

3 Phil. 563

[G.R. No. 1438. March 30, 1904]

**PETRONILA SALONGA, PLAINTIFF AND APPELLEE, VS. MANUEL CONCEPCION,
DEFENDANT AND APPELLANT.**

D E C I S I O N

MAPA, J.:

The first question raised in the bill of exceptions refers to the sufficiency of the demurrer presented by the sureties of the plaintiff to the action brought against them by the defendant in his answer.

The defendant was arrested at the instance of the plaintiff, who, for the purpose of obtaining his arrest, presented two sureties, who assumed with her an obligation in solidum to pay all costs which might be adjudged to the defendant and all damages which he might sustain by reason of the arrest *if the same should finally be adjudged to have been wrongful or without sufficient cause.*

(Bill of exceptions, pp. 13 and 14.) In his answer to the complaint the defendant alleged that his arrest was unjust and illegal and had caused him damage in the sum of 5,000 Mexican pesos, and upon this based a counterclaim praying for judgment against the plaintiff and her sureties for the said sum

as damages, and for the costs of the suit. The sureties demurred to the action brought against them by the defendant upon the ground, as appears from page 2 of the bill of exceptions, that the defendant could not sue them until a judgment for damages should have been rendered against the plaintiff. The judge sustained the demurrer, and to this ruling the defendant excepted.

The sureties having assumed an obligation to pay the damages in case

it should be finally adjudged that the arrest of the defendant was wrongful, until this time arrives no action exists in favor of the defendant for the recovery of such damages. Obligations are to be fulfilled in the precise terms in which they have been contracted, as provided by article 1091 of the Civil Code. In order to maintain such an action it would be necessary to show that the order of arrest had been set aside by the court before the beginning of the action, because otherwise it would be impossible to determine, in going into the question as to the damages, whether the arrest was wrongful or not, and the wrongfulness of the arrest is the basis of the action. On page 2 of the bill of exceptions it is stated that the order of arrest was vacated by the court on motion of the defendant, but it does not appear whether the said order was vacated before or after the filing of the defendant's answer. At all events it is certain that the *answer* does not allege that the order had been vacated, and consequently, as to the sureties, the answer is defective in not stating facts constituting a cause of action against them. It therefore follows that there was no error in the order of the court sustaining the demurrer.

The exception of the appellant to the ruling of the court excluding the testimony of Inocencio Reyes, the husband of the plaintiff, offered on behalf of the appellant, is without merit. The ruling of the court is based upon the provisions of article 383 of the Code of Civil Procedure, paragraph 3 of which reads in part as follows: "A husband can not be examined for or against his wife without her consent/" The ruling of the court was therefore without error and should be affirmed.

The defendant in the course of the trial offered as evidence certain pawn tickets issued by the pawn shops of Don Manuel Matute and Don Ricardo Gonzales, for the purpose of proving that some of the 14 pieces of jewelry which the plaintiff alleges she delivered to him as a pledge in security for the sum of 400 pesos borrowed from him in October, 1891 (sic), were at that time pledged in the pawn shops referred to. The defendant alleges that in September, 1901, the plaintiff, together with her husband, borrowed from him 500 Mexican pesos, and pledged to him three pawn tickets issued from the pawn shop of Don Manuel Matute, and also four pieces of

jewelry; that five or six days afterwards they borrowed 400 pesos more from him, and pledged to him another pawn ticket from Don Manuel Matute's pawn shop, and also a pawn ticket from the pawn shop of Manuel Gonzales. That on November 26 of the same year, by virtue of an order received from Inocencio Reyes to that effect, the defendant redeemed the jewelry pledged, and paid to Manuel Matute, the owner of the pawnshop, in all the sum of \$261.43—and \$78.18 to the pawnshop of Ricardo Gonzales; that these sums, added to the principal debt, make, the defendant avers, a total of \$1,239.61, of which the plaintiff and her husband still owe him \$1,139.61^{3/4}, for which he sought judgment against them by counterclaim. The pawn tickets were identified by Don Manuel Matute and Ricardo Gonzales. (Bill of exceptions, pp. 60 and 61.) One of them, the ticket for the gold watch (claimed in the complaint), is dated the 31st of July, 1901, as appears on page 67 of the bill of exceptions.

Supposing that part of the jewels referred to in the complaint were really pledged to the pawn shops above mentioned from the month of July until November, 1901, it follows necessarily that the statements of the plaintiff and her witnesses as to the manner, time, and form in which the said jewelry came into possession of the defendant are false, and that on the other hand the statements of the defendant as to the redemption of the jewels are true, the amount paid therefor being part of the sum sued for in the counterclaim. Indirectly the evidence might have a bearing upon the veracity of the other allegations of the parties and the testimony of the respective witnesses. It is, of course, apparent that for the purpose of showing the evidentiary value of the pawn tickets it will be necessary to identify the jewels to which they referred, with those which are the object of the complaint, but this identification can easily be made inasmuch as the jewels in litigation have been identified one by one by the plaintiff, and are deposited with the clerk of the court. It would be sufficient to compare them with the jewels described in the pawn tickets. With respect to the gold watch especially, the defendant says that the manufacturer's mark and the number expressed in the pawn ticket coincide perfectly with those of

the watch mentioned in the complaint. (Page 67, bill of exceptions.)
For these reasons it is evident that the pawn tickets may be evidence of direct and decisive influence in the case, and consequently the court below "erred in excluding them when offered as evidence.

For this reason the judgment of the court below is set aside, and it is ordered that the case be remanded for a new trial, in which the pawn tickets in question will be admitted in evidence, together with such other proof as the parties may present in connection therewith. No judgment will be entered for costs. So ordered.

Arellano, C. J., Torres, Cooper, Willard, McDonough, and Johnson, JJ., concur.
