

ZACARIAS C. AQUINO, PETITIONER, VS. FRANCISCO SOCORRO AND COURT OF APPEALS, RESPONDENTS.

G.R. No. L-23868. October 22, 1970

Ponente: RUIZ CASTRO, J.

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RUIZ CASTRO, J.:

On February 14, 1964 the Court of Appeals, upon petition of Francisco Socorro in CA-G. R. 33560-R,[1] issued a writ of pre-liminary injunction in his favor upon his posting a P1,000 bond. The writ of preliminary injunction, among others, restrained Zacarias Aquino "from entering, cutting, hauling, selling and/or exporting logs or other forest products from the forest area" sub-ject of litigation. Aquino, however, filed a counterbond in the amount of P2,000, effecting the immediate dissolution of the writ.

The Court of Appeals, on June 29, 1964, dismissed Socorro's petition re the main action, for lack of jurisdiction to entertain the same. Socorro subsequently appealed the decision of the appellate court to this Court. We affirmed the appellate court's decision in a resolution dated December 24, 1964 in case G.R. L-23608.

On July 15, 1964, before the appellate court's decision dismissing Socorro's petition became final, Aquino filed with the appellate court his claim for damages in the amount of P199,000 on account of the wrongful issuance of the writ of preliminary injunction. The appellate court denied Aquino's claim, for want of bad faith and malice on the part of Socorro in filing his petition and securing the issuance of the writ of preliminary injunction. Aquino's subsequent motion for reconsideration was denied.

Hence, the present petition for certiorari to review the resolution of the Court of Appeals denying his claim for damages.

Aquino contends that the respondent appellate court erred in denying his claim for damages on the ground of want of bad faith and malice on the part of the respondent Socorro in filing the petition for certiorari re the main case and securing the issuance of the writ of preliminary injunction. He invokes the provisions of Section 9, Rule 58 in relation to Section 20, Rule 57, of the Rules of Court. Section 9, Rule 58 recites:

"Judgment to include damages against party and sureties. - Upon the trial the amount of damages to be awarded to the plaintiff, or to the defendant, as the case may be, upon the bond of the other party, shall be claimed, ascertained, and awarded under the same procedure as prescribed in Section 20 of Rule 57."

Section 20, Rule 57 reads:

"Claim for damages on account of illegal attachment. - If the judgment on the action be in favor of the party against whom attachment was issued, he may recover, upon the bond given or deposit made by the attaching creditor, any damages resulting from the attachment. Such damages maybe awarded only upon application and after proper hearing, and shall be included in the final judgment. The applica-tion must be filed before the trial or before appeal is perfected or before the judgment becomes execu-tory. With due notice to the attaching creditor and his surety or sureties, setting forth the facts showing his right to damages and the amount thereof.

"If the judgment of the appellate court be fa-vorable to the party against whom the attachment was issued, he must claim damages sustained during the pendency of the appeal by filing an application with notice to the party in whose favor the attachment was issued or his surety or sureties, before the judgment of the appellate court becomes executo-ry. The appellate court may allow the application to heard and decided by the trial court."

Aquino points out that the said provisions do not require a claimant who seeks to recover damages on account of the wrong-ful issuance of a writ of preliminary injunction, to prove bad faith and malice on the part of the party who obtained the issuance of the writ. To reinforce his contention, he invokes the provisions of Section 4(b) of Rule 58 of the Rules of Court. This rule, Aquino avers, makes the party applying for an injunction liable for all da-mages sustained by the other party if the court finally decides the party applicant as not entitled thereto. He maintains that, in the case at bar, the dissolution of the writ of preliminary injunction by the respondent appellate court clearly demonstrates that the respondent Socorro was not entitled thereto.

Socorro, on the other hand, prays for the dismissal of the present petition on the following grounds: (1) The petitioner "re-fused to prosecute his claim for damages in the main action then already on appeal to this Court;" (2) The petitioner "failed to state in his motion claiming for damages the facts upon which his rights thereto are based;" (3) The petitioner, if "suing on the bond has no more cause of action as the said bond had already been dissolved[2] upon motion by the petitioner Aquino;" and (4) The peti-tioner, if "suing beyond the bond failed to show, or there is no showing that the respondent Socorro," in filing his petition for certiorari and securing the issuance of the writ of preliminary in-junction, "was motivated by malice or bad faith."

The present case raises the question of whether Aquino's claim for damages on account of the improvident issuance by the respondent appellate court of the writ of preliminary injunction should be dismissed on the ground that he has failed to show or prove bad faith and malice on the part of the respondent Socorro in obtaining the issuance of the writ of preliminary injunction.

In *Pacis vs. The Commission on Elections*,[3] this Court made an extensive discussion of the principals applicable to the recovery of damages caused through the improvident issuance of a writ of preliminary injunction. This Court said that "damages sustained as a result of a wrongfully obtained injunction may be recovered upon the injunction bond required to be filed with the court." The same provisions permitting the issuance of the writ of preliminary injunction require the filing of a bond before the grant of the writ. "The statutory undertaking of the bond is that it shall answer for all damages which the party to be restrained may sustain by reason of the injunction if the court should finally decide that the plaintiff was not entitled thereto. Malice or lack of good faith is not an element of recovery on the bond. This must be so, because to require malice as a prerequisite would make the filing of the bond a useless formality."

Continuing, this Court said that "the dissolution of the in-junction, even if the injunction was obtained in good faith, amounts to a determination that the injunction was wrongfully obtained and a right of action on the injunction bond immediately accrues." Thus, for the purpose of recovery upon the injunction bond, "the dissolution of the injunction because of the failure of petitioner's main cause of action" provides the "actionable wrong" for the purpose of recovery upon the bond.

This Court also stressed, in the same case, that "there is nothing in the Rules of Court which allows recovery of damages other than upon the bond pledged by the party suing for an injunc-tion. Section 9, Rule 58, limits recovery only upon the bond, and it specifically states that ... 'the amount of damages to be award-ed to the plaintiff, or to the defendant, as the case may be, upon the bond of the other party, shall be claimed, ascertained, and awarded under the same procedure as prescribed in Section 20 of Rule 57.'" Under this provision, the party restrained, if he can recover anything, can recover only by reason of and upon the bond - the only security and

protection conceded to him by the rules. Consequently, the rule limits the amount of recovery in a suit on an injunction bond to the sum thus fixed, the amount measuring the extent of the assumed liability.

This Court also finds it necessary to restate the rule in *Molina vs. Somes*[4] that "an action for damages for the improper suing out of an injunction must be maintained upon the same principles which govern an action for the wrongful bringing of an action." This rule, however, applies only when the party restrained pursues his claim for damages not upon the injunction bond. In such a case where the party restrained sues not on the injunction bond, the rules accord him no relief by way of a claim for damages unless he can establish that the party applicant secured the issuance of the writ maliciously and without probable cause. This Court stated that "... when the process has been sued out maliciously there may be a right of action in favor of the defendant. But this right depends upon the law governing malicious prosecutions, and has no relation to the claim for damages urged by the defendant in this case. ..." [5]

Additionally, this Court, citing *Palmer vs. Foley* (71 N. Y. 106, 108), said:

"It seems that, without some security given before the granting of an injunction order, or without some order of the court or a judge, requiring some act on the part of the plaintiff, which is equivalent to the giving of security - such as a deposit of money in court - the defendant has no remedy for any damages which he may sustain from the issuing of the injunction, unless the conduct of the plaintiff has been such as to give ground for an action for malicious prosecution."

In the case at bar, the record reveals that the petitioner Aquino, in the proceedings before the respondent appellate court, filed a counterbond in the amount of P2,000 and opposed the injunction bond filed by the respondent Socorro on the ground of its insufficiency. In effect, these brought about the immediate dissolution of the writ of preliminary injunction. Thus Aquino pursues his claim for damages in the amount of P199,000 no longer upon the injunction bond in the amount of P1,000 filed by Socorro with the respondent appellate court. This being the case, applicable here is the holding in *Molina vs. Somes*, supra, that an application for damages on account of the improvement issuance of a preliminary injunction writ must be governed by the same principles applicable to an action for the wrongful bringing of an action. Before the respondent's liability can attach, it must appear that he filed his petition for certiorari re the main action and obtained the issuance of the writ of preliminary injunction maliciously and without probable cause. These two essential requisites, malicious prosecution and lack of probable cause, are neither alleged nor proved in this case before us. Nothing in the record tends to establish the liability of the respondent Socorro.

ACCORDINGLY, the present petition for certiorari is hereby denied. No costs.

Reyes, J.B.L., Acting C.J., Dizon, Makalintal, Zaldivar, Fernando, Teehankee, Villamor, and Makasiar, JJ., concur.

Barredo, J., concurs in a separate opinion.

Concepcion, C.J., on official leave.

[1] "Francisco Socorro, petitioner, vs. Hon. Montano A. Ortiz, as Presiding Judge of the Court of First Instance of Agusan, Director of Forestry, Zacarias C. Aquino, and the Commissioner of Customs, respondents."

[2] Respondent Socorro alleges on page five of his brief that the filing by the petitioner of a counterbond brought about the dissolution of the injunction bond he filed with the respondent appellate court. Aquino offered no statement to rebut this allegation of Socorro. Assuming, however, this allegation of Socorro to be true, the dissolution or cancellation of Socorro's bond contravenes the accepted rule that the filing of a counter bond by a party opposing the injunction bond on the ground of its insufficiency does not automatically cancel or effect the

dissolution of the injunction bond.

[3] L-29026, August 29, 1969, 29 SCRA 25.

[4] 24 Phil. 66 (1913).

[5] Note 4, at p. 67, citing the case of the City of St. Louis vs. St. Louis Gaslight Company, 82 Mo. 349-357.

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CONCURRING OPINION

BARREDO, J.:

I concur in the result.

The first thing I would like to clarify because it is not touched in the main opinion is that were it not for the fact that petitioner has erroneously assumed that respondent's injunction bond had been validly cancelled, apparently without any objection or protest on his part, and, on the basis of such erroneous assumption, he filed his application for damages without regard to said bond, I would have voted to reverse the appealed resolution in order to allow petitioner to recover on the said injunction bond to the full extent thereof, its cancellation, if true, having been improperly made.

Secondly, I consider it necessary to emphasize that the appealed main resolution of the Court of Appeals made reference to the "want of bad faith and malice on the part of petitioner (herein respondent) in filing the instant (in that court) petition". In other words, the want of bad faith or malice contemplated by the appellate court is not with reference to the seeking or securing of the injunction itself. I stress this point because, indeed, the records fail to show any specific finding of the appellate court that the injunction in question had been improvidently issued. I am not ready to hold that the mere dismissal of an action wherein a preliminary injunction has been issued at the instance of plaintiff or the mere rendition of a judgment favorable to defendant in such an action constitutes in itself an implied finding that the plaintiff was not entitled to the injunction. The provision in Section 20 of Rule 57 on Attachment to the effect that "if the judgment on the action be in favor of the party against whom attachment was issued, he may recover, upon the bond given or deposit made by the attaching creditor, any damages resulting from the attachment" may not necessarily apply to injunctions, since it is conceivable that the propriety or impropriety of an injunction may not depend on the tenability or lack of it of plaintiff's alleged cause of action as in the case of attachment. The terms of Section 3 of Rule 58, to wit:

"SEC. 3. Grounds for issuance of preliminary injunction. - A preliminary injunction may be granted at any time after the commencement of the action and before judgment, when it is established:

"(a) That the plaintiff is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the acts complained of, or in the performance of an act or acts, either for a limited period or perpetually;

"(b) That the commission or continuance of some act complained of during the litigation or the nonperformance thereof would probably work injustice to the plaintiff; or

“(c) That the defendant is doing, threatens, or is about to do, or is procuring or suffering to be done, some act probably in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.”

do not necessarily exclude the possibility of an injunction being properly and justly issued, even if the plaintiff ultimately fails to prove the cause of action alleged in his complaint.

Thirdly, an examination of Annex C of the petition reveals that all that petitioner alleged in his "Claim for Damages for Wrongful Injunction" were these:

"COMES now respondent Zacarias C. Aquino through counsel and before this honorable Court respectfully states:

"1. That this Court issued a writ of preliminary injunction in the above-entitled case subject to the condition that petitioner shall answer for whatever damages that may be suffered by respond-ents;

"2. That because of the issuance of the writ of preliminary injunction, respondent Aquino suffered damages amounting to P199,000.00.

"WHEREFORE, it is respectfully prayed that after due trial, petitioner be ordered to pay damages to respondent Aquino in the sum of P199,000.00."

In the face of the undenied statement of fact in respond-ent's brief to the effect that upon the dissolution of the injunction on account of petitioner's having filed a counterbond of P2,000.00 "Socorro (respondent) did not press on the injunction and had not taken possession and enjoyed the use of said forest area", I sustain respond-ent's contention that for such a huge claim of practically one-fifth of a million pesos, petitioner's above-quoted application does not comply with the requirement of Section 20 of Rule 57 in relation to Section 9 of Rule 58 of "setting forth the facts showing his right to damages". In other words, petitioner has not even alleged that after the writ of injunction was issue it was actually enforced or implemented. I cannot imagine how the mere issuance of the writ, without more, could have occasioned the huge amount of damages claimed by petitioner.

Fourthly, the main opinion gives me the impres-sion that the ruling in *Pacis* as follows:

"As stated, this present proceed-ing is upon a motion for assessment of damages on the bond. There is nothing in the Rules of Court which allows recovery of damages other than upon the bond pledged by the party suing for an injunction. Section 9, Rule 58, limits recovery only upon the bond, thus:

'SEC. 9. Judgment to in-clude damages against par-ty and sureties. - Upon the trial the amount of damages to be awarded to the plaintiff, or to the defendant, as the case may be, upon the bond of the other party, shall be claimed, ascertained, and awarded under the same procedure as prescribed in Section 20 of Rule 57.' (Italics supplied. Section 20, Rule 57, has been here quoted earlier.)

It would be misreading the rule to allow damages beyond the amount of the bond. The bond, under this rule, is the only protection con-ceded to the party restrained. Re-covey cannot be made beyond what the law permits.

"This principle is skillfully ex-plained in *Molina vs. Somes*, supra, at pp. 64-65, thus:

"The assertion by some text writers and courts that the one who sues out an in-junction without legal cause is liable on the theory that he wrongfully induced or moved the court to take the action which it did, is, in our judgment, without stable foundation. He who obtains a thing by permission of the law, and by strict com-pliance with the law, ought not to be held liable in any manner except that specified in the law under which he operates. He ought not to be held for a trespass or other wrong, as they assert he may be in replevin, etc. How can it be logically said that one who, acting in good faith, obtains an injunc-tion or property under a replevin in precisely

the manner required by law has committed a legal wrong against the person as to whom the law authorizes him to obtain the injunction? The law itself, by virtue of the conditions which it imposes, fully protects the defendant against the evil effects of the injunction; and if the party securing the injunction has performed all that the law requires of him as a condition precedent to obtaining it, what more can be asked? In return for the restrictions of the injunction, the defendant has been given certain legal rights against the plaintiff by way of an undertaking which, by virtue of the law itself, fully compensates him for the change of position. The bond is full compensation for the privileges which the plaintiff receives and for those which the defendant loses. The law says so. The statute asserts that the doing of certain things by the plaintiff shall be a complete compensation to the defendant for that which the law requires him to give up. If it is not complete compensation, then the law is unjust, in that it requires the defendant to give up something for which he receives no compensation. It is not to be presumed or believed that the legislature intended to do such a thing, and it is not to be presumed or believed that it did do it. But, even, if the law be unjust, an injustice of the law cannot be cured by an injustice to a party. The giving of the undertaking legally equalizes the status of the two. To put upon the plaintiff the additional burden of a trespass or other wrong would destroy the legal equilibrium and produce an injustice.'

"Recovery of private respondent must therefore be limited to the amount of the bond. Where the bond is insufficient in amount, the law expressly gives the party affected the recourse of excepting thereto and provides for the dissolution of the injunction if 'a bond sufficient in amount with sufficient sureties approved after justification is not filed forthwith. (Section 8, Rule 58, Rules of Court.)'"[1]

which to me means that a defendant in injunction has no remedy for the recovery of damages arising from the unwarranted or unjustified issuance of the injunction other than upon the bond, is qualified by *Somes* in that independently of the bond or when the amount of damages claimed is in excess of the amount of the bond, the enjoined party may sue for damages upon a showing of malicious prosecution. I am not sure that such is the true import of *Somes*. While I may admit that some of the decisions cited or quoted in *Somes* do give hints of such a possibility, I do not see that the statutory background of the injunction bonds in those cases is the same as ours in this jurisdiction.

Besides, the following passage in *Somes*, added to that quoted by Justice Sanchez in *Pacis*, is to me clear enough in indicating that when a bond is required by law, it is the exclusive recourse to which an injunction defendant is entitled:

"The assertion of text writers that the party in cases of replevin or injunction, wrongfully put the court in operation, and that, therefore, he is liable as in tort or otherwise apart from his bond to the defendant therefore, is, in our judgment, also unfounded. Such a theory is bad not only for the reasons already given but also for the further reason that it makes the plaintiff an insurer of the judgment of the court. In other words, upon that theory, the plaintiff, before he can safely obtain an injunction or a replevin, must be certain that the court will decide in his favor; that is, the plaintiff must insure a judgment of the court in his favor, on the pain of being sued in tort or other legal wrong, in addition to his liability resulting from the responsibility of his sureties on the bond. Such a theory nullifies the symmetry of the law and destroys the equality between the parties which the law establishes. As we have said, the statute asserts conclusively that the giving of a bond to the defendant is an exact equivalent for the loss which he sustains by reason of his change of position. In other words, the plaintiff has paid the defendant in full for whatever benefits he has obtained from him. If, now, we add to that payment the obligation to respond to a defense in damage for the commission of a tort or other wrong, we at once destroy that equality which the law has established, and lay a burden upon the plaintiff which, in equity, he ought not to bear and which, under the law, he is not required to bear. The law expressly states what shall be his punishment if he is wrong. Courts cannot by their own fiat add anything more. The injury is caused by operation of the law, not by the act of plaintiff." (*Molina vs. Somes*, 24 Phil. 49, 65-66.)

I am more inclined, therefore, to hold that *Pacis* has restricted whatever broad implications *Somes* may have. In

other words, my view is that under *Pacis* there is no re-med-y other than upon the bond, whether the injunction is maliciously or otherwise obtained, and that good faith of the enjoinder is never a defense in a claim for damages caused by the unwarranted or unjustified issuance of the injunction. If additional authority of similar weight to those relied upon in *Somes* is needed to support this view, I find that in *Gorton v. Brown*, 27 Ill. 489, 81 Am. Dec. 245, wherein it appeared that a bond had been given upon obtaining an injunction, the bond being required by statute, it was held that the remedy of the defendant in in-junction proceedings was exclusively upon the bond. The Court said: "We hold the remedy on the bond given on ob-taining the injunction is all the remedy to which the in-jured party can resort. It is designed by the statute, to cover all damages the party enjoined can possibly sus-tain, and it is in the power of the judge or officer granting the writ to require a bond in a penalty suffi-cient to cover all conceivable damages. This bond is a high security which the law requites the complainant in a bill for an injunction to execute, to indemnify the de-fendant, in case the injunction shall be dissolved. It is a familiar principle, when a party has taken a higher security, his suit must be brought on that security. x x x x. The bond becomes, when forfeited, the cause of action, and is intended by the law, to measure the damages of every kind which the party may sustain by wrongfully suing out the injunction in case it is dissolved. It is not at all like the official bonds of sheriffs. They are made payable to the People of the State, not to any particular person, and consequently do not merge a remedy one may have outside of the bond, and besides, it is the policy of the law to multiply the remedies against public officers. Not so with the injunction bond; that is made payable to the defendant. He is the only person interested in it. It is his security. It is all the law gives him as his security, and he is bound to sue on the bond. Were no bond given or re-quired, then the action might lie. This action on the case, under the circumstances shown, cannot and ought not to be maintained. It is against public policy." (150 ALR 907-908.)

This case looks to me nearer to our statutory back-ground than any of those cited in *Somes*.

In any event, I do not feel it is necessary for me to make a definite commitment on this point in this case. The first three reasons I have given above, are more than enough to justify the denial of the present petition. Withal, although it appears that in its ori-ginal appealed resolution of denial the Court of Ap-peals did mention "want of bad faith or malice", it is not clear to me that after the petitioner filed his mo-tion for reconsideration, the appellate court was still of the same view. The record shows that respondent filed with the said appellate court the following oppo-sition or answer to petitioner's motion for reconsider-ation, which motion pointed out that the rules do not require any showing of the malice or bad faith referred to by the Court of Appeals:

"Comes now petitioner above, and per order of this Court, dated Octo-ber 2, 1964, in answer to the motion for reconsideration to the denial of the original motion of respondents demanding damages for wrongful in-junction, respectfully submit:

"1. That the decision of this Honorable Court under date of June 29, 1964, having been appealed for review with the Supreme Court under case No. L-23605 and the petition for the issuance of a writ of Certiorari, still pending with said Superior Court, it is deemed that said motion on the part of respondents is still premature and should be addressed to the latter as it was held in said decision that this Court lacked jurisdic-tion over the petition as above-entitled; and

"2. That the matter of the de-termination whether there was any wrongful attachment or not is still to be resolved in what final decision may be made on the case of Certiorari and Mandamus, and therefore, any issues incidental to the question of the issuance of a preliminary injunction, should be resolved in a court with proper jurisdiction and not with this Court, as it was held that it had no jurisdiction over the main action.

"WHEREFORE, premises considered, it is prayed that the motion for reconsideration be denied."

and the appellate court simply resolved as follows:

"Upon consideration of the motion filed by counsel for the respondents in case CA-G. R. No. 33560-R, Francisco Socorro vs. Hon. Montano A. Ortiz, etc., et al., praying that the resolution of August 17, 1964, be reconsidered on the ground that malice and bad faith or motive are not factors in the determination of whether or not a party litigant is liable for damages for the wrongful issuance of a writ of preliminary injunction, and that as long as the issuance of the writ caused damages to the adverse party he is entitled to a judgment for damages; and of the answer thereto of counsel for petitioner; the Court RESOLVED to DENY the motion. Let the resolution of August 17, 1964, denying respondent Zacarias C. Aquino's claim for damages, STAND."

Under these circumstances, I am not convinced that the grounds of the action taken by the Court of Appeals being assailed in the present case before Us is clear enough for Us to make a categorical ruling on the point under discussion. I prefer to reserve my final opinion on it until a more appropriate case comes to this Court.

Lastly, if the ruling in the main opinion that an action for malicious prosecution lies independently of the claim on the injunction bond is meant to prevail, I believe it is but fair to petitioner to hold also as a corollary to said ruling that the procedural requirements and limitations of Section 9 of Rule 58, which contemplates exclusively claims upon the injunction bond, do not apply to such action for malicious prosecution. In consequence, the Court of Appeals is not the proper court where petitioner's claim should have been filed and, therefore, petitioner is still free to pursue such claim elsewhere.

Before closing, I notice that the main opinion holds towards the end thus:

"x x x This being the case, applicable here is the holding in *Molina vs. Somes*, supra, that an application for damages on account of the improvident issuance of a preliminary injunction writ must be governed by the same principles applicable to an action for the wrongful bringing of an action. Before the respondent's liability can attach, it must appear that he filed his petition for certiorari re the main action and obtained the issuance of the writ of preliminary injunction maliciously and without probable cause. These two essential requisites, malicious prosecution and lack of probable cause, are neither alleged nor proved in this case before us. Nothing in the record tends to establish the liability of the respondent Socorro."

Does this mean that in the action for malicious prosecution to recover damages arising from an unwarranted injunction, the damaged party has to show malice or bad faith in both the filing of the action and the securing of the injunction, otherwise, he cannot recover? In the affirmative, is the resolution of the Court of Appeals which we are refusing to review, correct in requiring the showing of malice or bad faith in the main claim, without also referring to the malice or bad faith in the securing of the injunction? Does *Somes* require malice or bad faith in filing the main action in order that there may be a recovery for malicious obtaining of an injunction in connection with such main action? What, indeed, is the basis of the possible award of damages, the malicious prosecution of the suit, the malicious securing of the injunction, or both? In *Somes*, Justice Moreland quotes from *Russell vs. Farley*, 105 U.S. 433, 438, thus:

"And if the legal right is doubtful, either in point of law or of fact, the court is always reluctant to take a course which may result in material injury to either party, for the damage arising from the act of the court itself is a *damnum absque injuria*, for which there is no redress except a decree for the costs of the suit, or in a particular (proper) case, an action for malicious prosecution. To remedy this defect (difficulty), the court, in the exercise of its discretion, frequently resorts to the expedient of imposing terms and conditions upon the party at whose instance it proposes to act."

Is it clear from this that the action that can be filed independently of the bond is one for malicious prosecution of the main action or merely for malicious suing out of the injunction? Frankly, I cannot answer these questions in the light of the main opinion.

These considerations have compelled me to write this separate concurring opinion.

[1] L-29026, August 22, 1969, 29 SCRA 25, pp. 29-30.

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