had really accepted them under coercion, express or implied. Neither of these factors, it has been demonstrated, was present in the instant litigation. On the contrary, as has also been demonstrated, it was upon his instance and insistence that the payment was effected. Neither was there any surprise, deceit, fraud or mistake. There was only lack of foresight or business ability.

The second cause of action raises the question whether plaintiff is entitled to wages after December 31, 1942.

Although plaintiff neither tendered resignation nor received notice of discharge there is sufficient evidence to show both express and implied mutual consent to terminate the relation of employer and employee between him and defendant. Pagola testified that in April, 1943, shortly after plaintiff arrived in Manila, Domingo Aurecochea informed witness and Tirso Lizarraga that he was out of defendant's employment. This is confirmed by the parties' actions. It appears that plaintiff left Kabankalan for Bacolod on December 15, 1942, and from Bacolod he came to Manila in April, 1943. From the time of his departure from Kabankalan he performed no

services for defendant. From the time he arrived in Manila he obtained, upon his request, various amounts on account of his deposit, but he never mentioned any amount as due him for salary. Find when he was handed a statement of his account in which he was credited with wages up to December 31, 1942, and when he got a check and signed a receipt on the basis of that statement, he made no protest or comment. Not even in his attorney's letter of demand of April, 1945 shortly before he brought this action, was any item included for wages for any period posterior to 1942.

The payment of P800.00 which is the subject of the third cause of action is not urged in plaintiff's-brief. At any rate, this amount was included in the statement of account and covered by the check paid to and the receipt signed by, the plaintiff.

The assigned error that the lower court failed to decide that "the management of the defendant corporation, particularly in Central Bearin, Kabankalan, Negros Occidental, was working with, strong and influential with the Japanese", is irrelevant in the light of the findings and conclusions reached on the main Issues, and the point was properly passed up.

The Judgment of the Court of First Instance of Manila is affirmed with costs against appellant.

Paras, Actg. C.J., Pablo, Bengzon, Briones, and Padilla, JJ., concur.

Perfecto, J., We concur except in the pronouncement as to the relative purchasing powers of the military notes in October, 1943, and of the Victory notes in April, 1945.

DISSENTING OPINION

FERIA, J.:

We are of the opinion that this Court has no appellate jurisdiction over the present case.

Section 138 (3) of Commonwealth Act No. 3, as amended by Commonwealth Act No. 259, provides;

"The Supreme Court shall have exclusive jurisdiction to review, revise, reverse, modify or affirm, on appeal, certiorari or writ of error, as the law or rules of court may provide, final judgments and decrees of inferior courts as here in provided in—

* * * * *

"5. All civil cases in which the value in controversy exceeds fifth- thousand pEsos, exclusive of interests and costs, or in which the title or possession of real estate exceeding in value the sum of fifty thousand pesos to be ascertained by the oath of a party to the cause or by other competent evidence, is involved or brought in question. The Supreme Court shall likewise have exclusive jurisdiction over all appeals in civil cases, even though the value in controversy, exclusive of interests and costs, in fifty thousand pesos or less, when the evidence involved in said cases is the same as the evidence submitted in an appealed civil case within the exclusive jurisdiction of the Court as provided herein."

The complaint of the plaintiff-appellant in this case contains two distinct and separate causes of actions. In the first, he claims the sum of P48,088.45 with 8 per cent interest thereon per annum, compounded annually from December 31, 1941, which he delivered to the defendant and the latter accepted as a cash deposit. In the second, plaintiff seeks to recover the sum of P12,920.00 as part of his salary, as plaintiff's employee from March, 1945, also with 8 per cent interest, he third cause of action for the recovery of P800.00, which is not urged in plaintiff's brief, may be considered as a part of the first cause of action.

There is doubt that the alleged first and second causes of action are based on different transactions or contracts, the former" on a contract of deposit, and the latter oil a lease or contract of services. And the only question for determination is whether the two claims or causes of action, may be added together to make up the required jurisdictional amount necessary to give appellate jurisdiction to the Supreme Court.

It is obvious that the answer must be in the negative o hold otherwise would be to make it depend upon tho will of the parties to confer appellate jurisdiction upon the Supreme Court or the Court of Appeals, because it is discretionary on the part of the plaintiff to join different causes of action in a complaint against the opposite party. Jurisdiction over the subject matter, whether original or appellate, is conferred by law, and cannot be conferred by the will, agreement, or consent of the parties. It is a rule unanimously laid down by the Courts that each separate claim furnishes the jurisdictional test. (Troy Bank vs. G. A. Whitehead & Co. 222 U. S. 39, 56 L. ed. 81, 32 S. Ct. 9; Chamberlin vs. Browning, 177 U.S. 3. 605, 44 L. ed. 906, 20 S. Ct. 820; Henderson vs. Carbondale Coal & Coke. Co. 140 U. S, 25, 35 L. ed. 332, 11 S. Ct. 691; Clay vs. Field, 138 U. S. 464, 34 L. ed. 1044, 11 S. Ct., 419. Gibson vs. Shufeldt, 122 U. S. 27, 30 L. ed., 1083, 7 S. Ct. 1066; Elgin vs. Marshall, 106 U. 3. 573, 27 L. ed. 249, 1 3. Ct. 484; Ballard Paving Co. vs. Mulford, 100 U. S. 147, 25 L-ed. 591; Seaver vs. Bigolo M, 5 Wall. (U. S.) 208, 18 L. ed. 595; Winer vs. Blytheville Bank, 89 Ark. 435, 117 S. W. 232, 131 Am. St. Rep. 102; Hammall vs. Superior Ct. 217. Cal. 5, 17 P. (2d) 101, citing R. Spangler vs. Green 21 Colo. 505, 42 P. 674, 52 A&. St. Rep. 259; Johnson vs. Coolce, 85 Conn. 679, 84 A. 97, .Ann. Cas. 1913C, 275; Davis vs. 3ey.nour, 59 Conn. 531, 21 A. 1004, 13 L.R.A. 210; Burkhart vs. Goviin, 86 I'la.,376, 98 3o. 140, citing R.C.L.; Director Gen. vs. Wilford, 81 J?la. 430, 88 So. 256, citing S.C. l.; Covington Bro3. & Co. vs. Jordan, 125 Ky. 73, 100 S. W. 326, 15 Ann. Cqs.491; Louisville & H. 11. Co. vs. Com. 102 Ky. 300, 43 S. VI. 458, 53 L. Ii. A. 149; Gre- gory vs. Bransforfi, 87 Va. 77, 12 3. jS. 109, writ of error dismissed in 139 U. 3. 197, 35 L. ed. 144, 11 S. Ct. 519; Laws on vs. Bransford, 87 Ya. 75, 12 3. E. 108, . writ of error dismissed in .139 U. S. 197, 35 L. ed. 144, 11 S. Ot. 519.)

This Court in the case of Villaseñor vs. Erlanger & Galinger, 19 Phil. 574, following the rule above cited, held that a justice of the peace has jurisdiction to try and decide a civil case containing two or more separate causes of action though the total amount claimed in all of them exceeds the jurisdiction of the court, provided each one of the claims or causes of action is within said court's jurisdiction.

The provisions of the last sentence of the above quoted paragraph (5), Section 13.8, of Commonwealth Act No. 3 as amended, corroborate the rule above stated. Under the said provisions when a complaint contains two or more causes of action, if the Supreme Court has appellate jurisdiction over one of them, it will have jurisdiction over the other causes although the amount involved in the latter is fifty thousand pesos or less exclusive of interests and costs, because the evidence involved therein is the same as the evidence submitted in the appealed case or cause of action within the exclusive appellate jurisdiction of this Court. If the Jurisdictional amount is determined by the total sum tot two or more causes of action, there would not be one claim or cause of action involving an amount more and another less than fifty thousand pesos.

It is evident that the Court of Appeals, and not this Supreme Court, has appellate jurisdiction over the present appeal, and the present case should, therefore, be remanded to the Court of Appeals, for proper action. So ordered.

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