

**A. LEMOINE, PLAINTIFF AND APPELLANT, VS. C. ALKAN,
DEFENDANT AND APPELLANT.***G.R. No. 10422. January 11, 1916*

Ponente: MORELAND, J.

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This is an action brought to recover damages for breach of a contract for lease of services.

On the 10th day of July, 1913, the plaintiff and defendant signed a written contract whereby the defendant hired the plaintiff, an expert automobile mechanic, to perform services as such expert mechanic in his automobile repair shop in the city of Manila for the period of three years from the date of the contract at a salary of P350 a month. Plaintiff entered defendant's service on the day on which the contract was executed and continued therein until he was discharged by the defendant the latter part of August of the same year, plaintiff actually leaving defendant's service on the 5th day of September. On the 8th of the same month this action was begun to recover, as damages for breach of contract, the wages to which he was entitled under the contract.

The defendant presents three defenses to the action.

The first is that plaintiff was incompetent and insubordinate and that he unduly and without permission absented himself from the repair shop during the hours when, under the contract, he should have been at work.

The second is founded on the claim that plaintiff, if he had used due diligence, would have been able to obtain a like position in the city of Manila, it appearing by the evidence, asserts defendant, that various owners of other automobile repair shops were anxious to obtain the services of mechanics of plaintiff's ability and that any one of them would have hired him immediately on his discharge if he had presented himself for that purpose.

The defendant claims as his third defense that on the 6th of December, 1913, in a letter addressed to plaintiff, he offered to take him back into his employ under terms and conditions substantially the same as those specified in the original contract of service and at the same rate of wages; and that plaintiff, without reason or justification, refused to accept the offer. He then invokes the principle of law that, where a servant has been wrongfully discharged and has failed to obtain other employment, he must accept the offer of his original employer to receive him back in his employ under terms and conditions which are substantially those of his previous employment and at the same rate of wages, on pain of being unable to recover wages or damages after the date of the offer.

The court found for the defendant on his second defense but allowed plaintiff wages for three months, which the court considered a reasonable time which ought to be conceded to him in which to obtain other employment. Both parties appealed.

With respect to defendant's first defense, the trial court found against him on the facts; and a thorough review of the evidence in the record leads us to agree with that conclusion. The evidence is clearly insufficient to support a finding that plaintiff was incompetent or insubordinate or that he absented himself during working hours without permission. A fair preponderance of the evidence shows that he was an exceptionally good mechanic, entirely

competent to perform the work set for him, that he did perform it efficiently, that he was reasonably tractable and obedient, and that he did not absent himself from the garage during working hours except on the orders of defendant.

In regard to the second defense, the trial court found as a fact in the evidence that positions of like nature were, at the time of his discharge, open to plaintiff in the city of Manila and that, with ordinary diligence, he would have been able to obtain like employment immediately. We are in complete conformity with the finding of the trial court that plaintiff, by the use of reasonable diligence, could, immediately on his discharge, have obtained like employment in the city of Manila. It is clearly supported by a fair preponderance of the evidence and must accordingly be sustained. From this finding of fact the trial court drew the conclusion that plaintiff was not entitled to recover on his complaint, except in part, as he had failed to use the diligence required under the circumstances in seeking other employment of like nature in the same locality.

While we agree with the findings of fact as to these alleged defenses, we do not agree with the conclusion of law which the trial court draws therefrom, for reasons which we will set out hereafter.

The defendant asserts as a third defense that, on the 6th day of December, 1913, in a letter addressed to the plaintiff, he offered to take him back into his employ under terms and conditions substantially the same as those specified in the original contract and at the same rate of wages, and that plaintiff, without reason or justification, refused to accept the offer. He then invokes the principle of law that, where a servant has been illegally discharged and has failed to obtain other employment, he must accept the offer of the employer who discharged him to receive him back into his employ under terms and conditions substantially those of his previous employment and at the same rate of wages on pain of having his damages on a suit for breach of contract reduced to the extent of the wages which he would have received if he had accepted the offer. We understand that the facts on which this defense rests are admitted by both parties. There remains only the discussion as to whether such facts constitute a defense or whether they may be used in mitigation of damages to which plaintiff may prove himself entitled. This discussion will also be reserved until later.

The action in this case is founded on that provision of the Civil Code which provides that "field-hands, mechanics, artisans, and other hired laborers, for a certain time and for a certain work, shall not leave nor be dismissed, without just cause, before the fulfillment of the contract" (art. 1586); and also that disposition of the same code which provides that "those who, in fulfilling their obligations, are guilty of fraud, neglect or delay, or who violate the provisions thereof, are liable for the damages caused thereby." (Art. 1101.)

An examination of the Spanish authorities relative to the right of a mechanic to bring an action for damages resulting from a wrongful discharge discloses nothing which indicates that that law differs in any material respect from that of English-speaking countries. Manresa in his discussion of this subject follows the usual lines with which American lawyers and jurists are familiar. His first serious remarks, after outlining the scope of the subject, refer to that portion of the article which seems to restrict its application to those who have agreed to work for a certain time with respect to a certain work, the limitation, "for a certain work," seeming to indicate, says Manresa, if taken literally, that the persons mentioned in the article may be discharged at will when they are employed generally and without reference to any particular piece of work, even though the hiring is for a specified time. His conclusion is that the wording of the article must not be taken so literally as to permit the perpetration of an injustice which would necessarily follow if, after the execution of a contract of hiring for a specified time, the proprietor might, before the designated period had prescribed, capriciously discharge the employee. He seems to think that the disjunctive "or" should take the place of the conjunctive "and" between the words "time" and "for," making the article read "for a certain time or for a certain work," he giving it as his opinion that that is the real meaning of the article.

Continuing the discussion, Manresa is of the opinion that the Civil Code not having specified the causes which would justify a dismissal of the employee or the abandonment by the latter of his contract, all matters pertaining to that question are left to the sound judgment of the courts. He adds that, along with the prohibition against wrongful discharge found in article 1586, goes also the supplemental obligation to indemnify in case of such discharge. He is of the opinion that there is no necessity for such a statement in article 1586 or elsewhere in the law relative to lease of services, inasmuch as the principles which it would embody are enunciated in the law of obligations as laid down in previous articles of the same Code. He makes some comment with respect to the amount of damages to be awarded and adds that when, in actions based on a wrongful discharge, the evidence establishes the fact of wrongful discharge, the employer shall be considered, in relation to the injured employee, a "debtor in bad faith."

Under both the Spanish and American law, then, the action based on a wrongful discharge is one to recover damages for breach of contract.

That which defendant alleges to be his second and third defenses, even if all the facts necessary to establish the defenses as alleged were proved, could not really be called defenses. They would more properly go to a mitigation of damages. But even considering them as matters in mitigation of damages, the defendant has not proved facts sufficient to avail himself of the benefit thereof under his so-called second defense. He has offered no evidence showing what wages plaintiff would have received if he had obtained one of the positions to which defendant refers. The evidence refers simply to the fact that plaintiff might have obtained like employment in the same locality; but it does not show at what rate of wages. There is nothing in the record showing the wages of a particular position or the usual wages paid in such employment. We understand it to be the rule that before defendant can take advantage of the failure of plaintiff to obtain like employment, it must appear: (1) That it is like employment, (2) that it is in the same locality; (3) that it is under substantially the same conditions; and (4) the wages which he could have earned. We are of the opinion that defendant has successfully established the first three conditions; but, on the other hand, he has utterly failed to establish the fourth. It is clear that the court cannot allow any sum in reduction of damages unless it has been proved; and it not appearing of record how much plaintiff could have earned in like employment, it is impossible to determine the sum which must be deducted from the damages proved by plaintiff.

Defendant is more successful with what he calls his third defense. It is admitted, as we have said, that about 3 months after plaintiff had been discharged and was still without employment, defendant offered to take him back into his employ in the same repair shop, at the same rate of wages and substantially under the conditions named in the original contract and that plaintiff refused the offer. He gave no reason for his refusal, but made a counter-offer in which he proposed material changes in the conditions under which he would return and in the wages which he was to receive, he demanding a higher salary. He also required that there be added to the contract of reemployment a penal clause in the sum of P15,000 which the defendant would be obliged to pay in case of a wrongful discharge in addition to the damages sustained. He also required that the defendant permit a judgment to be entered against him in the present action for the full amount of the damages claimed. Defendant refused to accept these new conditions and the plaintiff declined to accept the offer to reemploy.

We are of opinion that plaintiff should have accepted the offer of defendant and that, in refusing to do so, he conferred on the defendant the right to present his offer in mitigation of any damages which plaintiff might have sustained by reason of the wrongful discharge. We are aware that it has been held that, when a contract of employment has once been broken by the employer by a wrongful discharge of the employee and that status has been recognized by both parties, the employee is not obliged to do anything more under the original contract; that, it having been broken voluntarily by the employer, his employee is no longer under any obligation to comply with

the terms thereof. But, notwithstanding this, we believe that, under such circumstances, the employee should accept an offer even under the old contract, as long as it does not involve a renunciation of any right already accrued, although it is doubtful if it can be said in the case at bar that the offer was in reality one to return to employment under the old contract but was, rather, the creation of a new contract, the terms and conditions of which were substantially those of the old. The mere acceptance of the offer of defendant would not constitute a waiver of his right to recover damages for the time intervening from the date of the wrongful discharge to the time when he returned to work under the new offer, which would consist in the loss of wages for that period, and any other damages which might have been sustained and which plaintiff could prove. We do not mean to hold that an employer may wrongfully discharge an employee an indefinite number of times and require him each time to return to work under the same contract. There would be a legal remedy for that sort of treatment, even if an employer should be so disregardful of his own interests as to give his employee an opportunity to begin an indefinite number of actions against him in each one of which he could recover damages equal to or exceeding the wages which he would have received if he had not been wrongfully discharged, together with interest and costs in each case, and possibly much more. We believe that it is the purpose of the law to require an employee to labor if he is given the opportunity; and that it does not permit him to remain idle and collect his wages nevertheless when he has an opportunity to return to his former employment. The employer is the same employer when the employee is offered the opportunity to return as he was when the original contract was made; and the conditions under which the employment is to proceed are substantially the same. Of course, where the employer has so mistreated the employee that a self-respecting man could not again work for him, the situation would be different. Nothing of that sort appears in this case and we are convinced that, as matter of law, the plaintiff should have returned to service under the offer of defendant.

It is true that, at the time the offer was made, this action had been commenced. Plaintiff left defendant's service on September 5th and began this action on the 8th. The offer was made on December 5th. We do not believe, however, that the pendency of the action alters the situation materially. There was no condition attached to the offer requiring the plaintiff to dismiss his action without costs or even without judgment and it is to be presumed that defendant intended plaintiff to have the right to continue his action to final determination and obtain the damages which he had suffered during the period intervening between the discharge and the reinstatement.

Plaintiff proved no other damages than the loss of wages. The damages in an action for wrongful discharge are prima facie the amount of wages for the full term. These are the damages and the only damages which plaintiff proved. The complaint alleges damages to character and reputation arising from the fact of the wrongful discharge. No evidence was offered showing damages of that kind or the amount thereof. The amount which defendant proved in mitigation or recoupment is equal to the amount which plaintiff proved his damages to be, with the exception of the period between September 5th and December 5th of the same year. As a necessary result plaintiff can recover in this action only for the three months' period. The court below allowed plaintiff his wages for the months of September, October and November, but on a different theory from that on which we have based his right; but, whatever the theory, the amount is correct and the judgment of the trial court is to that extent proper.

It is contended that the burden of proving that plaintiff could have procured like employment in the same locality under similar conditions is on plaintiff. We cannot agree with this under the principles either of Spanish or American law. Under the Spanish law, as we have seen, the employer, when he wrongfully discharges an employee, becomes, with respect to the employee, a debtor in bad faith. On a debtor in bad faith is laid the necessity of affirmatively establishing every fact necessary to extricate him from that position. In this necessity we find the germ of that principle of the American law which throws on the employer in an action for wrongful discharge the burden of proving affirmatively that if the employee had used due diligence he could, immediately

on his discharge, have obtained like employment in the same locality. (Hicks vs. Manila Hotel Co., 28 Phil. Rep., 325, and cases cited.)

The judgment, appealed from is affirmed, without special finding as to costs in this instance. So ordered.

Arellano, C. J., Torres, Carson, Trent, and Araullo, JJ., concur.

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