

CARLS PALANCA TANGUINLAY, PLAINTIFF AND APPELLANT, VS. FRANCISCO G. QUIROS ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 4085. March 12, 1908

Ponente: TRACEY, J.

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TRACEY, J.:

This is an appeal from a judgment of the Court of First Instance of the city of Manila in favor of the defendants.

In the year 1893 the defendant Quiros brought an action against the plaintiff in which he obtained from the Court of First Instance of the district of Intramuros an attachment, which was levied upon property of the plaintiff consisting of certain promissory notes and money, a quantity of hemp and coprax, and a stock of merchandise and furniture.

The defendant Jose Reyes Tolentino, an employee of Quiros, was named official depository of the attached property, an appointment which he accepted in writing. In January, 1894, a second attachment, at the instance of Germann & Co., was levied upon the same property. Both these attachments became of no effect, the first through an order of dissolution by the court in November, 1897, and the second by lapse.

In 1904 a new attachment was issued in the action of Germann & Co. under which what remained of the hemp and coprax was sold at public auction for P838, the sheriff certifying that it was then impossible to find any other part of the property to be attached. Under the earlier attachments the official depository, the defendant Reyes, never took actual possession, notwithstanding his written acceptance, but suffered the goods to remain in the custody of Quiros, who kept the stock of merchandise in the lower apartments of his house on Calle Martinez. From this house it was taken in 1898 by Mr. Andrea, the Belgian consul, the agent for the owner of the property, but under what precise claim or circumstance is not shown. The key of the apartment in which the merchandise was stored was in the possession of Quiros, who does not appear to have opposed the removal.

This action is brought "for the restitution and delivery to the plaintiff" of all the attached property, "or, in default of that, for the payment of the sum of P18,000, Philippine money, the value of the said property."

Among the defenses pleaded was *res judicata* based on a judgment of this court modifying one of the Court of First Instance upon a counterclaim set up by the present plaintiff, as defendant in an action brought against him by Quiros for the purchase price of goods sold, decided on March 3, 1900, and reported in 5 Philippine Reports, page 675. In the counterclaim it was stated "that the defendant, Carlos Palanca Tanguinlay, in consequence of the attachment improperly granted and levied on his property, goods, effects, and papers of all kinds, suffered damage (danos) to the extent of P20,000 and loss of profits (perjuicios) for more than 40,000, to wit: Damages consisting in the loss of his property, furniture, goods and papers, and for having under the attachment closed his shop, destroyed his business, and suspended his credit, all of which had a value of more than P25,000, and loss of profits, consisting in the loss of the receipt of the gains of his business, which were more than P10,000 pesos, Mexican currency, for each year from 1893 to 1897, amounting to the sum of P40,000." That is to say, among the damages expressly claimed was compensation for the loss of the same property described in the complaint in the

action now before us. On this claim the Court of First Instance in the earlier action allowed 6,347 pesos, an allowance which was overruled in this court, the judgment as to that item having been reversed.

The question presented here is whether this former judgment operates as an adjudication upon the matter of the present action so that it can not be retried.

The law of res judicata is well settled in the United States and is laid down in a series of decisions of the Supreme Court to the effect that as between the parties to the first judgment and their privies it operates as a bar to a second action upon the same claim, not only as to issues actually in litigation but also as to all matters which might have been litigated therein, whereas in an action between them upon a different cause it is a bar only as to matters actually litigated. (Cromwell vs. County of Sac, 94 U. S., 351; Werlein vs. New Orleans, 177 U. S., 390; United States vs. California Co., 192 U. S., 355; Fayerweather vs. Ritch, 195 U. S., 276, 299; N. P. Railway Co. vs. Slaght, 205 U. S., 122.)

These cases, as well as many others cited therein, indicate that the tendency of jurisprudence is to broaden the doctrine rather than to narrow it, on the ground that both public and private interests demand a cessation of litigation, requiring the litigants to avail themselves once and for all of the remedies open to them in a pending action.

Section 306 of the Philippine Code of Civil Procedure provides that in cases other than those in rem—

" * * * the judgment so ordered is, in respect to the matter directly adjudged, conclusive between the parties and their successors in interest by title subsequent to commencement, of the action or special proceedings, litigating for the same thing and under the same title and in the same capacity."

And section 307—

"That only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto."

It is not probable that the compilers of our code, by the restrictive language of these sections, sought to change the general rule as laid down by the cases cited from the Supreme Court. Indeed it is to be assumed that they did not, as these sections were taken by them bodily from sections 1908 and 1911 of the code of the State of California, of which they are reproductions, and which have been construed by the courts of that State in harmony with the general rule. (Taylor vs. Castle, 42 Cal., 367; Phelan vs. Gardner, 43 Cal., 306, 311; Woolverton vs. Baker, 98 Cal., 628; Toomy vs. Hale, 100 Cal., 172; Reed vs. Cross, 116 Cal., 473; Bingham vs. Kearney, 136 Cal., 175; Estate of Harrington, 147 Cal., 124, 128.)

In Bingham vs. Kearney the court said (p. 177) :

"It is a rule, long recognized in this country, that a judgment between the same parties is conclusive, not only as to the subject-matter in controversy in the action upon which it is based but also in all other actions involving the same question, and upon all matters involved in the issues which might have been litigated and decided in the case, the presumption being that all such issues were met and decided. It is the policy of the law to put an end to litigation, and to aid the vigilant and not those, who sleep upon their rights. It is not the policy of the law to allow a new and different suit between the same parties, concerning" the same subject-matter, that has already been litigated; neither will the law allow the parties to trifle with the courts by piecemeal litigation.

* * * * *

"If she failed to assert her claim properly or to present the proper evidence in the first suit, she will not now be permitted in a second to litigate it. The principles herein stated are elementary."

Although not binding upon us, this interpretation by the California courts of the sections of their code reproduced in our own must have been known to our legislators when adopting them and leave it open to us to accept as a rule in this jurisdiction the doctrine cited from the cases of the Supreme Court of the United States. For the purposes of the present case, however, it is not necessary to go further than to say that, even under the narrowest construction of the code, we are of the opinion that the words "litigating for the same thing" suffice to bring this pending action within the effect of the former one, and also that "the thing" that must have been deemed to have been adjudged in the former judgment, so appearing upon its face, was the conversion of the specific property sued for in this case. What was determined by the first judgment was that Quiros was not liable, for the reason that no damage was shown to have been suffered by the property during the short term while in his possession, nor was he liable thereafter, for the reason that the property had been taken from him and sold under the attachment of Germann & Co. This reasoning proceeded upon what now proves to have been an error of fact, the assumption that all the property went into the possession of Germann & Co. under their first attachment and was sold by them. Upon that assumption, a proper deduction from the evidence which these plaintiffs then presented to the court, the judgment was undoubtedly correct. In this action they now undertake to show that it was wrong by means of other proofs. These proofs were in existence at the time of the first trial and should have been produced then. It is too late now for the plaintiff to try to repair the error by means of a retrial of the issues then determined.

It is urged that the question in the two cases is not the same, because in the first damages only were asked for the property lost, whereas in the second the property itself is pursued, with the incidental demand for damages in case of its loss. The statement of the claim is its own refutation. Courts at the present day are not concerned so much with the form of actions as with their substance. It is idle to say that in the first action this plaintiff could not have recovered, if the goods had been shown to have been not lost but still in the possession of his adversary. Under such circumstances, on a refusal to deliver, he could have had judgment for their value or, even, by proper amendment of his pleading, for a return of the property. In the language of the Code of Civil Procedure, the parties in the two suits were "litigating for the same thing" and the possession of that thing "appears upon the face of the judgment to have been so adjudged" and it obviously was "actually and necessarily included therein and necessary thereto." It does not affect the principle that the judgment was erroneous. The error should have been shown in the trial of the first action. The American books are full of similar cases, an instance being *Hateh vs. Coddington* (82 Minn., 92), in which it was held that a former action between the same parties to recover damages for a wrongful conversion of personal property was a bar to a subsequent suit to recover possession of the specific property itself, notwithstanding the difference of form and that the relief sought and the subject-matter of the cause of action were regarded as the same. Nor is it altogether clear that the law of Spain was different. Señor Manresa, in his commentary on article 1252 of the Civil Code, cites a decision of the supreme court of the 25th of April, 1900 [vol. 8, p. 555], holding that in a real action a judgment in a former personal suit between the same parties for indemnity for the use of the same property operated as *cosa juzgada*.

The allowance of this defense leads to an affirmance of the judgment of the court below in favor of the defendant, with costs of this instance against the appellant. So ordered.

Arellano, C. J., Mapa, Johnson, Carson, and Willard, JJ., concur.
Torres, J., did not sit in this case.

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