

**MATEA CAPUNU, APPLICANT, VS. JULIO LLORENTE, JUDGE OF
FIRST INSTANCE, CONRADO R. GWEKOH, JUSTICE OF THE PEACE,
DOLORES FERNANDEZ Y RICO AND HER HUSBAND, WALTER
BRUGGMANN, RESPON...**

G.R. No. 9990. February 01, 1915

Ponente: MORELAND, J.

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MORELAND, J.:

This is an application for a writ of certiorari to review the proceedings of the Court of First Instance of Tarlac in which the court granted a motion to dismiss an appeal from a judgment of a justice's court in a summary proceeding for the recovery of the possession of land made on the ground that the appellant had refused to pay the monthly rental mentioned in the judgment as required by section 88 of the Code of Civil Procedure.

It seems from the record in the case that the applicant for the writ was defendant in the justice's court in a summary proceeding to recover possession of land on the ground of failure to pay rent. Judgment was entered against her for the possession of the premises and for the sum of P4 rent for the months of January and February, 1914, and requiring her to pay the plaintiffs the sum of P2 per month until she quitted the premises. From this judgment the defendant appealed to the Court of First Instance. In accordance with the provisions of section 88 of the Code of Civil Procedure as amended the rent for the month of March became due and payable during the first ten days of the month of April. It was not paid by appellant; and the appellee, taking advantage of the provisions of that section, made a motion as heretofore stated for the dismissal of the appeal on the ground that the appellant had not paid the rent for the month of March within the time specified by the section. The court, on hearing the motion, found that the appellant had allowed the first ten days of April to expire without paying the rent for the month of March and that, therefore, under the provisions of section 88 referred to, the appellee was entitled to have the appeal dismissed. The court accordingly dismissed the appeal, declared the judgment of the justice's court final, and remanded the record to that court for execution of the judgment.

The applicant for the writ in her brief says:

"The question to be resolved here is as follows:

"In a case begun in a justice's court which has been duly appealed to the Court of First Instance where, by virtue of a dismissal of the appeal, the judgment of the justice's court becomes final, which court has the power to execute the sentence, the justice's court or the Court of First Instance?"

Answering that question counsel for applicant says;

"The answer is that the power rests with the Court of First Instance for the following reasons:

"(a) Because the Court of First Instance acquired jurisdiction of the case both as regards the merits and with regard to all the incidents thereof, as the appeal had been duly taken and perfected.

"(b) Because the justice's court completely lost its jurisdiction and everything that took place therein became null and void; and by reason thereof there were perfected in the Court of First Instance new pleadings and there would have been taken new evidence.

"(c) Because the decision of the Court of First Instance does not reconfer upon the justice of the peace the jurisdiction which he had lost.

"(d) Because the general theory that judgments are executed by the court originally trying them where they are affirmed on appeal is not applicable to cases appealed from justice's courts."

We are of the opinion that the question put by counsel for the applicant for the writ is definitely answered in express terms by the provisions of the Code of Civil Procedure found in the section already referred to. Speaking of the necessity of the appellant paying the monthly rental during the time the appeal is pending the section says:

"Should the defendant fail to make the payments above prescribed from time to time during the pendency of the appeal, the Court of First Instance, upon the motion of the plaintiff, of which the defendant shall have notice, upon proof of the failure of the defendant to make such payments, shall forthwith dismiss the appeal. The dismissal of the appeal shall revive the judgment of the justice of the peace and it may thereupon be enforced by execution as though no appeal had been taken."

The language of this section is clear and unambiguous and entirely disposes of the contention of counsel for applicant as above set forth. The appeal having been dismissed, the judgment of the justice's court was revived and assumed the same legal status it would have occupied if no appeal had been taken. It was subject to execution by the court which rendered it without the intervention of the Court of First Instance.

While no question is raised here as to the power of the Court of First Instance to dismiss the appeal on the neglect of the appellant to pay the rent for the month of March within the time specified by law, we might say in closing that his duty as well as his authority to do so has been declared in the case of Carranceja vs. Moir (R. G. No. 9720; 13 Off. Gaz., 2204), already decided by this court.

The application for the writ is denied and the proceeding dismissed, with costs against applicant. So ordered.

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

Trent, J., concurs in the result.

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