

ARCADIO REMIGIO, PLAINTIFF AND APPELLANT, VS, FAUSTO RIGATA, DEFENDANT AND APPELLEE.*G.R. No. 4031. September 22, 1908*

Ponente: WILLARD, J.

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This action was originally brought before a justice of the peace, where judgment was rendered in favor of the plaintiff for P75. It seems that the defendant appeared before the justice of the peace, but it does not appear that he presented any counterclaim or special defense. He appealed from the judgment of the justice of the peace to the Court of First Instance, where the plaintiff reproduced his original demand presented in the lower court.

The plaintiff's contention is that he furnished the defendant P75 with which the defendant was to buy wood that was to be delivered to and sold by the plaintiff, and that the profits of the transaction should be equally divided between the parties. The defendant at the trial admitted that he had received the P75 for the purpose named, and testified that he had invested the money in wood and had delivered it to the plaintiff. The only question of fact arising on the plaintiff's complaint relates to the delivery of the wood to the plaintiff by the defendant. The court below found that there had been such a delivery and the evidence, in our opinion, strongly preponderates in favor of that finding.

This disposes of the plaintiff's appeal so far as it relates to the cause of action set out in the complaint.

The defendant presented an answer and counterclaim which was amended several times and which finally asked for an accounting and for judgment for the amount which upon such accounting would be found due from the plaintiff to the defendant. What that amount would be, does not clearly appear from the counterclaim and it does not appear that such a counterclaim was within the jurisdiction of a justice of the peace.

It appears from the decision of the Court of First Instance that the plaintiff moved to dismiss the counterclaim. That court granted this motion, reserving, however, to the defendant the right to maintain an action upon the matters presented in his counterclaim.

The plaintiff and appellant now claims that the court, instead of dismissing the counterclaim, should have acquitted the plaintiff of it and that it should not have reserved to the defendant the right to maintain an action upon the matters therein set out.

This reservation, however, produced no effect. Except in special cases where it is otherwise distinctly provided, such a reservation can produce no effect. If, where the counterclaim is dismissed, the law gives the party the right to maintain another action, he has such right whether the first judgment contains a reservation to that effect or not. If, on the contrary, the law gives him no such right, then the court can not give it to him by attempting to reserve it. (*Belzunce vs. Fernandez*, 10 Phil. Rep., 452; *Almeida vs. Abaroa*, 8 Phil. Rep., 178.)

Upon the other point presented by this assignment of error, the appellant is in no position to complain of the action of the court. He asked that the counterclaim be dismissed and the court granted his motion. He, therefore,

can not now complain of such action.

The court below held that in an action appealed from a justice court the defendant was, in the Court of First Instance, limited to the pleading which he had presented before the justice of the peace, and that the Court of First Instance had no authority to allow an amendment by adding new defenses or counterclaims. In view of what has been hereinbefore said, it is not necessary for us to decide this question, but we call attention to the fact that the former decisions of this court upon the subject of the nature of the pleadings which may be presented in the Court of First Instance in cases appealed from a court of a justice of the peace, go no further than to say that the plaintiff can not so amend his complaint as to present a cause of action which would not be within the jurisdiction of a justice of the peace.' (Alonso vs. Municipality of Placer, 5 Phil. Rep., 71, Enriquez vs. Watson & Co., 6 Phil. Rep., 114, Evangelista vs. Tabayuyong, 7 Phil. Rep., 607; Bernardo vs. Genato, 10 Phil. Rep., 756.)

The judgment of the court below is affirmed, with the costs of this instance against the appellant. So ordered.

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

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