

MACONDRAY & COMPANY, INC., AND FIDELITY & SURETY COMPANY OF THE PHILIPPINE ISLANDS, PETITIONERS, VS. THE YANGTSZE INSURANCE ASSN., LTD., AND JOSE CASIMIRO, AS SHERIFF, EX OFFICI...

G.R. No. 29604. July 21, 1928

Ponente: STREET, J.

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STREET, J.:

This is an original proceeding in the Supreme Court by which the petitioners, Macondray & Company, Inc., and Fidelity & Surety Company of the Philippine Islands, seek to obtain a writ of prohibition enjoining the respondents, Yangtsze Insurance Assn., Ltd., and Jose Casimiro, as ex officio Sheriff of the City of Manila, from executing a judgment entered in the Court of First Instance of the City of Manila pursuant to a mandate from the Supreme Court following upon a decision in which our Second Division affirmed upon appeal a judgment of said Court of First Instance. The contention of the petitioners is that the judgment of this court was for an amount in excess of P10,000 and for this reason beyond the competency of a division of this court. The cause is now before us upon a demurrer submitted by the attorneys for the respondents.

The facts necessary to an understanding of the point involved in this petition are as follows: On December 8, 1922, Yangtsze Insurance Assn., Ltd., filed a complaint against Macondray & Company, Inc., and Fidelity & Surety Company of the Philippine Islands in the Court of First Instance of the City of Manila, wherein the plaintiff sought to recover jointly and severally of the defendants the sum of P10,775.30, with interest from the date of the filing of the complaint and with costs. On January 10, 1923, the defendant Fidelity and Surety Company of the Philippine Islands filed a general answer denying the allegations of the complaint; and on March 18, 1924 the defendant Macondray & Company, Inc., filed an amended answer denying the allegations of the complaint and setting up various special defenses. In the same answer Macondray & Company, Inc., by way of cross-complaint, alleged that the obligation (Exhibit B), which was the subject of the action, had been executed by Macondray & Company, Inc., without consideration and prayed that said obligation be declared null and void. The cause having come on for hearing in the Court of First Instance, his Honor, Judge George R. Harvey, entered judgment in favor of the plaintiff and against the defendant Macondray & Company, Inc., as principal, and against the Fidelity & Surety Company of the Philippine Islands, as surety, for the sum of P7,737.03, with legal interest from December 9, 1922, and costs. His Honor further ordered that the cross-complaint of defendant Macondray & Company, Inc., be dismissed.

To this judgment the defendants excepted and prosecuted their appeal in ordinary course, the bill of exceptions having been approved on July 7, 1927. When the appeal reached the Supreme Court it was heard and decided in the Second Division before Justices Malcolm, Ostrand, Johns and Villa-Real, the opinion being written by Mr. Justice Johns. The conclusion reached by the Justices participating in the decision was that there was no merit in the appeal and the judgment of the lower court was affirmed, with costs.[1]

To this judgment the defendants-appellants excepted and interposed a motion for reconsideration and rehearing on the ground that the decision was contrary to the proven facts and contrary to law. In their argument in support of the motion for reconsideration the attorneys for the defendants-appellants, in addition to a discussion of the merits of the case, made the contention that the amount in controversy was in excess of the jurisdiction of a division of the Supreme Court and that the judgment entered by this court was therefore null and void. On March 30, 1928, said motion was heard by the full court and the motion denied, the Chief Justice taking no part in the resolution. The decision of this court having been subsequently certified to the Court of First Instance, an execution was in due course placed in the hands of Jose Casimiro, as ex officio Sheriff of the City of Manila, for the purpose of executing said judgment, whereupon, as already stated, the present petition was instituted in the Supreme Court to stop the proceedings.

Section 138 of the Administrative Code of 1917, in the part material to be here noted, says:

"Six of the judges of the Supreme Court, lawfully convened, shall be necessary to form a quorum for the transaction of any business involving the admiralty jurisdiction of the court, or for the final disposition of a civil case in which the amount in controversy exceeds ten thousand pesos or a criminal case in which the judgment of the lower court imposed death, or imprisonment for more than ten years, or a fine of more than ten thousand pesos, and the concurrence of five judges shall be necessary for the pronouncement of a judgment, but when there is a vacancy in said court five judges shall constitute such quorum, and the concurrence of four shall suffice for the pronouncement of the judgment. In all other cases the presence of four judges shall be sufficient to form a quorum, and the concurrence of three judges for the pronouncement of a judgment."

Upon this provision the petitioners base their contention to the effect that the judgment entered by the Second Division of this court, upon appeal in the civil case abovementioned, was beyond the competency of the court, and therefore null and void. In this connection attention is directed to the fact that the judgment rendered by said division, including costs and interest to the date of the judgment, was in excess of P10,000. It is also insisted that even apart from the amount of the judgment awarded to the plaintiff pursuant to the original complaint, the amount involved in the contention made in the defendant's cross-complaint is also in excess of the jurisdictional amount specified in the statute.

The proposition thus advanced by the petitioners is, in our opinion, not well founded. In the first place, it is obvious that, in estimating the amount in controversy for jurisdictional purposes, costs ought not to be taken into consideration, since the incidence of costs is determined by the result of the litigation, and the amount of the costs cannot be known until the award of costs is made. It is quite clear that, in determining the jurisdiction of the court in civil matters, attention is to be directed to the state of the obligation sued on at the time the complaint is filed, that is, when the litigious controversy is first submitted to the jurisdiction of the court.

Upon the point whether interest should be added to the principal in estimating the amount in controversy, we note that the statute with which we are here concerned does not expressly indicate whether interest shall be included or excluded. The expression "amount in controversy" is used without anything being said about interest. On the other hand, in defining the jurisdiction of Courts of First Instance and of justices of the peace, the law expressly declares that interest is to be excluded (subsec. 3, sec. 56 of Act No. 136, and sec. 68 of Act No. 136). Of course, where the statute expressly so provides, interest must be excluded.

A cursory examination of the American decisions dealing with the situation where nothing is said in the statute relative to interest reveals the fact that the conclusions reached by the different courts are not harmonious, (See title "Amount in Controversy, vol. I, Encyc. Pl. & Pr., pp. 719, 720.) But the weight of authority would seem to be to the effect that, under such a statute, when interest is claimed in the complaint, it should be added to the principal in determining the jurisdictional amount. We may add that it has been the custom of this court, from an

abundance of caution, to cause cases to be submitted to the full tribunal whenever it appears that the principal obligation, together with interest, exceeds P10,000.

It is, however, a well established rule that, where the jurisdiction of a court is dependent upon the amount in controversy, such amount must be determined by the facts existing at the time when the jurisdiction of the court is invoked. (*Strasburger vs. Beecher*, 44 Fed., 209.) In an original action this time is determined by the filing of the complaint; and in an appeal it must be considered to be determined as of the moment when the appellate court acquires jurisdiction of the case. It has been repeatedly held that, where interest accruing after suit brought is added to the amount recovered before a justice of the peace, whereby on appeal therefrom a larger amount is recovered than was recovered before the justice, the jurisdiction of the court will not thereby be ousted even though the amount thus awarded is in excess of the jurisdiction of a justice of the peace. (*Mitcheltree vs. Sparks*, 2 111., 198; *Haight vs. McVeagh*, 69 111., 624; *Bargis vs. Farrar*, 45 Ind., 41; *Trego vs. Lewis*, 58 Pa. St., 463; *Shaw vs. Squires*, 153 Pa. St., 150.)

Furthermore, it is well recognized that in cases where the jurisdiction of a court is restricted by a minimum limit and proper averments of value are made in the pleadings of the plaintiff, the court will not lose jurisdiction by reason of the fact that the ultimate recovery is for a less sum than such minimum limit. The same idea must conversely apply to the situation where the jurisdiction of the court is restricted by a maximum limit; and in the case of a division of the Supreme Court, if the amount involved is such as to be within the competency of a division at the time the cause is brought to this court, the jurisdiction of the division will not be ousted by the circumstance that additional interest thereafter raises the amount in controversy to a point in excess of the statutory amount. As was said by this court in *Buenviaje vs. Director of Lands* (49 Phil., 939), jurisdiction refers to something which, if once possessed by a court, does not vanish in the vicissitudes of decision. A case cannot be within the competency of a division one day and beyond its competency on another.

Now, it will be observed, in the case before us, that, although the amount finally awarded to the plaintiff in this court, as a result of the affirmance of the judgment of the court below, amounted at the time judgment was here entered to more than P10,000, nevertheless the amount in controversy, including both principal and interest, was less than P10,000 at the time this court acquired jurisdiction of the cause upon appeal.

The result is that the exception taken by the petitioners to the jurisdiction of the Second Division of this court in the case of *Yangtsze Insurance Assn., Ltd., vs. petitioners* is not well founded, so far as concerns the action taken upon the plaintiff's complaint.

But it is insisted for the petitioners that the cause of action stated in the cross-complaint of the defendant in the case mentioned involves more than P10,000 and that the case is thereby put beyond the jurisdiction of a division of the Supreme Court. This contention is untenable for the reason that the cross-complaint is merely defensive, and although the petitioners therein seek to have the contract which is the subject of the complaint declared null and void for lack of consideration, no cause of action is stated independently of that stated in the complaint. And even if it were true, as is insinuated in the argument for the petitioners, that the cross-complaint involves a claim for something above the amount for which judgment was rendered in the lower court, the petitioners are here confronted by the fact that the judgment of the trial court dismissing the cross-complaint does not show affirmatively that the cause of action stated in the cross-complaint involves an amount in excess of P10,000. In such a situation, under Rule 30 of this court, it was necessary for the appellants to submit an affidavit, or affidavits, showing that the amount in controversy exceeded P10,000, in order to assure that the case would here receive the attention of the full court.

The demurrer to the petition must therefore be sustained; and the defect from which the petition suffers being of

an incurable nature, an order absolute will here be entered dismissing the petition, with costs. So ordered.

Avanceña, C. J., Johnson, Malcolm, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

[1] Yangtsze Insurance Assn. vs. Macondray & Co., and Fidelity & Surety Co. of P. I., G. R. No. 28103, promulgated March 3, 1928, not reported.

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