

GEORGE H. GANAWAY, PETITIONER, VS. J. W. QUILLEN, WARDEN OF BILIBID PRISON, RESPONDENT.*G. R. No. 18619. February 20, 1922*

Ponente: MALCOLM, J.

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The petitioner in this original action in habeas corpus asks that he be released from Bilibid Prison because of imprisonment for debt in a civil cause growing out of a contract. The return of the Attorney-General alleges as the reason for petitioner's incarceration in Bilibid Prison an order of the Hon. George R. Harvey, judge of First Instance of the city of Manila, issued under authority of Chapter XVII of the Code of Civil Procedure. As standing alone the petition for habeas corpus was fatally defective in its allegations, this court, on its own motion, ordered before it the record of the lower court in the case entitled Thomas Casey et al. vs. George H. Ganaway.

The complaint in the civil case last mentioned is grounded on a contract, and asks in effect for an accounting. That this is true is shown by the phraseology of the complaint which repeatedly speaks of an agreement entered into by the plaintiffs and the defendant, by Exhibit A, relating to the publication of a book named "Forbes' Memoirs," and which describes itself as "this contract," by the receipt attached to Exhibit A, which mentions "the contract," and by the order of the trial judge on demurrer which says that "the plaintiffs allege a contract with the defendant and a breach of the contract by the defendant."

The constitutional prohibition in effect in the Philippine Islands is in the same category as those States in which imprisonment for debt is absolutely prohibited. The Constitution of the Philippine Islands, unlike some States in the American Union, makes no exception in cases of fraud. The prohibition in the Philippine Bill, reproduced in the Jones Law, is "that no person shall be imprisoned for debt." It should be given the same interpretation which similar provisions have received in the United States.

Abolition of imprisonment for debt was brought about by the force of public opinion which looked with abhorrence on statutory provisions which permitted the cruel imprisonment of debtors. The people sought to prevent the use of the power of the State to coerce the payment of debts. The control of the creditor over the person of his debtor was abolished by humane statutory and constitutional provisions.

One of the first States to adopt the constitutional provision in the absolute form appearing in this jurisdiction was Alabama. In the leading case of Carr vs. State of Alabama ([1895], 106 Ala., 35; 34 L. R. A., 634), the Supreme Court of Alabama held that a statute making it a misdemeanor for a person engaged in banking to receive a deposit of money or other thing of value knowing himself to be in failing circumstances or insolvent, and providing that upon conviction he shall be fined not less than double the amount of such deposit, one-half of which shall be paid to the depositor, but that payment to the depositor of the amount deposited with costs, before conviction, shall be a complete defense to any prosecution under the statute, was void. The court, speaking through the learned Justice McClellan, made the following observations:

"The elimination of the exception as to frauds was a pregnant omission, which left the guaranty of immunity

from imprisonment to the debtor to apply to all cases of debt, whether they involved fraud or not. So that the statute we are considering can derive no aid from the idea that the receipt of a deposit by a banker under the circumstances stated is a fraud, and hence that the transaction would constitute 'a case of fraud,' since even in such cases there can be no imprisonment for debt.

"The 'imprisonment for debt' which the framers of constitutions embodying this provision doubtless had most prominently in mind was imprisonment upon process issuing in civil actions the object and sole purpose of which were the collection of debts. It was to remove the evils incident to the system of taking the debtor's person upon a *capias ad satis faciendum* that this organic inhibition came primarily to be ordained. But the effect of its ordination has been to establish a public policy much broader in its influence upon legislation and operation upon judicial proceedings than would have sufficed for the eradication of the ills which attended upon the recovery, or attempted recovery, of debts by restraint of the debtor's person. This policy is inimical alike to the incarceration of a debtor as a means of coercing payment, and to his punishment by imprisonment for a failure to pay, at least when such failure results from inability."

The "debt" intended to be covered by the constitutional guaranty has a well-defined meaning. Organic provisions relieving from imprisonment for debt, were intended to prevent the commitment of debtors to prison for liabilities arising from actions *ex contractu*. The inhibition was never meant to include damages arising in actions *ex delicto*, for the reason that the damages recoverable therein do not arise from any contract entered into between the parties, but are imposed upon the defendant for the wrong he has done and are considered as a punishment therefor, nor to fines and penalties imposed by the courts in criminal proceedings as punishments for crime. (*Freeman vs. U. S.* [1910], 217 U. S., 539.) In this connection, it may be said that the reason for the decision of the Supreme Court of Georgia in the case of *Harris vs. Bridges* ([1856], 57 Ga., 407), mainly relied upon by the Attorney-General, will be found to be because the action was one in tort.

The Code of Civil Procedure took effect on October 1, 1901; that is, prior to the enactment of the Philippine Bill. Chapter XVII of the Code is entitled "Arrest of Defendant." A comparison of the provisions of the Code of Civil Procedure in the Philippines with the Code of Civil Procedure of California shows clearly that the Philippine provisions on the subject of arrest of defendants were taken bodily from the California Code. However, the constitutional provision in California differs from ours because it declares that "no person shall be imprisoned for debt, in any civil action on mesne or final process, unless in cases of fraud." We are, therefore, not bound by the decisions of the Supreme Court of California because, obviously, our basic constitutional provision must override any statutory provision in conflict therewith.

A quite similar question has been once before presented to this court. Two Chinese, under the firm name of Sang Kee, commenced an action in the Court of First Instance of the city of Manila against the Chinaman Tan Cong, to recover judgment for the sum of P30,000. The plaintiffs alleged in their petition, among other things, that on or about the first day of January, 1904, the defendant was employed by the plaintiffs as a general agent for their mercantile establishment; that the defendant had been requested to turn over the funds, personal property, stocks, etc., to the plaintiffs, but that he had refused to do so. The detention of the defendant was ordered by the Judge of First Instance. A petition for habeas corpus was presented to the Supreme Court, and in a learned decision, the vacation judge, Mr. Justice Johnson, held that the provisions of section 5 of the Philippine Bill expressly prohibited the imprisonment of citizens of the Philippine Islands in actions for the recovery of money in a cause of action arising on a contract, and ordered the release from imprisonment of the petitioner. We would now make the decision, just described, the authoritative decision of the Court sitting in banc. (*Tan Cong vs. Stewart* [1907], 5 Off. Gaz., 365.)[1]

It is clear that the action pending in the Court of First Instance of the city of Manila in which Thomas Casey et al. are plaintiffs and George H. Ganaway is the defendant, is one predicated on an obligation arising upon a contract.

Consequently, the imprisonment of the petitioner is in contravention of organic law. It is for us in the Philippine Islands to let no obstacle interfere with a reasonable enforcement of the enlightened principle of free government relating to imprisonment for debt. It may, however, be appropriate to remark that our holding need not be taken as going to the extent of finding Chapter XVII of the Code of Civil Procedure invalid and should be understood as limited to the facts before us and as circumscribed by the various exceptions to the constitutional prohibition.

This court has, heretofore, in a minute order, directed the discharge from imprisonment of the petitioner, and this decision is in explanation thereof. The minute order will, therefore, stand as the authoritative adjudication of the court. Costs de officio. So ordered.

Araullo, C. J., Johnson, Avanceña, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

[1][No. 4073. June 14, 1907]

TAN CONG, PETITIONER, VS. M. L. STEWART, ACTING DIRECTOR OF PRISONS, RESPONDENT.

DEBT, IMPRISONMENT FOR.—By virtue of one of the provisions of section 5 of the Philippine Bill (Act of Congress of July 1, 1902), citizens of the Philippine Islands can not be imprisoned for debt in a civil action.

ORIGINAL PETITION for a writ of habeas corpus.

L. M. Southworth for petitioner.

Gibbs & Gale for respondent.

Johnson, J.;

On the 31st day of May, 1907, Tang Lap Ting and Ho Tung Shan, partners under the firm name of Sang Kee, by their attorneys commenced an action in the Court of First Instance of the city of Manila against the petitioner herein, for the purpose of recovering judgment for the sum of 30,000 pesos, and such additional sum as may be found to be due said plaintiffs upon an accounting of the business of the said copartnership.

The plaintiffs alleged in their petition that they were residents of the city of Victoria, colony of Hongkong; that they were partners and coowners in a mercantile establishment in the city of Manila, under the industrial name of Sang Kee; that on or about the 1st day of January, 1904, the petitioner herein was employed by the said plaintiffs as a general agent for said mercantile establishment; that said petitioner (or defendant in that action) on or about the said 1st day of January, 1904, took charge of said business and all the property, merchandise, funds, credits, etc., of said mercantile establishment and continued in the management of said business as such general agent until the end of the year 1905 or the beginning of the year 1906, when said mercantile establishment was closed by order and direction of the said plaintiff; that at the time said mercantile establishment was closed the petitioner (or defendant in that action) had in his possession belonging to the said plaintiffs, personal property, stocks, credits, etc., amounting to the sum of 30,000 pesos; that the said petitioner had been requested to turn over the said funds, personal property, stocks, etc., to the plaintiffs, but that he had refused so to do. On the same day one Chan A. Chong, as attorney for the said plaintiffs, filed an affidavit stating, among other things, that he, as such attorney for the said plaintiffs, had on various occasions asked the said petitioner for a settlement of the accounts of the said business of Sang Kee and that the books, accounts, and balance of the business, etc., be delivered to him; that the said petitioner had failed and refused to comply with said request; that the petitioner had refused to indicate the whereabouts of the books and balance pertaining to the business; that the petitioner had closed all his

private business in the city of Manila; that he had applied to the customs authorities of the city of Manila for a certificate to allow him as a Chinese merchant to leave the Philippine Islands for China; that he intended to leave Manila either on May 31 or June 1, 1907; that he intended to take with him out of the Philippine Islands a considerable amount of money obtained by the unlawful investment of the balance of the assets of said firm Sang Kee; that he intended to leave the Philippine Islands with the intention of defrauding his creditors; that the action commenced by the plaintiffs against the petitioner herein was for the goods and money concealed, misappropriated, and used by the petitioner as manager and agent for the plaintiffs during the performance of his commission and for the voluntary violation of his duties; that the action commenced against him was for the purpose of recovering the possession of personal property unlawfully retained by the petitioner herein, who had concealed, transferred, and sold the same to avoid discovery and seizure; that the petitioner was guilty of fraud; that the action was brought for concealing and selling property which should have been retained by the petitioner, and that the petitioner had transferred and sold his property with the intention of defrauding his creditors. On the same day the judge of the Court of First Instance of the city of Manila issued the following order for the detention of the petitioner herein:

"(Tang Lap Ting y otro, contra Chung Chew Kong, etc.-Orden de detencion del demandado)

"AL SHERIFF DE MANILA, salud:

"Por cuanto que Tang Lap Ting y Ho Tung Shan de Victoria, Colonia de Hongkong se han querellado bajo juramenta ante mi, Juez del Juzgado de Primera Instancia de la Ciudad de Manila, que Chun Chew Kong alias Chino Kon alias "Tan Congco de Manila, debe a dichos Tang Lap Ting, Ho Tung Shan (demandantes) la cantidad de treinta mil pesos (P30,000) y que dicho Chun Chew Kong ha malversado y apropiado dichos fondos.

"Y por euanto el demandante ha prestado la fianza que marca la ley.

"Nosotros, por lo tanto, le ordenamos que detenga en seguida a dicho demandado y le traiga ante este juzgado, a menos que el demandado preste una fianza en la cantidad de treinta mil pesos (P30,000) conforme a derecho, y que V. devuelva a dicho juzgado este mandamiento con sus diligencias.

"Firmado de mi mano este dia 31 de mayo de 1907.

"(Signed by Judge of the Court of First Instance
of the city of Manila.)"

Upon the foregoing order of detention, the petitioner herein was arrested and turned over to the warden of Bilibid Prison and has been detained there since said date as a prisoner.

On the 6th day of June the petitioner herein presented a petition for a writ of habeas corpus, alleging¹ that he was imprisoned and restrained of liberty illegally and that said illegality consisted in that he was deprived of his liberty without due process of law and his imprisonment for debt is in violation of the provisions of the Bill of Rights included in the Act of Congress of July 1, 1902.

Upon these allegations the writ of habeas corpus was issued returnable before the writer, acting as vacation judge, upon the 7th day of June. 1907, at 10 o'clock a. m.

The petitioner alleges that he is imprisoned for debt and that imprisonment for debt is prohibited in the Philippine Islands by virtue of one of the provisions of section 5 of the Act of Congress of July 1, 1902, known as the Philippine Bill. Said section 5, among other things, provides "that no person shall be imprisoned for debt."

The defendant was arrested and imprisoned by virtue of the provisions of chapter 17 of Act No. 190 of the

Philippine Commission, known as the "Code of Procedure in Civil Actions." Said Act No. 190 became effective in the Philippine Islands on the 1st day of October, 1901. Said Act of Congress became effective upon the 1st day of July, 1902. The petitioner claims that the above-quoted provisions of section 5 of the Act of Congress repealed said chapter 17 of Act No. 190, providing for imprisonment for debt and that therefore he cannot be imprisoned for debt under the laws now in force in the Philippine Islands. This is the simple question presented in the application for the writ of habeas corpus.

The Bill of Rights of the Constitution of the United States contains no inhibition against imprisonment for debt; however, by an Act of Congress approved February 28, 1839 (5 Stat. at L., 321) Congress enacted "that, no person shall be imprisoned for debt in any State, on process issued out of a court of the United States, where, by the laws of such State, imprisonment for debt has been abolished; and where, by the laws of the State, imprisonment for debt shall be allowed under certain conditions and restrictions, the same conditions and restrictions shall be applicable to process issued out of the courts of the United States, and the same proceedings shall be had therein as are adopted in the courts of such State."

By this Act of Congress the United States courts existing in a State are governed by the laws of the State relating to imprisonment for debt. The foregoing Act of Congress was amended on the 14th day of January, 1841 (5 Stat. at L., 410), providing that the above-quoted Act of Congress "shall be construed as to abolish imprisonment for debt on process issued out of any court of the United States, in all cases whatever, where, by the laws of the State in which the said court shall be held, imprisonment for debt has been, or shall hereafter be, abolished."

By an Act of Congress approved March 2, 1867, it was provided (14 Stat. at L., 543) "That whenever any defendant is arrested or imprisoned (under process issued out of United States courts) he shall be entitled to discharge from such arrest or imprisonment in the same manner as if he was arrested or imprisoned on like process of said courts in the same district," etc.

An examination of the constitutional provisions of the various States discloses the fact that all of them contain provisions inhibiting the imprisonment of citizens for debt. These constitutional provisions may be divided into two general classes:

(1)

Those which inhibit the imprisonment of citizens for debt, except for fraud, etc.; and

(2) Those which inhibit imprisonment for debt without any exception or any further provision.

A large majority of the State constitutions contain the first provision. An examination of the decisions of these States, so far as it has been possible, discloses the uniform rule that unless there is some fraud perpetrated in the creation of the debt, a person will not be imprisoned for debt. Many decisions might be cited to support this statement.

The author of the article entitled "Imprisonment for Debt" (16 American and English Encyclopedia of Law) says that the only States which have constitutional provisions corresponding with the second clause are Alabama, Georgia, Maryland, Mississippi, Missouri, Tennessee, and Texas. We have been able to examine the constitutional provisions of Alabama, Georgia, Maryland, Missouri, and Mississippi only, and therefore can not verify the statement of the author of this article as to the others.

The constitutional provision in the State of Missouri is that "imprisonment for debt shall not be allowed, except for the nonpayment of fines and penalties imposed for violation of the law." (See sec. 16, Constitution of Missouri of 1875.)

The constitution of the State of Tennessee provides that: "The legislature shall pass no law authorizing imprisonment for debt in civil cases." (See sec. 18 of the Constitution of Tennessee of 1807.)

The constitution of the State of Texas provides that: "No person shall ever be imprisoned for debt." (See sec. 18 of the Constitution of the State of Texas.)

The constitution of the State of Alabama provides that: "No person shall be imprisoned for debt." (See article 21 of section 21 of the Constitution of the State of Alabama.)

The provision of the Philippine Bill is "that no person shall be imprisoned for debt." (See Act of Congress of July 1, 1902.)

An examination of the quoted provisions of the constitutions of the foregoing-mentioned States shows that their constitutional provisions are, in effect, the same as that contained in the Philippine Bill, so far as imprisonment for debt is concerned, and it would seem that this court would be justified in following the interpretation of the provisions of the constitutions by the highest courts of record of these States.

After the adoption of the above-quoted provisions of the Constitution of the State of Alabama, the legislature in 1892 passed an act declaring a banker who received a deposit, knowing his insolvency, to be guilty of a misdemeanor, punishable by a fine of double the deposit; one-half to go to the depositor, with imprisonment in case of nonpayment. Later, in 1895, one Carr, as president of a banking firm, received \$355 from one Abernathy, knowing at the time, or having good cause to believe, that said banking firm was in an insolvent and failing condition. Later Carr was indicted under the provisions of the above-quoted statute. Carr demurred to the said indictment, raising the question of the constitutionality of the foregoing statute. The demurrer was overruled and Carr appealed to the supreme court.

The former constitution of the State of Alabama provided that: "No person shall be imprisoned for debt except in cases of fraud." The Supreme Court of Alabama, in considering the appeal (see Carr vs. State, 106 Ala., 35; 17 Southern Reporter, 350; 34 Lawyers' Reports Annotated, 634) said:

"That the elimination of the exception as to 'fraud' was a pregnant omission which left a guaranty of immunity from imprisonment to the debtor to apply to all cases of debt, whether they involved fraud or not. So that the statutes we are considering can derive no aid from the idea that the receipt of the deposit by a banker under the circumstances stated, is a fraud, and hence that the transaction would constitute 'a case of fraud/ since even in such cases there can be no imprisonment for debt. 'The imprisonment for debt which the framers of the constitutions embodying this provision doubtless had most prominently in mind, was imprisonment upon process issued in civil actions, the object and sole purpose of which was the collection of debts.'

"It was to remove the evil incident to the taking of the debtor's person upon a *capias ad satis faciendum* that this organic inhibition came primarily to be ordained, but the effect of the ordination has been the establishment of a public policy which bordered in its influence upon the legislation and operation on judicial proceedings that would have sufficed for the reduction of the ills that attended upon the recovery or attempted recovery of debts by the restraint of the debtor's person."

The supreme court overruled the decision of the lower court, sustained the demurrer, and discharged the defendant, holding that the case against Carr was one for debt, and that he could not, therefore, be imprisoned.

After the adoption of the above provision in the constitution of the State of Tennessee, the legislature of that

Statute in 1887 provided that it could be—

"Unlawful for any person or persons, firms, or corporation or company, to refuse to cash any check or script of their own that may be presented within thirty days of the date of issuance, and that any such person who should refuse to redeem any lawful currency, any such checks, etc., would be guilty of a misdemeanor and, upon conviction, should pay a fine of not less than ten nor more than twenty-five dollars for each offense."

Under this law the "Paint Rock Coal Company" was indicted. The defendant presented a demurrer to the indictment, upon the ground that the said Act (Act of 1887) was unconstitutional, in that it impaired the obligation of the contract and attempted to imprison the defendant for refusing to pay a debt. The lower court sustained the demurrer and the prosecuting attorney appealed to the supreme court. The supreme court (*State vs. Paint Rock Coal Company, etc.*, 92 Tenn., 81) held that the act was violative of the spirit, if not of the letter, of the constitutional provision. It is an indirect imposition of imprisonment for the nonpayment of debt, and is, therefore, clearly within the constitutional inhibition.

In Missouri, in the case of *Coughlin vs. Ehlert* (39 Mo., 285), it was held that since the abolition of imprisonment for debt "a party can not be imprisoned for refusing to obey an order or decree directing the mere payment of money." (See also *Roberts vs. Stoner*, 18 Mo., 481.)

In Wisconsin, in the case of *In re Blair* (4 Wis., 422), it was held that the constitutional provisions against imprisonment for debt must have the effect of rendering void any order or judgment ordering imprisonment for debt.

These constitutional provisions of the various States have been the result of many years of gradual growth. They marked the change which had taken place from the days of the feudal system and before, when a debtor who was unable to pay his debt was either sent to prison or became the personal slave of the creditor. These constitutional provisions are of the greatest importance to the citizen. The right to personal liberty is one of the most valuable and most cherished rights appertaining to men in society and one of which he cannot be deprived, except by the judgment of the courts, or by the law of the land. In the barbaric age of the law, an unfortunate debtor could be deprived of this inestimable right if he failed to pay an honest debt. His creditor could keep him in his own custody or send him to jail for the simple misfortune of being poor. This was so in all the States of the Union whose organic laws had been established prior to the year 1818, except in the one State of Tennessee. In that year the constitution of this State was adopted, which contained, as one of its fundamental principles—alike beneficent and just—this provision:

"No person shall be imprisoned for debt, unless on refusal to deliver up his estate for the benefit of his creditors in such manner as may be described by law, or in cases where there is strong presumption of fraud."

Since this beneficent provision in the constitution of Tennessee, all of the States of the Union have adopted provisions prohibiting imprisonment for debt, so that today in none of the States of the Union may a man be imprisoned for debt, unless such debt grew out of some fraud. In the case of *Meyer vs. Berlandi et al.*, and *Bohn Manufacturing Co. vs. Jameson* (39 Minn., 38; 1 Lawyers' Reports Annotated, 777), the Supreme Court of Minnesota said, with reference to the statute which attempted to imprison one for debt in the absence of fraud;

"That this is returning with a vengeance to the old barbarous fiction upon which imprisonment for debt was originally based, viz., that a man who owed a debt and did not pay it was a trespasser against the peace and dignity of the crown and for this supposititious crime was liable to arrest and imprisonment—such a statute can not be sustained for a moment."

We are convinced that a person, under the provisions of the Philippine Bill, cannot be imprisoned in the Philippine Islands for debt. The question is presented, whether or not in the present case there was an attempt to

imprison the petitioner herein for debt and this raises the question, What is debt? In Webster's International Dictionary "debt" is denned as "that which is due from one person to another, whether money, goods, or services; that which one person is bound to pay to another, or to perform for his benefit; thing owed; obligation; liability." In law, it is "an action to recover a certain specific sum of money alleged to be due." Bouvier, in his law dictionary, defines it as "a term used in bookkeeping to express the left-hand page of the ledger or of an account to which are carried all of the articles supplied or amounts paid on the subject of an account or which are charged to that account; the balance of an account where it shows that something remains due to the party keeping the account." Black, in his law dictionary, defines debt as "a sum of money due by a certain and express agreement" or as "a sum of money due by a contract." Escriche, in his "Diccionario de Legislacion y Jurisprudencia," defines a debt as "la obligacion que alguno tiene de pagar, satisfacer o reintegrar a otro alguna cosa." Valbuena, in his "Novisimo Diccionario" defines a debt as follows: "Obligacion de pagar, de satisfacer a otro."

The Supreme Court of Illinois, in the case of Parker vs. Follensbee (45 111., 473), in defining the meaning of the word "debt" as used in the constitution, said:

"That any liability to pay money growing out of a contract, express or implied, constitutes a debt within the meaning of this provision of the constitution."

Under these definitions the question arises: Was the action which was begun by Tang Lap Ting and Ho Tung Shang against the petitioner herein on the 31st day of May, 1907, an action for debt? An examination of the complaint filed discloses the following facts:

- (1) That the plaintiffs were partners and co-owners of a mercantile establishment in the city of Manila under the industrial name of Sang Kee.
- (2) That on or about the 1st day of January, 1904, the petitioner herein was employed by the plaintiffs in that action as general agent for said mercantile establishment, and that on or about the same date, by virtue of an express employment, took charge of said business, with all its property, merchandise, funds, credits, etc., and continued in the management of said business, as such agent, until the end of the year 1905 or the beginning of the year 1906, when said business was closed by the order and direction of the said plaintiffs.
- (3) That at the time of the closing of said business, the petitioner herein, in accordance with accounts rendered by him to the plaintiffs, had in his possession, belonging to the funds of said business, personal property, stocks, credits, etc., that exceeded the total sum of 30,000 pesos, which came into his possession in the exercise of his employment.

The plaintiffs in that action prayed for judgment against the petitioner herein in the sum of 30,000 pesos and asked for an accounting of said business.

It appears from the said petition that whatever property of whatever class which came into the possession of the petitioner herein, belonging to the plaintiffs in that action, was turned over to him by them voluntarily. There is no allegation of fraud on the part of the petitioner herein in securing possession of said property. He was given charge of said property, with authority to manage and control the same as an employee of the plaintiffs. Certainly this created an obligation on the part of the petitioner herein to return such property, or so much thereof as might be the result of his management during the period of his employment as general agent. This relation between the petitioner and the plaintiffs in that action which may be clearly denominated the relation of debtor and creditor.

The plaintiffs alleged that they had made frequent demands upon the petitioner for a delivery of said property and that the petitioner refused to comply with said requests or demands. We are not of the opinion that these demands made by the plaintiffs upon the petitioner changed the relation which originally existed between the parties, that

of debtor and creditor. There may have existed legal reasons justifying the petitioner in refusing to deliver over to the plaintiffs the said property. He may have had just claims against the plaintiffs which constituted a lien upon said property, as well as other reasons which might be mentioned. It is true that the petitioner, under the provisions of the Penal Code, might be liable criminally for the refusal to deliver over property which he had received with the duty to return the same, upon his refusal so to do; but certainly his refusal to comply with the terms of a contract under which he had assumed the relation of debtor did not destroy that relation.

The petitioner was arrested and lodged in jail under the provisions of chapter 17 of the Code of Procedure in Civil Actions. Section 412 of said chapter provides that—

"A defendant may be arrested in the following cases:

"(1) In an action for the recovery of money or damages on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the Philippine Islands with intent to defraud his creditors.

"(2) In an action for money or property embezzled in the course of his employment or for willfully violating his duty.

"(3) In an action to recover the possession of personal property unjustly detained, when the property or any part thereof has been concealed, removed, or disposed of to prevent its being found or taken by the officer.

"(4) When the defendant has been guilty of fraud in contracting a debt or incurring the obligation upon which the action is brought; or in concealing or disposing of the property for the taking, detention, or conversion of which the action is brought.

"(5) When the defendant has removed or disposed of his property or is about to do so, with the intent to defraud his creditors."

The action brought by the plaintiffs against the petitioner was an action for the recovery of money in a cause of action arising on a contract. We are of the opinion, and so hold, that the above-quoted provisions of section 5 of the Philippine Bill expressly prohibits the imprisonment of citizens of the Philippine Islands in actions of that class, and therefore the petitioner herein is hereby ordered to be released from the imprisonment with costs de oficio. So ordered.

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