

RUFINA ROCES, PLAINTIFF AND APPELLEE, VS. FRANCISCO JALANDONI AND OSCAR BOGACKI, DEFENDANTS AND APPELLANTS.

G.R. No. 4374. January 26, 1909

Ponente: JOHNSON, J.

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JOHNSON, J.:

This was an action by the plaintiff to recover possession of a house and the land upon which it was situated, which house and land are more particularly described in paragraph one of the complaint.

The defendant, Jalandoni, admitted in his answer the rights of the plaintiff. The defendant Bogacki filed a general denial, denying each and all of the allegations of the plaintiff.

After hearing the evidence adduced during the trial of the cause, the lower court rendered a judgment in favor of the plaintiff, ordering that the said property, which was then in the possession of the defendant, Bogacki, be returned to the plaintiff and that the said Jalandoni pay to the defendant Bogacki the sum of P120 with interest at 6 per cent from June, 1906, without making any finding as to costs.

From this decision the defendant Bogacki appealed and made the following assignments of error:

"1. The court erred in finding that the general demurrer offered by the defendant Oscar Bogacki should be overruled for having been presented after the proofs had been submitted.

"2. The court erred in finding that the complaint had been cured by the testimony of the plaintiff."

There was no motion for a new trial in the court below, and while the proof was brought to this court we can not examine it for the reason that this court has many times decided that in the absence of a motion for a new trial in the lower court and an exception taken to the ruling of the court thereon, this court can not examine the evidence. In order, therefore, to determine whether or not the lower court committed the errors assigned above, an examination of the facts stated in the decision of the lower court only can be made.

With reference to the first assignment of error, the lower court stated in his decision that the defendant Bogacki Interposed a general demurrer after all of the proof had been presented by both parties in the trial. The lower court further stated that the complaint presented by the plaintiff was very weak and insufficient, and that if the general demurrer had been presented before the commencement of the trial, it might have been sustained, but that in the opinion of the court the defects in the said complaint had been cured by the declarations of the plaintiff, presented during the trial, without opposition on the part of the defendant.

We must accept this finding of facts on the part of the court. If it is true, and the fact is not denied, that whatever defects in the matter of allegations which existed in the complaint had been cured by the evidence adduced during the trial, then a demurrer presented after the proof was admitted without opposition could not be effective.

The appellant calls our attention to section 93 of the Code of Procedure in Civil Actions, which provides that:

"If no objection be taken to the complaint, either by demurrer or answer, the defendant shall be deemed to have

waived all objections, excepting only the objection to the jurisdiction of the court over the subject-matter and that the complaint does not state facts sufficient to constitute a cause of action."

No rule is better established than the rule which requires the complaint to contain a statement of all of the facts constituting the plaintiff's cause of action. If it does not, it is subject to demurrer. The rule is also well established that if the defendant permits evidence to be introduced, without objection, which supplies the necessary allegations of a defective complaint, then this evidence has the effect of curing the defects of such a complaint and a demurrer thereafter is inadmissible upon the ground that the complaint does not state facts sufficient to constitute a cause of action. Not only are defective pleadings cured by the admission of evidence without objection, during the trial, but the court is required to render a judgment in any particular case, giving such relief as is consistent with the case made by the pleadings and the evidence. (See sec. 126, Code of Procedure in Civil Actions, and sec. 2533 of the Compilation of the Acts of the Philippine Commission.)

The judgment of the lower court being fully supported by the law, the same is hereby affirmed, with costs.

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

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