45 Phil. 406

[G.R. No. 20484. November 13, 1923]

GEORGE H. GANAWAY, PLAINTIFF AND APPELLANT, VS. THE FIDELITY & SURETY COMPANY OF THE PHILIPPINE ISLANDS ET AL., DEFENDANTS AND APPELLEES.

D E C I S I O N

STATEMENT

Thomas Casey et al. commenced an action in the Court of First Instance, in which the plaintiff here was the defendant. It was founded upon a contract, and prayed for an accounting. In that action the plaintiffs applied for, and obtained, an order of arrest of the defendant under the provisions of Chapter XVII of the Code of Civil Procedure. The order was granted upon the condition that the plaintiffs would furnish and approve a bond in the sum of P2,000. This bond was furnished with the plaintiffs in that action, as principals, and the defendant, Fidelity & Surety Company, as surety, and among other things it provides that the plaintiffs, as principals, and the Surety Company, as surety, "in consideration of the above and of the issuance of said order, hereby jointly and severally bind ourselves in the sum of two thousand pesos (P2,000), Philippine currency, under the condition that the surety and the plaintiff will pay all the costs which may be adjudged to the defendant, and all damages which he may sustain by reason of aforesaid order of arrest if the same shall finally be adjudged to have been wrongful or without sufficient cause." Upon the strength of the bond, the warrant for the arrest of the defendant was issued, and he was arrested and confined in Bilibid from the 14th of January, 1922, to the 4th of February, 1922. During the period of his confinement, he applied to this court for a writ of habeas corpus upon which he was released.

April 1, 1922, this action was commenced against the Fidelity & Surety

Company as defendant, in which after formal allegations it is alleged that on or about October 18, 1921, Thomas Casey and William A. Caldwell commenced an action against this plaintiff in which they sought to recover from him upon an alleged breach of contract; that on January 14, 1922, they applied for the order of arrest, which was granted upon the giving of a bond in the sum of P2,000, with the Surety Company as surety. The plaintiff alleges his confinement in Bilibid and the issuing out and the granting of the writ of habeas corpus, from which he "suffered damages and was forced to pay costs in securing his release from the said arrest and imprisonment in the amount of P4,600," for which he prays judgment, with interest and costs.

For answer, the Surety Company admits all of the allegations of the complaint, except as to damages, which it specifically denies, and, as a separate defense, alleges that the action in which Caldwell and Casey were plaintiffs, and the plaintiff here was defendant, is still pending in the Court of First Instance of the City of Manila, and that no finding has been made in the court as to whether the order for the arrest was issued wrongfully and without sufficient cause, and for another defense, it alleges that it became surety in consideration of the signing of the bond by the defendants William A. Caldwell and R. G. Woods, who jointly and severally agreed in writing to pay and reimburse the defendant for any sums of money which it might pay or become liable to pay on account of having signed the bond as surety, and it prays that the complaint be dismissed, and that Caldwell and Woods be made parties defendant, and that in any judgment which may be rendered, the Surety Company shall have the same amount of judgment jointly and severally against Caldwell and Woods. The order was granted, and those parties were made defendants, and after making like admissions and denial as the Surety Company, they allege, in substance, that Chapter XVII of the Code of Civil Procedure mentioned in the complaint is unconstitutional, inoperative, null and void, and that every obligation arising therefrom is null and void, and that there is no consideration for the bond, and that the original action is still pending in the Court of First Instance, and that no final action has been rendered there.

Upon such issues, testimony was taken, and the lower court rendered judgment for the defendants and dismissed the complaint, from which the plaintiff appeals, specifying six different assignments of error, in substance that the trial court erred in holding that before the action can be maintained, there

must be a final adjudication by the trial court that the arrest was wrongful or without sufficient cause, and in holding that there has been no adjudication by the Supreme Court that the order of arrest was wrongful or without sufficient cause, and in holding that an action for damages must wait the result of a suit in which the party was arrested, and in not deciding in favor of the plaintiff.

JOHNS, J.:

In its opinion the lower court cited and relied upon the decision of this court in Raymundo *vs*. Carpio (33 Phil., 395), which was an action brought upon an attachment bond under section 427 of the Code of Civil Procedure, in which this court held, in legal effect, that an action cannot be brought upon an attachment bond until after a final judgment has been rendered in the court in which the action was pending, to the effect "that the attachment had been obtained wrongfully or without sufficient cause."

There is this distinction. In the instant case, a warrant of arrest, which is in the nature of a quasi-criminal proceeding, was wrongfully issued in the civil action, under which the defendant was arrested and thrown in Bilibid. To obtain his release, he applied direct to this court for a writ of habeas corpus, and in a well-written opinion, the plaintiff was released by this court upon the writ, for the plain, simple reason that his arrest was wrongful and without sufficient cause, and, .as this court held, that under the Jones Law "debtors cannot be committed to prison for liabilities arising from actions *ex contractu*," and that the action was founded upon contract. (Ganaway *vs*. Quillen, 42 Phil., 805.) That was a final adjudication of this court that the arrest of the plaintiff in the civil action was wrongful and without sufficient cause. It is true that in the petition for a writ of habeas corpus, the warden of the prison was the only defendant. But it is also true that the defendants here were privies to that proceeding, and are bound by that decision. The plaintiff was confined in prison because the defendants gave the bond. In other words, in the habeas corpus proceeding, there was a final adjudication by this court that the arrest of the defendant was wrongful and without sufficient cause, and that decision binds the defendants as privies to the proceeding.

Upon the facts shown, we are clearly of the opinion that the instant action

was not prematurely brought.

The rule in this class of cases is well stated in Corpus Juris, vol. 5, page 526, where it is said:

> "*Upon undertaking*.—(*a*) *In general*.—Defendant's right to maintain an action on the undertaking by plaintiff for defendant's arrest accrues when it is judicially determined that plaintiff was not entitled to have him arrested, although the original cause is still pending, unless the undertaking is conditioned upon recovery of judgment by defendant, and, although the cause of action and grounds for the arrest are identical, because liability on the bond is fixed by the discharge from arrest."

The remaining question is the amount of damages which the plaintiff has sustained.

It is conceded that he was confined in Bilibid for twenty-one days. To obtain his release, he was forced to employ counsel and file his petition for a writ of habeas corpus, which was argued and submitted to this court. There is also testimony tending to show that at the time of his arrest, he had a concession at the carnival grounds for the painting of signs upon the fence surrounding the grounds, for which he had already procured some contracts, and that in the ordinary course of business, he would have obtained a large number of other contracts, upon which he claims that there would have been profits to him and his partner for about P8,000, of which he would have been entitled to one-half.

The evidence as to the amount of damages from loss of business by reason of plaintiff's arrest is not very clear or satisfactory, but it does tend to show that he sustained some damage from such loss.

The rule as to the measure of damage is well stated on page 528 in the Corpus Juris above cited, as follows:

> "The items of damage that may be recovered include the taxable costs, counsel

> fees in proceedings to vacate the order of arrest, expenses in securing bail, and compensation for loss of earnings during imprisonment."

We hold that the plaintiff's arrest was wrongful and without sufficient cause, and that within the meaning of the bond, the question of his wrongful arrest was finally adjudicated in the habeas corpus proceeding in this court. All things considered, we find that the amount of costs and damages which the plaintiff sustained, by reason of his arrest, is P1,500.

The judgment of the lower court will be reversed, and one will be entered here jointly and severally against the Surety Company and William A. Caldwell and R. G. Woods for the sum of P1,500, with interest at the legal rate from this date, and for the costs on appeal and in the lower court, and judgment for a like amount will be entered in favor of the Fidelity & Surety Company of the Philippine Islands against the defendants William A. Caldwell and R. G. Woods upon their bond to guarantee and protect the Surety Company and hold it harmless. So ordered.

Johnson, Malcolm, Avanceña, Villamor, and *Romualdez, JJ.,* concur.

DISSENTING

STREET, J.:

The bond which is the basis of this action against the defendant as surety was executed pursuant to section 415 of the Code of Civil Procedure, with a view to procuring an order for the attachment of the person of the herein plaintiff in a civil action which had been instituted against him by other persons. The condition of the bond is to the effect "that the surety and the plaintiff will pay all the costs which may be adjudged to the defendant and all damages which he may sustain by reason of the aforesaid order of arrest if the same shall finally be adjudged to have been wrongful or without sufficient cause."

The language which we have quoted is in exact conformity with the requirement of the statute and is in fact reproduced in great part from the section above cited. When the law provided that the parties to the bond shall obligate themselves to pay all damages which the arrested person may sustain by reason of the arrest *if the same shall finally be adjudged to have been wrongful or without sufficient cause*, the undoubted intention was that the liability thereby created should become effective when the civil case, to which the arrest was an incident, should be decided. By the decision now made an independent action on the bond is sustained by this court before the civil liability incident to the civil action has been declared.

To permit such procedure operates with injustice to the desfendant, for if this judgment should be executed before the civil cause is determined and it should be there found that the herein plaintiff is indebted to his opponent in the civil action, the surety against whom judgment is now rendered will have been deprived of the opportunity to set off !the amount for which the plaintiff herein may be found liable in the civil action against the present judgment. The arrest of this plaintiff in the civil action was a mere incident of the principal action and any damages to which he may be entitled by reason of the arrest which has been declared unlawful would be a proper subject of consideration in that action and the damages should go to the extinction of the civil liability if any should be declared in that case.

The law concerning arrest in a civil case, or attachment of the person, rests upon the same basis, so far as the principles involved are concerned, as the law concerning the attachment of property in a civil action; and it will be noted that the obligation of the surety in case of the attachment of property is precisely the same, under section 427 of the Code of Civil Procedure, as the obligation of the surety in case of arrest under section 415. The words are identical in the two sections—"that the plaintiff will pay all costs which may be adjudged to the defendant, and all damages which he may sustain by reason of the arrest [or attachment], if the same shall finally be adjudged to have been wrongful or without sufficient cause." (Secs. 415, 427.) The meaning of this language, as expressed in section 427, has been considered by this court in Raymundo *vs*. Carpio (33 Phil., 395), where it was said:

> "Section 427 of the Code of Civil Procedure provides that damages which the defendant may sustain by reason of an attachment may be obtained in the principal action when 'it shall finally be adjudged to have been wrongful or without sufficient cause.' This means that it is a necessary prerequisite to defendant's right to recover damages for the issuance of an attachment by plaintiff that the Court of First Instance in which the action was tried shall adjudge in its final judgment that the attachment had been obtained wrongfully or without sufficient cause. If such a pronouncement is not obtained from the Court of First Instance in its final judgment in the action, then there can exist no foundation for an action by the defendant to obtain damages which he may have sustained by reason of the attachment."

It is difficult to see how a court can commit itself to the proposition that certain language in section 427 means one thing and that the identical language in another section means something entirely different. The inconsistency is obvious and needs no comment to expose it.

In the passage quoted in the opinion of the court from Corpus Juris it is said that the right to maintain an action on a bond of the kind now under consideration accrues when it is judicially determined that the plaintiff was not entitled to have the defendant arrested, *although the original cause is still pending*. Reference to this passage will reveal the fact that the only cases cited to the part which we have put in italics are New York cases, and we are informed in a note that the practise indicated is permissible only under the present Practise Act in New York and that the law in that State formerly was to the effect that the entry of judgment in favor of the defendant in the civil action was a condition precedent to liability on the undertaking for the order of arrest. Evidently these later New York cases can have no value in a jurisdiction where the law is expressed as in sections 415 and 427 of our Code of Civil Procedure.

Authority decidedly more in point upon the interpretation of our statute is to be found in the decisions of the Supreme Court of California, for upon comparison it will be found that section 415 of our Code of Civil Procedure, in the part here material to be noted, is taken almost verbally from section 482 of the Code of Civil Procedure of the State of California, which we here

reproduce:

> "SEC. 482. *Security by plaintiff before order of arrest.*— Before making the order, the judge must require a written undertaking on the part of the plaintiff, with sureties in an amount to be fixed by the judge, which must be at least five hundred dollars, to the effect that the plaintiff will pay all costs which may be adjudged to the defendant, and all damages which he may sustain by reason of the arrest, if the same be wrongful, or without sufficient cause, not exceeding the sum specified in the undertaking. The undertaking must be filed with the clerk of the court."

In the case of Stechhan *vs*. Roraback (67 Cal., 29), the Supreme Court of California had occasion to consider a question under their statute, which was almost identical with that involved in the present case, namely, whether an independent action would lie against the sureties after the arrested person had been discharged but before the civil action had been finally determined in the superior court. It was held that the action could not be maintained. The opinion delivered by the Supreme Court of California is brief and may be here reproduced to advantage in its entirety:

> "The defendant Roraback commenced an action against Stechhan in a justice's court, and procured an order for his arrest. In procuring such order Stechhan gave an undertaking, with the other defendants herein as sureties. On the trial of the action, the justice held the arrest to have been wrongful and without cause, and discharged Stechhan. This action is on the undertaking. The defendants herein in their answer averred that after the judgment in the justice's court, Roraback, plaintiff therein, appealed from such judgment to the Superior Court, and that such appeal was still untried and undetermined. This portion of the answer was demurred to, and the demurrer sustained. We are of opinion that this ruling was error. On the appeal the whole case was for hearing and determination, including the question whether or not the arrest was wrongful
> or without sufficient cause; and until such determination it could not be known whether liability on the undertaking had been incurred."

It will be noted that the only difference between the provision in question, as it stands in the California Code of Civil Procedure and as it stands in the Philippine Code of Civil Procedure, is that where the California law says “if the same be wrongful, or without sufficient cause,” our statute says “if the same shall finally be adjudged to have been wrongful or without sufficient cause.”

The greater fullness and precision of the words of our own statute—where the two thus differ—make the interpretation adopted by the California court even more inevitable in this jurisdiction than in California. The words “finally adjudged,” used in our statute, were evidently chosen with a view to indicating more clearly than in the original that the liability must have been finally determined in the civil action in which the undertaking of the sureties was given.

I am therefore of the opinion, as was the trial judge, that the action is, to say the least, premature; and the judgment dismissing the case should accordingly be affirmed.

Date created: June 10, 2014