

**SIMEON TAN-SUYCO, PLAINTIFF AND APPELLANT, VS. ELENA JAVIER, VIUDA DE NER, ILDEFONSO MOMFORT, AND ENRIQUE JESUS, DEFENDANTS AND APPELLEES.**

*G.R. No. 6495. December 23, 1911*

Ponente: JOHNSON, J.

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**JOHNSON, J.:**

It appears from the record that on the 31st of July, 1908, the plaintiff commenced an action in the Court of First Instance of the Province of Occidental Negros, for the purpose of recovering the sum of P6,387.50 as damages resulting from an attachment secured by the said defendants against the property of the said plaintiff.

The plaintiff alleges that the said attachment was illegal.

The said attachment was issued in the cause No. 270 of the Court of First Instance, in which the defendant herein, Elena Javier, was the plaintiff, and Ceferino Tan-Suyco was the defendant. By virtue of said attachment certain property, including a number of carabaos, was attached. The plaintiff herein, Simeon Tan-Suyco, made a representation to the sheriff that the said property and carabaos belonged to him and not to Ceferino Tan-Suyco, whereupon the attachment was raised. Later, the defendant herein (the plaintiff in cause No. 270) amended her petition and made the said Simeon Tan-Suyco (the plaintiff herein) a codefendant with the said Ceferino Tan-Suyco. Upon the amended complaint (in cause No. 270) a second attachment was issued and the same property and carabaos were again attached. The plaintiff herein (one of the defendants in cause No. 270) made another representation to the sheriff that the property belonged to him and not to Ceferino Tan-Suyco. In that cause (No. 270) the said Simeon Tan-Suyco filed a separate answer from that filed by Ceferino Tan-Suyco, in which, after a relation of the facts, appeared the following prayer:

"1. He prays that the court dismiss the complaint against him.

"2. That the property attached at the instance of the plaintiff and described in the cross-complaint filed in December, 1904, be declared to belong to him.

"3. That the plaintiff be sentenced to restore to the defendant, Simeon Tan-Suyco, the property attached, to pay for the damage caused, with the costs of the suit, and that in case of insolvency action be instituted against the property of his bondsmen for the resulting liability."

Said cause No. 270 proceeded to a determination in the Court of First Instance, was appealed to the Supreme Court, and in a final decision rendered by the Supreme Court on the 3d of October, 1906, the said Simeon Tan-Suyco was relieved from all liability whatever in said action. (Javier vs. Tan-Suyco, 6 Phil. Rep., 484.)

Nearly two years after the termination of said cause No. 270, the present action was commenced. After hearing the evidence adduced during the trial of the cause, the Honorable Albert E. McCabe, judge, found from the evidence that the questions presented had been litigated and concluded in said cause No. 270, and dismissed the action, absolving the defendants from any liability thereunder, with costs against the plaintiff.

From that judgment the plaintiff appealed and made the following assignment of errors:

"I. The Court of First Instance erred in holding that the complaint of Simeon Tan-Suyco, asking for damages from the defendants Elena Javier and Ildefonso Monfort, had already been decided in civil case No. 270, instituted by Elena Javier against Ceferino Tan-Suyco for payment of a debt.

"II. The Court of First Instance erred in not holding sufficiently proven the damages caused to the plaintiff by his being deprived of the use of his 24 carabaos and one cow during the days when this stock was held under attachment and reattachment at the instance of the defendant, under the bond of her co-defendants."

With reference to the first assignment of error above noted, the court, in its decision, said :

"On March 2, 1905, the plaintiff in case No. 270 amended her complaint so as to aver that the amount the defendants owe her was P4,882.62, instead of P5,127.21, as in the previous complaint.

"The defendant Simeon Tan-Suyco replied to this amended complaint and again prayed that the plaintiff be sentenced to. make restitution of the property attached and to payment of the damages caused thereby; and that in case of insolvency the judgment be extended to her bondsmen.

"The court rendered judgment in this case, No. 270, on March 10, finding that the defendant Ceferino Tan-Suyco owed the plaintiff, Elena Javier, the sum asked in the complaint, but it excluded the defendant Simeon Tan-Suyco from this judgment, stating that it was not proven that he was a debtor along with his father; and in this judgment it was ordered that the attachment be dissolved and that the 24 carabaos and one cow be returned to Simeon Tan-Suyco, and that the complaint against him be dismissed, with the costs in his favor.

"With reference to that judgment, it appears that the defendant, Simeon Tan-Suyco, acquiesced therein, but that the plaintiff, Elena Javier, after her motion for a new trial had been overruled, appealed to the Supreme Court of the Philippine Islands, where the case was heard in that court as No. 2675 (6 Phil. Rep. 484), and wherein decision was handed down on October 3, 1906, affirming the judgment of the lower court against Ceferino Tan-Suyco, as well as that part of the judgment in favor of Simeon Tan-Suyco.

"It appears that when this decision of the Supreme Court had been transmitted to this Court of First Instance, the sheriff was then directed to return the attached animals to Simeon Tan-Suyco, and that they were returned on December 1, 1906, with the exception of 8 which had died in the depository's hands. It appears beyond doubt that these 8 animals died through no fault of the person in whose custody they were, some of them from old age and some from the epizooty prevailing in this province.

"The present action was instituted by the plaintiff on account of the damage thus sustained, but the defendants allege that it is res judicata, having been settled by the decision in case No. 270.

"At the hearing of this case in this court the plaintiff was rather vague in his testimony with reference to the damage he sustained. When asked how long he had been deprived of the use of his animals, he did not specify the dates, saying about three years. He submitted no evidence to show the value of the 8 animals that died; but it would appear that he suffered loss at the rate of P0.50 for each day, including Sundays, that these animals were withheld from him, and for each and all of them, male and female, old and young, and even for those that died; that is, in his last amendment to his complaint he asked for damages in the sum of P12,250.

"However, in view of the court's intention in this suit, it is thought unnecessary to weigh the evidence regarding the amount of damages the plaintiff might have been allowed to collect herein.

"This court holds that the matter is res judicata, this same action for damages having been settled in case No. 270. It was one of the matters in litigation, brought thus into question by Simeon Tan-Suyco; and some statements were made by him based upon the previous action. In preparing and rendering the judgment in case

No. 270, the trial judge considered the question of the damages that might have been granted to Simeon Tan-Suyco.

"In the opinion of this court, this is a case that plainly comes under the principles constituting res judicata in the Philippine Islands, laid down in the decision of the Supreme Court of the Philippine Islands in the case of Tanguinlay vs. Quiros (10 Phil. Rep., 360), where the matter is fully and clearly discussed."

It will be remembered that in the other case (No. 270) the present plaintiff asked for damages resulting from the alleged unlawful attachment. The court did not allow damages in that case. The plaintiff did not appeal from that decision, thereby indicating that he was satisfied with the same. As was said above, the plaintiff, nearly two years after the termination of that action (No. 270), commenced the present action for the purpose of litigating again the very question which he had presented in the first case, thus incurring additional costs and expenses, which should always be avoided when possible. And, moreover, section 439 of the Code of Procedure in Civil Actions expressly makes provision for the recovery of damages in connection with an action for the recovery of property illegally attached. The question then as to damages for the alleged illegal attachment, which was involved in action No. 270, must have been litigated in that action and is, therefore, res judicata of the question presented here.

This court said, in the case of Tanguinlay vs. Quiros (10 Phil. Rep., 360):

"The law of res judicata is well settled in the United States and is laid down in a series of decisions of the Supreme Court to the effect that as between the parties to the first judgment and their privies, it operates as a bar to a second action upon the same claim, not only as to the issues actually in litigation but also as to all matters which might have been litigated therein, whereas in an action between them upon a different cause it is a bar only as to matters actually litigated. (Cromwell vs. County of Sac, 94 U. S., 351; Werlein vs. New Orleans, 177 U. S., 390; U. S. vs. California Co., 192 U. S., 355; Fayerweather vs. Ritch, 195 U. S., 276, 299; Northern Pacific Railway Co. vs. Slaght, 205 U. S., 122.)"

It might be argued, however, that under the provisions of section 307 of the Code of Procedure in Civil Actions, that because the lower court in said action No. 270, made no finding whatever with reference to damages that it should be assumed that the question of damages was not litigated in said action (270).

Section 307 provides: "That only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto." Said section 307 is an exact reproduction of section 1911 of the Code of Civil Procedure of the State of California, and has been construed many times by the supreme court of said State. (Taylor vs. Castle, 42 Cal., 367; Phalen vs. Gardner, 43 Cal., 306, 311; Woolverton vs. Baker, 98 Cal., 628; Toomy vs. Hale, 100 Cal., 172; Reed vs. Cross, 116 Cal., 473; Bingham vs. Kearney, 136 Cal., 175; Estate of Harrington, 174 Cal., 124, 128.)

In the case of Bingham vs. Kearney above cited, the supreme court of the State of California said:

"It is the rule, long recognized in this country, that a judgment between the same parties is conclusive, not only as to the subject matter in controversy in the action upon which it is based, but also in all other actions involving the same question, and upon all matters involved in the issues which might have been litigated and decided in the case, the presumption being that all such issues were made and decided. It is the policy of the law to put an end to litigation, and to aid the vigilant and not those who sleep upon their rights. It is not the policy of the law to allow a new and different suit between the same parties, concerning the same subject matter, that has already been litigated; neither will the law allow the parties to trifle with the courts by piecemeal litigation.

"If the parties to an action fail to assert their claim properly or to present proper evidence in the first suit, they will not again be permitted in a second action to litigate the same questions. These principles are elementary."

The principles applicable to res judicata under American jurisprudence are supported by many decisions of the supreme court of Spain.

There is nothing in the record which shows why the plaintiff herein did not insist upon having a finding of the lower court in action No. 270, upon the question of damages. Under his pleadings he had a perfect right to present evidence upon the question of the amount of damages which he actually suffered. He also had a right to insist upon a decision upon whatever evidence he introduced upon that question. If the court refused to make a finding upon such evidence or denied his right to recover damages at all, it was his duty to have appealed in that action (270), for the purpose of having the question of damages settled in that action, instead of waiting and commencing a separate and distinct action for the same purpose.

This court, speaking through Mr. Justice Carson, in the case of Lanuza vs. Gonzalez (17 Phil. Rep., 413) said:

"Relief can not be granted in a second action, either by the trial court or by the Supreme Court, when the relief sought might have been secured by an appeal in the former action; hence, when a court, after due trial, renders a judgment adjudicating the ownership of property and no appeal is taken, under the provisions of section 306 of the Code of Civil Procedure the judgment becomes final and the matter must be regarded as res adjudicata, notwithstanding the fact that, if an appeal had been taken, the judgment of the lower court might have been reversed in the second instance. (Regalado vs. Luchsinger & Co., 5 Phil. Rep., 625; Macondray & Co. vs. Quintero, 6 Phil. Rep., 429; Tanguinlay vs. Quiros, 10 Phil. Rep., 360.)"

After a full consideration of all the facts and the law applicable to the present case, we are of the opinion and so declare that the lower court committed no error in deciding that the questions presented here had been litigated in said action 270.

In view of our conclusions with reference to the first assignment of error, we deem it unnecessary to discuss the question presented in said second assignment of error.

Upon a full consideration of the record, the evidence and the law, we are of the opinion that the judgment of the lower court should be affirmed, with costs. It is so ordered.

Mapa, Carson, Moreland, and Trent, JJ., concur.

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