[G. R. No. 17799. May 09, 1922]

SMITH, BELL & COMPANY, LTD., PLAINTIFF AND APPELLEE, VS. BRUNA MANGAHAS, DEFENDANT AND APPELLANT.

D E C I S I O N

MALCOLM, J.:

Untitled DocumentThe amount involved in this action, now on appeal in third instance, is but P49.91. The legal question presented is, however, of some importance, and is as to whether or not on appeal by a defendant from a judgment of a justice of the peace court to a Court of First Instance, the defendant must be served with a summons.

The record discloses the pertinent facts which are hereafter stated. Smith, Bell & Company, Limited, plaintiff, filed a complaint, which was later amended, against Bruna Mangahas, defendant, in the justice of the peace court of the city of Manila, on January 27, 1921. Summons was issued by the justice of the peace; the defendant presented her answer; and the justice of the peace rendered judgment in favor of the plaintiff and against the defendant for the sum of P49.91, with legal interest from the date of the filing of the complaint, and with the costs.

The losing party, the defendant, interposed her notice of appeal on February 23, 1921. Thereupon, the record was elevated to the Court of First Instance, and, on March 8, 1921, the clerk of the Court of First Instance of Manila, following a printed form, notified the plaintiff and the defendant "that this office has received from the justice of the peace for the city of Manila a certified copy of the docket entries, together with all the original papers and processes and the original appeal bond given in the above- entitled case, and has docketed the same. In compliance with the provisions of section 1 of Act No. 2111, plaintiff should file his complaint within a period of two months if he resides within the city of Manila, or four months if he resides outside the city of Manila." Both parties received copies of this notification. The next step was the filing by the plaintiff of his complaint on March 11, 1921.

The following day, the attorney for the defendant received a copy of plaintiff's complaint.

Plaintiff, through its attorneys, on April 2, 1921, prayed the court for an order declaring the defendant in default, for the reason that more than twenty days had elapsed since service was made on her, and that defendant had failed to appear, or demur to, or answer the complaint. This motion does not appear to have been served on counsel for defendant. The trial judge found the defendant in default, and gave judgment for the plaintiff against the defendant for the sum of P49.91, with legal interest from March 8, 1921, and the costs. Counsel for defendant, having received notice of this decision, presented a motion of reconsideration, which was denied by the trial judge.

The Code of Civil Procedure contains a number of provisions which the parties have interpreted as favorable to their respective claims, while certain other codal sections which are not mentioned, must also be taken into consideration.

Section 75 of the Code of Civil Procedure provides in effect that a perfected appeal from a justice of the peace court, when duly entered in the Court of First Instance, shall stand for trial de novo upon its merits in accordance with the regular procedure in that court, as though the name never had been tried and had been originally there commenced. This section speaks principally of the trial in the Court of First Instance, but on its face might also be interpreted to mean that, as in cases originally instituted in the Court of First Instance, and as provided by section P90 and other sections, of the Code, when a civil action is commenced by filing a complaint with the clerk of the court, the clerk must "forthwith issue one summons or more for calling the defendants into court."

Section 78, as amended, of the Code provides that when an appeal is taken from a justice of the peace court, the clerk of the Court of First Instance shall docket the cause in the Court of First Instance, and shall, within ten days, so notify the parties. The plaintiff shall be obliged to file the complaint within a period of two months if he resides within the province, or of four months if he resides outside the province, counting from the date on which he received the notice. If the plaintiff shall fail to file the complaint within the above-mentioned period, the court dismisses the case. This is the provision of law which was specifically mentioned by the clerk of the Court of First Instance in his formal notification to the parties.

Section 112 of the Code provides that "when a perfected appeal from a judgment of a justice of the peace has been duly entered in the Court of First Instance, new pleadings shall be filed in the action in that court. * * *" As section 1 of the Code defines "pleadings" as "the

formal allegations by the parties of their respective claims and defenses, for the judgment of the court," this section has no direct bearing on the issue.

Section 128 of the Code provides that "in case a defendant fails to appear at the time required in the summons, or to answer at the time provided by the rules of court, the court shall, upon motion of the plaintiff, order judgment for the plaintiff by default which shall be entered upon the docket. * * *" This section, like section 75, would seem to imply that a summons is necessary in order to give the court jurisdiction. However, it is noted that section 128 makes use of the little word, "or," and that the defendant in the instant case is in default because of failure to answer at the time provided by the rules of court.

There is one fact which, it seems to us, is of paramount importance, and which, if clearly recognized, must result in holding that, when a defendant loses in a justice of the peace court, appeals from that court to the Court of First Instance, and later receives a notification of the receipt of the case in the Court of First Instance, and a copy of the complaint of the plaintiff, a summons to the defendant is a superfluity-and this fact is-that it was the defendant who brought the case to the Court, of First Instance, and who, necessarily, needs no notice of the pendency of an action which she herself is forcing, except that furnished by the notification of the clerk having the effect of a summons, and the receipt of a copy of the complaint of the plaintiff. Due entry of appeal in the Court of First Instance by a defendant in a justice of the peace court is equivalent to appearance of the defendant in the higher court, and he can be declared in default even if no formal summons is issued and served on him. Such a holding could not be attacked as tantamount to judicial usurpation and oppression, in view of the fact that it is not judgment without notice, but judgment with notice twice received.

The decision of this court in Pagalaran vs. Ballatan, ([1909], 13 Phil., 135), written by Mr. Chief Justice Arellano, while not directly in point, is at least persuasive authority.

As appellant does not press the point, that attorneys for the plaintiff failed to give defendant notice of the motion for a default judgment, we need not enter into a discussion of this phase of the case.

Our holding is, on the admitted facts of record, and on the applicable provisions of the Code of Civil Procedure, that when judgment is given in a justice of the peace court in favor of the plaintiff and against the defendant, and the defendant appeals to the Court of First Instance, service of a formal summons on the defendant is unnecessary process, and the form of

notification pursuant to Act No. 2111, section 1, followed by clerks of court, together with the receipt of a copy of the complaint of the plaintiff, is a sufficient compliance with the law.

Accordingly, judgment must be affirmed, with costs against the appellant. So ordered.

Araullo, C. J., Avanceña, Villamor, Ostrand, and *Romualdez, JJ.,* concur.

Date created: March 29, 2010