

[ G.R. No. 2086. September 29, 1905 ]

**P. ELADIO ALONSO, PLAINTIFF AND APPELLEE, VS. THE MUNICIPALITY OF PLACER, DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**WILLARD, J.:**

The plaintiff brought this action in the court of a justice of the peace to recover possession of the land described in the complaint. The action was there tried on the 5th day of December, 1903, and a judgment entered for the defendant. From that judgment the plaintiff appealed to the Court of First Instance. The appeal having been duly entered in that court, the plaintiff asked and obtained leave to file an amended complaint. This amended complaint sets out a cause of action of which the justice of the peace had no jurisdiction. He had no jurisdiction for two reasons: First, because the complaint did not allege a case coming within the provisions of section 80 of the Code of Civil Procedure, and second, because it appeared from the complaint that even if such a case were alleged, the action was not brought within one year from the times of the dispossession of the plaintiff by the defendant. The defendant demurred to this amended complaint, which demurrer was overruled, and to this ruling the defendant excepted. The case was tried, on its merits, and judgment entered therein for the plaintiff. The defendant excepted to the judgment, and has brought the case here by bill of exceptions, and he assigns as one error committed by the court below the order overruling his demurrer to the complaint.

We think that this assignment of error must be sustained. The question reduced to its lowest terms is this: Upon appeals from the judgment of a justice of the peace, has the Court of First Instance

power to change the nature of the action and permit a recovery upon a cause of action of which the justice of the peace had no jurisdiction? As has been said by the appellee in his brief, the jurisdiction of Courts of First Instance is of two kinds-original and appellate. The jurisdiction which it was exercising in this case was its appellate jurisdiction. The only way in which it obtained jurisdiction of the subject-matter of the action and of the parties was by virtue of the appeal. The appeal brought into the Court of First Instance the action which was tried in the court below, and that action, tried in the court of the justice of the peace, was the only action of which the Court of First Instance had jurisdiction. It was in that action that the amended complaint was presented. The pleadings in that action might be changed by the Court of First Instance, but in our opinion they could not be so modified as to alter the nature of the cause of action and produce a new cause of action of which the Court of First Instance had original exclusive jurisdiction, and of which the court of the justice of the peace had no jurisdiction.

The appellee bases his contention upon the provisions of section 75 of the Code of Civil Procedure, which is as follows:

*“Effect of appeals.—A perfected appeal shall operate to vacate the judgment of the justice of the peace, and the action 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 same had never been tried and had been originally there commenced.”*

This section is very broad, but we do not think it contemplates a change of the nature of the action. This section applies both to appeals from judgments rendered by a justice of the peace, under said section 80, and to appeals from judgments rendered by such justices in other cases. If we were to sanction the proceeding in this case, we do not see why, on appeal from a judgment of a justice of the peace in an ordinary case, plaintiff could not so amend his complaint as to change

entirely the nature of the cause of action. He could bring an action before the justice for goods sold and delivered to the amount of 100 pesos. Upon the appeal from the judgment rendered in that case, he could so amend his complaint as to set out a cause of action for personal injuries to the amount of 1,000 pesos. (Reitze vs. By. Co., 126 Pa. Stat., 437.)

Section 80, above referred to, is as follows:

*“Forcible entry into and detainer of land or buildings.—Any one deprived of the possession of land, or a building, by force, intimidation, fraud, strategy, or stealth, and any landlord, vendor, vendee, or other person against whom the possession of land or a building is unlawfully withheld by his tenant, vendee, vendor, or other person, after the expiration of his right by contract express or implied to hold possession, and the legal representatives or assigns of him who is so deprived of possession, or from whom possession is so withheld, as against him who so obtains possession or withholds possession after the expiration of his rights, and all persons claiming to hold under him, shall, at any time within one year after such deprivation or unlawful withholding of possession, be entitled to restitution of possession, and to damages, in a court of justice of the peace, in the manner hereinafter prescribed. The owner of land or of a building, occupied by a tenant, may likewise obtain restitution or possession of the premises, and recover rents due and damages, in the manner next hereinafter provided, when the tenant for thirty days after due demand for payment of rent due for the occupancy of the premises shall have refused or neglected to make payment of the same.”*

We agree with the appellee that this section and sections 56 and 68 of Act No. 136 do not give justices of the peace exclusive jurisdiction in all actions to recover possession of real estate, but they do give them exclusive jurisdiction for one year of all actions to recover the possession of real estate where it is obtained by force, intimidation, strategy, or stealth. Such an action, brought before a justice of the peace, differs from an ordinary action brought in the Court of First

Instance to recover possession, in two important particulars. In the action brought before the justice of the peace no evidence is admissible in relation to the ownership of the real estate in question. If the plaintiff in such an action proves that he was in quiet and peaceable possession, and that the defendant ejected him forcibly, the plaintiff can recover the possession, although, as a matter of fact, the defendant may have been the owner of the property. The other difference is that the judgment rendered by the justice of the peace in such an action to recover possession of property of which the plaintiff has been deprived by force, is not, according to section 87 of the Code of Civil Procedure, final or conclusive. It does not constitute *res adjudicata*; and this is the effect of the final judgment rendered in such an action, whether such final judgment is rendered in the court of the justice of the peace or in the Court of First Instance upon appeal, or in the Supreme Court upon a second appeal. In no event is the judgment conclusive, and after the case is entirely ended another action can be brought by either party to determine the ownership of the property. In the case at bar it would be extremely difficult to say,, if we allowed this judgment to stand, whether it was conclusive or not, and whether it would be a bar to another action for the same cause.

It is claimed by the appellee that the objection as to the change of the nature of the action is not raised by the demurrer interposed to the amended complaint below. We do not, think this contention can be sustained. The objection that the court, as an appellate tribunal, has no jurisdiction of the subject-matter is not waived by a failure to present it by demurrer or answer, and the demurrer in this case was at least sufficient to show that the defendant never consented to try the case on this amended complaint.

In order to avoid misapprehension we will say further, that we agree with the court below to the effect that article 1968, paragraph 1, of the Civil Code, has been repealed as to all cases arising subsequent to its passage by section 39 of the Code of Civil Procedure. The prescriptive period of one year mentioned in article 1968 has not been retained in section 80 of the Code of Civil Procedure. That section simply says that if one desires to take advantage of the very summary

proceeding therein provided he must bring his action within one year, but section 40 of the same code provides that an action for the recovery of the possession of real property may be brought within ten years after the cause of action accrues. It follows that in case of a forcible entry into real estate, the party dispossessed must, if the action is brought within one year, bring it before a justice of the peace, but if such an action is not brought within one year before a justice of the peace, he may bring the same action in the Court of First Instance, as a case of which that court would have original jurisdiction. In the case at bar if the plaintiff, instead of presenting an amended complaint in the action which he appealed from the justice of the peace, had abandoned that appeal and presented this amended complaint as a complaint in an original action in the Court of First Instance it could have been maintained.

The judgment of the court below and the order of that court overruling the demurrer to the complaint are reversed. The demurrer to the complaint is sustained, and the case is remanded to that court for further proceedings in conformity with law. No costs will be allowed to either party in this court. After the expiration of twenty days judgment will be entered in accordance herewith. So ordered.

*Arellano, C. J., Torres, Mapa, Johnson, and Carson, JJ., concur.*