

EMILIO QUISUMBING, PLAINTIFF AND APPELLEE, VS. PEDRO TANGLAO, DEFENDANT AND APPELLANT.*G. R. No. 42623. January 30, 1937*

Ponente: CONCEPCION, J.

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-Of the three errors assigned in this appeal as committed by the lower court, the first raises a question of jurisdiction. The appellee filed a complaint in the justice of the peace court of Gerona, Tarlac, for the recovery from the appellant of the sum of P480 as fees for services rendered by him as civil engineer, plus twenty-five per cent of said sum as penal clause, and P100 as damages. The defendant, appellant herein, filed a demurrer based on the ground that as the sum claimed was P700, the justice of the peace court had no jurisdiction over the subject matter of the action. The demurrer was overruled and the defendant excepted and filed his answer. After the hearing, judgment was rendered in favor of the plaintiff for the sum of P480 plus P60 as damages and the costs. The defendant appealed from the judgment and in the Court of First Instance of Tarlac he questioned the appellate jurisdiction of the court by means of another demurrer, inasmuch as the justice of the peace court, which originally tried the case, neither had jurisdiction over the subject matter of the action. The demurrer was overruled, the defendant excepted, the case was duly tried and judgment was rendered against the defendant. After filing and perfecting the appeal; the appellant now comes to this court and assigns, among other errors, that the court erred in having overruled the demurrer.

The question seems to be clear, taking into consideration the fact that the jurisdiction of the court is determined by the allegations of the complaint giving rise to the action.

"Allegations and demand in complaint as determining amount in controversy.—It is almost universally maintained that the amount claimed by the plaintiff in the ad damnum clause of his declaration, petition, or complaint, or that named in the summons, determines the question of the jurisdiction of a court to entertain an original proceeding, and not the value of the property involved in the controversy, as established by the evidence at the trial, nor the amount found by the jury or finally recovered." (7 R. C. L., 1052.)

"Where the jurisdiction of a court is dependent upon the amount in controversy, the question whether the court has jurisdiction must be determined by the amount actually in controversy at the time the jurisdiction of the court is invoked; and if the court has jurisdiction then, the circumstance that the claim is subsequently increased by accretion of interest to an amount beyond the statutory limit will not defeat the jurisdiction of the court." (Macondray & Co. and Fidelity & Surety Co. vs. Yangtze Insurance Assn., and Casimiro, 51 Phil., 789.)

In the complaint the plaintiff sought: (1) payment of PP480 as professional fees; (2) the sum of P120 representing twenty-five per cent of said sum, as penalty, and (3) P100 more as damages, totalling P700.

According to section 68 of Act No. 136, as amended by Act No. 2131, "the justice of the peace shall have exclusive original jurisdiction where the value of the subject matter or amount of the demand does not exceed two hundred pesos, exclusive of interest and costs; and where such value or demand exceeds two hundred pesos but is

less than six hundred pesos, the justice of the peace shall have jurisdiction concurrent with the Court of First Instance." It is clear, therefore, that in the case at bar the justice of the peace court of Gerona had no jurisdiction, whether exclusive or concurrent with that of the Court of First Instance of the province, to try and decide the complaint in question, by reason of the amount involved. Such being the case, neither did the Court of First Instance of Tarlac have appellate jurisdiction over the case and it should have limited itself to dismissing the complaint after the demurrer had been filed by the defendant-appellant.

"If an action is commenced in the court of the justice of the peace and that court has no jurisdiction over such action, and the question of jurisdiction is properly and timely raised, the Court of First Instance has no jurisdiction over such action on appeal, except to determine whether or not the court of the justice of the peace had jurisdiction. On appeal from a judgment of the justice of the peace, the appellate court has only such jurisdiction as the justice of the peace had. If the latter had no jurisdiction, the appellate court acquires none by the appeal: Provided, the jurisdiction of the lower court is put in question in both the lower court and on appeal. (U. S. vs. Ang Suyco, 17 Phil., 92; Carroll and Ballesteros vs. Paredes, 17 Phil., 94; Davis vs. Director of Prisons, 17 Phil., 168; U. S. vs. Bernardo, 19 Phil., 265.)" (Lucido and Lucido vs. Vita, 25 Phil., 414.)

The plaintiff-appellee, however, contends that inasmuch as the demurrer filed in the Court of First Instance had been overruled and the trial of the case was proceeded, with until judgment was rendered without any objection on the part of the defendant-appellant, the latter cannot now raise in this court the same question raised by the demurrer relative to the lack of appellate jurisdiction of the Court of First Instance. This court is of the opinion that the appellee's contention is untenable even under the doctrine laid down in the case of Nolan vs. Montelibano (29 Phil., 236-264), the pertinent part of which reads as follows:

"In the case before us, the justice's court not having had jurisdiction of the subject matter of the action, the appellate power of the court on appeal was limited to the determination of that question; and, having found that the justice's court was without jurisdiction, its appellate power was limited to a reversal on an annulment of the judgment and the termination of the cause. Instead of doing so, however, it proceeded with the trial of the case on the merits, as if the action had been originally commenced in that court. In so doing it entered on the exercise of its original and not its appellate jurisdiction. No objection to this course was made; on the contrary, all parties came in, filed their pleadings and proceeded to trial without objection to the exercise by the court of its original jurisdiction. Under such circumstances it is the doctrine of this court that the judgment of the appellate court will not be disturbed; and that an objection to the jurisdiction of the appellate court to proceed as it did, made in this court for the first time, comes too late." (Pages 244, 245.)

As will be observed from the foregoing quotation, there is an essential difference between the case at bar and that of Nolan vs. Montelibano referred to above. (1) In the Montelibano case the Court of First Instance overruled the demurrer, one of the grounds of which was that the Court lacked appellate jurisdiction over the complaint, but held that the justice of the peace had no jurisdiction with regard to the subject matter of the action. In the case at bar, the Court of First Instance overruled the demurrer holding that the justice of the peace court had jurisdiction over the subject matter of the action (Bill of Exceptions, page 11).

(2) In the case of Nolan vs. Montelibano, after the Court of First Instance had declared that the justice of the peace lacked jurisdiction, instead of reversing the judgment and terminating the case, said court proceeded with the trial thereof on the merits, as if the action had been originally commenced in that court. In the present case, after the demurrer had been overruled, the court also proceeded with the trial of the case but did not do so as if the action had been originally commenced therein, but as an appellate court in the exercise of its appellate jurisdiction, inasmuch as in overruling the demurrer, it affirmed that the justice of the peace had jurisdiction over the subject matter and therefore it (the Court of First Instance) likewise had appellate jurisdiction.

(3) In the case of Nolan vs. Montelibano, the court in proceeding with the trial of the case on the merits, did so

exercising its original jurisdiction. Therefore, "it was the duty of the defendant, if he desired to limit the Court of First Instance to the exercise of its appellate jurisdiction only, to make an appropriate objection at the time the appellate court ceased to act as an appellate court and entered on the exercise of its original jurisdiction."

In the case under consideration, however, it was not necessary for the defendant-appellant to object to the court's proceeding with the trial of the case because said court did so in the exercise of its appellate jurisdiction, and the defendant had already excepted to the resolution of the court overruling his demurrer wherein he precisely impugned that same appellate jurisdiction.

In view of all the foregoing, this court concludes that the grounds which served as the basis of the decision in the case of Nolan vs. Montelibano are not applicable to the case under consideration and, adhering to the doctrine laid down in the above-cited case of Lucido and Lucido vs. Vita, reverses the appealed judgment and orders the dismissal of the complaint, without prejudice to the plaintiff's renewing his action in the Court of First Instance, with costs to the plaintiff. So ordered.

Avancena, C. J., Villa-Real, Abad Santos, Imperial, Diaz, and Laurel, JJ., concur.

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