

QUIRICO ALMAJEN, PETITIONER AND APPELLANT, VS. PASCUAL VALERA, ET AL., RESPONDENTS AND APPELLEES.*G.R. No. 13722. February 29, 1960*

Ponente: REYES, J.B.L., J.

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In criminal Case No. 305, petitioner-appellant Quirico Alimajen was charged with the crime of qualified theft in a complaint filed before the Justice of the Peace Court of Barotac Nuevo, Iloilo, by the Chief of Police of the town. It appears that the accused was arrested upon warrant issued by the Justice of the Peace Court, but was subsequently released when his application for bail bond, dated December 14, 1957, was approved. On December 23, 1957, he filed a motion waiving his right to a preliminary investigation and asking that the case be certified instead to the Court of First Instance of Iloilo for trial on the merits. The Justice of the Peace denied the motion, claiming that it had already acquired original jurisdiction over the criminal case. Defendant moved for a reconsideration of the order, but the motion was likewise denied; whereupon, he filed with the Court of First Instance of Iloilo a petition for a writ of preliminary injunction and prohibition against the respondent Justice of the Peace. On February 19, 1958, the petition was dismissed for lack of merit. This dismissal is now the subject of the instant appeal.

That the Justice of the Peace Court has concurrent jurisdiction with the Court of First Instance of Iloilo in this case, by virtue of section 87, subsection (c), No. 3 of the Judiciary Act of 1948 (Rep. Act 296), the amount involved in the criminal charge being only P183.30, is not questioned. The main point of inquiry is whether or not the respondent Justice of the Peace erred in refusing to forward the criminal case to the Court of First Instance of Iloilo on the basis that his court already acquired original jurisdiction over the same. The answer, we believe, must be in the negative. The rule is that when two or more courts have concurrent jurisdiction, the first to validly acquire it takes it to the exclusion of the other or the rest (*Valdez vs. Lucero*, 76 Phil., 356; 42 Off. Gaz. No. 11, 2835; *People vs. Livera*, 94 Phil., 771; see also *Lumpay, et al., vs. Hon. Moscoso*, 105 Phil., 968; 58 Off. Gaz. [30] 5185).

While the choice of the court where to bring an action, where there are two or more courts having concurrent jurisdiction thereon, is a matter of procedure and not jurisdiction, as suggested by the appellant, the moment such choice has been exercised, the matter becomes jurisdictional. Such choice is deemed made when the proper complaint or information is filed with the court having jurisdiction over the crime, and said court acquires jurisdiction over the person of the defendant; from which time the right and power of the court to try the accused attaches (see *People vs. Blanco*, 85 Phil., 296; 47 Off. Gaz., [7] 3425; *Crisologo vs. People*, 94 Phil., 477; 50 Off. Gaz., [3] 1021). It is not for the defendant to exercise that choice, which is lodged upon those who may validly file or subscribe to the complaint or information under sections 2 and 3 of Rule 106 of the Rules of Court.

The complaint in Criminal Case No. 305 was filed by the Chief of Police, and the Justice of the Peace was able to place the accused under its authority and control (jurisdiction) thru the coercive power of arrest and in later allowing his release on bail. There is no indication that the case was brought before the inferior court merely for

purposes of preliminary investigation as the appellant would tend to imply in likening this case with that of *Reñaria vs. Judge Veluz*, 91 Phil., 473. In fact, the lower court had already set the case for hearing. Of course, the right to preliminary investigation, being statutory, may be waived, but the fact that appellant manifested in the Justice of the Peace Court a waiver of such right does not prove that the complaint was filed therein only for that purpose and not likewise to try the case on the merits, which was for those who filed it to determine, and for the lower court to appreciate.

Wherefore, the appeal should be dismissed and the case remanded to the Justice of the Peace Court for the trial on the merits. Costs against appellant.

Paras, C. J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, Barrera, and Gutierrez David, JJ., concur.

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