

**FRANCISCO ROSCO ET AL., PLAINTIFFS AND APPELLEES, VS.
MARIANO REBUENO, DEFENDANT AND APPELLANT.***G.R. No. 9518. January 03, 1916*

Ponente: MORELAND, J.

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This is an appeal from a judgment of the Court of First Instance of Albay in favor of the plaintiff Francisco Rosco and against the defendant for the sum of P200, interest and costs.

The history of this case is rather an unusual one. In the year 1905 two actions were begun in the justice's court of Oas, one entitled Francisco Rosco vs. Mariano Rebueno and another, and the other Ignacio Rosco, vs. Mariano Rebueno and others. These actions were tried separately in the justice's court, resulting in a judgment in favor of the defendants in each case. Appeals were taken to the Court of First Instance of Albay by the respective plaintiffs. After the appeals had been taken and perfected, the attorney who had acted for the plaintiffs in the two actions in the justice's court file a complaint in the Court of First Instance in which the two plaintiffs in the appealed cases were joined as plaintiffs and the defendants in both actions in the justice's court were joined as defendants. The complaint thus filed in the Court of First Instance, while including the causes of action in the two appealed cases, also set out new and different allegations, and judgment was prayed in that complaint for P2,300, a sum, as will be noted, quite beyond the jurisdiction of a justice's court. To this complaint answer was duly made. The Court of First Instance refused to try the action on the pleadings filed, holding that it was not an original action but was a continuation of the appeals in the two actions in which judgments had been rendered in the justice's court. It accordingly decided that the action which the court would try was that of Francisco Rosco vs. Mariano Rebueno, and that the trial would be considered a new trial in the appeal from the judgment rendered by the justice's court in the action of Francisco Rosco vs. Mariano Rebueno. It appears that, when the action was begun in the Court of First Instance, some of the parties who were named as defendants in the two actions in the justice's court were excluded as defendants in the action in the Court of First Instance; so that, when the court decided that it would not try the action begun in that court but would try the action entitled Francisco Rosco vs. Mariano Rebueno, it was found that some of the parties who had been defendants in that action in the justice's court are not parties in the action filed in the Court of First Instance. Accordingly the court said:

"But no judgment can be rendered against the defendants who are excluded from the new or the amended complaint. The plaintiff had a right to exclude the other defendants when he reproduced his complaint, and this court has no jurisdiction in this case other than its appellate jurisdiction."

After trial the court rendered judgment in favor of Francisco Rosco for the sum of P300 and interest. An appeal was taken from that judgment to the Supreme Court, where it was reversed and the case remanded for a new trial. The court, tried the action on the issues framed by the pleadings in the Court of First Instance, treating it as an original action in that court and not as a trial on appeal, and rendered a judgment against defendant, with interest and costs. The appeal now before us is from that judgment.

The defendants in the Court of First Instance pleaded *res judicata*, founded on the existence of final judgments in the justice's court on Oas in favor of the same plaintiffs and against the same defendants based on the same cause of action. The contention of the appellant is that the two judgments in the justice's court, one in favor of Francisco Rosco and the other in favor of Ignacio Rosco, are final judgments and that no action between the same parties based on the same cause of action can now be founded or maintained. His argument is that, although the two judgments of the justice's court were appealed and the appeals perfected in 1906, those appeals were abandoned when the two plaintiffs in the actions in the justice's court joined together as plaintiffs in a single action brought in the Court of First Instance, which action was based on additional allegations to those found in the complaints in the justice's court and in which a joint judgment was demanded in favor of the two plaintiffs for a sum greatly in excess of the jurisdiction of the justice's court. He asserts that the action in the Court of First Instance, being a new and original action in that court, was, in effect, an abandonment of the appeals theretofore taken from the judgments in the justice's court, and that those appeals having been abandoned, the judgments were revived and thereafter remained and now are in full force and effect as final judgments. He reasons that the trial court was in error when, over the plea and objection of the defendant, it changed not only the parties to the action then pending before it but also the substance thereof by holding that it would not try the action then before it for trial, namely, the action entitled Francisco and Ignacio Rosco vs. Mariano Rebueno and others, which was an original action in the Court of First Instance for a sum of money over which a justice's court had no jurisdiction, but rather would try the action entitled Francisco Rosco vs. Mariano Rebueno, which was an action not then before it for trial, which the parties had not placed on the calendar and had not prepared for trial. He alleges that the court also erred in holding that the action then before it for trial was not an original action in that court but was a continuation of the two actions in which appeals had been taken from judgments of the justice's court.

Appellant's arguments, apart from that one relating to *res judicata*, were applicable to the case as it stood on the first appeal to this court but not on this appeal. After the cause was returned by the Supreme Court the trial court, on the second trial, treated the action as an original action in that court and tried the case on the issues framed by the pleadings in that action, including that of *res judicata*, and not on those presented to the justice's court. This was necessary by reason of the decision of the Supreme Court on the first appeal. That the action then before the court for trial was an original action and had, under the circumstances, no legal relation with the actions tried in the justice's court, was beyond question at the time of the second trial by reason of the opinion of the Supreme Court just mentioned rendered on the first appeal in the same action. (*Rosco vs. Rebueno*, 11 Phil. Rep. 300.) In that case the court said:

"It is true that the plaintiffs did not appeal from the judgment of the Court of First Instance, but we think that the defendant was clearly entitled to a final adjudication of all the material issues raised by the pleadings, and that the trial court was not justified in limiting itself to a determination of only so much of the complaint filed in this case as was in accord with the allegations of the complaint in one of the cases, apparently selected arbitrarily, which had come up on appeal from the trial court. There can be no doubt that the complaint filed in the Court of First Instance could in no sense be regarded as a reproduction of the separate complaints filed in separate actions in the court of the justice of the peace, which were appealed to that court, nor could it be considered as a reproduction of the complaint in either of them, since it alleges and prays for damages in an amount over which the court of the justice of the peace had no jurisdiction." (*Alonso vs. Municipality of Placer*, 5 Phil. Rep. 71.)

The declaration of the Supreme Court "that the complaint filed in the Court of First Instance could in no sense be regarded as a reproduction of the separate complaints filed in separate actions in the court of the justice of the peace, which were appealed to that court, nor could it be considered as a reproduction of the complaint in either of them," is a finding, in effect, that the action was an original action in the Court of First Instance and, as we have before stated, bore no legal relation to the actions in the justice's court or either of them. This being the case, the

action was an original action in the Court of First Instance, separate and distinct from anything that had gone before, and should have been tried, as it was on the second trial, on the issues raised by the pleadings in that action and not on those offered by the pleadings in some other action.

Turning now to the defense of *res judicata*. The action being an independent and original action in the Court of First Instance, the plea of *res judicata* offered by the defendant in that action, based on the existence of judgments rendered between the same parties in the same cases, must be held good and the action dismissed if it is true, as claimed by appellant, that such judgments are still in existence. A party can rarely be permitted to have two remedies relating to the same rights, both of which may be made use of successively. It cannot be the law that a party may bring an action in a justice's court and, having an adverse judgment rendered against him, appeal from the judgment, and, thereafter, without further proceedings in such appeal, begin an independent and original action in the appellate court including the cause of action on which the judgment of the justice's court was founded, but tendering new issues and demanding a judgment in excess of the jurisdiction of the justice's court, and then, after a defeat in that action, return to his neglected appeal and try the action in which the appeal was taken. A party has a right to only one judgment, or one opportunity for judgment, against the same person for the same cause of action. In this case the appellee had opportunity for his judgment in the justice's court; and, if the judgment in that case is still alive, he cannot have a second opportunity against the same person on the same cause of action in the Court of First Instance.

While the question has not been raised or argued in this court, it has occurred to us that there might be some doubt as to whether the judgments of the justice's court, which were appealed from the appeals abandoned, are still in existence. Section 75 of the Code of Civil Procedure, as it stood at the time the appeals from the judgments of the justice's court were taken and perfected, provided that "a perfected appeal shall operate to vacate the judgment of the justice of the peace * * *." Section 78, which now provides that a dismissal of an appeal when it was taken by the plaintiff "shall revive the judgment of the lower court," contained no such clause at the time the appeals in question were taken and perfected, and we have been unable to find any other law in force at that time providing for a revival of the justice's judgment in case of the abandonment of an appeal by the plaintiff. Under the section as it then stood, this court held that a justice's judgment from which an appeal had been taken to a Court of First Instance was vacated and annulled and that nothing could thereafter revive it. (*Lim vs. Lim*, 13 Phil. Rep., 605; *Knight vs. Mc Micking*, 2 Phil. Rep., 698.) Act No. 2111, which went into effect on January 31, 1912, amended section 78 so as to provide, as we have seen, that "the dismissal of the appeal shall revive the judgment of the lower court." Up to that time, under the provisions of section 75, a justice's judgment could not be revived by a dismissal or abandonment of an appeal. Act No. 2111 remedied this anomalous condition and, after its passage, a justice's judgment could be revived. The question which occurs to us is therefore this: Is Act No. 2111 applicable to an appeal from a judgment of a justice's court entered in April, 1906, the Act not having gone into effect until January 31, 1912? On this question we entertain the opinion that the Act was not applicable at the time the appeals from the judgments of the justice's court in the case before us were taken or at the time they may be said to have been abandoned. By virtue of positive statute the judgments of the justice's court disappeared when the appeals were taken. In contemplation of law they did not exist from that moment. As a necessary conclusion of law, they could not thereafter be pleaded in bar of the suit subsequently brought in the Court of First Instance by the same plaintiffs against the same defendants to recover on the same cause of action. While the result produced by such a holding is anomalous, it is the one which necessarily follows from the plain terms of the Act; and the Supreme Court, if it had the disposition, lacks the power to change it.

On the merits we are of the opinion that the judgment is correct. The evidence of the plaintiffs fully supports the findings of fact and the court correctly applied the law.

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

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

Trent, J., did not sit in the case.

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