

MIGUEL BOGA TAN CHIAO BOC ET AL., PLAINTIFFS AND APPELLEES, VS. GREGORIO SAJO VECINA, DEFENDANT AND APPELLANT.*G.R. No. 4033. October 08, 1908*

Ponente: MAPA, J.

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Payment of various sums, alleged to be due from the defendant to the plaintiffs and aggregating a total of P5,223.60, was prayed for in the complaint. The defendant denied the existence of the debt and filed a counterclaim for the sum of P6,110, which he alleged the plaintiffs owed him for various reasons. The court in its judgment rejected the counterclaim in toto, adjudged the defendant to pay the plaintiff the sums of P900 and P3,323.60, or a total of P4,223.60, and dismissed the complaint as to the other amounts claimed therein. The plaintiffs expressed their conformity with the above judgment, from which the defendant took an appeal.

In the brief filed in this court, the appellant relies on the two following points: (1) that the finding of the judgment in regard to the payment of P900 is erroneous, in that it is not supported by the evidence; (2) that from the sum of P3,323.60 which, according to the judgment, he must pay the plaintiff, there must be deducted the sum of P1,200, the value of the rent, for the occupation for four years of a house and land belonging to the defendant and situated in the pueblo of Molo.

(a) The judgment for P900. This amount is, according to the judgment, the balance of the sum of P2,900 delivered to the defendant by one Basilio Majinay by order and for account of the plaintiffs, there being deducted therefrom the sum of P2,000 owed by the plaintiffs to the defendant and representing the value of sugar-cane plantations which they bought from him on credit. The defendant admitted that he received from Majinay the said sum of P2,900, but alleged that he received the full amount as payment, since the plaintiffs owed him, not only P2,000 for the sugar-cane plantations, but also the sum of P910 which he advanced to the plaintiffs to meet the expenses of the operation of an hacienda which they held on lease, in addition to another sum of P500 which they borrowed from him to give to Basilio Majinay.

The defendant produced his son, Jose Sajo, as a witness to prove the advancement of P910. The latter testified that this amount was actually advanced by his father, but his statement was so vague and inconsistent that the court rightly disregarded it. The appellant himself has omitted all mention thereof in his brief, for which reason it is unnecessary for us to deal with this question herein. Another witness, Galicano Brusa, said that on a certain day in the year 1903 he received from Jose Sajo P300, which the latter had borrowed from the defendant for the purchase of corn for the use of the workmen of the hacienda of Lulubcon. This hacienda is the property of the defendant and in the year 1903 was leased to one of the plaintiffs who was in partnership with Jose Sajo in the development of the said hacienda. This last witness did not say for what reason nor for whose account that amount was delivered to Jose by the defendant, nor did he say whether he had personal knowledge of the occurrence, or whether he had heard of it from others; he spoke of it in his testimony as an incidental matter only. His testimony

is not and can not, therefore, be conclusive as to the defendant, chiefly because this same witness has specifically stated that he did not know who used to advance money for the expenses of the operation of the hacienda. There is not sufficient evidence of record to the effect that the defendant had advanced, for account of the plaintiffs, any amount to cover such expenses.

As to the sum of P500 which, according to the defendant, he loaned the plaintiffs for delivery to Basilio Majinay, the record shows -the positive testimony of Pablo de la Cruz, who affirms that he was present when the amount was delivered by the defendant to the plaintiff Tomasa Juaneza, and that it was in the nature of a loan. The plaintiff himself admits that Tomasa, his wife and coplaintiff herein, borrowed from the defendant the above-mentioned sum of P500, which was delivered to Basilio Majinay; and, although said plaintiff asserts that the sum was paid by the defendant on account of the P1,300 which Tomasa had previously given the defendant, nevertheless, such alleged previous delivery to the defendant of a larger sum has not been duly established; and it should be noted, moreover, that, among the various amounts alleged to have been delivered by the plaintiffs to the defendant, no mention was made in the complaint itself of the P1,300. The testimony of the witness De la Cruz is positive as to the fact that Tomasa received the said P500 as a loan; "that sum was borrowed from Gregorio Sajo" were the words used by the witness when testifying in regard to this matter. The last-named amount must, therefore, be credited to the defendant and deducted from the total amount which the latter is, according to the judgment appealed from, to pay the plaintiffs.

(b) The judgment for P3,323.60. This debt appears on a vale which the defendant signed in favor of the plaintiff Tomasa Juaneza on the 17th of March, 1904. The defendant admits the existence of the debt, but only claims a reduction therefrom of P1,200, which the defendants owe him for rent of his house and land situated in the pueblo of Molo. It is proven that the defendant leased to the plaintiff herein a certain piece of land and a building, owned by himself, in Molo, Province of Iloilo, at the rate of P300 per annum. The contract of lease began in 1900 and was continued at least until 1905. Two witnesses have positively stated that one of the plaintiffs has not paid the rents corresponding to the years 1900, 1901, 1902, and 1903. One of said witnesses was intrusted by the defendant with the collection of said rents from the plaintiff. He tried on several occasions to do this, his last demand having been made in 1904. He failed in all his efforts, because the plaintiff invariably told him that he (the plaintiff) had no money, and promised to pay some other day, without, however, redeeming his promise. The other witness was present in June, 1904, when the defendant demanded payment from the plaintiff, at the latter's own house, of the rents above referred to, and heard the plaintiff confess that he had not really paid those rents at that time. The plaintiff himself admitted this fact in his testimony, although he stated that the defendant was indebted to him for the value of several commissions he performed for the former, for which reason, he said, they kept an account-current including the rents and which should show a balance against said defendant. This account was not exhibited at the trial nor was evidence presented to prove the alleged commissions performed by the plaintiff and the value thereof. In view of the evidence, we find that the plaintiff is indebted to the defendant in the sum of P1,200, the aggregate amount of said rents, which must be deducted from the total sum awarded to the plaintiffs by the judgment appealed from.

The lower court found that the question relative to the claim for the payment of those rents could not be settled in the present action, "on account of another action previously commenced by Sajo against Boga in the court of the justice of the peace of Iloilo, which court has jurisdiction of the case, it being for the payment of rents due and for the recovery of possession of a leased property, situated in the city of Iloilo, province of the same name."

This reasoning of the judge includes, as we understand it, two questions, *lis pendens* and the jurisdiction of the court. In regard to the first question, it is true that, on July 10, 1905, the defendant brought suit against the plaintiff before the justice of the peace of Iloilo for the recovery of the possession of said land and building; but it

is also true that the only rents whose payment is claimed in the complaint filed in that suit were those corresponding to 1904, said complaint containing a statement that the proper claim had already been filed to secure payment of the rents corresponding to the years 1900,1901,1902, and 1903, and that said claim was pending before the courts, and this statement undoubtedly refers to the present action, which was brought one year before the filing of that complaint, and in which payment of said rents was demanded by means of a counterclaim. It does not appear that another action has been brought to secure payment of those rents, and consequently there is no such *lis pendens* as is seemingly referred to in the judgment of the lower court.

The object of the present action being the collection of rents due, independent of the action for ejectment, and of which no mention is made herein, it is evident that the court below had jurisdiction to try and pass upon that question in spite of the fact that the property leased is situated in another judicial district. The action for the collection of rents can be jointly brought with the action for ejectment, and in consequence thereof, or separately and in an action that has nothing to do with ejectment. In the first case, the justice of the peace of the locality where the real property which is the subject-matter of the action is located, has jurisdiction thereof, according to the provisions of sections 80 and 81 of the Code of Civil Procedure, which vest said functionary with exclusive jurisdiction to try actions for ejectment on account of nonpayment of rents. In the second case, as the action is of a personal nature, and as there is no statutory provision to the contrary, it can be brought in the province where either the defendant or the plaintiff is a resident, at the latter's option, according to section 377 of the code. In this latter case, according to the provisions of sections 56 and 68 of Act No. 136, the amount of the rent will determine whether the case will come within the jurisdiction of the Court of First Instance or of the court of the justice of the peace. As the rents claimed herein amount to P1,200, it was incumbent upon the lower court to hear and make findings thereon; and error was, therefore, committed by not doing so on the ground of supposed lack of jurisdiction.

The judgment of the lower court is affirmed, it being understood that the total sum which the defendant must pay the plaintiffs for the reasons therein set forth shall be only P2,523.60, with the legal interest, at 6 per cent per annum, which has accrued or may accrue from the 19th of April, 1904, the date of the filing of the complaint, without special ruling as to the costs of this appeal. So ordered.

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

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