

EUGENIA PAGALARAN, PLAINTIFF AND APPELLEE, VS. VALENTIN BAL-LATAN ET AL., DEFENDANTS.-MARIA BIDAYANES, APPELLANT.

G.R. No. 4119. March 11, 1909

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

Eugenia Pagalaran brought suit in the court of the justice of the peace of the municipality of Aparri, Province of Cagayan, against Valentin Bal-latan and Maria Bidayanes, for the purpose of recovering possession of one caraballa (female carabao) from the former, and another caraballa and calf from the latter; the complaint was dismissed with costs against the plaintiff who appears to have appealed in due course.

On the 17th of September, 1906, the defendant Maria Bidayanes was summoned by the Court of First Instance of the First Judicial District of the Province of Cagayan, as follows:

"Eugenia Pagalaran, plaintiff, vs. Valentin Bal-latan and Maria Bidayanes, defendants.-Demand for the return of one caraballa with calves.-Civil cause No. 69.-To Maria Bidayanes, Aparri.-You are hereby notified that the Hon. Albert E. McCabe, judge of First Instance of this judicial district has been pleased to set Friday, the 21st day of September, 1906, for the hearing of the above-entitled cause to the end that you may appear before this court with your lawyer and such evidence as you may intend to adduce in your favor.-Given by the Hon. Albert E. McCabe, judge of First Instance, this 17th day of September, 1906, in Aparri, Province of Cagayan."

The following was indorsed on the back of the said summons :

"Office of the provincial sheriff. Aparri, September 17, 1906.-By virtue of the foregoing summons I, the sheriff for the Province of Cagayan de Luzon, First Judicial District of the Philippine Islands, called at the house of Maria Bidayanes in the barrio of Talungan, within the limits of this town, and personally notified her of the contents of said order to appear before the court; thereupon she acknowledged service, and I delivered to her a duplicate hereof, the receipt for which she signed together with myself. (Signed) Antonio Soriano, provincial sheriff, (Signed) Maria Bidayanes."

On the 24th of September, 1906, the court entered a judgment containing the following statements: that the defendant Valentin Bal-latan was personally present, but that the defendant Maria Bidayanes was not, neither was she represented by counsel, notwithstanding the fact that she had been duly notified of the date set for the hearing of this case; that the clerk of the court called upon the defendant Maria Bidayanes by name, three times, in a loud voice, inside the court-room, and three times at the top of the staircase outside, and as the said Maria Bidayanes did not answer, the court proceeded to the trial of the case. And as conclusions resulting from the evidence: that in the month of December, 1904, the plaintiff was the owner and in peaceful possession of two caraballas and one calf, and that in the same month the defendant Valentin Bal-latan unlawfully took possession of one of the said caraballas, and the defendant Maria Bidayanes unlawfully took possession of the other, together with its calf; that after the commencement of the suit the defendant Valentin Bal-latan returned to the plaintiff the caraballa that was in his possession, and that the caraballa unlawfully taken from the plaintiff by the defendant Maria Bidayanes has had a second calf, and that the said caraballa and its two calves are now unlawfully in her possession; in

consequence, the court sentenced Bal-latan to pay one-half of the costs of the proceedings, and Maria Bidayanes to return the caraballa and its two calves, and to pay the other half of the costs.

Counsel for the defendant served a notice upon the attorney for the plaintiff couched in the following terms:

"This is to notify you that, under the affidavit, a copy of which is inclosed, we will ask the court on the 26th of September, 1906, at 9 a. m., or as soon thereafter as we may be heard, that the judgment in default entered in this case against the defendant Maria Bidayanes, and all subsequent proceedings be annulled and rendered ineffective, for the following reasons: the said defendant has never been summoned, nor has she been served with a copy of the complaint in this suit in the Court of First instance as provided by law."

And the court below entered the following order;

"This case was brought up for trial at the session of the court held in Aparri on the 6th day of April, 1907, for resolution of the motion presented by the counsel for the defendant, Maria Bidayanes, on the 26th of September, 1906, asking that the decision or judgment rendered in this matter sometime since be revoked and declared to be null and void for the reasons set forth in the motion and in the affidavit attached thereto. This court believes that the decision rendered in this matter can not be revoked and declared null and void by means of a motion of this kind, but that the proper procedure should be by appeal and before or by means of a motion for a new trial filed within the term fixed by law; therefore, the motion is overruled by this court.-So ordered.-Given at Tuguegarao, Province of Cagayan on this 12th day of April, 1907."

Counsel for the defendant excepted to the above order and gave notice of their intention to appeal therefrom, and for the purpose of making up their bill of exceptions they indicated the following parts of the record:

The complaint filed with the justice of the peace. (There is no other.)

The judgment of the justice of the peace.

The appeal interposed by the plaintiff.

The notice served upon the defendant of the trial to be held on September 17, 1906.

The decision of the court.

The motion and affidavit, with exhibits presented by the defendant.

The order of the court below denying the motion.

The exception of the defendant to the overruling of the motion.

After submitting the bill of exceptions the appellant alleged the following errors:

- The fact that the defendant was sentenced without having been summoned to answer any complaint;
- The fact that judgment was rendered without due process of law;
- The fact that the said judgment entered in default against the defendant was not annulled.

All the foundation for these allegations consists in that section 75 of the Code of Civil Procedure provides that a perfected appeal shall operate to vacate the judgment of a justice of the peace, and the action shall stand for trial de novo as if it had never before been tried, and in the present case no complaint had been previously filed with the Court of First Instance, as proven by the bill of exceptions submitted, which is a faithful transcript of the whole proceedings, and it does not appear that the plaintiff complied in any manner with the provisions of section 112 of the said law; and in that judgment was rendered in default, and there is no default where no complaint or summons had been served at the trial.

In the first place, the defendant appellant, as appears from the order which she herself has presented, was summoned on the 17th of September, 1906, to appear on the 21st of said month and year, at the trial of the above-entitled cause in the matter of a claim for the recovery of a carabao with calves; it was clearly stated that

"by virtue of the foregoing summons" the sheriff went to her house, and it is explicitly stated that he notified her of the contents of said citation and summons and that she acknowledged the service. Moreover, section 397, the caption of which is "What equivalent to service," provides: "An acknowledgment on the back of the summons by the defendant * * * shall be equivalent to service." On the back of the summons appears the statement that the same was duly served.

If the summons was not accompanied by a new complaint, if a new complaint which might have been attached to the summons was not presented to the court ad quem—none of which matters can be established in this decision by the perusal of the bill of exceptions which, as stated therein, is composed of certain parts of the proceedings, and is not a transcript of the whole—yet it is not possible to maintain that the plaintiff acted in violation of section 112 of the Code of Procedure when said section authorized her, if she so preferred, to refer to the complaint that she had filed with the justice of the peace "instead of presenting a new one." So that neither is it true that "there was no complaint in the action." There was a complaint and there was a summons.

In the second place, even if there had been no complaint or formal summons, no law or reason whatever justifies the nonappearance of the defendant after having been summoned, inasmuch as even if it were for the purpose of challenging the jurisdiction of the court, or of alleging the nullity of the summons, she ought to have appeared and not have abandoned the action, filing then the motion which she did not make until after judgment in default had been rendered.

And in the third place, after judgment in default had been entered, the remedy open to the appellant was that authorized by section 55 of the Code of Civil Procedure, to wit, to ask that the judgment be vacated and that she be heard. She should have appeared and stated that her non-appearance in the action, which gave rise to the judgment in default, was due to fraud, accident, or mistake. This the appellant did not do. She merely claimed that the said judgment should be annulled on the ground of lack of summons, which is without foundation, and because of the absence of a new complaint, which she might have pleaded upon appearing in answer to the summons alleged to have been defective because it was not accompanied by a copy of the new complaint.

From the fact that an appeal interposed against a decision of a justice of the peace annuls the entire proceedings had in his court, it does not follow, nor is it true, that a new complaint is necessary, as alleged by the appellant. According to section 75 of the Code of Civil Procedure, a perfected appeal shall operate to vacate the judgment of a justice of the peace, and the action when duly entered in the Court of First Instance shall stand for trial de novo upon its merits in accordance with the regular procedure in that court, as though the same had never been tried and had been originally there commenced.

For the reasons above set forth, the judgment appealed from is hereby affirmed with the costs of this instance against the appellant.

Torres, Mapa, Johnson, Carson, and Willard, JJ., concur.

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