

JOSE V. VILLASIN, PLAINTIFF AND APPELLEE, VS. SEVEN-UP BOTTLING COMPANY OF THE PHILIPPINES, CEBU BRANCH, DEFENDANT AND APPELLANT.*G.R. No. 13501. April 28, 1960*

Ponente: CONCEPCION, J.

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Defendant Seven-Up Bottling Company of the Philippines, Cebu Branch, has brought this case before this Court, on appeal from an order of the Court of First Instance of Cebu dismissing its counterclaim in the above entitled case.

The same was originally instituted in the Justice of the Peace Court of Mandawe, Cebu, on May 20, 1955. In his amended complaint, plaintiff Jose V. Villasin sought to recover from the defendant P1,329.91, with interest thereon, in addition to P500 as attorney's fees and the costs of the suit. The defendant filed an answer admitting some allegations of the complaint and denying other allegations thereof, as well as setting up a special defense and, also, a counterclaim for P1,273.70, plus P500, as actual damages, and another P500, as attorney's fees. In due course, said court rendered a decision on March 16, 1956, finding that the evidence was insufficient to sustain the aforementioned counterclaim and sentencing the defendant to pay to plaintiff the sum of P1,329.91, with interest thereon, and P200 as attorney's fees, apart from the costs.

The defendant appealed to the Court of First Instance of Cebu, in which it filed an answer, dated April 23, 1956, in effect reproducing that submitted in the justice of the peace court, with the counterclaim for P1,283.10, and P500 as actual damages, aside from P500 as attorney's fees. After answering this counterclaim, plaintiff filed, on March 8, 1957, a motion to dismiss the same, predicated, among other grounds, upon "lack of appellate jurisdiction", inasmuch as the sums claimed in said counterclaim aggregate P2,283.10—which furnishes the jurisdictional test, pursuant to the decisions in *Soriano vs. Omila*, 97 Phil., 62; 51 Off. Gaz. [7] 3465; *Despo vs. Sta. Maria*, 98 Phil., 305; 53 Off. Gaz., 3759 and *Campos Rueda vs. Sta. Cruz Lumber Co.*, 98 Phil., 627; 52 Off. Gaz. [3] 1387—thus being in excess of the original jurisdiction of the justice of the peace court at that time, and, hence, beyond the appellate jurisdiction of the court of first instance. By an order dated May 2, 1957, the motion was granted by the latter, which, accordingly, dismissed defendant's counterclaim for lack of jurisdiction, upon the authority, not only of the cases above mentioned, but, also, of *Felix Vda. de Rosario vs. Justice of the Peace of Camiling*, 99 Phil., 698; 52 Off. Gaz., [11] 5157, and *Gregorio Carlos vs. J. P. Kiener Construction*, 100 Phil., 29; 52 Off. Gaz., [15] 6554. Hence this appeal, taken by the defendant, from said order.

The appeal was prematurely taken and should not have been given due course, the order appealed from being interlocutory in nature (*Caldera, et al. vs. Balcuelba, et al.*, 84 Phil., 304; 47 Off. Gaz., 659; *Quimosing vs. Javien*, L- 2968 (Resolution of July 19, 1949). As such, it is not immediately appealable, for, prior to the rendition of the final judgment, it is, at any time, subject to such corrections or amendments as the court may deem proper (*Manila Electric Co. vs. Artiaga*, 50 Phil., 147; *Restauero vs. Fabrica*, 80 Phil., 762). The order of May 2, 1957, did not put

an end to the litigation, for it left something else to be done on the merits—a hearing and decision on plaintiff's complaint (*Mejia vs. Alimorong*, 4 Phil., 572; *Roa vs. Africa*, 8 Phil., 828; *Insular Government vs. The Roman Catholic Archbishop of Nueva Segovia*, 17 Phil., 187; *Natividad vs. Villarica*, 81 Phil., 172; *Villados vs. Makaraig*, 54 Phil., 901; *Sancho vs. Lizarraga*, 55 Phil., 601; *Quimson vs. Alaminos Coop. Marketing Asso., Inc.*, 73 Phil., 342; *Ignacio vs. Hilario*, 76 Phil., 605; *Sitchon, et al. vs. Sheriff of Occidental Negros and Luzon Surety Co., Inc.*, 80 Phil., 397; *Fuentebella vs. Carrascoso*, G. R. No. 48102 [May 27, 1942]; and *Lim vs. Oreta*, 94 Phil., 40.) The propriety or wisdom of said order or the validity of the conclusion therein reached may not be reviewed until after the court of first instance has passed judgment upon the merits, of the cause of action set up in said complaint (*Olsen vs. Olsen*, 48 Phil., 238, 240).

"Judgment or orders subject to appeal.—No interlocutory or incidental judgment or order shall stay the progress of an action, nor shall it be the subject of appeal until final judgment or order is rendered for one party or the other." (Section 2, Rule 41, Rules of Court.)

Wherefore, the present appeal is hereby dismissed, with the costs of this instance against defendant-appellant. It is so ordered.

Paras, C. J., Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, and Gutierrez David, JJ., concur.

Endencia, J., reserves his vote.

Reyes, J.B.L., J., took no part.

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