

VICENTE NAVALES, PLAINTIFF AND APPELLEE, VS. EULOGIA BIAS ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 3489. September 07, 1907*

Ponente: TORRES, J.

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On the 18th of November, 1904, Vicente Navales filed a complaint with the Court of First Instance of Cebu against Eulogia Rias and Maximo Eequiroso, claiming that the latter should be sentenced to pay him the sum of 1,200 pesos, Philippine currency, as damages, together with costs and such other expenses as the court might consider just and equitable. To this end he alleged that the said defendants, without due cause, ordered the pulling down and destruction of his house erected in Daanbuangan, town of Naga, Island of Cebu, which was 6 meters in height with an area of 8.70 square meters, built of wood with a nipa roof, and worth 1,000 pesos, which amount he expended in its construction. He further alleged that the destruction took place in the month of April, 1904, and that, notwithstanding his efforts, he had not obtained any reimbursement from the defendants, and that by reason of their refusal he had been prejudiced to the extent of 200 pesos, Philippine currency.

The defendants, in answer to the foregoing complaint, denied all and each one of the allegations therein contained, and asked that judgment be entered dismissing the complaint with costs against the plaintiff.

After considering the proofs submitted by both parties and the proceedings upon the trial, the judge, on the 17th of January, 1906, rendered judgment declaring that the decision entered by the justice of the peace of Naga, and the order given by virtue thereof were illegal, as well as the action of the deputy sheriff Luciano Bacayo, that the defendants were thereby liable for the damages caused to the plaintiff, which amounted to 500 pesos, and that the defendants were sentenced to pay the said sum to the plaintiff, with costs. The defendants upon being informed of this decision, asked that it be set aside, and also moved for a new trial on the ground that the decision was not in accordance with the weight of the evidence. The motion was denied, to which exception was taken, and, at the request of the interested party, the corresponding bill of exceptions was admitted.

The aim of this litigation, therefore, is to obtain payment, through a judicial decision, of the damages said to have been caused by the execution of a judgment rendered by the justice of the peace, in an action for ejectment.

It is undeniable that, in order to remove from the land of Eulogia Rias, situated within the jurisdiction of the town of Naga, the house which Vicente Navales had constructed thereon, by virtue of the decision of the justice in the action instituted by the said Eulogia Rias against the owner of the house, Vicente Navales, the deputy sheriff who carried the judgment into execution was obliged to destroy the said house and remove it from the land, according to the usual procedure in the action for ejectment.

In the order of execution issued to the deputy sheriff, the directive portion of the judgment of the justice of the peace was inserted, and it contained the essential statement that the said judgment, by reason of its not having been appealed from, had become final, and from the contents of the same it may be inferred that there had been an action for ejectment between the above named parties, and that there was no reason why it should not be enforced

when it had already become final and acquired the nature of *res adjudicata*.

Section 72 of the Code of Civil Procedure reads:

"Execution.—If no appeal from a judgment of a justice of the peace shall be perfected as herein provided, the justice of the peace shall, at the request of the successful party, issue an execution for the enforcement of the judgment, at the expiration of the time limited by law for the perfection of an appeal."

Assuming that the order for execution of a final judgment was issued in accordance with the law, and in view of the fact that it has not been alleged nor proven that the sheriff when complying with the same had committed trespass or exceeded his functions, it must be presumed, according to section 334 (14) of the said Code of Procedure, that the official duty was regularly performed. Therefore, it is not possible to impute liability to the plaintiff who obtained the judgment and the execution thereof when the same was not disputed nor alleged to be null or illegal, and much less to compel the payment of damages to the person who was defeated in the action and sentenced to be ejected from the land which he improperly occupied with his house.

No proof has been submitted that a contract had been entered into between the plaintiff and the defendants, or that the latter had committed illegal acts or omissions or incurred in any kind of fault or negligence, from any of which an obligation might have arisen on the part of the defendants to indemnify the plaintiff. For this reason, the claim for indemnity, on account of acts performed by the sheriff while enforcing a judgment, can not under any consideration be sustained. (Art. 1089, Civil Code.)

The illegality of the judgment of the justice of the peace, that of the writ of execution thereunder, or of the acts performed by the sheriff for the enforcement of the judgment, has not been shown. Therefore, for the reasons hereinbefore set forth, the judgment appealed from is hereby reversed, and the complaint for damages filed by Vicente Navales against Eulogia Rias and Maximo Requiros is dismissed without special ruling as to costs. So ordered.

Arellano, C. J., Johnson, Willard, and Tracey, JJ., concur.

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