

YU LAY, PLAINTIFF AND APPELLEE, VS. JUAN GALMES, DEFENDANT AND APPELLANT.*G.R. No. 14619. January 13, 1920*

Ponente: TORRES, J.

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On October 18, 1917, plaintiff's counsel filed a complaint with the justice of the peace court of the City of Manila alleging that from the 1st until the 30th of September, 1917, inclusive, plaintiff sold and delivered to the defendant a certain quantity of eggs worth five hundred and fifty-six pesos and eighty-five centavos (P556.85); that the defendant promised to pay this sum to the plaintiff during the first fifteen days of the following month but failed and refused to pay said sum then, in spite of the demands made upon him for that purpose; wherefore, plaintiff prayed for a judgment against the defendant for the aforesaid sum of five hundred and fifty-six pesos and eighty-five centavos (P556.85) with interest and costs.

In his answer to this complaint, defendant set up a general denial of all its essential averments and at the same time filed a counterclaim for the sum of one thousand three hundred and seventy-three pesos (P1,373).

After hearing the case and the evidence, the justice of the peace rendered his decision refusing to make any finding upon the counterclaim on the ground that it exceeds the sum of six hundred pesos (P600) and is not within his jurisdiction, and sentencing the defendant to pay to the plaintiff the sum of five hundred and fifty-six pesos and eighty-five centavos (P556.85) with legal interest and to pay the costs.

From this judgment defendant appealed to the Court of First Instance of the City of Manila.

The parties having been notified when the case was received by the Court of First Instance, plaintiff did not file a new complaint but notified defendant's counsel that he would rely upon the complaint he had filed with the justice of the peace court (rec., 10, 11).

Defendant then filed his answer setting up a general denial of all the material averments of the complaint, and as a special defense alleged that on March 15, 1915, the plaintiff entered into a contract with the defendant whereby the former has bound himself for four years, beginning from that date, to deliver daily to the latter a basket of fresh chicken eggs and another of fresh duck eggs at a fixed price; that from the 1st up to 30th of September, 1917, plaintiff failed to comply with his obligation arising out of the contract by delivering, instead of the fresh ones mentioned in said contract, eggs of bad and useless quality, about 50 per cent of which had to be thrown away since they were in the period of incubation; that from the 10th to the 30th of said month, the plaintiff delivered a less quantity than that mentioned in the contract and, from September 23, entirely failed to deliver the basket of duck eggs as per agreement; that when the plaintiff was asked by the defendant to deliver to him other eggs of the quality specified in the contract in substitution of those which, being useless, had to be thrown away, the former refused to the defendant's damage in an amount greater than that which the plaintiff claims, and that for this reason, the defendant refused to pay his account charged upon him by the plaintiff for the latter's services during the month of September, 1917. After reciting the contract mentioned in his special defense, the defendant

alleged, as a counterclaim, that for plaintiff's failure to deliver daily, from September 10 to 30, 1917, a basket-full of 550 duck eggs, he (defendant) had to buy that quantity from the market for P22 which are P10 more than what was agreed upon in the contract, a surplus amounting to two hundred pesos (P200) in 20 days; that because from the 24th to the 30th of September, plaintiff had delivered less than 450 chicken eggs daily, as per contract, defendant had to buy the remainder from the market to wit, on the 24th 250 eggs, on the 25th 150, on the 26th 90, 27th 250, 28th 50, 29th 100 and 30th 50, at 4 centavos per egg, paying in all P37.60 which are P23.50 more than their price according to the contract; that for plaintiff's failure to deliver at the defendant's domicile the eggs mentioned in the contract, as was his duty, defendant had to pay for their transportation charges P1 daily or P20 for 20 days; that for plaintiff's non-compliance with the contract, defendant was unable to furnish his services to his customers, thereby suffering damage to the amount of P10 daily or P200 for 20 days; that for plaintiff's omission of the obligations imposed upon him by the contract, during the 17 months which remained of the four years mentioned therein, defendant had to buy eggs at a price much higher than that stipulated as per contract, thereby paying daily P12.50 more than he would have paid under said contract, which in 17 months amounted to six thousand three hundred and seventy-five pesos (P6,375); and that, finally, plaintiff having violated the contract thru his fault and negligence, he is thereby responsible for punitive damages, which the defendant puts at one thousand pesos (P1,000). Wherefore, defendant prays to be absolved from plaintiff's complaint and for a judgment against the latter for the sum of seven thousand nine hundred and eighteen pesos and ninety centavos (P7,918.90), as set forth in the counterclaim.

After filing his original complaint, plaintiff asked for the dismissal of the foregoing counterclaim on the ground that this case having been originally tried in the justice of the peace court where said counterclaim for seven thousand nine hundred eighteen pesos and ninety centavos (P7,918.90) was not set up nor could have been set up, the Court of First Instance has no jurisdiction over it. Plaintiff at the same time demurred to the special defense alleged in defendant's answer, saying that it was not a true defense.

On May 20, 1918, the trial Court overruled the demurrer set up against the complaint by defendant's counsel and dismissed the cross-complaint or counterclaim.

Having been notified of the foregoing decision, defendant filed a complaint in the Court of First Instance based upon the same cause of action set forth in his counterclaim, and asked that said case be heard together with the present case and that he be permitted to amend his answer by alleging, after the general denial of all the facts mentioned in the plaintiff's complaint, "as a special defense and by way of cross-complaint or counterclaim," the same cause of action set forth in the former counterclaim which was dismissed, altho the alleged damages are now reduced to five hundred and sixty-five pesos and five centavos (P565.05) by the exclusion of the so-called punitive damages arising from the plaintiff's failure to deliver during the remaining 17 months of the four years mentioned in the contract and of the benefits he failed to receive and would have received had the plaintiff complied with his obligation, but always with the prayer of sentencing the plaintiff to pay him the difference between the amount of the alleged damages and the sum claimed by the plaintiff, with interest and costs, and of absolving him from the complaint.

The trial court denied the petition to amend the answer and the petition for a single trial of the two cases.

To this decision the defendant excepted.

After the hearing of this case and the evidence presented at the trial, the court on July 23, 1918, rendered his decision sentencing the defendant to pay the plaintiff the sum of five hundred and fifty-six pesos and eighty-five centavos (P556.85) demanded in the complaint, with legal interest from October 19, 1917, and costs.

From this judgment the defendant duly excepted at the same time asking for a new trial which was denied with his

exception, and filed within the legal period the bill of exceptions which, having been approved by the court as correct and as expressing all elements necessary for a clear determination of all the assignments of errors, was forwarded to the clerk of this court together with the records.

Appellant assigns the following errors: (1) That the lower court erred in dismissing defendant's counterclaim; (2) That the lower court erred in sentencing the defendant to pay the amount demanded in the complaint.

Appellant's arguments in support of these contentions, reduced to their lowest terms, are these: that the defendant could not have filed his counterclaim with the justice of the peace court for the reason that the latter has no jurisdiction over said counterclaim and only the Court of First Instance could entertain it; that the defendant would be unjustly deprived of the right which lawfully belongs to him, in view of the provision of section 97 of the Code of Civil Procedure that the defendant's omission to set up a counterclaim existing at the time of the commencement of the action and arising out of the transaction set forth in the complaint, as in the instant case, bars him from setting it up again in any other action between the same parties. Appellant contends furthermore, that as the Court of First Instance has jurisdiction over its amount and subjectmatter, and as sections 75 and 112 of said Code provide that a perfected appeal from the justice of the peace court to the Court of First Instance shall operate to vacate the judgment of the former and the case will be tried in the Court of First Instance as though it had been originally there commenced, no law or rule of law is violated if the alleged counterclaim is allowed in the Court of First Instance as it does not alter in the least degree the nature of the cause of action.

Therefore, the first question to be decided is whether upon appeal from the justice of the peace court to the Court of First Instance, the latter can decide any question essentially distinct from that raised by the parties in the justice of the peace court.

Section 75 of the Code of Civil Procedure provides that a perfected appeal shall operate to vacate the judgment of the justice of the peace, and the action when duly presented in the Court of First Instance shall stand for trial de novo upon its merits in accordance with the regular procedure in that court, as though the same never had been tried and had been originally there commenced.

This legal provision speaks of an action which is no other than the one brought before the justice of the peace, inasmuch as before the appeal mentioned in the foregoing section is filed with the Court of First Instance there is no action in that court.

Said section says that said action, when duly presented in the Court of First Instance, shall stand for trial de novo upon its merits.

Now then, if the action which, according to this section, is to be heard by the Court of First Instance concerns the same controversy or question lawfully raised by the action instituted in the justice of the peace court, and said question would be tried upon its own merits and not upon those of another suit, it is obvious that the parties must in substance reproduce in the appellate court the same and identical question which was raised in the justice of the peace court. This question is evidently the same as that raised by the parties' pleadings filed with the justice of the peace court in accordance with law and not only the cause of action upon which the plaintiff's complaint is based, nor only the defendants' counterclaim, inasmuch as neither of these alone could raise any question for determination while no judicial controversy, which requires a decision, is put in issue. If the action or controversy which must be submitted to the appellate court must be essentially identical with the question submitted in the justice of the peace court, the nature of which is determined by the pleadings duly filed with that court, it is right to conclude that in the Court of First Instance, where the case is to be heard upon appeal, no pleadings can be allowed which raise a question essentially distinct from that raised in the justice of the peace court.

From the foregoing, the inevitable conclusion is that under the provisions of the law on the subject, upon appeal to the Court of First Instance, the parties cannot file any pleading which raises questions essentially distinct from those lawfully and duly raised in the court of origin; and that while sections 75 and 112 of the Code of Civil Procedure provide that the parties shall file new pleadings and the case will be tried and decided in the Court of First Instance as though same had been originally there commenced, it does not mean that the proceedings had in the justice of the peace court are to be disregarded, but that as no record is there kept of the proceedings, in the Court of First Instance, as a court of record, the proceedings must be recorded for which it is necessary that the parties should file new pleadings, that new trial should be held and the case should be decided as though same had not been previously heard in the justice of the peace court, but essentially the same questions, duly raised, discussed and decided in the justice of the peace court, must be there raised, discussed and decided.

Besides being more reasonable and in harmony with the letter of the law, this interpretation is supported by several decisions of this Supreme Court now constituting an established doctrine and does not unjustly deprive the parties of their right to recover in any other way whatever sum of money or object which in justice belongs to them, as will be explained later on.

In the cases of *Alonso vs. Municipality of Placer* (5 Phil. Rep., 71), *Enriquez vs. A. S. Watson & Co.* (6 Phil. Rep., 114) *Evangelista's. Tabayuyong* (7 Phil. Rep., 607), *Rosco vs. Rebuena* (11 Phil. Rep., 300) and *Bernardo vs. Genato* (11 Phil. Rep., 603), it was held that upon appeal from a judgment of the justice of the peace court to the Court of First Instance, the nature of the cause of action, originally instituted before said justice of the peace court, cannot be changed. This doctrine has been expressly affirmed and stated more clearly than in former decisions in the case of *Remigio vs. Rigata* (11 Phil. Rep., 307) wherein the Court pointed out that the plaintiff upon appeal cannot so amend his complaint as to change or alter the nature of the cause of action originally instituted in the justice of the peace court. In the foregoing decisions this Court seems to have limited itself in holding that the plaintiff cannot change the nature of the cause of action in the Court of First Instance simply because it was the only question raised in said cases. But, the doctrine that not only the plaintiff but also the defendant cannot change the nature of the question (not only the cause of action) raised and argued before the justice of the peace court, can be inferred from the case of *Bernardo vs. Genato* (10 Phil. Rep., 756). In this last case, defendant set up in the justice of the peace court a counterclaim for certain improvements of which said justice had no jurisdiction. In the Court of First Instance, defendant recited the facts constituting his counterclaim but did not pray for the positive relief demanded in the court of origin and only asked that in view of said facts the plaintiff's complaint be dismissed. This was a true special defense. But this court held that this special defense or exception is inadmissible inasmuch as same was not presented before the justice of the peace court.

That this is the doctrine prevailing upon the mind of the Court is clearly and undoubtedly shown in its decision rendered in the case of *Beech vs. Jimenez and Crossfield* (12 Phil. Rep., 212).

In the foregoing case, it was held that if in an action for unlawful entry and detainer instituted in the justice of the peace court it had been alleged that, as the defendant had the right to repurchase the property object of the complaint by virtue of a contract entered into between the parties, the lessee could not be ejected therefrom, it would have been a good defense under the circumstances of that particular case; but that as this was not raised in the justice of the peace court, the Court of First Instance had no authority to hear and decide it upon appeal; and that for this reason it was then improper and an evident extralimitation of authority on the part of the court to hold in abeyance the plaintiff's right in said case to take possession of the property until the termination of the period during which the defendant could repurchase same. In the syllabus of that decision the following doctrine has been laid down:

"Upon an appeal to a court of first instance from the judgment of a justice of the peace, it is not possible,

without changing the purpose of the appeal, to alter the nature of the question raised by the complaint and the answer in the original action."

There can be no doubt, therefore, of the scope of the doctrine laid down in the several decisions of this Court. Consequently, we hold that, upon an appeal to the Court of First Instance, the plaintiff as well as the defendant cannot file any pleading or allegation which raises a question essentially distinct from that raised and decided in the justice of the peace court.

Appellant will probably argue that the interpretation thus given to sections 74 and 112 of the Code of Civil Procedure would be highly prejudicial to a defendant in the justice of the peace court who may have against the plaintiff a counterclaim arising out of the same transaction upon which plaintiff's cause of action is based but in excess of the amount over which said justice of the peace court has jurisdiction, inasmuch as according to law the defendant could not set it up in the justice of the peace court, and therefore, the defendant would be forever barred from exercising his right for the reason that, according to section 97 of the Code of Civil Procedure, a counterclaim of that nature not presented in said action or hearing can never be set up in another suit.

In the first place, however, from the fact that the defendant cannot set up such a demand in the form of a counterclaim in the justice of the peace court, it cannot be inferred that he cannot allege it in the form of special defense for the purpose of weakening the plaintiff's cause of action. In a case like the present one, the defendant could have very well alleged, before the justice of the peace court, that for his failure to comply with some of his obligations arising out of the contract, the plaintiff became indebted to the defendant in a sum greater than that prayed for in his complaint; and could have asked that for said reason plaintiff's complaint be dismissed. For in such a case, there being no money claim, the justice of the peace can very well take action over said allegation since it is within his jurisdiction and, if it is proven, absolve the defendant from the plaintiff's complaint. (See *Bernardo vs. Genato*, 11 Phil. Rep., 603, specially page 605.)

In the second place, if the defendant fails to set up the aforesaid counterclaim in the justice of the peace court, he is not thereby barred from setting it up in any other action; inasmuch as section 97 of the Code of Civil Procedure cannot be so interpreted that if the defendant does not set up a counterclaim which exceeds the amount within the jurisdiction of the justice of the peace court, he will be thereby barred from demanding it in another action. Such interpretation would be another unfounded supposition compelling the defendant to set up a counterclaim of which the law itself has prohibited a court from taking cognizance, being in excess of its jurisdiction. When the legislator provides that defendant's failure to set up a counterclaim is a bar to his setting it up in another action, he does not refer to a counterclaim which the court cannot entertain, but to that which falls within its jurisdiction, for it cannot be presumed that the legislator would order an absurdity.

Lastly, section 97 of the Code of Civil Procedure is not applicable to the proceedings in the justice of the peace court, because, in the first place, this court being one of limited jurisdiction, such a general and comprehensive provision, which in many instances embraces an amount in excess of its limited authority, cannot be applied to its proceedings. Furthermore, said section 97 is found under the division of the Code entitled "Procedure in Courts of First Instance in Civil Actions" and, consequently, it has no application to the procedure in the justice of the peace courts, which is governed by chapter four entitled "Procedure in Courts of Justices of the Peace."

That the legislator had no intention of making section 97 applicable to proceedings in the justice of the peace courts appears more evident upon an examination of the provisions contained in said chapter four and upon comparing them with those provisions of the Code under the title "Procedure in the Court of First Instance in Civil Actions." In fact the provisions under this last title are repetitions of many of the provisions of chapter four, which shows that the legislator did not intend nor make it understood that the provisions under that division of the Code might be applicable to the procedure in the justice of the peace courts, unless it was so expressly ordered.

The foregoing discussion is supported by the fact that sections 94 to 96, which refer to procedure in the Courts of First Instance, having given the defendant the right to set up any special defense or counterclaim, the legislator enacted section 10 of Act No. 1627, whereby a defendant in the justice of the peace court is conferred the same rights of which sections 94 to 96 of the Code of Civil Procedure speak. Wherefore, it is very clear that the legislator's intention is that the provisions under the title "Procedure in the Courts of First Instance in Civil Actions," among which is section 97, should not be applied to the procedure in the justice of the peace court in the absence of an express disposition to that effect, otherwise section 10 of Act No. 1627 aforesaid, would be unnecessary.

Applying to the instant case the doctrines laid down above, it is obvious that defendant's answer filed in the justice of the peace court was inadmissible, except so far as it sets forth a general denial of the allegations of the complaint, because, the counterclaim therein set up not being admissible for it is in excess of the amount over which the justice of the peace has and had jurisdiction (*Tuason vs. Crossfield and Sellner*, 30 Phil. Rep., 543; *Mendoza vs. Arellano and B. de Arellano*, 36 Phil. Rep., 59; and 34 Cyc., 646-647), the only question raised by the plaintiff's complaint and defendant's answer consisting of a general denial is reduced to whether or not the allegations in the plaintiff's complaint were true. Consequently, the special defense and the counterclaim, which raise the questions whether the plaintiff failed to comply with his obligations arising out of the contract and whether the defendant was thereby damaged in the amount mentioned in the counterclaim, which questions were not raised in the justice of the peace court, could not be lawfully taken into account or decided in the Court of First Instance.

The Supreme Court of California, in the case of *Malsof vs. Vaughn* (23 Cal., 61), has laid down the doctrine which affirms everything that has been said in the foregoing paragraphs and which says:

"The set-off or counterclaim set up by the defendant Bristol, in his answer, amounted to the sum of five hundred and ninety-three dollars and forty cents, and it is insisted that the amount being beyond the jurisdiction of the justice of the peace, the objection of the plaintiff to the filing of the answer on that ground should have been sustained by the justice, and by the county court when it was reviewed. Section 574 of the Practice Act provides that in proceedings before justices of the peace 'the answer may contain a denial of any of the material facts stated in the complaint, which the defendant believes to be untrue, and also a statement, in a plain and direct manner, of any other facts constituting a defense or counterclaim, upon which an action may be brought by the defendant against the plaintiff in a justice's court.' It is clear that the defendant could not have brought an action against the plaintiff in a justice's court, upon the demand set forth in his answer by way of counterclaim, and the justice and county court therefore erred in not sustaining the objection of the plaintiff."

It is evident that the payment of a sum greater than that of which the justice of the peace court has jurisdiction can only be demanded before the Court of First Instance.

Now then, from the agreement between the parties (rec. 49) and by virtue of the contract entered into between them, it appears that plaintiff delivered to the defendant the quantity of eggs demanded in the Exhibit X (folio 29) worth five hundred and fifty-six pesos and eighty-five centavos (P556.85); and that the defendant did not like to pay for it, notwithstanding the demands made upon him for that purpose. Consequently, it is clear that the lower court committed none of the errors assigned by the appellant.

From these considerations, the judgment appealed from is hereby affirmed with the costs against the appellant, without prejudice to his right to claim a greater sum before the competent court. So ordered.

Arellano, C. J., Johnson, Araullo, Street, Malcolm, and Avanceña, JJ., concur.

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