

ANTONIO RAYMUNDO ET AL., PLAINTIFFS AND APPELLANTS, VS. AMBROSIO CARPIO ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 10744. February 02, 1916

Ponente: MORELAND, J.

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MORELAND, J.:

This is a motion in behalf of the defendants to be permitted to introduce evidence either in this court or in the Court of First Instance for the purpose of establishing the amount of damages which is alleged they have sustained by reason of the attachment which the plaintiffs obtained at the commencement of this action.

The action was one to recover for money loaned. The defense was a general denial together with the allegation that the execution of the document which evidences the debt sued on was obtained by means of false and fraudulent representation and deceit. There was no allegation in the answer and there was no attempt on the trial to show that the attachment was obtained wrongfully or without sufficient cause, and no question of that sort was presented or an issue made with respect thereto.

On the appeal the only question argued was the fact of debt and the evidence offered by the defendants to establish their special defense.

We are of the opinion that the motion must be denied. 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. This question has already been passed on by this court in the case of *Belzunce vs. Fernandez* (10 Phil. Rep., 452). In that case it was held that "to sustain an action for damages resulting from an attachment requires a finding, previously made in a final judgment, to the effect that the attachment was wrongful and without sufficient cause, in conformity with the provisions of section 427, and following the procedure prescribed by section 439 of the Code of Civil Procedure."

It would seem that the proper practice to be followed in cases where it is desired to obtain damages by reason of the wrongful issuance of an attachment in favor of plaintiff that an issue should be tendered on the subject by the defendant in his answer in the main cause. Such a tender would present the question squarely in that court, and the parties having offered their evidence on the subject, the trial court could dispose of it along with the principal action. It is not necessary that the defendant wait until it is determined by a final decision in the main action that the plaintiff is not entitled to recover in order to present the question of his right to damages. All questions which are material to the main action or which are incidental thereto but depending thereon should be presented and litigated at the same time with the main action, so as to avoid the necessity of subsequent litigation and

consequent loss of time and money.

The motion is denied. So ordered.

Arellano, C. J., Torres, Johnson, and Araullo, JJ., concur.

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