

**MACARIA MANUEL ET AL., PLAINTIFFS AND APPELLEES, vs.
FRIDOLIN WIGETT ET AL., DEFENDANTS.-FRIDOLIN WIGETT,
APPELLANT.**

G.R. No. 4507. August 18, 1909

Ponente: CARSON, J.

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CARSON, J.:

In the course of proceedings in the administration of the estate of Francisca Hilario, deceased, and upon the petition of the heirs of the estate, the trial court issued an order directing one Jose Mas, a former administrator of the estate, to deposit in court or to pay over to the present administrator, Roberto Moreno, prior to the 1st day of June, 1907, the sum of P10,514.14, together with interest thereon at the rate of 6 per cent per annum from September 26, 1904, and in addition the sum of P459.29, together with interest thereon at the rate of 6 per cent per annum from October 18, 1906; and directing further that, in the event of the failure of Mas so to do, judgment be entered against him for the sum of P10,973.43, together with interest thereon at the rate of 6 per cent per annum on P10,514.14 thereof, from September 26, 1904, and on P459.29, from October 18, 1906, and against his sureties, Fridolin Wigett and Felipe Calderon, and each of them, for the sum of P10,000. From this order Wigett appealed, and the action of the trial court in this regard is now before us for review on his bill of exceptions duly signed and certified, to which no objection has been entered either as to form or content.

It appears that the defendant, Jose Mas, was duly appointed administrator of the estate of Francisca Hilario, deceased, and that his codefendants, Fridolin Wigett and Felipe Calderon, are sureties upon a bond for the sum of P2,000, which he executed when he qualified as such administrator on the 25th day of February, 1901, and upon a second bond, executed on the 2d of September, 1903, amplifying the original bond from P2,000 to P10,000; that Mas continued to act as administrator until the 19th day of September, 1904, when he was relieved by an order of the Court of First Instance, and Roberto Moreno, who still continues to act as administrator was appointed in his place; that on the 26th day of September, 1904, the then trial judge ordered Felipe Calderon, who was acting as legal adviser to the administrator Mas, to deposit in court the sum of P10,514.14 before the 3d day of October, 1904, on the ground that this amount paid over to him by the administrator was being unlawfully detained by him; that Calderon duly excepted to this order and declined to pay over the funds as ordered, claiming that the estate was indebted to him in an amount equal to all the funds belonging thereto in his possession, by way of fees for services rendered as legal adviser, and for certain alleged advances made on behalf of the estate; that on the 3d day of October, 1904, the trial court issued another order, wherein, after reciting the terms of the order of September 26, 1904, and setting out the failure of Calderon to comply therewith, his conduct in that regard was adjudged to be a contempt, for which he was sentenced to imprisonment for six months or until he complied with the terms of the previous order; that to this order Calderon duly excepted and later perfected an appeal to this court; that on the 16th of October, 1906, while Calderon's appeal was still pending, the new administrator, Moreno, and the heirs of the estate filed a petition praying that the former administrator, Mas, and his bondsmen, be required to pay over certain funds of the estate which they alleged that Mas unlawfully retained in his hands;

that on the 15th day of May, 1907, the above set out order was entered, directing Mas to deposit in court or to pay over to the new administrator the sum of P10,973.43 with interest, prior to June 1, 1907, and that, in the event of his failure so to do, judgment be entered against him and against the sureties on his bond, and that at that time Calderon's appeal was still undetermined. It further appears that of this sum, P10,514.14 is the same amount which, in the earlier proceeding, the trial court found had been paid over to Calderon by Mas and was being illegally detained by Calderon; and that the defendants filed a demurrer to the petition of plaintiffs in the proceedings now under review on the ground that at that time there was another proceeding pending between the same parties for the same cause, and that upon demurrer being overruled and the order overruling it duly excepted to, they filed their answer setting out the foregoing facts in full, and again objecting to the jurisdiction of the court on the ground that the questions raised by the petition were at that time pending resolution in the Supreme Court of the Philippine Islands.

No objection appears in the record based on the patent irregularities which mark the proceedings whereby this case has been brought before us, and the only error assigned by counsel for appellant is the failure of the trial court to dismiss the petition, it appearing that the above-mentioned appeal by the defendant Calderon from another order entered in the course of the administration proceedings was still pending when the petition was filed and when the order based thereon was entered.

Appellant relies on the express provisions of sections 91 and 92 of the Code of Civil Procedure which provide that:

"The defendant may demur to the complaint, or to the statement of any distinct cause of action therein set forth, within the time fixed by general rules of court for such pleadings when it appears upon the face thereof.

* * * * *

"That there is another action pending between the same parties for the same cause." and that when this fact does not appear upon the face of the complaint, the objection may be taken by answer.

While these sections of the code provide that the objection is to be taken either by demurrer or answer, the objection is, of course, the same as in the absence of code provisions, is in general in the United States and England taken advantage of by the plea in abatement known as *auter action pendant*, and the principles laid down by the authorities touching that plea are equally applicable to the objection when raised under the express provisions of the code.

In the case of *Watson vs. Jones* (80 U. S., 679), it was held that, when in courts of concurrent jurisdiction, the pendency of a suit in one is relied on to defeat a second suit in another, the proceedings in an appellate court are part of the proceedings in the first court, and orders made by it to be enforced by the court of primary jurisdiction are, while unexecuted, a part of the case in the first suit, which may be relied on as *lis pendens* in reference to the second suit. So, in the case under consideration, there can be no doubt that the pendency of the former proceedings on appeal may be relied on to defeat new proceedings if it appear that they are between the same parties for the same cause. (*Fisk vs. Atkinson*, 71 Cal., 452; *Althen vs. Tarbox*, 48 Minn., 18.)

It is not always easy, however, to determine whether the parties and the cause in different actions or proceedings are or are not the same, but in the above-cited case (*Watson vs. Jones*, *supra*) the elementary principles which govern the availability of the plea of "other suit pending" were thus stated [p. 715]:

"But when the pendency of such a suit is set up to defeat another, the case must be the same. There must be the same parties, or at least such as represent the same interest, there must be the same rights asserted, and the same relief prayed for. This relief must be founded on the same facts, and the title or essential basis of the relief sought must be the same. The identity in these particulars should be such that if the pending case had

already been disposed of, it could be pleaded in bar as a former adjudication of the same matter between the same parties."

And in the same case it was said that the true test of the sufficiency of a plea of "other suit pending" in another forum was the legal efficacy of the first suit when finally disposed of, as "the thing adjudged" regarding the matter at issue in the second suit. (Cf. Haytian Republic, 154 U. S., 124; Dick vs. Gjlmer, 4 La. Ann., 520; Bischoff vs. Theurer, 8 La. Ann., 15.)

It has also been held that "the criterion by which to decide whether two suits are for the same cause of action is, whether the evidence, properly admitted in the one, will support the other." (5 Cr. C. C., 393; see 13 Wallace (U. S.), 679); that the suits must be such that the same judgment may be rendered in both (17 Pick. (Mass.), 510; 19 id., 523); that there must be no substantial difference in the relief sought (Jenkins vs. Elridge, 3 Story (U. S.), 181; Calaveras County vs. Brockway, 30 Cal., 325); that "if the whole relief sought in the second suit is not obtainable in the first, or if the relief which may be given or the remedies available in the second suit are more extensive than can be attained in the first, a plea to the second suit of the pendency of the first is not good" (Larter vs. Canfield, N. J., 1900, 45 Atl., 616; Gibson vs. Northwestern Land Co., 89 Wis., 49); that the rule in equity is the same as at law, namely, that the plea of a party to a suit pending can be pleaded only when all the relief sought for in the second suit is obtainable in the first (Parker vs. Selye, 3 N. Y. App. Div., 149; Macy vs. Childress, 2 Tenn. Ch., 23); and that, while the parties need not in all cases be precisely the same, they must be the same in person or in interest (5 Wis., 151).

Applying any one or all of the foregoing criteria to the proceedings under consideration, it will be readily seen that the plea of "other action pending" was properly disregarded in the court below.

Admitting that the parties plaintiff were the same, or at least the same in interest, in both proceedings, it is clear that the parties defendant were wholly different, Calderon being the sole party defendant in the former proceedings pending on appeal, while Jose Mas, administrator, Fridolin Wigett and Calderon, are defendants in the proceedings at bar, the alleged liability therein of Calderon who was also the party defendant in the former proceeding, being merely subsidiary to and dependant on the liability of his principal, Mas.

It is clear also that the adjudication of the matters admitted on Calderon's appeal could not be pleaded in bar as an adjudication of the questions at issue in the later proceeding and that the same judgment could not in any event be rendered in both proceedings; the cases are wholly distinct; the real question at issue on Calderon's appeal was his right to take, hold, and pay himself for alleged professional services out of funds admittedly belonging to the estate, without a previous adjudication of his claim and the allowance thereof by the court; while the object of the proceedings under review was to determine the amount of the alleged liability of the administrator to the estate and of the subsidiary liability of Calderon and Wigett, the sureties on his bond as administrator. Not only were defenses available to Calderon which could not be set up by Mas and vice versa, but the liability of Mas as administrator might under various circumstances subsist despite the fact that the adjudication of Calderon's appeal should relieve him of liability; and on the other hand a holding on appeal that the court in the former proceeding had properly directed Calderon to pay over the funds in question not only could not bind Mas, who was not a party to that proceeding, but would not relieve Mas and his bondsmen of responsibility in the event that Calderon failed to or was unable to pay over the funds as directed; and finally it will be observed that the relief sought in the second proceeding, to wit, the fixing of the liability upon Mas, and subsidiarily upon his sureties, was more extensive than the relief which could have been obtained in the first.

Appellant lays especial stress upon the fact that the court in the former proceeding may be called upon to decide the very question submitted in the latter, to wit, whether the amount of the fees and reimbursements claimed by Calderon were reasonable and properly paid over to him by the administrator. It is very doubtful whether this

question is placed at issue in any view which may be taken of Calderon's appeal (*Escueta vs. Sy-Juilliong*, 5 Phil. Rep., 405; *Gonzales vs. Del Rosario*, 7 Phil. Rep., 140), but, however this may be, appellant's contention is, we think, sufficiently and satisfactorily disposed of by the following citation from the decision of *Buck vs. Colbath* (3 Wall., 334), where the principles which should govern in regard to the identity of the matters at issue in two suits to make the pendency of the one defeat the other are fully discussed

"It is not true that a court, having obtained jurisdiction of a subject-matter of a suit and of parties before it, thereby excludes all other courts from right to adjudicate upon other matters having a very close connection with those before the first court, and, in some instances, requiring the decision of the same questions exactly.

"In examining into the exclusive character of the jurisdiction in such cases, we must have regard to the nature of the remedies, the character of the relief sought, and the identity of the parties in the different suits."

The order of the lower court is affirmed, with the costs against the appellant.

Arellano, C. J., Torres, Johnson, and Moreland, JJ., concur.

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