

AGAPITO ABUTON, PLAINTIFF AND APPELLEE, VS. ALEJANDRO PALER, DEFENDANT AND APPELLANT.*G. R. Nos. 32020-32022. February 28, 1930*

Ponente: ROMUALDEZ, J.

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body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; } Inasmuch as there is only one identical question raised in these three causes on appeal, they were discussed and voted together by this court, and now only one decision is rendered in all of them.

The only difference between these three causes consists in the amount claimed by the same plaintiff from the same defendant, which is P300 in G. R. No. 32020, P350 in G. R. No. 32021, and P448.73 in G. R. No. 32022.

These three causes were commenced in the court of the justice of the peace of the municipality of Oroquieta, Misamis, P. I., in the month of June, 1923. But the competency of the justice of the peace of that municipality was challenged and he declined to take cognizance of said causes, and forwarded them to the justice of the peace of the municipality of Plaridel. The latter summoned the parties to his court in Plaridel, where they submitted to his jurisdiction, appeared by counsel, and presented evidence. (Pages 8-11; 6-7; and 14-17, bills of exceptions of these three causes Nos. 32020, 32021, and 32022, respectively.) After trial of said causes, judgment was rendered in all of them absolving the defendant. Plaintiff appealed from this judgment to the Court of First Instance of Misamis, the cases were dismissed for plaintiff's failure to prosecute. Later, however, they were reinstated, and the complaints were reproduced. And for failure to answer the same, the defendant was declared in default.

The defendant moved the court to set aside the order of default and to permit him to present evidence in support of the answer then filed (pages 12-14; 12-14; and 18-20, bills of exceptions in cases G. R. Nos. 32020, 32021, and 32022, respectively).

This petition was denied, and after trial, said Court of First Instance rendered judgment for the plaintiff in accordance with his prayer in each and every one of said causes.

Defendant moved the court to reconsider its refusal to set aside the order of default and to reopen the trial, but this motion was also denied, whereupon the defendant prepared his appeal by filing in each of said causes the usual motion for a new trial, which was denied; defendant excepted and announced that he would present bills of exceptions.

Pending the approval of said bills of exception counsel for the defendant filed a motion praying that the whole proceedings be quashed for lack of jurisdiction, contending that said causes on appeal originated from the court of a justice of the peace who lacked jurisdiction to try them, because said justice of the peace of Maridel had not

been designated by the Court of First Instance to take cognizance thereof, as provided in section 211 of the Administrative Code and in accordance with the decision of the Supreme Court of the Philippine Islands in the case of *Bacar and Magbanua vs. Tordecillas* (39 Phil, 187).

The court granted the petition, and ordered the dismissal of the three causes, quashing the judgments rendered therein, as well as the whole proceedings theretofore had in said court.

Plaintiff then moved for a reconsideration, drawing the attention of the court a quo to the fact that the defendant had voluntarily entered an appearance in the justice of the peace court of Plaridel and presented evidence at the hearing before said court, without objecting to its jurisdiction; and that said defendant also appeared and filed several petitions in the Court of First Instance without challenging said court's jurisdiction. Plaintiff contends in said motion for reconsideration that in view of said facts, the doctrine laid down by this court in *Manila Railroad Co. vs. Attorney-General* (20 Phil., 523), as well as the doctrine in the case of *Nolan vs. Montelibano* (29 Phil., 236), must be applied.

This motion filed by the plaintiff was favorably considered by the court below, which in its resolution of October 9, 1928, set aside the order of dismissal rendered in these three causes, and ordered the execution of the judgments rendered, which had meanwhile become final.

The defendant appealed from said resolution, and assigns the following alleged errors of the court below:

"1. In holding that the defendant's motion objecting the jurisdiction of the court was filed too late.

"2. In holding, as a fact, in the resolution appealed from, that notwithstanding the dismissal of the cause on August 21, 1928, the judgment by default became final and executory, because the defendant did not present his bill of exceptions within the period allowed up to August 25 of said year, when the defendant was only notified of the order of dismissal on August 29, of the same year.

"3. In setting aside the order of dismissal and ordering the execution of the judgment."

The main question here raised is whether the court of the justice of the peace of Plaridel had original jurisdiction, and the Court of First Instance of Misamis had appellate jurisdiction, in taking cognizance of, and deciding said causes.

It appearing from the record that the defendant submitted to the jurisdiction of said court of justice of the peace and Court of First Instance, the former acquired original jurisdiction, and the latter, appellate jurisdiction.

The question here relates to the place where the action was brought, that is, the venue of action, which depends rather upon the person of the litigants than upon the subject of litigation. Therefore, the objection to venue may be waived, either expressly or by implication.

In the cases before us, the defendant, in entering an appearance, submitting himself, and filing petitions, waived such objection to the jurisdiction, not only of the court of the justice of the peace of Plaridel, but also of the Court of First Instance. Counsel for the plaintiff has correctly cited the decisions in *Manila Railroad Co. vs. Attorney-General* (20 Phil, 523), and *Nolan vs. Montelibano* (29 Phil., 236) where these principles are clearly elucidated.

In the cases at bar section 211 of the Administrative Code, or the decision in *Bacar and Magbanua vs. Tordecillas* (39 Phil., 187), is not applicable, inasmuch as the justice of the peace of Plaridel acquired jurisdiction over the parties, not because the justice of the peace of Oroquieta endorsed the causes to him, but because the parties voluntarily submitted themselves to his jurisdiction. In order for the parties to submit to the jurisdiction of the court of the justice of the peace of Plaridel, the endorsement of the justice of the peace of Oroquieta was not indispensable. It would have been sufficient for the plaintiff to file his complaint in that court, and for the

defendant to appear and answer without raising, as in fact he did not raise, any question with respect to jurisdiction. And as said justice of the peace of Plaridel thus acquired original jurisdiction over said causes, the Court of First Instance of Misamis could not but acquire full and plenary appellate jurisdiction.

With respect to the order of dismissal set aside by the resolution appealed from, we find that said order of dismissal was entered when the judgments theretofore rendered had already become final, in view of the fact that the defendant had been notified thereof on January 28, 1928 (pages 18, 19, and 24, bills of exceptions of these causes G. R. Nos. 32020, 32021 and 32022, respectively) and he filed his exception and motion for a new trial only on April 11, 1928 (pages 25, 26; 26; 30, 31, id., respectively). Therefore, the doctrine laid down by this court in the case of Layda vs. Legazpi (39 Phil., 83), is applicable. The resolution appealed from is hereby affirmed, with costs against the appellant. So ordered.

Johnson, Malcolm, Villamor, Ostrand, Johns and Villa-Real, JJ., concur.

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