

**GREGORIO JIMENEZ ET AL., PLAINTIFFS AND APPELLANTS, VS.
PASCUALA LOZADA ET AL., DEFENDANTS AND APPELLEES,***G.R. No. 7270. March 29, 1913*

Ponente: TORRES, J.

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This appeal was raised, through a bill of exceptions, by counsel for Gregorio, Mateo, and Antonio Jimenez and Isabel Guevara, from the judgment rendered on June 1, 1910, whereby the Honorable Simplicio del Rosario, judge, denied the motion to set aside the judgment rendered by the justice of the peace of Las Piñas, dissolved the temporary injunction granted on April 3 Of the previous year, and ordered that the record of proceedings be returned to the said justice of the peace court, which had forwarded it to the Court of First Instance, and that the justice of the peace be advised that in the future, as in the present case, he must admit an appeal whenever the fees therefor and the proper bond were furnished, nor should he require payment of the sum to which the appellant was sentenced for accounts distinct from rentals stipulated between landlords and tenants.

By a written motion of March 29, 1909, Gregorio Jimenez, for himself and his codefendants, petitioned the Court of First Instance: (1) To set aside and reverse the judgment rendered by the justice of the peace in the case prosecuted by Pascuala Lozada against the appellants over the unlawful detainer of a parcel of land; (2) to order a new trial in the Court of First Instance, as though the case were on appeal; (3) to issue a temporary injunction against the said plaintiff and the justice of the peace who rendered the judgment, prohibiting, until further order and after filing of bond, further procedure tending to affirm the same; and (4) to require from the justice of the peace the record in the case; alleging that when the suit was filed in the justice of the peace court, the defendants, on March 13, 1909, interposed a demurrer (Exhibit B), which was overruled, but the justice of the peace ordered the plaintiff to amend his complaint to conform with the demurrer (Exhibit C); that when the case came to trial on the 22d of the same month, the said justice rendered judgment contrary to the weight of the evidence, sentencing the defendants to restore to the plaintiff possession of the land (Exhibit D), instead of absolving the defendants or suspending the proceedings and certifying the cause to the Court of First Instance, as prescribed by section 3 of Act No. 1627, since it was disclosed that it was not a case of unlawful detainer, but a question of ownership, or simply of possession, according to the 9th question, paragraph 4, of the Attorney-General's opinion of November 28, 1906; that an appeal (Exhibit E) was filed within five days after entry of the judgment, but the justice of the peace disallowed the same and required the exorbitant bond of P1,200 when it could not have exceeded P500, in view of the fact that the losses and damages were assessed at P345, with the costs, of both instances; that, on March 26, 1909, and within the aforesaid five days, the defendant, with two bondsmen, again presented before the justice of the peace his written petition for appeal, the documents attesting the solvency of his two bondsmen for the sum of P1,200, and P16 as court fees; but the justice of the peace refused also to admit it or the bond offered with the said amount, because the defendants then and there failed to pay the sum of P345 specified in the judgment as losses and damages; that, in spite of the defendant's petition, made upon his appearance before the justice of the peace, that the latter embody in some order his denial of the defendant's previous petitions, the said justice likewise disallowed this petition, stating that he was not obliged to issue an order denying or admitting

written motions for appeal; and that therefore the legal period allowed by law for the filing of the appeal had elapsed, and the defendants were, by fraud, mistake, accident, or excusable negligence, prevented from filing an appeal, and they invoked sections. 148 to 152 of the Code of Civil Procedure.

By order of April 3 of the same year, the Court of First Instance directed the aforesaid justice of the peace to suspend all proceedings in the case until further order and to forward the record thereof to the Court of First Instance, provided that the defendants furnished a bond of P400.

Upon the petition of the appellants, the court, by order of February 2, 1910, declared the plaintiff, Pascuala Lozada, in default and directed that the justice of the peace of Las Piñas be included in the case as one of the defendants, and a summons was issued upon him. By another order of April 5, 1910, issued at the request of the same appellants, the justice of the peace of Las Piñas, Simon Villa-real, was declared to be in default and a day was set for the hearing of the default proceedings against the defendants.

At this stage of the case, on June 1, 1910, the judgment under consideration was rendered, exception whereto was taken by counsel for the appellants, Gregorio Jimenez et al., who also moved in writing for a new trial. This motion was denied, whereupon the appellants filed the proper bill of exceptions, which was approved and forwarded to the clerk of this court.

This is a question of a special remedy sought from the Court of First Instance of this city, for setting aside the judgment which was rendered by the justice of the peace of the municipality of Las Piñas at the oral trial of the case prosecuted by Pascuala Lozada against Gregorio Jimenez et al., over unlawful detainer of a parcel of land and restitution thereof, on the ground that said justice of the peace had refused to admit their appeal, because they had failed to pay the sum of P345, to payment whereof as losses and damages they were sentenced, pursuant to the provisions of section 2 of Act No. 1778, although they had furnished the bond required of them and deposited the sum of P16 as fees for the appeal to the Court of First Instance; also because the defendant Gregorio Jimenez believe himself to be owner of the land in question, citing therefor the provisions of sections 148 to 152 of the Code of Civil Procedure.

The appeal having been admitted in the Court of First Instance with summons to the plaintiff, Pascuala Lozada, and the justice of the peace that first tried the case, who were declared to be in default for failure to answer the summons, the court in his judgment of June 1 held that the justice of the peace of Las Piñas should have admitted the appeal from his judgment rendered at the oral trial, even though the appellants had not paid or deposited in his court the sum of P345, to payment whereof they had been sentenced, and that the bond offered under guaranty of solvent sureties and delivery of P16 as fees for the appeal to the Court of First Instance were sufficient, for the provision relevant to the case in section 2 of Act No. 1778 refers to such defendants as are debtors for rents and are to be ejected, but not to usurpers or detainers of real property.

The said provision of section 2 of said Act applicable to the case reads;

"The appeal shall not be allowed until such obligation has been filed with the justice of the peace and it is proven that at the time such appeal is taken all money found by the judgment to be due from the defendant to the plaintiff, either as rent or as the reasonable value of the use and occupation of the premises, as the case may be, has been paid to the plaintiff or has been deposited in court."

The amount which the defendants were sentenced to pay in the judgment rendered by the justice of the peace was not money due as rent, but was for losses and damages, as recognized in the judgment appealed from, and, pursuant to this judicial declaration, the proper procedure would have been to have ordered the justice of the peace to admit the appeal and carry it forward in the ordinary manner.

As the justice of the peace had not previously admitted the appeal filed by Gregorio Jimenez et al., and as the complaint whereupon Pascuala Lozada's case had been instituted in the justice's court was not reproduced in the Court of First Instance, the latter could not legally try or decide the same matter in second instance, as he has done, on the fundamental issue between the parties, for in view of the objection of Gregorio Jimenez et al. to the procedure of the justice of the peace of Las Piñas in refusing to allow the appeal directed to the Court of First Instance; the latter's competency was restricted entirely to deciding the definite point as to whether or not the justice of the peace should have admitted the appeal raised by the defeated defendants to the Court of First Instance, for with this obstacle removed the appeal would go forward in the ordinary way.

In order that the Court of First Instance may in second instance try a case prosecuted in a justice of the peace court and pass judgment upon the fundamental issue between the litigants, the appeal must be submitted to him in the manner prescribed by law and the case be reopened through a new complaint in his court, acting in second instance, for without these requisites he cannot lawfully exercise appellate jurisdiction in second instance, and in such case in trying the cause on appeal he will have occasion to decide whether or not the judgment of the justice, of the peace should be set aside, as the appellants request, if not reversed for other legal reasons.

In addition to the foregoing, there still remains the question whether, when appeal has been raised through bill of exceptions from the judgment of the Court of First Instance which passed upon and decided the fundamental issue of the case in the justice of the peace court, without having previously admitted the defeated party's appeal from the judgment therein, this court can act in third instance upon the appeal by the same party from said judgment of the Court of First Instance.

Jimenez's incidental objection to the procedure of the justice of the peace, carried on in the form of a trial in the Court of First Instance, though related to the case in the former, is distinct and independent, with a completely different subject matter, wherefore this court, in taking cognizance of the appeal through bill of exceptions to the judgment rendered in this new trial, does so by virtue of its appellate jurisdiction in second instance, for it is not called upon to settle the fundamental issue tried by the justice of the peace, but to decide the admissibility of the judgment rendered by the Court of First Instance, thereby straightening out the procedure that has varied from the regular course prescribed by law.

The judgment of the Court of First Instance on the fundamental issue in the suit is completely void and ineffective, for it was rendered without jurisdiction therefor, and this court in so declaring as a result of the appeal by the interested party does so by virtue of its appellate jurisdiction in second instance, nor can it be said to do so in third instance, since the appeal hereby decided does not refer definitely to the suit tried by the justice of the peace, but to the premature extrajudicial judgment rendered by the Court of First Instance.

For the foregoing reasons, the judgment appealed from is set aside and the Court of First Instance will provide that the justice of the peace allow said appeal in accordance with law; without special findings as to costs.

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

Trent, J., dissents.

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