

MACARIO MARCO, PLAINTIFF AND APPELLEE, VS. N. T. HASHIM, DEFENDANT AND APPELLANT.*G.R. No. 14815. December 12, 1919*

Ponente: STREET, J.

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This action was instituted on January 29, 1916, by the plaintiff, Macario Marco, in the court of the justice of the peace of the municipality of Bffiang, in the Province of Laguna, to recover of the defendant, N. T. Hashim, the sum of P311, with interest from September 30, 1912. Said sum represents a loan of money made upon August 26, 1912, by the plaintiff to one G. F. Gardiner, and falling due on September 30 of the same year. The debt is evidenced by a receipt signed by said Gardiner and the defendant N. T. Hashim, the latter signing, so it is said, as surety for the former. In the court of the justice of the peace, judgment was rendered in favor of the plaintiff. The defendant appealed to the Court of First Instance, where judgment was again rendered in favor of the plaintiff, and the defendant appealed to the Supreme Court.

There is no dispute as to the genuineness of the note, or the existence of the debt, and the only defense interposed in the court below and relied upon in this Court arises upon a plea of *res judicata*. In this connection it appears that a former action upon identically the same receipt was begun in the year 1914 by the same plaintiff against the same defendant in the court of the justice of the peace of Biiiang, Laguna, and that judgment was there rendered in favor of the plaintiff against the defendant for the amount sued for, with interest. The defendant appealed to the Court of First Instance, where the cause was dismissed for failure of the plaintiff to appear and file a complaint within the period of two months, as prescribed by law. (Sec. 78, Code of Civ. Proc.) The case having been dismissed in the Court of First Instance, the plaintiff returned to the court of the justice of the peace and instituted the present action to recover the same sum of money, with the result as already stated.

The trial court was, in our opinion, clearly right in holding that the present action is not barred by the disposition made of the first case. When an appeal is taken from a judgment of a justice of the peace, the judgment is abrogated and the cause stands for trial *de novo* in the Court of First Instance upon its merits, in accordance with the regular procedure of that court, as though the action had originated there. (Sec. 75, Code of Civ. Proc.) A judgment entered by a justice of the peace therefore can not be revived or resuscitated, except in accordance with some express provision of the law. It is the same as if no judgment at all had ever been rendered in that court.

In the closing sentence of section 78 of the Code of Civil Procedure we find the following provision:

"If the plaintiff shall fail to file the complaint within the above-mentioned period, the court shall dismiss the case if the appeal was taken by the defendant, or dismiss the appeal if it was taken by the plaintiff, and in such case the dismissal of the appeal shall revive the judgment of the lower court."

This passage makes provision for two different contingencies, namely, (1) where the appeal is taken by the defendant, and (2) where the appeal is taken by the plaintiff. In the latter contingency, i. e., where the appeal is taken by the plaintiff, the dismissal of the appeal has the effect of reviving the judgment of the lower court. The

obvious reason for this provision is to prevent the plaintiff from destroying a judgment unfavorable to himself by his own neglect to appear and file a complaint in the Court of First Instance. For instance, if the defendant in a court of the justice of the peace has interposed a cross-demand and obtained a judgment in his own favor, it would be unreasonable and unjust to allow the plaintiff first to destroy the judgment by appealing and secondly to prevent its revival by staying away from the Court of First Instance or refraining to renew his complaint.

No similar provision is made for the revival of the judgment of the justice of the peace in the other contingency, that is, when the defendant appeals; and the solution of the question of the effect of the dismissal of the case in this contingency must be sought either in other provisions of the Code of Civil Procedure or in the general principle applicable in such case.

Let it also be noted that where the appeal is taken by the defendant, the court dismisses the case, while if the appeal is taken by the plaintiff, the court dismisses the appeal; and the provision for the revival of the judgment of the lower court relates only to the situation where the appeal is dismissed.

Now, it is evident that the dismissal of the case, in the contingency that the appeal is taken by the defendant, is a dismissal without a trial on the merits; and its effect is to leave the records of the court absolutely free from any adjudication with respect to the merits. Such a dismissal can not operate as a conclusive bar to another action based upon the same cause; for the general rule is that the defense of *res judicata* can only arise from an adjudication upon the merits. (15 R. C. L., p. 955.)

This conclusion above indicated comports with the provision found in section 127 of the Code of Civil Procedure, where it is declared that if a case is dismissed for failure of the plaintiff, for an unreasonable length of time, to prosecute his action, the dismissal shall not be a bar to another action for the same cause. Under this provision it is clear enough that if the first action had originated in the Court of First Instance, and had been dismissed for failure of the plaintiff to prosecute, the dismissal would not have been a bar to another action; and the same rule must be applied to an action appealed from the court of the justice of the peace, in the absence of express provision to the contrary.

The judgment must be affirmed; and it is so ordered, with costs against the appellant.

Arellano, C.J., Torres, Araullo, Malcolm, and Avanceña, JJ., concur.

Judgment affirmed.

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