

**FRANCISCO ROSCO ET AL., PLAINTIFFS AND APPELLEES, VS.
MARIANO REBUENO, DEFENDANT AND APPELLANT.***G.R. No. 4021. September 18, 1908*

Ponente: CARSON, J.

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Francisco Rosco, one of the plaintiffs in this action, filed in the court of the justice of the peace of Oas, against Mariano Rebueno, the defendant in this action, and various others, a complaint wherein he alleged that the defendant, Mariano Rebueno, deputy sheriff of the municipality of Oas, at the instance of his codefendants, sold a caraballa, the property of Francisco Rosco, in executing a judgment of the justice of the peace in favor of one Colomba Racadag and against one Eusebio Reatiraza, and prayed for damages in the sum of P300. Judgment was rendered in that action in favor of the defendant and against the plaintiff. Ignacio Rosco, the brother of Francisco, also filed a complaint in the same court against the same defendant alleging that in the same proceedings, the defendant, Mariano Rebueno, deputy sheriff of Oas, had sold another caraballa and two calves, which the plaintiff in that action alleged to be his property, and prayed for damages in the sum of F550. Judgment in this action was also rendered in favor of the defendants and against the plaintiff. An appeal was duly perfected in both these actions, and the records therein were forwarded by the justice of the peace to the clerk's office of the Court of First Instance of Albay, on the 18th day of July, 1906. The record does not disclose whether any further action was taken in these appeals, but on the 21st day of August, 1906, a complaint was filed in the Court of First Instance wherein Francisco Rosco and Ignacio appear as coplaintiffs, and Mariano Rebueno as the sole defendant, the plaintiff in this action alleging that the defendant, as deputy sheriff of the town of Oas, unlawfully attached and sold two caraballas and two calves, the property of the defendant, Francisco Rosco, and prayed for damages in the sum of P2,300 and the costs of the proceedings. Upon this complaint, a trial was had, and it would appear, that alter the taking of testimony, counsel for the plaintiffs insisted that the action was an original one in the Court of First Instance, while counsel for the defendant contended that it was not an original action, but rather in the nature of an appeal from the court of the justice of the peace of Oas. The trial court upon this contention observed in its decision that:

"It will be seen upon examination of the record that Francisco Rosco filed a complaint against Colomba Racadog, Mariano Rebueno, Julian Racadag, and Anacleto Reazo, on the 12th day of October, 1905, in which Francisco Rosco alleged that he was the owner of a certain caraballa of the value of 200, and that the defendant, Rebueno, as sheriff had illegally sold the said caraballa in public auction. In that complaint Rosco prayed that judgment be entered against the defendants for the sum of 300, which sum included the value of the damages alleged, and the value of the caraballa. The justice of the peace decided the case on the 7th of April, 1906. The plaintiff appealed to this court on the 10th of April in the same year, and on the 18th of July, 1906, the clerk notified the plaintiff to appear and reproduce his complaint and pay the clerk's fees of 16. Counsel for the plaintiffs filed this complaint on the 21st of August, 1906, wherein Francisco Rosco and Ignacio Rosco are made plaintiffs and Mariano Rebueno defendant. Judgment in default was entered against the defendant on the 18th of September, 1906. The defendant appeared on the 24th of September, 1906, and prayed that judgment in default be set aside, and that he be permitted to answer. This petition was allowed on

the 29th of September, 1906, and the defendant answered on the 30th day of that month. The defendant did not file a demurrer to the complaint, because being in default, he had no opportunity so to do.

"In this new complaint, the plaintiffs allege that the defendant attached and illegally sold two caraballas with the calves, all the property of Francisco Bosco, and now pray for judgment for damages in ₱2,300.

"If the court should hold that this is not an original action, the prayer of the judgment could not be granted, because the action has been completely changed; the new complaint being filed by a new plaintiff and all the defendants having been excluded except one, and the amount prayed for not being within the jurisdiction of the justice of the peace. Having in mind the proceedings had in the clerk's office and the nature of the case, this must be considered as an appeal, and not an original action, and judgment must be rendered upon the basis of the original complaint; that is to say, the complaint in the action of Francisco Rosco against Mariano Bebueno et al.; but no judgment can be rendered against the defendants who were excluded from the new or the amended complaint. The plaintiff had a right to exclude the other defendants when he reproduced his complaint, and this court has no jurisdiction in this case other than its appellate jurisdiction."

Judgment was entered against the defendant, Mariano Bebueno, for the sum of P300 and costs, on the 23d day of January, 1907, and by an order dated March 19, 1907, the court reserved to the plaintiffs the right to proceed with an appropriate action in the appealed case of Ignacio Rosco vs. Mariano Bebueno et al.

From this judgment the defendant appealed, and brought the case here upon his bill of exceptions, and upon this appeal, the defendant insists that the court erred in rendering judgment against the defendant and in favor of the plaintiff,

We think that the contention of appellant must be sustained. Whatever may have been the intention of counsel for the plaintiffs, it is clear that the complaint filed in this action can in no wise be regarded as a reproduction of the complaint in the action of Francisco Rosco vs. Mariano Rebueno, appealed from the court of the justice of the peace. Indeed it is quite clear, as contended in the trial court by counsel for the plaintiffs, that it was his intention to file a new complaint, wholly disregarding the proceedings had in the court of the justice of the peace. In this complaint, he unites the plaintiffs in the two separate actions in the court of the justice of the peace, and he prays for larger damages for the sale of the animals mentioned in both complaints in the court of the justice of the peace, than the sum total of the damages prayed "for in both complaints in that court, and he brings his action against only one of the several defendants in both of the actions in the court below. This he had a perfect right to do, and he was entitled, as was the defendant entitled, to a judgment in conformity with the material issues raised by the pleadings. What would have been the result, had a plea of *res adjudicata* been filed by the defendant, it is not necessary for us to consider at this time.

It is true that the plaintiffs did not appeal from the judgment of the Court of First Instance, but we think that the defendant was clearly entitled to a final adjudication of all the material issues raised by the pleadings, and that the trial court was not justified in limiting; itself to a determination of only so much of the complaint filed in this case as was in accord with the allegations of the complaint in one of the cases, apparently selected arbitrarily, which had come up on appeal from the trial court. There can be no doubt that the complaint filed in the Court of First Instance could in no sense be regarded as a reproduction of the separate complaints filed in separate actions in the court of the justice of the peace, which were appealed to that court, nor could it be considered as a reproduction of the complaint in either of them, since it alleges and prays for damages in an amount over which the court of the justice of the peace had no jurisdiction. (*Alonso vs. Municipality of Placer*, 5 Phil. Rep., 71.) The judgment appealed from should be and is hereby reversed, without special condemnation of costs, and the record will be remanded to the trial court for a new trial. So ordered.

Arellano C. J., Torres, Mapa, Willard, and Tracey, JJ., concur.

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