

ERNESTO ALDEGUER, PLAINTIFF AND APPELLEE, VS. MARTIN GEMELO AND VICENTE GEMELO, DEFENDANTS AND APPELLANTS.*G.R. No. 46045. July 31, 1939*

Ponente: MORAN, J.

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This is an action brought in the Court of First Instance of Iloilo for the execution of a judgment for damages, rendered by the Court of First Instance of Occidental Negros. The judgment was rendered against Vicente Gemelo alone, but in the action for execution thereof, Martin Gemelo was joined as defendant. The defendants filed a counterclaim.

The lower court rendered judgment against the defendants, who interposed an appeal, and in this appeal they raised various questions of law, the most important of which is whether or not the lower court had jurisdiction to try the case. It is argued that, since the judgment whose execution is sought was rendered in the Court of First Instance of Occidental Negros, the action for its enforcement should also be brought in said court.

There is no question that judgment was rendered more than five (5) years ago. Consequently, section 447 of the Code of Civil Procedure, which provides that said judgment may be enforced by an action instituted in regular form, that is, by complaint, is applicable. In the case of *Compania General de Tabacos vs. Martinez and Nolan* (29 Phil, 515), this court said that after the lapse of five (5) years, the judgment "is reduced to a mere right of action in favor of the person whom it favors which must be enforced, as are all other ordinary actions, by the institution of a complaint in the regular form." Although section 447 is silent as to the place where the complaint should be filed, there is, however, section 377 of the same Code, which fixes the venue of actions in general. The action for the execution of a judgment for damages is a personal one, and under section 377 above-mentioned, it should be brought in any province where the plaintiff or the defendant resides, at the election of the plaintiff. As the action in the present case was brought in Iloilo where the plaintiff resides, we hold that it was duly brought therein.

It is argued that, when the judgment the execution of which is sought is real in character, the action for the enforcement thereof must also be a real action and must, therefore, be brought in the same court where the judgment was rendered, and that to establish uniformity, the same rule should be applied to actions for the collection of judgment which are personal in character. It does not seem proper that, merely for the sake of uniformity, we have to repeal, by decision, the express provisions of section 377 of the Code of Civil Procedure. There will be an occasion for this when this court promulgates the Rules of Court. Said legal provision takes into consideration the convenience of the litigants. In this case, it seems more convenient for the parties that actions for the collection of judgments for a certain sum of money be considered transitory in character because, if for example, a judgment was rendered in the Court of First Instance of Zamboanga eight (8) years ago, and the parties now reside in Cagayan, it would certainly be burdensome for them to be compelled to go to Zamboanga to demand enforcement of the judgment. After all, once a judgment has become final and executory, the questions decided therein cannot again be raised, and to determine whether the same has already been paid or not, it is unnecessary to examine anew the whole record of the decided case. Consequently, it is of no advantage at all that

the court where said proceedings were had be the same to take cognizance of the action for the collection of the judgment.

The entire reasoning of the appellants on this question is based on American authorities relative to the writ known as scire facias. However, we have already stated in the case of *Compania General de Tabacos vs. Martinez and Nolan*, supra, that the remedy of scire facias is not available in the Philippines. The proceedings of scire facias "are not original actions, but mere continuances of the former suit and supplementary remedies to aid in the recovery of the debt evidenced by the original judgment" (page 519). The action in the present case is an original action, and not a mere incident of the primitive suit or a mere auxiliary and supplementary remedy. It is a new and independent action for the recovery of a debt evidenced by the original judgment. In other words, it is an action based on a judgment, or what is called in English an action upon a judgment. The American doctrine is uniform in the sense that whereas the remedy of scire facias, which is a mere incident of the original suit, must be instituted in the court where said suit was brought (34 G. J, 664-615; 23 Cyc, 1444-1445; 2 Freeman on Judgments, 2272-2273; 1 Black on Judgments, 578), an action upon a judgment must be brought either in the same court where said judgment was rendered or in the place where the plaintiff or defendant resides, or in any other place designated by the statutes which treat of the venue of actions in general.

"No rule of law is better settled than the one, that an action of debt is maintainable on a judgment of a court of record. The judgment is a good cause of action, it being as between the parties, the most conclusive evidence of indebtedness. * * *." (John S. Greathouse et al. vs. David A. Smith, 4 Ill., 541-542.)

"* * * The owner of a judgment may * * * use his judgment as a cause of action, and bring suit thereon in the same court or any court of competent jurisdiction, and prosecute such suit to final judgment. (*Gould v. Hayden*, 63 Ind., 443; *Palmer vs. Glover*, 73 Ind., 529; *Campbell v. Martin*, 87 Ind., 577." (*Becknell et al. v. Becknell*, 110 Ind., 47.)

"This being, in effect, an action of debt on a judgment, and not a proceeding by scire facias, to revive, the suit was rightly brought in the county of the defendant's residence." (*Townsend v. Smith*, 20 Tex., 470.)

"There was no error in overruling appellant's demurrer to plaintiff's petition. The suit was an action of debt upon a judgment, and the proper venue was the county of the defendant's residence. (R. S., art. 1198,) It was a new suit and not a mere continuation of the former one, as in case of scire facias, and hence the authority of *Perkins v. Hume*, 10 Tex., 50, is not applicable to it." (*Johnson v. Skipworth*, 59 Tex., 474.)

"* * * The law seems to be very well settled, however, that suits on judgments in courts other than that in which they were recovered may be maintained at the will of judgment creditors, regardless of the fact that the time allowed, either by statute or the common law, for taking out an execution on the original judgment, has not expired. *Simpson v. Cochran*, supra; *Kingsland v. Forrest*, 52 Amer. Dec., 232; *Freem. Judgm.*, sec. 432 and citations. Judgment will be entered for plaintiff." (*Hickman vs. Macon County*, 42 Fed., pp. 759-760.)

"The subject matter of the suit in the state court, was a note which by the judgment became merged in the higher security. In this court, the subject of the suit was a judgment which was conclusive evidence of a debt due the plaintiffs, who being citizens of New York, have a right to sue in this court, on any cause of action within its cognizance. We cannot discriminate between a debt due by judgment, or in any other way. An action of debt on a judgment is not like a scire facias, which must issue from the same court which rendered the judgment." (*Barr et al. vs. Simpson*, 2 Fed., p. 905.)

"An action on a judgment may be brought in the court which rendered it, or in any other court having jurisdiction. Thus the action may be brought in an inferior court on a judgment obtained in a superior one; and, conversely, an

action lies in a superior court upon a judgment rendered in an inferior one. It was formerly thought that such an action was a local one, and must be brought in the county where the record remained; but it is now held that the action may be brought in any county in which jurisdiction of defendant's person can be obtained." (34 C. J., sec. 1543, p. 1091.)

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"An action upon a judgment is in its nature transitory and not local and may therefore be brought wherever the requisite jurisdiction may be obtained, whether in the same or a different court. Whether action may be brought in a justice's or other inferior court depends upon the jurisdiction given by statute to such courts and the amount of one judgment. * * *." (2 Freeman on Judgments, pp. 2251-2252.)

"* * * Accordingly in a majority of the states, the owner of a judgment may bring suit thereon in the same or any other court of competent jurisdiction, * * *." (2 Black on Judgments, pp. 1138-1139.)

Martin Gemelo has been unduly joined as defendant in this case. The judgment, the execution of which is sought, was rendered against Vicente Gemelo alone, and, consequently, it cannot be executed against Martin Gemelo.

"An action on a judgment cannot be maintained against one not a party to nor bound by it. Hence a judgment against the administrator of an estate in one state is not a cause of action against the administrator of the same decedent in another state, even though the same person is administrator in both states. The action must be against the judgment defendant. Thus a judgment against a defendant described therein as a Wyoming Corporation will not sustain an action against a Main Corporation though of the same name. However, a mistake in the name of the defendant in obtaining judgment against him will not prevent an action against the same individual in his right name. And the same is true where his Christian name was omitted," (2 Freeman on Judgments, pp. 2254-2255.)

With respect to the counterclaim of the defendants, which was overruled by the lower court, this court is of the opinion, considering the circumstances of the case, particularly the condition of the evidence and the attitude of the parties, that the interests of justice would be better served if we reserve, as we now hereby reserve, to the defendants their right to bring another action for said counterclaim.

For the foregoing reasons, the judgment is reversed in so far as it affects Martin Gemelo, and it is affirmed in all other respects, with the above-stated reservation in favor of the defendants, without costs in this instance.

Avanceña, C. J., Villa-Real, Diaz, and Concepcion, JJ., concur.

Imperial, J., see dissenting opinion.

Laurel, J., concurs in the foregoing dissenting opinion of Mr. Justice Imperial.

DISSENTING OPINION

IMPERIAL, J.:

I dissent from the majority opinion in so far as it holds that when the action provided for in section 447 of the Code of Civil Procedure, for the enforcement of a judgment which has become inactive by reason of the lapse of five years, is personal in character, it may be instituted in the Court of First Instance of the province where the plaintiff or the defendant resides, at the option of the plaintiff, in accordance with the rule laid down in section

377 of said Code.

American jurisprudence is almost uniform in holding that such actions, known as scire facias, must be instituted in the same court where the judgment sought to be revived has been rendered. "A proceeding to revive a judgment must be brought in the court and county where it was rendered" (34 C. J., 664; Griffin vs. Spence, 69 Ala., 393; Blackwell v. State, 3 Ark., 320; Funderburk v. Smith, 74 Ga., 515; Dickinson vs. Allison, 10 G., 557; Challenor vs. Niles, 78 Ill., 78; Thompson vs. Parker (83 Ind., 96; Conner vs. Neff, 2, Ind. A., 364; 27 N. E., 645; Threshing Mach. Co. v. Edmisten, 85 Nebr., 272; 122 N. W., 891.,

In almost all the States of the Union, a final judgment, which is not yet barred by the statute of limitations, maybe enforced by execution, scire facias or by action upon a judgment. When the judgment has become inactive by reason of the lapse of a certain period of time, the same may be enforced by means of scire facias or an action upon a judgment. In this jurisdiction there are only two ways of enforcing a final judgment, to wit: by execution within five years after its entry (section 443 of the Code of Civil Procedure), and by an action to enforce the same after the lapse of five years (section 447 of the Code of Civil Procedure; Compania General de Tabacos vs. Nolan, 29 Phil., 515). The proceeding of scire facias is not recognized by the Code of Civil Procedure. In the United States itself the proceeding has been outmoded and repealed by almost all the procedural laws on the matter. Neither is an action upon a judgment recognized by our Code of Civil Procedure (Compania General de Tabacos vs. Martinez and Nolan, supra, and the concurring opinion of Mr. Justice Moreland).

It is alleged that in the case of Compania General de Tabacos vs. Martinez and Nolan it has been said that a judgment, after the lapse of five years, is reduced to a mere right of action in favor of the person whom it favors and that, as the action in the present case is a personal action, there is no reason for not applying that part of section 377 of the Code of Civil Procedure, which provides that personal actions may be brought by the plaintiff at his residence or at that of the defendant, at the election of the plaintiff. In the first place, in the case of Compania General de Tabacos vs. Martinez and Nolan, we have not stated that the action is always a personal one and may be brought in any court in accordance with section 377; in the second place, not all actions upon a judgment are necessarily personal in character, because there are cases in which the action is real when it is sought thereby to enforce a judgment affecting real property or real rights; and in the third place, if the general provisions of section 377 were to be applied to actions for the enforcement of a judgment, there would be no uniformity as to the court that should exercise jurisdiction because, when it is sought to enforce a personal judgment it could be brought at the residence of the plaintiff or that of the defendant, at the option of the former, and when it is sought to execute a real judgment, the action must have to be brought at the place where the real property is situated. I am of the opinion that we would lay down a useful and uniform doctrine by holding that the actions to be brought under section 447 of the Code of Civil Procedure should be instituted in the court where the judgment sought to be enforced was rendered. In this manner the litigant would know in all cases, whether the action be real or personal, that it must have to be brought in the Court of First Instance which rendered the judgment sought to be executed.

With respect to the resolution of the case affecting the defendant Martin Gemelo, I agree with the majority opinion.

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