

PEDRO ADIARTE, PLAINTIFF AND APPELLANT, VS. PASTOR DOMINGO, DEFENDANT AND APPELLEE.*G. R. No. 47301. April 08, 1941*

Ponente: MORAN, J.

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On March 22, 1928, one Godofredo Domingo, duly authorized representative of the present defendant, Pastor Domingo, instituted an action in the Court of First Instance of Ilocos Nortes (Civil Case No. 3011) for the recovery of the sum of P1,150 representing the price of lumber, alcohol and shellac which present defendant obligated himself to deliver to present plaintiff. To the complaint, plaintiff interposed the defense of nondelivery of the goods and on the issue thus joined, judgment was rendered against him. This judgment was affirmed by this Court, and execution having issued thereon, his real property was sold at public auction. One year thereafter, that is, on October 17, 1936, plaintiff instituted the present action against the defendant to compel the latter to deliver to him the same lumber, alcohol and shellac which constituted the subject-matter of his defense in the prior litigation. A demurrer on the ground of res adjudicata was interposed by the defendant which was sustained by the trial court, and on plaintiff's appeal, the order was affirmed by this Court, with the modification that the plaintiff be given an opportunity to amend his complaint. No new facts, however, having been pleaded in the amended complaint to constitute a proper cause of action, a second demurrer, on the same ground of res adjudicata, was interposed thereto and was sustained by the trial court; and, from the order dismissing the amended complaint, the instant appeal was again taken.

In the judgment of this Court affirming the order of the trial court sustaining the demurrer to plaintiff's original complaint, the existence of res adjudicate was expressly declared. Considering that the amended complaint introduces no new facts to constitute a proper cause of action, our declaration of res adjudicate with respect to the original complaint must, of necessity, control on the matter of the amended complaint.

Appellant, however, contends that, in passing on defendant's demurrer, the trial court erred in having taken judicial notice of the records in civil case No. 3011 *aforecited*. Appellant undoubtedly overlooked what we said in our judgment of affirmance:

"En vista de los hechos y alegaciones de que se acaba de hacer mención, claro y evidente parece que el Juzgado Inferior no podia menos de tener en cuenta, al considerer el demurrer del demandado, la existencia y el resultado final de la causa civil No. 3011, por la sencilla razón de que se dice llanamente en la demanda que tales hechos existian y que se dictó sentencia en la referida causa contra el demandante y apelante, obligandole a pagar el importe de los materiales de construcción relacionados en el citado Exhibit A."

We have once held that, in the absence of objection and as a matter of convenience, a court may properly treat all or part of the original record of a former case filed in its archives, as read into the record of a case pending before it, when, with the knowledge of the opposing party, reference is made to it for that purpose by name and number or in some other manner by which it is sufficiently designated. (*U. S. vs. Clavería*, 29 Phil., 527.)

Order is affirmed, with costs against appellant.

Imperial, Diaz, Laurel, and Horrilleno, JJ., concur.

Avanceña, C. J., did not take part.

Order affirmed.

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