

JOSE LIM, PLAINTIFF AND APPELLEE, VS. DOMINGO LIM, DEFENDANT AND APPELLANT.

G.R. No. 4881. July 24, 1909

Ponente: TORRES, J.

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TORRES, J.:

On the 14th of February, 1905, Jose Lim filed a complaint with the justice of the peace of Iloilo against Domingo Lim for the recovery of P530, to the payment of which and costs the defendant was sentenced by said court. The latter appealed from the judgment of the justice of the peace to the Court of First Instance of the province, and duly furnished the necessary bond, whereupon the record of the case was forwarded to the Court of First Instance. On the 10th of November, 1906, the proceedings were remanded to the justice of the peace for the execution of the aforesaid judgment, for the reason that the fees of the clerk of the court, or the registration fees, had not been paid.

For said reason the defendant appellant filed a motion, of which the plaintiff was duly informed, praying the court to vacate the order remanding the case to the justice of the peace of Iloilo for execution of the judgment rendered, and claiming that the matter should be tried in the Court of First Instance; he further prayed that, in the event that his petition be not granted, he be allowed to appeal to this Supreme Court, and that in the meantime the proceedings, or the execution of the aforesaid judgment be suspended.

After the hearing of the motion the judge of the Court of First Instance entered his decision on the 24th of November, 1906, denying the said motion. The defendant excepted to this decision, and presented in due course a bill of exceptions which was subsequently forwarded to the clerk of this court.

In a case like the present one, where the defendant in an action brought before the justice of the peace has been sentenced to pay the amount claimed and has appealed from such judgment, furnishing for said purpose the corresponding bond, who is under the obligation to pay the registration fees in the Court of First Instance, in order that the matter may be tried again on appeal?

This is the question set up in this litigation, and it was submitted long before Act No. 1627, section 16 of which amended section 76 of the Code of Civil Procedure, went into effect.

After an appeal has been interposed within the period fixed by the said section of the code of procedure, and after the giving of a bond under the terms and for the amount stated therein, the appeal becomes perfected and, by operation of law, vacates the judgment of the justice of the peace and accomplishes the further results indicated in section 75 of the said Code of Procedure. That section reads as follows:

"SEC. 75. Effect of appeals.-A perfected appeal shall operate to vacate the judgment of the justice of the peace, and the action when duly entered in the Court of First Instance shall stand for trial de novo upon its merits in accordance with the regular procedure in that court, as though the same never had been tried and had been originally there commenced."

According to the provisions of the above section, and in the event of an appeal, the plaintiff should bring the action de novo before the Court of First Instance, to be tried on its merits, as if the same had never been heard, and had been there originally commenced. Such being the case, the plaintiff, whether or not he be the appellant, is the party bound to pay the registration fees in the Court of First Instance, in order that, by virtue of the perfected appeal which vacated the judgment of the justice of the peace from which appeal was taken, his claim may be heard and tried de novo in the second instance.

After the transmission of a certified copy of the record of proceedings, together with the original papers and the appeal bond, to the clerk of the Court of First Instance for registration for new hearing, the plaintiff must file a new complaint, or reproduce that presented in the court of the justice of the peace; and in order that action may be taken in accordance with the law, it is indispensable that the plaintiff himself shall pay the registration fees which the clerk of the court is obliged to collect under the provisions of section 78 of the said code, inasmuch as none of its sections imposes on the appellant, as such, the obligation to pay the registration fees. (See case No. 1471 in the matter of J. V. Knight vs. J. McMicking,[1] and No. 3278 in the matter of Reyes vs. Alburo,[2] and other decisions rendered by this court in similar cases.)

The aforesaid obligation was subsequently imposed on an appellant by section 16 of Act No. 1627, which only went into effect on the 1st of July, 1907; but prior to said date, an appellant who was not the plaintiff was not bound to pay the said fees.

Hence, on the supposition that the defendant, Domingo, appealed in due course from the judgment rendered against him by the justice of the peace of Iloilo, and gave the corresponding bond, it can not be denied that his appeal became perfected, and the judgment appealed from vacated by operation of law; therefore, there was no final judgment subject to execution. It can not be maintained that said judgment recovered any legal status, or that there existed any legal provision which caused its resuscitation, and therefore the justice of the peace could not be ordered to comply therewith, and the proceedings in the second instance should have followed according to law, and the record of the case in the justice's court been "brought up to the Court of First Instance.

In view of the above considerations and after repealing the order of the lower court of November 24, 1906, the order of the 10th of said month, ordering the execution of the said judgment, is hereby set aside. Let the judge of the Court of First Instance act in accordance with the law, without any special ruling as to the costs in this instance. So ordered.

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

[1] 2 Phil. Rep., 698.

[2] 7 Phil. Rep., 398.

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