

R. NOLAN, PLAINTIFF AND APPELLEE VS. ALEJANDRO MONTELIBANO Y RAMOS ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 9373. January 23, 1915*

Ponente: MORELAND, J.

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This is an appeal from a judgment of the Court of First Instance of the Province of Occidental Negros in favor of the plaintiff and against the defendants wherein it is "adjudged that the plaintiff pay to the defendant Montelibano the sum of P6,500, together with the additional sum of P1,500 expended by the defendant in the repair of the camarin, with interest on the last named sum at the rate of 12 per cent per annum from the 11th day of June, 1904, and that upon payment by the plaintiff of the said sums to the defendant Alejandro Montelibano, the said Alejandro Montelibano and the other defendants are hereby ordered and directed to deliver forthwith to the plaintiff the possession of the hacienda 'Rosario' in question, together with the tract of land known as the 'Lauzurica' lands, which were included in the contract, with all the growing crops thereon, including the 1913-14 sugar crop, the defendant retaining that part of the land now occupied by the 1912-13 crop and such buildings, camarines, and machinery as may be necessary for the harvesting and milling of the said 1912-13 crop; and that the defendants are further ordered to continue vacating and delivering to the plaintiff that area covered by the 1912-13 crop so soon as the land is cleared and until the entire area of the hacienda and all other lands, buildings, machinery, improvements, etc., are delivered to the plaintiff," together with costs.

It appears from the record that, on the 11th day of June, 1904, Dona Carmen F. de Cañete and Alejandro Montelibano, one of the defendants in this case, entered into a contract by virtue of which the said Carmen F. de Cañete delivered to the defendant Montelibano, in usufruct, the hacienda known as "Rosario," which is the subject of this action, for eight consecutive crops of sugar, said contract terminating August 30, 1913. The consideration moving to the said Carmen F. de Canete was the payment by the defendant Montelibano of a debt of P6,500 which she owed to one Yap-Tico of Iloilo. The provisions in the contract under which the hacienda was delivered to Montelibano, which are pertinent to this litigation, are as follows:

"That she (Doña Carmen F. de Cañete) is in debt to the commercial house of Yap-Tico of Iloilo in the sum of P6,500 conant, secured by a mortgage on said hacienda 'Rosario' and that she is unable to pay the said sum and, therefore, charges Alejandro Montelibano y Ramos with the payment of the same.

"That she gives the said hacienda 'Rosario' to the said Alejandro Montelibano y Ramos in usufruct for eight consecutive crops of sugar, which will terminate in August, 1913.

"In case the said Doña Carmen or her heirs fail to repay said sum at the time stipulated—that is to say, on the 30th of August, 1913—said contract shall be understood as having been extended for two crops more or until August 30; 1915, and in case said payment is not made as aforesaid, the land in question shall become and remain the property of said Montelibano.

"Alejandro Montelibano, on his part, agrees to pay the said commercial house of Yap-Tico the sum of P6,500 conant for and on behalf of the said Doña Carmen.

"In case of repayment by the said Doña Carmen or her heirs as aforesaid, the said Montelibano shall have the right to harvest the growing crop and shall thereafter proceed with the delivery of the fields as fast as they become vacant."

There is some question among the attorneys for the parties as to how this contract should be denominated. We pass any discussion of that question, relegating ourselves to the provisions of the contract and what the parties have expressly and clearly agreed to do therein. It is of slight consequence, under the circumstances of this case, what the name of the contract is or what it may be called, the terms thereof being full and clear; and they will be enforced between the parties irrespective of what the legal name of the contract may be in which they are found.

In the case at bar the provisions of the contract are full and clear. It provides that Carmen F. de Cañete will turn over her hacienda to Montelibano with the privilege of taking therefrom eight successive crops of sugar, said contract terminating on the 30th of August, 1913, in consideration that Montelibano pay a certain debt of P6,500 which the owner of the hacienda owed at the time to the commercial house of Yap Tico.

Under this contract Montelibano took possession of the premises on the 11th of June, 1904, and still continues in possession thereof.

In December, 1912, the owner of the hacienda sold the same to the plaintiff in this action, who became and is the owner thereof. Immediately thereupon the purchaser gave notice in writing to Montelibano of his intention to pay the sum owed by Carmen F. de Cañete and thereby redeem the premises and that he would require possession of Montelibano upon the removal of the eighth crop. Under this notice Montelibano was allowed to harvest the eighth crop according to the terms of the contract and to retain possession of so much of the land as was necessary for that purpose, delivering the land occupied by the eighth crop as that crop was removed. Montelibano refused to vacate the premises and suit was filed in the justice's court on February 4, 1913, for summary possession. The justice's court awarded possession to the plaintiff, an appeal was taken, and the complaint filed in the justice's court was reproduced in the Court of First Instance. Trial was had in the latter court and judgment found in favor of the plaintiff as aforesaid.

The case on the merits is so well put by the learned trial court that we cannot do better than reproduce what it says in reference thereto.

"Plaintiff claims possession of the hacienda under article four of the contract which provides that usufructuary rights of Montelibano shall expire in August, 1913, and after Montelibano shall have harvested eight crops of the sugar, by the payment by the other party to the contract of the amount due thereunder. Plaintiff further claims that Montelibano has been under notice since August or September, 1913, that Dona Carmen intended to avail herself of the provision of the said paragraph four and redeem the hacienda within the time limit therein specified by paying the full amount due, and the plaintiff declares that he himself, on the 17th day of December of the past year, immediately after he acquired the legal title to the hacienda as above stated, notified Montelibano in writing that he desired to pay the amount due under the contract to recover the usufructuary title to the hacienda and requested Montelibano to name a day in the month of June, 1913, when it would be convenient for him to deliver the possession. Later, on the 26th of January, 1913, the plaintiff again notified the defendant in writing and this time accompanied the notice with an offer of immediate payment. The defendant Montelibano persisting in this refusal to surrender possession of the hacienda, this suit was brought.

"The parties agree that the defendant Montelibano has already gathered seven crops of sugar under the contract, that he is engaged in harvesting and milling the eighth, and that the ninth crop (the crop in dispute) is planted and growing to the extent of 70 hectares or less.

"Plaintiff contends that the ninth crop was planted in bad faith in violation of the terms of the contract, and

after notice or redemption by himself and his predecessor in interest, Dona Carmen. On the other hand, Montelibano maintains that he has entered upon the two years' extension provided in paragraph 8 of the contract, in case of nonredemption and failure of the other party to pay the amount due thereunder.

"By referring to the said paragraph 8 we find that the latest day set therein for redemption is the 30th day of August of the present year of 1913, and that if the redemption shall not have been effected on or before the expiration of the said 30th day of August, 1913, the contract shall then be considered extended for two additional crops, terminating in August, 1915.

"It therefore definitely appears that several months must still elapse before the defendant can claim the possession and usufruct of the hacienda under the extension provided in paragraph 8 of the contract and manifestly and obviously he can claim no extension whatever even after August, 1913, unless the plaintiff fails to redeem as provided in said paragraph 8.

"There is, therefore, no possible construction of the contract by which the claim of Montelibano can be sustained. He is entitled to eight crops, and only eight crops, between the 11th day of June, 1904, and the 30th day of August, 1913; and he is required to surrender the possession of the hacienda upon the payment of the amount on or before August 30, 1913, save only the area covered by the eighth, or 1912-13 crop, the right to harvest which is specially reserved to him. To concede a ninth crop therefore to the defendants before they shall have entered upon the extension provided in paragraph 8 is to concede them something which is not conceded by the contract itself, to make defendants a present of a full crop of sugar and to deprive the plaintiff of the possession and usufruct of the hacienda until the latter part of the year 1914. This is in no wise contemplated by the contract; in fact it computes the usufruct in crops instead of years for the express purpose of avoiding misunderstanding by allowing the right of the usufructuary to lap over upon the right of the legal owner. "It requires one full year, according to the testimony of both parties, to grow a crop of sugar and the harvesting and milling occupy the greater part of another year, so that if we concede that Montelibano is entitled to the ninth crop, he is entitled to the possession of the land upon which the ninth crop is growing, together with the buildings, machinery, improvements, etc., until September or October, 1914.

"We are convinced, as we observed above, that the contract will admit of no such interpretation. We need not here consider the question of notice. Montelibano was under notice from the moment the contract was signed and ratified that he was limited to the eight crops between June 11, 1904, and August 30, 1913, and that these eight crops were intended by the parties as compensation in full for the advance by said Montelibano of the loan of P6,500.

'Plaintiff has, however, notified Montelibano and produced in court P10,000 with which to satisfy all claims due under the contract. It is true and the defendants have laid great stress upon this point that the contract provides that Montelibano shall have the right to harvest the pending crop in case of redemption, but this in our opinion has reference to the 1912-13 crop, which, as we have seen, is still pending and which, according to the evidence, will not be harvested and milled until September or October of the present year."

The merits of the cause have not been the subject of controversy in this court on the part of the appellant, his only assignment of error being: "The court erred in deciding that the justice's court had jurisdiction of this action and in refusing to dismiss the case before the justice's court."

Appellant's able argument on this point has convinced us that his contention is correct. The case at bar does not fall within the provisions of section 80 of the Code of Civil Procedure, which confers jurisdiction upon justices' courts in cases of forcible entry and detainer of land or buildings. The action should have been begun in the Court of First Instance originally. The fact, however, that the justice's court had no jurisdiction of the action does not deprive the Court of First Instance of jurisdiction, appellate or otherwise. A judgment of a justice's court which is pronounced without jurisdiction is as much the subject of appeal as one pronounced with jurisdiction, and the powers of the appellate court to deal with the situation are equally plenary and complete in both cases. The

difference between the power of the appellate court on appeals from judgments decreed without jurisdiction and those with jurisdiction consists in the question presented for determination rather than in appellate power. In either case there is full power to meet the situation—to decide the question presented. The only question arising on an appeal from a judgment of a justice's court rendered when that court had no jurisdiction over the subject matter is one of law and not of fact. In other words, the appeal presents for decision a question of law only and does not require or permit a trial de novo. In such case the only question is whether the justice's court had jurisdiction, and, if it had not, the duty of the appellate court is simply to reverse or annul; whereas, if the justice's court had jurisdiction to render the judgment appealed from and that judgment was rendered on the merits, then the jurisdiction of the appellate court extends to the trial of the case de novo. If, of course, the justice's court had no jurisdiction and so held, then its judgment would be affirmed by the appellate court, and, under such circumstances, that would be the only thing the appellate court, as such, could do. If the justice's court held that it had no jurisdiction, but erroneously, and refused to try the case on the merits, or, having tried the case on the merits, refused to pronounce judgment therein, the power of the appellate court would extend simply to a reversal of the judgment and a return of the cause to the justice's court for trial or the rendering of a judgment where the trial had taken place.

It should be noted that the errors which give rise to an appeal on a question of law only are those of (1) jurisdiction, and (2) those by which there has been no trial and decision on the merits in the justice's court. Where, however, there is jurisdiction in the justice's court and there has been a trial and decision on the merits, the appeal is always one for a new trial and never one on a question of law, no matter how many objections may have been made, exceptions taken, and errors committed during the trial.

In the case before us, the justice's court not having had jurisdiction of the subject matter of the action, the appellate power of the court on appeal was limited to the determination of that question; and, having found that the justice's court was without jurisdiction, its appellate power was limited to a reversal on an annulment of the judgment and the termination of the cause. Instead of doing so, however, it proceeded with the trial of the case on the merits, as if the action had been originally commenced in that court. In so doing it entered on the exercise of its original and not its appellate jurisdiction. No objection to this course was made; on the contrary, all parties came in, filed their pleadings and proceeded to trial without objection to the exercise by the court of its original jurisdiction. Under such circumstances it is the doctrine of this court that the judgment of the appellate court will not be disturbed; and that an objection to the jurisdiction of the appellate court to proceed as it did, made in this court for the first time, comes too late.

It was the duty of the defendant, if he desired to limit the Court of First Instance to the exercise of its appellate jurisdiction only, to make an appropriate objection at the time the appellate court ceased to act as an appellate court and entered on the exercise of its original jurisdiction. Not having done so, but having, rather, answered and proceeded to trial without objection, he is deemed to have consented to the exercise of that jurisdiction and is now estopped from raising the question.

It is contended that an objection was, in fact, made to the jurisdiction of the Court of First Instance to try the action on the merits, a demurrer having been filed to the complaint objecting to the appellate jurisdiction of the court. We do not so understand from the record. On the reproduction in the Court of First Instance of the complaint filed in the justice's court, the defendant demurred to the complaint on the following grounds:

"1. That the facts stated in the complaint are not sufficient to constitute a cause of action.

"2. That the court lacks appellate jurisdiction over the complaint."

The Court of First Instance has appellate jurisdiction and power suitable to deal effectively with every case

appealed to it from a justice's court, no matter what the nature of the case is, or whether the justice's court had jurisdiction or not. Every judgment of a justice's court, whether entered with or without jurisdiction, is appealable under the law to the Court of First Instance, which, as we have said, has full power to deal with the questions presented by the appeal. Such appellate power is expressly conferred by statute and cannot be divested by the act of court or party. Therefore, an objection to the appellate power of the Court of First Instance on appeal from a judgment of a justice's court, whether by demurrer or otherwise, is idle and useless and is properly overruled by the appellate court.

For every erroneous judgment of a justice's court there is a remedy by appeal to the Court of First Instance, whether the error be one of law or one of fact. If this were not so, a party aggrieved by a judgment of a justice's court would be deprived of a remedy expressly conferred by law. If, for example, the court in the case before us had sustained the objection to its appellate jurisdiction and dismissed the appeal on the ground that the justice's court had no jurisdiction and, therefore, the Court of First Instance had none, which is the argument presented by the appellee in this court, the appellant would have been deprived of a remedy granted by statute, which provides for appeals from judgments of justices' courts in all cases (Act No. 136, sec. 57); for, unless the appeal itself vacated the judgment of the justice's court in such a manner that it could not have been revived, then the dismissal of the appeal would have revived it and the appellant would have been left where he was before; and, although the judgment entered without jurisdiction would, if properly contested, have been unenforceable, nevertheless, the party aggrieved by such judgment would have been deprived of his statutory right to appeal from it and obtain its revocation or annulment in that manner. While an appeal from a justice's judgment for a new trial in the appellate court may vacate the justice's judgment, an appeal on a question of law only does not vacate it to such an extent, if at all, that a resolution of the question of law in favor of the judgment will not revive it.

It is, therefore, clear that the demurrer interposed was properly overruled. The Court of First Instance had appellate jurisdiction by statute and could not be deprived of that jurisdiction by anything the justice's court or any party might do. The demurrer was, therefore, without virtue or effect; and, that being so, it cannot be regarded as an objection to the original jurisdiction of the appellate court, and especially not when, by its terms, it is limited to the appellate jurisdiction.

The demurrer having been overruled, the defendants answered and the cause went to trial without objection from either party as to the exercise of the original jurisdiction of the appellate court. Under such circumstances this court will conclude that it was the intention of the parties to permit the appellate court to exercise its original jurisdiction and to try the case as if it had originally been begun in that court.

In the case of *Carroll and Ballesteros vs. Paredes* (17 Phil. Rep., 94), we said, with respect to the right of an appellant from a judgment entered by a justice's court without jurisdiction to require the appellate court to limit itself strictly to a resolution of the questions of law presented: "In the case at bar the accused, Ballesteros, made no objection whatever in the Court of First Instance to the trial being had upon its merits." And: "But when a timely objection is made to the jurisdiction of the appellate court (Court of First Instance) to try such case on its merits, the appellate court only acquires jurisdiction to dismiss the case."

In other words, it was held in that case that, where the justice's court had no jurisdiction of the subject matter of the action, the appellate jurisdiction of the appellate court was limited to a review of the judgment of the justice's court and, if found to have been entered without jurisdiction, to reverse or annul the same; but, even if the appellate court had no appellate jurisdiction to do more than stated, nevertheless, if it entered on the exercise of its original jurisdiction by proceeding with the trial of the case on the merits, the parties voluntarily filing their pleadings and going to trial without objection, they will be deemed to have waived the right to limit the court's activities to its appellate jurisdiction and will be held to have consented that it try the case in the same manner as

if the complaint had been originally filed in that court. Under such circumstances an objection to the original jurisdiction of the appellate court came too late when presented for the first time in the Supreme Court. To the same effect is the case of *United States vs. Ang Suyco* (17 Phil. Rep., 92), where the court said: "The defendants voluntarily presented themselves to the jurisdiction of the Court of First Instance without objection. That court having jurisdiction of both the subject and the person had a right to proceed with the trial *de novo*"

There has been some suggestion that, for some reason beyond that of obtaining a ruling on that question, an objection to the jurisdiction of the justice's court should have been made in that court. We can see no reason for such an objection except, of course, to call the attention of that court to the question in such a way as to obtain its ruling thereon. But such an objection was not absolutely necessary, so far as an appeal was concerned. If the justice's court had no jurisdiction of the subject matter under the law, its judgment, if it sought to do more than dismiss the case, was void, whether there was an objection or not; and such judgment would have been appealable with precisely the same force and effect as if there had been a dozen objections. A failure to object to the jurisdiction of the justice's court over the subject matter waives nothing and confers no power on either the justice's court or the appellate court. Jurisdiction over the subject matter is conferred on justices' courts by statute, and if the statute does not grant jurisdiction in a particular case, the failure to object does not confer it; nor would the justice's court have jurisdiction even if the parties consented to the exercise of jurisdiction. The justice's court obtains its jurisdiction solely from statutory authority; and the failure to make an objection to the jurisdiction does not render its judgment any the less void.

Nor is it necessary, in order to raise in the appellate court all of the questions presented by the appeal, to make in the appellate court a separate and distinct objection to the jurisdiction of the justice's court. It can serve no purpose, except that it might be considered a method, although a very clumsy one, of calling the court's attention to the question raised by the appeal. All of the errors committed by the justice's court, including errors over jurisdiction, are presented automatically by the appeal, if the appellant desires to avail himself of them by assignments of error or otherwise. What the questions are which can be raised by the appellant on the appeal will depend on the nature of the action and how it was handled in and by the justice's court. Thus, where a judgment has been entered by a justice's court without jurisdiction over the subject matter, an appeal raises only that question, namely, jurisdiction—a question of law. In the same way a question of law is raised by appealing from the order and judgment of the justice's court sustaining a demurrer to the complaint and dismissing the action; or where, after trial, or part of a trial, the justice's court dismisses the case without resolving the merits. The question presented to the appellate court in such cases is one of law and not of fact and, therefore, the only determination is as to the validity or legality of the judgment of the justice's court. In such cases the appellate court does not try the case *de novo*, but simply determines whether the sustaining of the demurrer and the dismissal of the complaint were proper or whether the dismissal of the case was in accordance with law. In case the appellate court finds that the dismissal was correct, it will affirm the judgment. If it find that the dismissal was in violation of law, it will reverse the judgment and remand the cause to the justice's court with instructions to try and resolve the case on the merits. It may be stated generally that, where there is no trial in the justice's court and judgment on the merits, or where there is no jurisdiction, trial or no trial, there can be no trial *de novo* in the appellate court. The appeal in such cases raises only a question of law and that is all that can be determined by the exercise of appellate jurisdiction. This being the case, an objection in the appellate court to the jurisdiction of the justice's court, if we give the word "objection" its ordinary meaning, is of no assistance to the appellate court, nor does it in any way limit the activities of that court. Such an objection will not render the action of the appellate court erroneous if it proceed with the exercise of its original jurisdiction in cases where it should limit itself to its appellate jurisdiction. The objection which should be presented to the appellate court, if it is desired to limit it exclusively to its appellate jurisdiction, is an objection to the exercise of its original jurisdiction. It is true that the foundation

of that objection is that the justice's court had no jurisdiction, or that for some reason there was no trial and decision on the merits in the justice's court, or that, for some other reason, only a question of law is presented by the appeal; but it is clear that, while the fact that the justice's court had no jurisdiction of the action may be one of the reasons why the appellate court ought not to exercise its original jurisdiction, an objection that the justice's court had no jurisdiction would not be equivalent to an objection to the exercise of the original jurisdiction of the appellate court; and, if it were the only objection made and the parties, making no other, went to trial under the original jurisdiction of the appellate court, it would not be sufficient to reverse the judgment entered on such trial. A reason on which an objection is founded is not a substitute for the objection itself. An objection, using the word in its real sense, is necessarily directed to the action or to an act of the court in which the objection is made and is, in such case, the basis of an exception if overruled. It is never directed against the act of some other court. What action could the Court of First Instance take if, for example, an appellant should arise at the beginning of the hearing on an appeal and say, "I object to the jurisdiction of the justice's court"? No question would be presented by such an objection and no action could be taken by the court on it.

It is thus apparent that, in the case of an appeal from a justice's court on a question of law only, the Court of First Instance has no power, by virtue of the appeal, to try the case on the merits. Its appellate power is limited to the resolution of the question of law. If it does anything more, that is to say, if it tries the case on the merits, it does so by an exercise of its original and not its appellate jurisdiction. If the appellant on such an appeal does not wish the Court of First Instance to try the case on the merits, that is, if he does not wish that court to exercise its original jurisdiction, then he should object to the exercise of that jurisdiction. If the appellant desires to limit the appellate court to the exercise of its appellate jurisdiction, he must object to every attempt on its part to exercise its original jurisdiction. He should not rest with a mere objection to the jurisdiction of the justice's court. He should object to what the appellate court is doing and not to what the justice's court has done. What the justice's court has done is the basis of an assignment of error and not an objection to what the appellate court is doing. The same may be said, and more, as to the effect of the same objection on appellate jurisdiction. Whether or not the justice's court had jurisdiction interferes in no way, as we have seen, with the appellate jurisdiction of the Court of First Instance. Appellate jurisdiction is conferred on the Court of First Instance by statute, and whether or not it may exercise that jurisdiction in a given case is determined by the statute and not by an objection interposed by a party to the appeal. If the appellate court has appellate jurisdiction in such case, then an objection cannot divest that jurisdiction; and if it has no appellate jurisdiction, then it cannot exercise appellate jurisdiction, no matter whether the parties object or consent. Parties cannot confer appellate jurisdiction where the statute has not conferred it any more than they can confer original jurisdiction where the statute does not confer it. The lack of jurisdiction in the justice's court may be raised for the first time on appeal. Such an objection is always available when attacking the judgment of the justice's court.

In the case before us the only objection offered throughout the case was by way of a demurrer to the sufficiency of the facts set out in the complaint and to the appellate jurisdiction of the Court of First Instance. No question was raised as to the power of the appellate court to go forward and try the case on the merits by the exercise of its original jurisdiction. In fact, far from making objections, the appellant in this case, defendant there, voluntarily, and without objection, filed his answer, went to trial, produced his evidence, and submitted the case to the court for decision. It was only after an adverse decision against him that he aroused himself sufficiently to make an objection to the power of the trial court to try the case, but even then the objection came for the first time in this court. Under such circumstances, it would be a miscarriage of justice to reverse the judgment and send the case back. Precisely the same procedure would be followed on a new trial as was followed before. There would be another trial of exactly the same nature as the trial now before us and before the same court. Under such circumstances we will not put the parties to the extra expense of another trial. We do not think that the law

requires it in this case and there is no decision of this court which holds the contrary.

In the case of *United States vs. Ang Suyco*, above cited, we sustained, even in a criminal case, the power of the trial court to exercise its original jurisdiction and to try the cause on the merits when there was no objection made by the defendant thereto, even though the justice's court acted without jurisdiction. In that case a criminal action was begun in the justice's court in which the defendant was charged with an "attempt against the agents of the authorities." The defendant was convicted and appealed to the Court of First Instance. The Court of First Instance and this court, on appeal, found that the justice's court had no jurisdiction of the subject matter of the action, inasmuch as the penalty provided for the crime charged was beyond that which a justice's court could impose. There was no objection presented to the Court of First Instance against the trial of the case there on the merits, although its legal duty was simply to reverse the judgment appealed from on the ground that it was entered without jurisdiction. But, as we have already said, the appellate court, instead of limiting itself to the exercise of appellate power, entered on the trial of the case on the merits. The defendant made no objection to such a procedure, but produced his evidence and submitted his case to the decision of the court. We held, on appeal to this court, that the Court of First Instance, having original and plenary jurisdiction of the subject matter, could exercise its original jurisdiction and try the case if the parties did not object thereto, and there having been no objection, it came too late in the appellate court. In that case we held that a third instance, that is, an appeal to the Supreme Court, was permissible, although the action was begun in the justice's court, for the reason that the Court of First Instance, in trying the cause, exercised not its appellate but its original jurisdiction, and having done so, an appeal lay to the Supreme Court.

There was the same holding in the case of *Carrol vs. Paredes*. In that case the accused was convicted of a certain crime in justice's court. An appeal was taken to the Court of First Instance and the case was again tried on the merits. The defendant was found guilty and sentenced in accordance with law. The accused then brought a proceeding in the Supreme Court to prohibit the Court of First Instance from executing the sentence against him on the ground that the Court of First Instance had no jurisdiction to try the case on the merits, as the appeal from the justice's court was on a question of law only and not for a new trial, and that, under such circumstances, the power of the appellate court was limited to a determination of the question of law and did not extend to the trial of the case on the merits. We held that, although the justice's court had no jurisdiction of the subject matter and that the appeal to the Court of First Instance presented a question of law only, the resolution of which would require simply a reversal or an affirmance of the judgment appealed from, and that, consequently, the Court of First Instance had no appellate jurisdiction to try the case on the merits, nevertheless, that court having, in the exercise of its original jurisdiction, tried the cause on the merits without objection, the judgment was valid and enforceable and the proceeding would not lie to stay its execution.

The cases cited are based exclusively on the proposition that no objection was made to the exercise of the original jurisdiction of the appellate court, and neither of them on the failure of the defendant to object to the appellate jurisdiction of the Court of First Instance or to the jurisdiction of the justice's court. They are all grounded solely on the fact and principle that the appellee went to trial on the merits under an exercise of the court's original jurisdiction, without objection, and that, having done so, an objection to the jurisdiction came too late in the Supreme Court.

So in the case before us. Even though the justice's court had no jurisdiction and, therefore, the only question presented to the appellate court was one of law, which required simply an affirmance or reversal of the judgment, and although the appellate court had no appellate jurisdiction to try the case on the merits, nevertheless, the court having, by statute, jurisdiction over the subject matter of the litigation, and having assumed to exercise its original instead of its appellate jurisdiction, and the parties having impliedly consented thereto, they cannot now be heard

to say that the court had no jurisdiction to do that which they tacitly consented it should do.

The fact that the Court of First Instance exercised its original and not its appellate jurisdiction is the very thing which permits the appeal to this court; for, if the Court of First Instance had exercised simply its appellate jurisdiction, there would have been no appeal to this court.

The judgment appealed from is affirmed, with costs against the appellants. So ordered.

Arellano, C. J., Torres and Araullo, JJ., concur.

DISSENTING

TRENT, J.,

I dissent. An objection by demurrer to the jurisdiction of the justice's court on appeal to the Court of First Instance requires a decision, and, when the objection is sustained, concludes the case. Further proceedings require the institution of a new complaint in the Court of First Instance before that court may enter into the exercise of its original jurisdiction. I consider this question definitely settled by several former decisions.

In this case I agree with the majority of the court that the justice of the peace had no jurisdiction of the subject matter of the action. On appeal, the defendant demurred to the appellate jurisdiction of the Court of First Instance. The demurrer was overruled and the court proceeded to try the case on its merits and render judgment accordingly. This court holds that this was proper, inasmuch as the defendant failed to object to the original jurisdiction of the Court of First Instance. The argument by which this conclusion is reached is too devious for me to follow. I shall simply call attention to some former decisions of the court which I think are ample authority to support my position in this case.

The point was first considered in the case of *United States vs. Ang Suyco* (17 Phil. Rep., 92), and *Carroll vs. Paredes*, appearing at page 94 in the same volume. These are the two cases which are relied upon as precedents in the majority opinion. In quoting from these cases, the court has, in my opinion, omitted that which absolutely shows their unfitness as precedents for the doctrine which is now proclaimed. I, therefore, take the liberty of restating these quotations with additions thereto which speak for themselves.

In the *Ang Suyco* case we said: "No objection whatever was made in the court of the justice of the peace against his jurisdiction. The failure of such objection, however, did not cure the lack of jurisdiction and render his sentence valid. Neither was there any objection presented in the Court of First Instance upon the ground that the justice of the peace did not have jurisdiction. The defendants voluntarily presented themselves to the jurisdiction of the Court of First Instance without objection. That court having jurisdiction of both the subject and the person had a right to proceed with the trial *de novo*"

In the *Carroll* case we said:

"If the sentence imposed upon him by the justice of the peace is void for want of jurisdiction of the subject matter, the defendant, on appeal, has a right to have the appellate court so determine, or he may elect to have the Court of First Instance try the case upon its merits, without raising the question of the jurisdiction of the justice of the peace. If he raises no objection with reference to the jurisdiction of the justice of the peace and submits himself to be retried for the crime for which he was charged, then he will be presumed to have waived all questions as to jurisdiction, and he cannot thereafter raise this question of jurisdiction, provided the appellate court had jurisdiction of his person and the subject matter. But should he make a timely objection in the appellate court as to the want or excess of jurisdiction of the justice of the peace, and should the court find

such objection well founded, then it acquires jurisdiction only for the purpose of dismissing the same, without prejudice, however, to the institution of a new proceeding for the same criminal acts in the proper tribunal. But in order to take advantage of these rights the appellant must by proper objection call the attention of the court to these facts and give the court an opportunity to pass upon the validity of such sentence; otherwise he will be, as we have said, presumed to have waived the question of jurisdiction. * * *

"These propositions are applicable alike to both criminal and civil cases.

"In the case at bar the accused, Ballesteros, made no objection whatever in the Court of First Instance to the trial being had upon its merits. He did not in any way call the attention of the Court of First Instance to the fact that the sentence imposed upon him by the justice of the peace was void for want of jurisdiction. We therefore conclude that he waived these questions and submitted himself to be retried for the crime charged upon the merits of the case.

"So we conclude: * * *

"2. That in a criminal case where a justice of the peace renders a judgment wherein he does not have jurisdiction of the person of the defendant and the subject matter of the action, and an appeal is taken to the Court of First Instance, and no objection is interposed in the said Court of First Instance as to the jurisdiction of the justice of the peace, then the defendant will be presumed to have waived all objections to such jurisdiction and the case can be tried upon its merits; provided, however, that the nature of the action is not changed and that the said Court of First Instance had jurisdiction of the subject matter of the action; but when a timely objection is made to the jurisdiction of the appellate court (Court of First Instance) to try such case on its merits, the said court only acquires jurisdiction to dismiss the case."

Now, the conclusion which the court draws from these cases is that they allow a Court of First Instance to proceed with the trial on its merits after having sustained an objection that the justice's court had no original jurisdiction, unless the objecting party objects also to original jurisdiction of the Court of First Instance. In the first place, no objection was made in either of these cases that the justice's court had no jurisdiction. The question, then, of what effect such an objection has upon the power of the Court of First Instance to proceed with the case was not before us. And that, be it said, is the question presented by the case at bar. In the two cases in question, this court simply determined the validity of the superior court's judgment when no jurisdictional objection is entered. And, as the quotations which I have made from them clearly show, it will be assumed, under such circumstances, that the Court of First Instance has proceeded from the inception of the trial in that court in the exercise of its original jurisdiction. Can the court And any comfort, for example, in the following portion of the Carroll case?

"But should he make a timely objection in the appellate court as to the want or excess of jurisdiction of the justice of the peace, and should the court find such objection well founded, then it acquires jurisdiction only for the purpose of dismissing the same, without prejudice, however, to the institution of a new proceeding for the same criminal acts in the proper tribunal."

This is precisely what the defendant did in the case at bar. He made a timely objection to the jurisdiction of the justice of the peace and it is admitted that that objection was well founded. But instead of dismissing the case, as the above quotation plainly directed it to do, the Court of First Instance proceeded with the trial of the case. And this court now approves the procedure adopted by the Court of First Instance and professes to find authority therefor in the very case wherein this court held that such procedure was improper.

But I shall dwell no longer on these two cases. I do not consider them as absolutely in point with the case at bar, for the reason, as stated, that there was no objection at all to the appellate jurisdiction of the Court of First Instance in either of them, while in the present case such objection was opportunely raised by demurrer. I proceed, therefore, to discuss two cases, one civil and one criminal, wherein actions tried on their merits by the justice of

the peace were appealed to the Court of First Instance and opportune objection was there made on the jurisdictional ground. They both are, for the purposes of this inquiry, exactly on all fours with the case at bar.

In the case of *United States vs. Bernardo* (19 Phil. Rep., 265), the defendant was tried and convicted in the justice of the peace court for seduction. He appealed to the Court of First Instance where "the defendant excepted on the ground of lack of jurisdiction, the court overruled the demurrer and declared that it was competent in the matter at issue." The defendant was convicted in the Court of First Instance, and "from this judgment the defendant appealed." This court held that the justice of the peace had no jurisdiction to try the case, "* * *" and therefore, all the proceedings had in the said case, together with the judgment, are null and void, and the judge of the Court of First Instance, before whom the case came on appeal by the accused, should have dismissed the same, as it was an action that was null and unsustainable for the reasons aforementioned; hence he could not legally have considered the complaint filed by the provincial fiscal by reason of the said appeal of the accused, inasmuch as, in order to try the crime which was the subject of that complaint, the judge of the Court of First Instance had to act by virtue of his original jurisdiction; in the present case he could not lawfully do so because that complaint was founded on the action tried before the justice of the peace which had come to the Court of First Instance on appeal, and the judge of First Instance had to hear and try the case by virtue of the jurisdiction which he had acquired by reason of the appeal pending in second instance. It would be improper to conclude that the said judge exercised the attributes of both courts at the same time by virtue of his original jurisdiction and of the appeal.

"After the case had been dismissed, and the proceedings had before the justice of the peace, together with his decision in the matter, had been declared null and void, the judge of First Instance, in the exercise of his original jurisdiction, could have given, in accordance with the law, due course to the complaint which would then have been presented by the provincial fiscal independently of the aforesaid proceedings, which were improperly instituted owing to the absolute lack of jurisdiction on the part of the justice of the peace to hear and try causes for the crime of seduction, for the reasons hereinbefore set forth."

Compare the disposition made on appeal to this court in the *Bernardo* case with the disposition which is to be made of the case at bar. In the *Bernardo* case this Supreme Court held void and of no effect a trial on the merits in the Court of First Instance after an opportune objection to the justice's original jurisdiction had been presented to the Court of First Instance and erroneously overruled by it. In the case at bar, this court holds such a trial valid and binding on all concerned.

The next and last case from which I desire to quote is hardly more than a year old. *Falcon vs. Barretto* (26 Phil. Rep., 72) was an original action of certiorari in this Supreme Court. The case is best described in the language of the court:

"The petitioner for the writ appealed from the judgment of the justice of the peace, asserting in the appellate court that the justice of the peace had no jurisdiction to try the action upon the ground that the relations between the parties under the instrument in question were not such as came within the purview of the Act relating to forcible entry and detainer. This contention was overruled by the appellate court which found that the instrument in question constituted a sale with a right to repurchase; that, being such, it created relations which fell within the meaning of section 80 and succeeding sections of the Code of Civil Procedure; that the justice's court, therefore, had jurisdiction; and for these reasons affirmed the judgment of that court.

"The contention of the petitioner is that the justice of the peace had no jurisdiction of the action for the reason that the relations between the parties thereto created by the instrument in question were not such as fall within the purview of the Act relating to forcible entry and detainer; and that the justice of the peace having no jurisdiction of the subject matter of the action, the Court of First Instance, on the appeal, had no jurisdiction further than to set aside and annul the void judgment of the justice's court.

"We are of the opinion that the contention of petitioner is well founded. * * *

"For these reasons we are of the opinion that the judgment of the justice of the peace was entered without jurisdiction and is therefore of no force or effect. The judgment of affirmance by the Court of First Instance adds nothing to it. If it was without effect before, it was after. We do not at this time enter into a discussion of the right of the Court of First Instance to dismiss the appeal and at the same time affirm the judgment appealed from. If an appeal is dismissed, that terminates the matter before the court, and a judgment of affirmance entered at the same time the appeal is dismissed is inconsistent with the act of dismissal.

"The complaint states a cause of action, if we may so speak, in certiorari with respect to the judgment of the justice's court. As to the judgment of the Court of First Instance, we think that nothing need be said inasmuch as, the judgment of the justice of the peace being void, the affirmance by the Court of First Instance made it no less so. The annulment of the justice's court is all that is necessary to put the plaintiffs in the proceeding at bar in at position where the matter in dispute between the parties may be settled in an ordinary action in the Court of First Instance."

I cannot refrain from quoting from one more case, which, while not embodying the same procedural facts as the Bernardo and Falcon cases, reaffirms in unmistakable language the doctrine I am contending for. In Lucido vs. Vita (25 Phil. Rep., 414), we said:

"If an action is commenced in the court of the justice of the peace and that court has no jurisdiction over such action, and the question of jurisdiction is properly and timely raised, the Court of First Instance has no jurisdiction over such an action on appeal, except to determine whether or not the court of the justice of the peace had jurisdiction, provided the question of jurisdiction is properly raised. (U. S. vs. Ang Suyco, 17 Phil. Rep., 92; Carroll vs. Paredes, 17 Phil. Rep., 94; Davis vs. Director of Prisons, 17 Phil. Rep., 168; U. S. vs. Bernardo, 19 Phil. Rep., 265.) On appeal from the justice of the peace, the appellate court has only such jurisdiction as the justice of the peace had. If the latter had no jurisdiction, the appellate court acquires none by the appeal, provided the jurisdiction of the lower court is put in question in both the lower court and on appeal. (U. S. vs. Bernardo, supra.)"

In view of these authorities it is quite apparent that the procedure of which this court has heretofore approved in cases like the present is exceptionally well marked. If an objection to the justice's jurisdiction is opportunely raised on appeal to the Court of First Instance and that objection ought, as a matter of law, to be sustained, the defendant is entitled to a decree from the Court of First Instance so holding, together with the dismissal of the proceedings. When the Court of First Instance overrules the objection and proceeds with the trial of the action on its merits, as it did in the cases of Bernardo and Falcon and in the case at bar, this court has consistently ordered the annulment of the trial and judgment, and decreed that further proceedings must be had under new pleadings in an action originally commenced in the Court of First Instance. But in the case at bar it is held that an objection to the original jurisdiction of the justice of the peace, or, which is the same thing, an objection to the appellate jurisdiction of the Court of First Instance, is of no avail to stop the trial of the case on its merits.

The court says: "The objection which should be presented to the appellate court, if it is desired to limit it exclusively to its appellate jurisdiction, is an objection to the exercise of its original jurisdiction."

In other words, say one thing and mean another. We are all agreed that the Court of First Instance has original jurisdiction of the present action. How, then, can the court with propriety urge the defendant to object that the Court of First Instance has not original jurisdiction?

Again, the decision of the court places the Court of First Instance in the anomalous position of exercising its appellate and its original jurisdictions in the same action. In this case, the Court of First Instance overruled an objection to its appellate jurisdiction and proceeded with the trial of the case. It also prefaces its judgment with the

statement that "this is an appeal from a judgment of the justice of the peace * * *."

And again, this court says, "the demurrer having been overruled the defendants voluntarily answer * * * ." The lower court in its order overruling the demurrer said, "* * * and the defendants are directed to answer to the complaint within five days from this date." Why brace up a weak position in this manner?

I note, also, an argument *ab inconvenienti* near the close of the opinion. It would have been eminently proper to have considered this matter in the Bernardo case. The same argument would have been somewhat belated in the Falcon case. But in the case at bar it is entirely out of place. The court, has definitely committed itself to the procedure, presumably, after full reflection. But I shall not attempt to analyze the opinion of the court, as I do not profess to understand it.

I regret to say that I note a tendency of late to disturb well-settled rules of procedure. I do not pretend that procedural changes, at least any of these I have in mind, are productive of the grave consequences which follow a reversal of a doctrine in the realm of substantive law. But the stability of procedure, even, is, as a rule, pretty much regarded as coming within the doctrine of *stare decisis*. Nor is it fitting that a court of last resort should, for light reasons or on metaphysical grounds, reverse its decisions which have been so often affirmed and reaffirmed.

Before concluding, I desire to refer briefly to the theory upon which this case was tried in both the justice's court and the Court of First Instance. In the former court the plaintiff insisted that the case was one of unlawful detainer and that the justice of the peace had exclusive original jurisdiction. The defendants urged that the justice of the peace did not have jurisdiction of the subject matter of the action because the suit was not one of unlawful detainer. The justice of the peace held with the plaintiff and the defendants appealed. The plaintiff reproduced in the Court of First Instance in toto the complaint which he had filed in the justice's court. The defendants demurred to this complaint upon two grounds:

"(1) That the facts stated in the complaint are not sufficient to constitute a cause of action.

"(2) That the court lacks appellate jurisdiction over the complaint."

The parties maintained their former positions. The court overruled the demurrer, holding that the justice of the peace did have original jurisdiction to try the cause. The parties did not change their positions during the trial.

The first paragraph in the trial court's decision reads: "This is an appeal from a judgment of the justice of the peace of the town of Bacolod, Occidental Negros, adjudging the possession of the hacienda in suit to the plaintiff."

The appellants' only assignment of error in this case is: "The court erred in deciding that the justice's court had jurisdiction of this action and in refusing to order the dismissal of the case before the justice's court."

The appellee in his printed brief, filed in this court, says:

"The question therefore was never one of title. Appellee commenced this suit for *desahncio* of the hacienda, wrongfully detained by appellants, and the suit was brought within one year from August 30, 1913, the date named in the contract upon which suit was brought. Suit was, therefore, rightfully brought in the court of the justice of the peace."

The above excerpts show the theory upon which the case was tried in the three courts. I think that this appeal should stand or fall upon that theory and not upon a new theory not presented at the trial or passed upon by the trial court. It seems to have been assumed by both parties that if the justice of the peace did not have jurisdiction, and the timely objection having been made in the Court of First Instance, that court should have annulled the proceedings and dismissed the complaint. But this court has disregarded the theory of the case and advanced a

new theory of its own which has never been passed upon by the lower court or discussed by the parties.
For the foregoing reasons I cannot agree to the disposition of this case.

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