

EMILIE ELMIRA RENEE BOUDARD, RAYMOND ANTONIN BOUDARD, GINETTE ROSE ADELAIDE BOUDARD AND MONIQUE VICTOIRE BOUDARD, PLAINTIFFS AND APPELLANTS, VS. STEWART EDDIE TAIT, DEFENDANT AN...

G.R. No. 45193. April 05, 1939

Ponente: DIAZ, J.

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DIAZ, J.:

Plaintiffs appeal from a judgment of the Court of First Instance of Manila dismissing the case instituted by them, thereby overruling their complaint, and sentencing them to pay the costs. They now contend in their brief that:

"I. The lower court erred in not admitting Exhibits D, E, F and H to M-I of plaintiffs.

"II. The lower court erred in declaring that it was indispensable for the defendant to be served with summons in Hanoi.

"III. The lower court erred in declaring that service by publication, with personal notice by the French Consul in Manila, was not sufficient,

"IV. The lower court erred in declaring that the Court of Hanoi had no jurisdiction over the person of the defendant.

"V. The lower court erred in dismissing this case, instead of sentencing the defendant to pay to the plaintiffs the amounts claimed in the complaint as adjudged by the Court of Hanoi; and

"VI. The lower court erred in denying the motion for new trial on the ground that the decision is contrary to the law and the evidence."

Briefly stated, the pertinent facts of the case, that we glean from the records, are as follows: The appellant Emilie Elmira Renee Boudard, in her capacity as widow of Marie Theodore Jerome Boudard and as guardian of her coappellants, her children born during her marriage with the deceased, obtained a judgment in their favor from the civil division of the Court of First Instance of Hanoi, French Indo-China, on June 27, 1934, for the sum of 40,000 piastras, equivalent, according to the rate of exchange at the time of the rendition of the judgment, to P56,905.77, Philippine currency, plus interest the amount or rate of which is not given. The judgment was rendered against Stewart Eddie Tait who had been declared in default for his failure to appear at the trial before said court.

Appellants' action, by virtue of which they obtained the foregoing judgment, was based on the fact that Marie Theodore Jerome Boudard, who was an employee of Stewart Eddie Tait, was killed in Hanoi by other employees of said Tait, although "outside of the fulfillment of a duty", according to the English translation of a certified copy of the decision in French, presented by the appellants. The dismissal of appellants' complaint by the lower court was based principally on the lack of jurisdiction of the Court of Hanoi to render the judgment in question, for the

execution of which this action was instituted in this jurisdiction. The lack of jurisdiction was discovered in the decision itself of the Court of Hanoi which states that the appellee was not a resident of, nor had a known domicile in, that country.

The evidence adduced at the trial conclusively proves that neither the appellee nor his agent or employees were ever in Hanoi, French Indo-China; and that the deceased Marie Theodore Jerome Boudard had never, at any time, been his employee. The appellee's first intimation of his having been sued and sentenced to pay a huge sum by the civil division of the Court of First Instance of Hanoi was when he was served with summons in the present case.

Passing now to the consideration of the errors assigned by the appellants, we must say that it was really unnecessary for the lower court to admit Exhibits D, E, F and H to M-I, nor can these exhibits be admitted as evidence, for, as to the first point, the appellants failed to show that the proceedings against the appellee in the Court of Hanoi were in accordance with the laws of France then in force; and as to the second point, it appears that said documents are not of the nature mentioned in sections 304 and 305 of Act No. 190. They are not copies of the judicial record of the proceedings against the appellee in the Court of Hanoi, duly certified by the proper authorities there, whose signatures should be authenticated by the Consul or some consular agent of the United States in said country. The appellants argue that the papers are the original documents and that the Honorable French Consul in the Philippines has confirmed this fact. Such argument is not sufficient to authorize a deviation from a rule established and sanctioned by law. To comply with the rule, the best evidence of foreign judicial proceedings is a certified copy of the same with all the formalities required in said sections 304 and 305 for only, thus can one be absolutely sure of the authenticity of the record. On the other hand, said exhibits or documents, if admitted, would only corroborate and strengthen the evidence of the appellee which in itself is convincing, and the conclusion of the lower court that the appellee is not liable for the amount to which he was sentenced, as alleged, for he was not duly tried or even summoned in conformity with the law. It is said that the French law regarding summons, according to its English translation presented by the appellants, is of the following tenor:

"Sec. 69 (par. 8). Those who have no known residence in France, in the place of their present residence: if the place is unknown, the writ shall be posted at the main door of the hall of the court where the complaint has been filed; a second copy shall be given to the Attorney-General of the Republic who shall visae the original." But then, Exhibits E, E-I, F and F-I show that the summons alleged to have been addressed to the appellee, was delivered in Manila on September 18, 1933, to J. M. Shotwell, a representative or agent of Churchill & Tait Inc., which is an entity entirely different from the appellee.

Moreover, the evidence of record shows that the appellee was not in Hanoi during the time mentioned in the complaint of the appellants, nor were his employees or representatives. The rule in matters of this nature is that judicial proceedings in a foreign country, regarding payment of money, are only effective against a party if summons is duly served on him within such foreign country before the proceedings.

"The fundamental rule is that jurisdiction in personam over nonresidents, so as to sustain a money judgment, must be based upon personal service within the state which renders the judgment. (*Pennoyer vs. Neff*, 95 U. S., 714; 24 Law. ed., 565; *Twining vs. New Jersey*, 211 U. S., 78; 29 S. Ct., 14; 53 Law. ed., 97; *Continental National Bank of Boston vs. Thurber*, 143 N. Y., 648; 37 N. E., 828.)

"The process of a court of one state cannot run into another and summon a party there domiciled to respond to proceedings against him. (*Hess vs. Pawloski*, 274 U. S., 352, 355; 47 S. Ct, 632, 633 [71 Law, ed., 109].) Notice sent outside the state to a nonresident is unavailing to give jurisdiction in an action against him personally for money recovery. (*Pennoyer vs. Neff*, 95 U. S., 714 [24 Law. ed., 565].) There must be actual service within the State of notice upon him or upon some one authorized to accept service for him. (*Goldey vs. Morning News*, 156 T.J. S., 518 [15 S. Ct, 559; 39 Law. ed., 517].) A personal judgment rendered against a nonresident, who has

neither been served with process nor appeared in the suit, is without validity. (McDonald vs. Mabee, 243 U. S., 90 [37 S. Ct., 343; 61 Law. ed., 608; L. R. A. 1917F, 458].) The mere transaction of business in a state by nonresident natural persons does not imply consent to be bound by the process of its courts. (Flexner vs. Farson, 248 U. S., 289 [39 S. Ct, 97; 63 Law. ed., 250].)" (Cited in Skandinaviska Granit Aktiebolaget vs. Weiss, 234 N. Y. S., 202, 206, 207J

"The process of a court has no extraterritorial effect, and no jurisdiction is acquired over the person of the defendant by serving him beyond the boundaries of the state. Nor has a judgment of a court of a foreign country against a resident of this country having no property in such foreign country based on process served here, any effect here against either the defendant personally or his property situated here." (5 R. C. L., 912.)

"Process issuing from the courts of one state or country cannot run into another, and although a nonresident defendant may have been personally served with such process in the state or country of his domicile, it will not give such jurisdiction as to authorize a personal judgment against him." (23 Cyc, 688.)

It can not be said that the decision rendered by the Court of Hanoi should be conclusive to such an extent that it cannot be contested, for it merely constitutes, from the viewpoint of our laws, prima facie evidence of the justness of appellants' claim, and, as such, naturally admits proof to the contrary. This is precisely the provision of section 311 of Act No. 190, as interpreted in the case of Ingenohl vs. Walter E. Olsen & Co. (47 Phil., 189) :

"The effect of a judgment of any other tribunal of a foreign country, having jurisdiction to pronounce the judgment, is as follows:

"1. In case of a judgment against a specific thing, the judgment is conclusive upon the title to the thing;

"2. In case of a judgment against a person, the judgment is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title; but the judgment may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact." (Sec. 311 of Act No. 190.)

In view of the foregoing considerations, our conclusion is that we find no merit in the errors assigned to the lower court and the appealed judgment is in accordance with the law.

Wherefore, the judgment is affirmed, with costs against the appellants. So ordered.

Avanceña, C. J., Villa-Real, Imperial, Laurel, and Moran, JJ., concur.

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