

ESTANISLAO NICOLAS, ABDON GUERRERO, AND ISIDORO ROSQUETA, PETITIONERS, VS. THE JUDGE OF THE COURT OF FIRST INSTANCE OF ILOCOS NORTE AND PAULO FORMANTES, RESPONDENTS.*G.R. No. 17762. August 06, 1921*

Ponente: STREET, J.

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On December 26, 1918, Paulo Formantes initiated an action of unlawful detainer in the court of the justice of the peace of the municipality of Dingras, Ilocos Norte, against Estanislao Nicolas, Abdon Guerrero, and Isidoro Rosqueta to recover the possession of four parcels of land which he alleged had been wrongfully seized and taken from his possession by them. As an incident of this action the plaintiff procured—very improperly of course—a preliminary injunction to be issued by the justice of the peace, against the defendants, requiring them to desist and abstain from the acts of detention and usurpation about which complaint was made; and as a consequence the plaintiff at once obtained complete and sole possession of the disputed property. On July 23, 1919, the justice of the peace, upon motion of the defendants, dismissed the action, apparently for failure of the plaintiff to prosecute the cause with diligence; and from this judgment the plaintiff appealed to the Court of First Instance. While the cause was thus pending in the last named court, the plaintiff appeared and of his own motion asked that the cause be dismissed, and an order was accordingly entered to that effect.

In the proceedings thus taken no provision whatever was made for the dissolution of the preliminary injunction or the return of the property to the defendants, or with respect to the enforcement of the liability incurred by the plaintiff by reason of having dislodged the defendants therefrom. Accordingly, in order to recover possession and to enforce the liability under the injunction bond, the defendants on February 28, 1921, moved the Court of First Instance to remand the cause to the court of the justice of the peace, to the end that the latter court might take the proper steps to effectuate restitution of the property and award the defendants the damages to which they might be entitled. This motion having been denied by his Honor, Judge J. R. Burgett, the defendants presented in the Supreme Court the petition now before us, praying for the writ of mandamus to compel the said judge to remand the cause to the court of the justice of the peace. The respondent judge, having been cited to show cause, has personally answered, admitting that an order had been made by him as stated; while a demurrer has been interposed by the attorney for Paulo Formantes, nominally in behalf of all the respondents, but really in representation of Paulo Formantes alone.

The case having been submitted to this court for resolution, we declare:

- That the appeal from the order of the justice of the peace of July 23, 1919, and the proceedings in connection therewith, had the effect of transferring jurisdiction over the case to the Court of First Instance; and in this connection it is unnecessary to consider whether, if the case had come to a trial in the Court of First Instance, that

court could have tried the case on its merits or should have primarily limited its inquiry to the question of whether the justice of the peace had erred in dismissing the case;

- That the dismissal of the cause in the Court of First Instance was properly granted on the motion of the plaintiff, under section 127 of the Code of Civil Procedure, regardless of whether the defendants assented to said order or not ;

- That upon the dismissal of said cause, the defendants in that action became entitled to be restored to the premises from which they had been ejected by the injunction and to have judgment upon the injunction bond for such damages as they may have suffered by reason of the wrongful suing out of said injunction;

- That the Court of First Instance has jurisdiction to give effect to said judgment of dismissal; and as an incident thereto, it has the power to place the defendants again in possession of the disputed property and to assess the full damages which the defendants are entitled to recover from the plaintiff, and to assess those damages against the sureties on the injunction to an amount not in excess of that for which said sureties are liable, and to award execution therefor;

- That it is not necessary to return the cause to the court of the justice of the peace, because there is no issue for that court to try, the case being, by the action of the plaintiff himself, wholly out of court, and nothing remains except to give effect to the judgment of dismissal, which can be accomplished as well or better in the Court of First Instance than in the court of the justice of the peace.

- That, as a consequence of the foregoing, and because of the fact that the plaintiff has a complete remedy in the Court of First Instance by motion therein for the restitution of possession and the assessment of his damages, upon the proof that may be properly submitted with respect to the amount to be awarded, the writ of mandamus cannot be issued.

The demurrer is therefore sustained; and it being evident from the admitted facts that no amendment could be offered to the complaint which would change the legal aspects of the case, an order absolute will be entered denying the petition, but without costs.

Johnson, Araullo, Avancena, and Villamor, JJ., concur.

Writ denied.

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