

LEONCIO JUANILLO, PLAINTIFF AND APPELLANT, VS. RAMON DE LA RAMA, DEFENDANT AND APPELLEE.

G.R. No. 48161. November 28, 1942

Ponente: MORAN, J.

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MORAN, J.:

- VENUE; WAIVER WHEN PLEADED AFTER JUDGMENT ON THE MERITS HAS BEEN RENDERED.—It "is true that, since the action is upon a contract not in writing, the venue thereof should be the place of residence of the defendant—the municipality of Pasay— where summons was served upon him. He omitted, however, to appear in court at the date of the trial to plead wrong venue, arguing that, as he knew that the municipal court of the City of Manila had no jurisdiction over his person, he had no legal duty to appear therein. It was not until the court had tried the case on the merits and rendered judgment against him that he filed his motion for reconsideration to plead for the first time lack of jurisdiction over his person. More than once has this court viewed with disfavor such an attitude as the defendant's.

- ID.; ID.—Venue is not like jurisdiction over the subject matter which may be challenged at any stage of the proceedings. Venue is a matter of procedure which may be waived expressly or impliedly even in inferior courts. Where, as in the present case, the defendant, knowing from the very beginning that the venue was improperly laid, allows the trial to be held against him, he cannot, after the rendition of an unfavorable judgment, validly appear in court and raise for the first time the question of venue. Under such circumstances, objection to improper venue must be deemed waived and can no longer be pleaded.

- ID.; ID.—And the plea of wrong venue having been waived in the municipal court, it cannot be pleaded for the first time in the Court of First Instance. Well known is the rule that a defendant cannot, on appeal to the Court of First Instance, plead any defense that has not been interposed in the court below. The defense of wrong venue should have been ignored in the Court of First Instance and its order of dismissal predicated upon such defense is erroneous.

APPEAL from an order of the Court of First Instance of Manila. Ocampo, J. Decision penned by Associate Justice Manuel V. Moran.

Cecilio I. Lim and Antonio M. Castro, public defenders, for appellant.

Jose F. Orozco for appellee.

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