

**FRANCISCO GONZALEZ QUIROS, PLAINTIFF AND APPELLEE, VS.
CARLOS PALANCA TAN-GUINLAY, DEFENDANT AND APPELLANT.***G.R. No. 1904. March 03, 1906*

Ponente: WILLARD, J.

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The plaintiff brought this action to recover the sum of 10,217.75 pesos, the value of goods sold by him to the defendant, and the sum of 64,984.89 pesos, as damages caused to plaintiff by the failure of the defendant to pay for the goods at the time agreed upon. The defendant in his answer denied all the allegations of the complaint, and further, alleged the pendency of another action for the same cause; a counterclaim to the amount of 40,000 pesos, for damages suffered by the defendant by reason of an attachment wrongfully secured by the plaintiff in 1893; and a further counterclaim for damages caused by reason of a prosecution for estafa instituted against him maliciously by the plaintiff. The court below ordered judgment in favor of the plaintiff for the value of the goods sold and delivered to the defendant, with interest thereon. He sustained the first counterclaim of the defendant, and assessed the damages suffered by the defendant by reason of the attachment referred to in the answer, at 6,347.75 pesos. The other defenses and counterclaims of the defendant the court held not to have been proven, and final judgment was entered for the plaintiff and against the defendant for 10,000 pesos and costs. Both parties have appealed from the judgment.

(1) It is claimed by the defendant that there is no evidence to show the value of the goods sold by the plaintiff to the defendant, and that the documents introduced for the purpose of proving the value were not properly received. It is not necessary to pass upon the question as to the admissibility of this evidence, since the plaintiff, testifying at the trial, stated that the value of the goods so sold by him to the defendant was the amount which the court named in its judgment.

(2) The goods referred to in the complaint were sold to the defendant in two parcels. The value of the first lot was 2,235.95 pesos. For the purpose of paying this sum the defendant delivered to the plaintiff a bill of exchange for 2,700 pesos, purporting to be drawn by Juan Vy-Teco to the order of Chua-Sengco on Lucio Icaza. When this bill of exchange was delivered to the plaintiff by the defendant it had been indorsed by Chua-Sengco, and by the defendant, and apparently accepted by Lucio Icaza. By the terms of the acceptance the bill of exchange was payable on the 26th of December, 1893. The plaintiff took the bill of exchange and paid the defendant in cash the difference between 2,700 pesos and the value of the goods sold, 2,285.95 pesos. At the maturity of the acceptance Icaza refused to pay the bill of exchange, on the ground that his signature thereto was a forgery, and nothing was ever realized thereon. The plaintiff neglected to have the bill of exchange protested for this nonpayment. The defendant claims that the court committed an error in ordering judgment for the full value of the goods sold, inasmuch as the plaintiff, by reason of his failure to protest the bill of exchange, must suffer the loss occasioned by its non-payment. This contention, we think, should be sustained. Article 1170 of the Civil Code is as follows:

"Payments of debts of money shall be made in the specie stipulated and, should it not be possible to deliver the specie, then in legal silver or gold coin current in Spain.

"The delivery of promissory notes to order or drafts or other commercial paper shall only produce the effects of payment when collected or when, by the fault of the creditor, their value has been affected.

"In the meantime the action arising from the original obligation shall be suspended."

We have already held, in the case of *CompaSia General de Tabacos vs. Molina*[1] (No. 2091, 3 Off. Gaz., 678) that this section applies both to mercantile documents executed by the debtors themselves, and to those executed by third persons and delivered by the debtor to the creditor. The bill of exchange in this case comes within the second class, and by the terms of the second paragraph of article 1170 it must be considered as a payment of the debt, inasmuch as its value has been affected by the fault of the creditor (the plaintiff) in failing to have the bill of exchange protested for nonpayment. There should be deducted, therefore, from the sum allowed the plaintiff, 2,235.95 pesos.

(3) In order to prove the first special defense set out by the defendant in his answer, viz, the pendency of another suit for the same cause of action, he presented in evidence a certified copy of a complaint presented in 1895 by the plaintiff against the defendant. No evidence was presented to show that the complaint had ever been answered. Under the former practice there was no lispendens until the defendant had answered the complaint, and although it appears that various proceedings were taken in this suit relating to the attachment of the goods of the defendant, yet it nowhere appears that the defendant ever answered the complaint. This assignment of error can not, therefore, be sustained.

(4) In December, 1893, the plaintiff procured an attachment of the defendant's goods. This attachment was dissolved in 1897, and judgment ordered in favor of the defendant and against the plaintiff for damages suffered by the defendant by reason of the attachment. No proceedings were ever had to assess the damages until the defendant presented his counterclaim in the present case. It appears from the evidence that the goods of the defendant were seized under the plaintiff's attachment upon the 5th of December, 1893; that upon the 28th of January, 1894, the same goods were again attached in a suit by *Germann & Co.* against this defendant. What became of the goods does not appear, although there are indications that they were sold upon the attachment secured by *Germann & Co.* Under these circumstances the plaintiff can not be held responsible for the value of the goods. His responsibility would be limited to the damages suffered by the goods while they were held under his own attachment from the 5th day of December, 1893, until the 28th day of January, 1894, and for the time elapsing after the 28th of January he would incur certain responsibility in connection with *Germann & Co.*, but under the evidence in the case there is no ground for holding that he is responsible for the value of the goods. There was no evidence to show how much the goods had been damaged, if at all, while they were in the possession of the plaintiff, nor was there any evidence to show how much they had been damaged after the 28th of January, and while they were subject to both attachments. The only evidence in regard to damages which the defendant offered was evidence relating to the value of the goods when they were seized under the plaintiff's attachment. As we have said, that is not the measure of damages in this case, and the defendant having failed to prove any other kind of damages, the decision of the court below allowing him the sum of 6,347 pesos as damages, can not be sustained.

(5) In 1894 the plaintiff presented a criminal complaint against the defendant for estafa, by reason whereof the defendant was arrested and kept in confinement for nearly two years and a half. He was released by an order of the United States military authorities on the 13th of April, 1899, but there does not appear in the record any order issued by any court authorizing this release. On the 27th of November, 1900, the plaintiff presented another criminal complaint for estafa against the defendant, based upon the same facts as was the first one. This complaint was later dismissed by the court, and the defendant discharged from custody. Article 326 of the Penal Code provides, as we have held in the case of *United States vs. Agustina Barrera*[1] (3 Off. Gaz., 411), that no

prosecution for a false accusation or complaint in a criminal case can be commenced unless the judge, in dismissing the first complaint; orders a complaint to be filed against the complaining witness for false accusation. The judgment dismissing the complaint against this defendant contained no such provision. We hold that this article applies not only to a criminal proceeding against the complaining witness, but also to civil proceedings, and that no action to recover damages in a civil suit can be maintained by the person arrested against the person presenting the complaint, unless in the order acquitting the person arrested the judge certifies that the complaint was malicious, as required by said article 326. The defendant in this case, therefore, is not entitled to recover any damages by reason of the criminal prosecution against him.

This disposes of all the errors assigned by the defendant.

(6) The plaintiff also appealed, and claims that he is entitled to recover 60,000 pesos as damages which he suffered by reason of the nonpayment by the defendant of the amount due for goods sold to him by the plaintiff, saying that if the defendant had paid for the goods as he agreed to do, the plaintiff could, by using the money so paid, have made 60,000 pesos in his business. This claim is based upon article 1101 of the Civil Code, which is as follows:

"Those who in fulfilling their obligations are guilty of fraud, negligence, or delay, and those who in any manner whatsoever act in contravention of the stipulations of the same, shall be subject to indemnify for the losses and damages caused thereby."

Plaintiff says that the defendant in refusing to pay for these goods acted in a fraudulent manner. We do not think this article is at all applicable to the case at bar. Damages may be recovered under this article when the obligation is to do something other than the payment of money, but when the obligation which the defendant has failed to perform consists only in the payment of money the rule of damages is that laid down by article 1108 of the Civil Code, which is as follows:

"Should the obligation consist in the payment of a sum of money, and the debtor should be in default, the indemnity for losses and damages, should there not be a stipulation to the contrary, shall consist in the payment of the interest agreed upon, and should there be no agreement, in that of the legal interest.

"Until another rate is fixed by the Government interest at the rate of six per cent per annum shall be considered as legal."

And the only damages which the plaintiff can recover in this case for the nonpayment of the debt are those declared in this article, viz, interest at the rate of 6 per cent per annum. This being a mercantile contract the interest should commence to run from the time the debt became due. (Art. 341 of the Code of Commerce.)

It is to be observed, moreover, that the plaintiff introduced no evidence showing the amount of his damages. The two mercantile experts whom he presented as witnesses testified that, from the examination they had already made, it would not be possible for them to state how much the plaintiff's damages were. The plaintiff, after they had testified, caused them to make a further examination of his books, and after the evidence in the case had been closed, made an application to the court to be allowed to present the result of this examination. The court refused to open the case for this purpose, to which refusal the plaintiff excepted. The order made by the court in this respect falls within section 141 of the Code of Civil Procedure, and was not subject to exception.

The result of an examination of the whole case is that from the sum of 10,217.75 pesos, the value of the goods sold and delivered by the plaintiff to the defendant, there should be deducted the sum of 2,235.95 pesos, on account of the bill of exchange hereinbefore referred to. The defendant is not entitled to recover any damages on account of the attachment of the goods procured by the plaintiff, for which he was allowed by the court below

6,347.75 pesos. The plaintiff therefore, is entitled to judgment against the defendant for the sum of 7,981.80 pesos, with interest at the rate of six per cent per annum from the 1st day of January, 1894, until the amount is paid, and the costs of this suit.

The judgment of the court below is reversed and the case remanded, with instructions to enter judgment for the plaintiff for 7,981.80 pesos, with interest thereon at 6 per cent per annum from the 1st day of January, 1894, and for costs. No costs will be allowed to either party in this court So ordered.

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

MAPA, J.:

I concur with the result.

[1] Page 142, *supra*.

[1] 4 Phil, Rep., 461.

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