

ABDON HOSANA, PLAINTIFF AND APPELLANT, VS. BALBINO DIO-MANO AND FRANCISCO DIOMANO, DEFENDANTS AND APPELLEES.

G.R. No. 27116. October 03, 1927

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal by the plaintiff, Abdon Hosana, from an order of the Court of First Instance of Tayabas dismissing the case without any special pronouncement as to costs, on the ground that the said plaintiff had not reproduced his complaint in the Court of First Instance within the period of two months, in accordance with the provisions of Act No. 2111, amending section 78 of Act No. 190.

In support of his appeal, the appellant assigns the following alleged errors as committed by the court a quo in its order, to wit: "1. The trial court erred in holding that Act No. 3171 is not applicable in the instant case; 2. The trial court erred in holding that the provisions of Act No. 3171 have no retrospective effect; 3. The trial court erred in dismissing the case.

The essential and pertinent facts for the resolution of this appeal may be summarized as follows: On May 8, 1924, the plaintiff-appellant, Abdon Hosana, brought an action for forcible entry and detainer against Balbino Diomano and Francisco Diomano, in the justice of the peace court of Pitogo, Tayabas. Judgment having been rendered in favor of the plaintiff, the defendants appealed the case to the Court of First Instance of the said province. While the case was pending in the Court of First Instance, the clerk, on September 22, 1924, notified the plaintiff to file a new complaint or reproduce the original complaint within the period of two months from the date of the receipt of said notice, that is, on or before November 22, 1924, pursuant to the provisions of Act No. 2111.

On October 30, 1924, Act No. 3171 of the Philippine Legislature, amending section 78 of Act No. 190, as amended by Act No. 2111, went into effect.

Relying on the provisions of the new law, the plaintiff did not reproduce in the Court of First Instance the original complaint filed by him in the justice of the peace court, nor did he present a new one.

On March 31, 1926, upon motion of the attorney for the defendants, the lower court dismissed the case on the grounds stated above.

The only question to be determined in the present appeal is whether Act No. 3171 has retroactive effect and whether its provisions are applicable to appeals pending at the time of its enactment.

Act No. 2111, which was in force at the time the defendants, Balbino Diomano and Francisco Diomano, perfected their appeal from the judgment rendered against them, provides as follows:

"ACT No. 2111.—An Act amending section seventy-eight of Act Numbered One hundred and ninety, entitled 'An Act providing a Code of Procedure in Civil Actions and Special Proceedings in the Philippine Islands,' as

amended, by providing for the disposition by the appellate court of cases appealed from the justice of the peace court to the Court of First Instance when the plaintiff fails to prosecute the case.

"By authority of the United States, be it enacted by the Philippine Legislature, that:

"SECTION 1. Section seventy-eight of Act Numbered One hundred and ninety, entitled 'An Act providing a Code of Procedure in Civil Actions and Special Proceedings in the Philippine Islands' is hereby further amended so as to read as follows:

" 'SEC. 78. Transmittal of record and disposition of the case by the appellate court when the plaintiff fails to prosecute the case.—The justice of the peace from whose decision an appeal is taken, shall, within five days after the perfection of said appeal, transmit to the clerk of the Court of First Instance for the province a certified copy of the docket entries, together with all the original papers and process in the case, and the original appeal bond or certificate of deposit in lieu thereof, together with the appellate court docket fee, upon receipt of all of which the clerk shall docket the cause in the Court of First Instance, and the same fees shall thereafter be charged upon such appeal as in suits originating in said court, and shall within ten days, so notify the parties. The plaintiff shall be obliged to file the complaint within a period of two months if he resides in the province, or of four months if he resides outside the province, counting from the date on which he received the notice. 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.'

"Enacted, January 31, 1912."

Pending the reproduction of the complaint and before the expiration of the period granted the plaintiff for the purpose, Act No. 3171 went into effect, the pertinent part of which is as follows:

"SEC. 78. Transmittal of the record and duties of the clerk of court upon the perfection of the appeal and forwarding of the papers in a case appealed from justice of the peace court.—The justice of the peace from whose decision an appeal is taken, shall, within five days after the perfection of said appeal, transmit to the clerk of the Court of First Instance for the province a certified copy of the docket entries, together with all the original papers and process in the case, and the original appeal bond or certificate of deposit in lieu thereof, together with the appellate court docket fee, upon receipt of all of which the clerk shall docket the cause in the Court of First Instance, and the same fees shall thereafter be charged upon such appeal as in suits originating in said court. Upon the docketing of the cause under appeal, the complaint filed in the justice of the peace court shall be considered reproduced in the Court of First Instance and it shall be the duty of the clerk of the court to notify the parties by registered mail, and the period for interposing a demurrer and making an answer shall begin with the date of the receipt of such notice by the defendant."

Black, in his work on Interpretation of Laws, lays down the following rule:

"Statutes regulating the procedure of the courts will be construed as applicable to causes of action accrued, and actions pending and undetermined, at the time of their passage, unless such actions are expressly excepted, or unless vested rights would be disturbed by giving them a retrospective operation." (Black on Interpretation of Laws, p. 265.)

In Ruling Case Law, volume 25, page 791, the following appears:

"38. Laws Relating to Procedure and Legal Remedies.— Statutes relating to procedure or legal remedies are undoubtedly within the general rule against retrospective construction where the effect of giving them a retroactive operation will be to impair the obligation of contracts or to disturb vested rights. But the rule does not prevent the application of statutes to proceedings pending at the time of their enactment where they neither create new, nor take away vested, rights. When a new statute deals with procedure only, prima facie, it applies to all actions—those which have accrued or are pending and future actions. A law prescribing the form of

pleadings will apply to all pleadings filed after its enactment, although the action is begun before that time."

In the case of *Enrile vs. Court of First Instance of Bulacan* (36 Phil., 574), this court enunciated the following doctrine:

"FORCIBLE ENTRY AND DETAINER; DEPOSIT; ACT NO. 2588.—During the course of the hearing of an appeal from a judgment rendered by a justice court in an action for forcible entry and detainer, the appellee moved to dismiss on the ground that the appellants had not made the deposit required by section 88 of the Code of Civil Procedure. The court denied the motion and gave appellants an opportunity to make the deposit in the Court of First Instance. While the action was pending the Legislature passed Act No. 2588 which amends section 88 of the Code of Civil Procedure by providing that, instead of dismissing the appeal on failure of the appellant to make the deposit in the justice court required by section 88 as a condition precedent to the allowance of the appeal, the court should, on motion and proof of certain facts, order the execution of the judgment of the justice court, but should continue with the appeal and decide the questions properly presented thereby. Held: That Act No. 2588 is applicable to the present case for the reason that it affects procedure rather than the substantive rights of the parties and tends to remedy a condition arising in appeals from judgments of justice courts in actions of forcible entry and detainer which has produced considerable hardship to appellants."

It will be seen from the authorities and from the decision of this court cited above, that though the general rule is that substantive as well as remedial laws have no retroactive effect, unless there is an express provision therefor, in the case of a law of procedural nature, the object of which is to expedite and facilitate proceedings, said law shall apply to all proceedings and actions pending at the time of its enactment, provided it does not create new rights nor affect those already acquired by the parties.

It was undoubtedly the object of the legislator in passing Act No. 3171 to shorten the period and simplify the proceedings in cases appealed from the justice of the peace courts, by eliminating the sixty-day period within which the plaintiffs are required to reproduce their complaints, which are considered reproduced from the moment the appeal is docketed in the Court of First Instance, making it the duty of the clerk of court to notify the defendant, by registered mail, so that he may interpose a demurrer or file his answer within the reglementary period. This being the purpose of the law, following the rule laid down by the authorities cited above and that established by this court, the provisions of Act No. 3171 should be applied to the case at bar, in accordance with which there was no necessity for the plaintiff-appellant to reproduce his complaint, the same having been reproduced by operation of law upon the docketing of the appeal, imposing upon the clerk of court the obligation to notify the defendants by registered mail, so that they could interpose a demurrer or file their answer within the reglementary period.

Therefore, the court a quo erred in dismissing the case on the ground that the plaintiff-appellant failed to reproduce his complaint within the period of sixty days, in accordance with the provisions of Act No. 2111, which was amended by Act No. 3171, relieving the plaintiff of the obligation to reproduce his complaint.

For the foregoing considerations, the judgment appealed from is hereby reversed and it is ordered that the case be remanded to the Court of First Instance of Tayabas for further proceedings, without special pronouncement as to costs. So ordered.

Avanceña, C. J., Johnson, Villamor, and Romualdez, JJ., concur.

DISSENTING

STREET, MALCOLM, and JOHNS, JJ.,

After passing from the justice of the peace court of Pitogo, Tayabas, the parties received the usual notification from the clerk of the Court of First Instance of Tayabas on September 22, 1924. From that date to March 13, 1926, the parties failed to move in the premises until on the date last mentioned a motion was presented by the defendants for the dismissal of the action. That constituted laches. But the foregoing is not the only aspect to the case. On September 22, 1924, Act No. 3171, which is now invoked, was not in force since it was approved on October 30, 1924. There is not a word in Act No. 3171 which is indicative of retroactive effect.

For the foregoing incontrovertible reasons, the decision of Judge Platon dismissing the action should be sustained and affirmed.

Order reversed and case remanded for further proceedings.

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