

ALEXANDER DRAGON, PLAINTIFF AND APPELLEE, VS. CARMEN DE LA CAVADA DE ENRIQUEZ, FRANCISCO ENRIQUEZ, AND VICENTE D. CONDE, DEFENDANTS AND APPELLANTS.

G.R. No. 3736. January 02, 1908

Ponente: JOHNSON, J.

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JOHNSON, J.:

This was an action commenced in the Court of First Instance of the city of Manila by the plaintiff against the defendants for the purpose of recovering damages and costs incurred by reason of an alleged unlawful arrest of the plaintiff at the request of the defendant Carmen de la Cavada de Enriquez. The facts out of which this action grew are as follows:

On the 4th day of March, 1905, the said Carmen de la Cavada de Enriquez commenced an action in the court of the justice of the peace of the city of Manila for the purpose of recovering from Alexander Dragon the sum of P65 alleged to be due from the latter to the former as rent upon a contract for the use and occupation of a certain dwelling house in the city of Manila.

On the 24th day of March, 1905, the said Carmen de la Cavada de Enriquez, through her attorney, presented the following petition for the arrest and detention of the said Alexander Dragon:

"The plaintiff in the above-entitled case appears and deposes:

"That the defendant, Alexander Dragon, owes her on account of rent due for the property Nos. 80, 84, and 76, Calle Numancia, owned by the plaintiff herein, the sum of P65, for the payment of which she has this day filed a proper complaint.

"That the plaintiff has no security whatever for the recovery of said claim.

"That the aforesaid Alexander Dragon has disposed of his property and is about to leave the Philippine Islands with intent to defraud his creditors, according to the annexed affidavit.

"That, therefore, the plaintiff requests that the detention of the said defendant be ordered, and that he be held in confinement until such time as he may pay the plaintiff or furnish sufficient and satisfactory security."

Which petition was supported by the following affidavit:

"Know all men that I, Carmen de la Cavada de Enriquez, a resident of Manila, do hereby declare under oath:

"That I am the plaintiff in the above-entitled case.

"That the defendant, Alexander Dragon, on account of rent due on my property Nos. 80, 84, and 76, in Calle Numancia, district of San Nicolas, owes me the sum of P65, for the payment of which the corresponding complaint has this day been filed with the court of the justice of the peace of Manila.

"That the said Alexander Dragon has disposed of his property and is about to leave the Philippine Islands with

intent to defraud his creditors.

"That I hold no security whatever for the recovery of my claim.

[SEAL.]

"CARMEN C. DE ENRIQUEZ.

"Signed and sworn to in my presence on this the 24th day of March, 1905, no cedula having been produced because of her exemption by reason of her sex.

"J. COURTNEY HIXSON, Notary Public.

"(Commission expires December 31, 1906.)"

On the same day the defendants in this action executed the following bond:

"Be it known to all who may read these presents that:

"Whereas the plaintiff in the above-entitled case has requested the detention of the defendant, Alexander Dragon; and,

"Whereas in order that such remedy may be granted her it becomes necessary that a corresponding bond for not less than P1,000 shall be furnished:

"Now, therefore, I, Carmen de la Cavada de Enriquez, with my husband's consent, as principal, and we, Francisco Enriquez, of Manila, No. 196 Calle San Sebastian, and Vicente Diaz Conde, of Manila, No. 14 Calle Camba, as bondsmen, do hereby bind ourselves jointly and severally, that in case it be finally declared that the detention of the said Alexander Dragon, the defendant herein, was without cause, we will pay the said Alexander Dragon all costs awarded him and all damages he may suffer by reason of his detention, provided, however, that the amount thereof shall not exceed the sum of P1,000; and provided further, that if the final judgment establishes the justice and propriety of his said arrest, this bond shall then stand null and void.

"CARMEN C. DE ENRIQUEZ.

"FRANCISCO ENRIQUEZ.

"VICENTE D. CONDE."

On the 25th day of March, 1905, after the filing of the petition for the detention of the said Dragon and the said affidavit and bond, the justice of the peace issued an order of arrest and placed the same in the hands of the sheriff of the city of Manila, who upon the same day arrested the said Alexander Dragon and placed him in the custody of the court.

On the 29th day of March, 1905, the attorney for the said Dragon presented a motion in the said court of the justice of the peace asking that Dragon be released from imprisonment for the reason that the grounds upon which he was arrested were not supported by the facts set out in the petition and affidavit. This motion was denied by the justice of the peace.

On the 29th day of March, 1905, the said justice of the peace, after hearing the evidence adduced during the trial of the cause upon the original complaint, rendered a judgment in favor of the plaintiff, Carmen de la Cavada de Enriquez, against the defendant, Alexander Dragon, for the sum of P58.60.

From the foregoing order and sentence of the said justice of the peace, Alexander Dragon appealed to the Court of First Instance of the city of Manila, which appeal was duly perfected.

On the 12th day of June, 1905, the attorney for the said Dragon presented a motion in the Court of First Instance of the city of Manila, asking that the order of arrest issued by the said justice of the peace be declared without effect. The motion was based upon the following grounds:

"1. That the issuing of the order of arrest was contrary to the laws of the Philippine Islands, for the reason that no authority exists for the issuance of orders of arrest for debt.

"2. That the affidavit of the plaintiff is untrue and false.

"3. That the defendant had never intended to leave the Philippine Islands.

"4. That the defendant has not disposed of his property nor ever intended to do so except in connection with the needs of his business."

On the 21st of August, 1905, the judge of the Court of First Instance of the city of Manila, after hearing the respective attorneys upon the said motion, made the following order:

"This case is on for hearing upon motion of the defendant to vacate the order of arrest made herein by the justice of the peace and that the defendant be discharged from custody on account of said order: It is, therefore,

"Ordered by the court, that the motion be sustained and that said order of arrest be, and the same is, vacated and annulled and the defendant discharged from custody, by virtue of said order.

"JOHN C. SWEENEY, Judge."

No exception was made by the said Carmen de la Cavada de Enriquez against this order.

On the 12th day of October, 1905, the case, appealed from the court of the justice of the peace of the city of Manila, was duly heard by the judge of the Court of First Instance of the city of Manila, and, after hearing the evidence in said cause upon the merits, the said court modified the judgment of the court of the justice of the peace and rendered a judgment in favor of the said Carmen de la Cavada against the defendant Alexander Dragon for the sum of P62.40. From this judgment neither of the parties presented an exception.

On the 5th day of January, 1906, the said Alexander Dragon commenced an action in the Court of First Instance of the city of Manila against the defendants herein, Carmen de la Cavada de Enriquez, Francisco Enriquez, and Vicente D. Conde, upon the bond executed in the court of the justice of the peace, given for the arrest and detention of the said Dragon, and prayed for damages in the sum of P5,000.

On the 2d day of February, 1906, the defendants presented a demurrer to the complaint which was overruled by the court, and on the 27th day of October, 1906, the defendants filed an amended answer in said cause as follows:

"And now come the defendants in the above-entitled cause, jointly and severally by their attorneys, and leave of court having first been had therefor, file this their amended answer to the complaint of the plaintiff and for answer thereto deny each and every one of the allegations in each and every paragraph in said complaint contained; wherefore the defendants pray that they go hence without day, and that they recover their costs herein incurred.

"The above-named defendants and each of them, now assuming the position of plaintiffs, in reconvention and cross complaint, for other grounds of relief against the above-named Alexander Dragon, allege:

"1. That on the 13th day of October, 1905, in a certain cause entitled Carmen de la Cavada de Enriquez vs. Alexander Dragon, in the city of Manila, the above-named defendant Carmen de la Cavada de Enriquez recovered a judgment against the said plaintiff herein, Alexander Dragon, in the sum of P62.40, and for costs, P39.36, in said cause incurred.

"2. That the said judgment is still in full force and effect and neither the said judgment nor any part thereof has been paid or satisfied.

"3. That the claim of the plaintiff, Alexander Dragon, is upon a bond executed by Carmen de la Cavada de Enriquez, as principal, and the other two defendants herein as sureties.

"Wherefore the defendants herein pray that if the said Alexander Dragon be adjudged to recover any sum in this case, the amount of the said judgment, P101.66, above referred to, be allowed and set off against any sum so recovered by the plaintiff, and for such other relief as the court may deem just and proper."

After hearing the evidence adduced during the trial of the cause, the lower court in its judgment said:

"The only question here is whether there has been a breach of the conditions of the bond, namely, 'that it be definitely declared that the detention of the said defendant, Alexander Dragon, was without lawful cause.'

"This court [the Court of First Instance] did so declare, in effect, by the order sustaining the motion to vacate the arrest on the specific grounds already stated, that the affidavit was untrue, and that the present plaintiff did not intend to leave the jurisdiction. (McDaniel vs. Gardner, 34 La. Annual, 341; Squire vs. McDonald, 21 N. Y. Supplement, 1025.) This issue was therefore squarely presented and decided, and that adjudication could not here be changed even should the evidence warrant.

* * * * *

"The court finds that the arrest of the plaintiff was wrongful and without sufficient cause; that he has been damaged thereby in expense in obtaining his release in the sum of P450 and in other ways to the extent of P100; that these are items of damage in respect to which the defendants have undertaken to indemnify him, and that the judgment recovered by the principal defendant is not a proper counterclaim herein. It is ordered, considered, and adjudged that he recover from the defendants the sum of P550."

The defendants duly excepted to the above judgment, and after presenting a motion for a new trial, which was duly denied, appealed to this court and presented their bill of exceptions. The defendants and appellants in this court made the following assignments of error:

"1. The trial court erred in finding that the order of arrest in case No. 3743 was vacated 'on the specific grounds already stated, that the affidavit was untrue and that the present plaintiff did not intend to leave the jurisdiction.'

"2. The trial court erred in not finding that the order of arrest in case No. 3743 was vacated because the court held 'the same was contrary to law,' in that it was in conflict with the act of Congress of July 1, 1902, providing that 'no person shall be imprisoned for debt.'

"3. The trial court erred in finding that the sum of P450, alleged to have been paid by the defendant in case No. 3743, constitutes a part of the damage sustained by reason of the arrest of the defendant in said cause, no actual damage having been shown.

"4. The trial court erred in overruling the demurrer of the defendants filed to the complaint in this cause.

"5. The trial court, finding no proof of actual damage, erred in awarding P550 punitive or exemplary damages."

With reference to the first above-noted assignment of error, it will be remembered that the present action is brought upon a bond executed by the defendants herein, in favor of the plaintiff herein, and that the bond provided that the defendants would pay to the plaintiff "all the damage he may suffer by reason of his detention," "in case it should be definitely declared that the detention of the said Alexander Dragon was without lawful cause."

The question is whether or not it had been finally declared in that cause that the said Alexander Dragon had been

arrested without legitimate cause. By reference to the order of the court discharging the defendant, it will be noted that he used the following language:

"That the said order of arrest be, and the same is, vacated and annulled and the defendant discharged from custody."

The judge in this order fails to give the particular reason for setting aside the order of arrest and discharging the said Dragon. It is to be presumed, however, that the order of arrest was set aside for the reason that the same had been improperly made. This order was final for the reason that no exception or appeal had been taken from it; therefore it was finally determined that the arrest of the said Dragon "was without lawful cause."

The statement of the judge in his decision in the action upon the bond that the order of arrest had been vacated "on the specific grounds already stated, that the affidavit (for arrest) was untrue and that the present plaintiff did not intend to leave the jurisdiction," was a voluntary statement on the part of the judge, for the reason that there was nothing in the record to show upon what specific grounds the order to vacate the arrest was made but, for the purposes of the action upon the bond, the particular ground upon which the arrest was made is immaterial. It was sufficient for the plaintiff to show in his action upon the said bond that he had been arrested without legitimate cause and had been finally discharged. When the said Dragon brought to the attention of the court, in the proper way, these facts, he had shown sufficient facts to justify the court in holding that the parties to the bond were liable thereon. A bond is a contract, and the persons obligated thereby are liable, where it is shown that there has been a breach thereof, and then the only question left to be decided by the court is as to the amount of damages resulting by reason of such breach.

What we have said relating to the first assignment of error, in our opinion, also answers the second assignment of error above noted. It is true that the lower court discussed at length the effect of one of the provisions of section 5 of the act of Congress of July 1, 1902, in its relation to section 412 of the Code of Procedure in Civil Actions. It is true also that one of the provisions of said act of Congress provides that "no person shall be imprisoned for debt," while section 412 of said code provides that persons may be arrested under certain conditions therein named, some of which would indicate, at least, that persons might be arrested for debt. This action, however, was not brought for damages resulting from the arrest of the defendant for debt. It was brought upon a contract (bond) under which the defendants promised to pay to the plaintiff all damages which he, the plaintiff, might suffer under the arrest, if the court should finally decide that the arrest was made without legitimate cause. The lower court did finally decide that the arrest was without legitimate cause, and therefore, under the conditions of the contract (bond), the defendants were liable for whatever damages the plaintiff might show he had suffered by reason of such arrest. In our opinion, in the present action, the question of the effect of the said act of Congress upon the said provisions of said code is not germane, for the reason that the action is upon a contract to pay damages upon conditions named in the contract, and not an action for damages resulting from an arrest made contrary to the provisions of the said act of Congress. The action herein is the same as if the defendants had executed and delivered a bond promising to pay to the plaintiff damages resulting from any other cause. By virtue of the form of the action in the present case, we refuse to discuss the effect which the said act of Congress has upon the said provisions of the said code, believing that the same is not germane to the issue presented here.

With reference to the third assignment of error above noted, the proof shows by a large preponderance of evidence that the plaintiff, by reason of said arrest without cause, was obliged to pay to his attorney the sum of P450. Under the provisions of the bond we are of the opinion, and so hold, that the defendants obligated themselves to pay this amount, said damages being directly the result of said arrest without cause. We are of the opinion, and so hold, that a reasonable amount paid to an attorney, in cases like the present, may properly be considered in assessing the damages occasioned to the plaintiff. There is nothing in the record which shows that

the amount which the plaintiff claims, P450, was an unreasonable amount, and therefore this amount is allowed as a part of the damages suffered by the plaintiff by reason of the said arrest without cause. (Philips vs. Bonhan, 16 La. An., 387; Wentz vs. Benhardt, 37 La. An., 636; Vanderberg vs. Cunnolly, 54 Pacific Rep., 1097.)

The necessary expense incurred by one who is arrested without cause, in order to secure his release, may be included as damages in an action upon a bond given to secure such arrest, when it is finally determined that the arrest was without just cause.

With reference to the fourth assignment of error above noted, we are of the opinion, and so hold, that the judge of the lower court committed no error in overruling the said demurrer.

With reference to the fifth assignment of error above noted, we are of the opinion, and so hold, that the lower court did not have sufficient evidence before it to justify its judgment in favor of the plaintiff and against the defendants for damages in the sum of P100, the sum allowed by the lower court in addition to the amount of P450 adjudged to be due the plaintiff from the defendants as an amount paid by the plaintiff as attorney's fees.

With this modification, the judgment of the lower court is hereby affirmed, and it is hereby ordered and decreed that the plaintiff recover of the defendants, according to the terms of the said bond, the sum of P450, and costs. So ordered.

Torres, Willard, and Tracey, JJ., concur.

DISSENTING

ARELLANO, C. J.:

This cause has been preceded by another in which a final judgment has already been rendered, and from which the present case is derived.

The object of the former case was the payment of rentals which Alexander Dragon was to make to Carmen de la Cavada on the 5th of March, 1905, and which he failed to make, and the latter filed her complaint with the court of the justice of the peace of Manila, who sentenced the defendant to pay the rent. Upon said judgment being appealed to the Court of First Instance of Manila, it was affirmed with the costs of both instances against the defendant.

As a preliminary incident in the previous cause, motion was made asking for the arrest and detention of the defendant for the reason that he had sold out his property and was about to leave the Islands with intent to defraud his creditors, according to the affidavit annexed. On the 25th of March, 1905, the justice of the peace, after the filing of the bond provided for by section 415 of the Code of Civil Procedure, ordered the defendant to be forthwith detained and brought to his court unless bond was furnished for P67.90, the exact amount of rent due, and the costs of the proceedings. The defendant was detained on the same day, the sheriff having had to "look for the defendant, Dragon, all over the city of Manila, and even searching a vessel which was about to sail from the port of Manila for Hongkong, but without success;" according to the statement of the defendant's lawyer a motion was also presented to the justice of the peace to set aside the order of arrest. On the 17th following, the justice of the peace entered judgment for the payment of rent and the relief asked for in said motion, stating in respect thereof as follows:

"The motion presented by the defendant asking the annulment of the order of arrest is hereby overruled: * * *

(4) because, although the defendant has alleged that he did not intend to leave the Islands and in proof thereof offered two witnesses, as the latter have not testified in a proper manner with respect to the intention of the

defendant to absent himself, it is not expedient to annul the order of arrest, especially as the plaintiff herein has presented two witnesses who testified to the contrary, and, further, because this reason was alleged after the bond was furnished."

While the appeal was being considered by the Court of First Instance the defendant again presented a motion asking that the order of arrest be annulled and set aside, basing his motion upon the allegation that the affidavit offered by the plaintiff was untrue and false, that he had not intended to absent himself from the Islands, and that he had not alienated any of his property except in connection with the requirements of his business, but particularly because "the issuance of the order of arrest was contrary to the laws of the Philippine Islands for the reason that there is no authority whatever for issuing an order of arrest in connection with debt."

The law of the Philippine Islands alluded to is that of July 1, 1902, section 5 of which provides that "no person shall be imprisoned for debt."

The Court of First Instance in deciding the motion limited itself to saying: "The motion is sustained and it is directed that the order of arrest be, and is hereby, canceled and annulled, and that the defendant be discharged from the custody under which he is kept by virtue thereof." The plaintiff consented to said decision.

The same defendant, Dragon, on January 5, 1906, filed the present complaint wherein he claims from Carmen de la Cavada, and from her bondsmen, Francisco Enriquez and Vicente D. Conde, the sum of P5,000, with legal interest thereon, as damages.

At this date he had not yet paid the rentals, amounting to P101, which he had been sentenced to pay by the Court of First Instance, and the present defendants demanded as a counterclaim the payment thereof.

The Court of First Instance in final judgment said—

"That by reason of the detention of the defendant he has been damaged by the expenditure of P450 in obtaining his release, and in other ways to the extent of P100; that these are items of damage in respect to which the defendants have undertaken to indemnify him and that the judgment recovered by the principal defendant is not a proper counterclaim herein."

And as the reason for thus deciding the question the court stated:

"Upon appeal to this court of the case in which the bond was given, a motion was filed to vacate the order of arrest on the ground that the same was contrary to law, that the affidavit was untrue, and that the affiant never intended to leave the jurisdiction or defraud the creditors. This motion was sustained and the order of arrest vacated * * *. This is a suit ex contractu on a bond * * *. The only question here is whether there has been a breach of the condition of the bond, viz, 'that it be finally declared that the detention of the defendant, Alexander Dragon, was made without lawful cause.' This court so held as a matter of fact when deciding that the motion to vacate the order of arrest be sustained, basing the same on the specific reasons already stated, that the affidavit was untrue and that the present plaintiff never intended to leave the jurisdiction." (B. of E., 8.)

"In this order the court—it is so rightly stated in the foregoing majority opinion—does not state the specific reason for vacating the order of arrest and for releasing the said Dragon. It is to be presumed, however, that it was set aside by reason of the same not having been properly issued."

And this is my reason for dissenting: In the order the court below does not state the specific reasons for vacating the order of arrest; and it can not be assumed that it was set aside because it had not been properly issued.

When dealing with an action ex contractu, the judgment must precisely and clearly specify in what manner the contract was violated.

Obligations arising from contracts have legal force between the contracting parties, and must be fulfilled in accordance with their stipulations. (Civil Code, art. 1091.) The stipulations of the bond contract were:

"* * * we bind ourselves jointly and severally that, in case it be finally declared that the arrest of the defendant, Alexander Dragon, was made without lawful cause, we will pay the said Alexander Dragon all costs entered in his favor and all damages he may suffer by reason of his detention, provided, however, that the total amount thereof shall not exceed the sum of one thousand pesos, Insular currency."

In order that the defendants be bound to pay such costs and damages it is by all means necessary that, in accordance with their obligation, a final declaration that the detention of the said Alexander Dragon was made without lawful cause be made; while there is no such final declaration, and there is none, the condition of the obligation entered into is not violated. Therefore, no action can arise for the payment of the costs and damages stipulated in the contract.

The specific reason for the ruling vacating the order of arrest may have been that, it being an action for debt, the judge considered that it was contrary to the Philippine bill of July 1, 1902, and probably for the same reason the annulment was consented to by the plaintiff in that action. In such a case no action for damages could arise therefrom because it was not included within the conditions of the contract. This fact may be assumed as well as the other.

If a doctrine is established that whenever a motion is sustained and a previous ruling, order, or decision is vacated, the court accepts and acknowledges all the reasons contained in the motion, I do not conform to such a doctrine inasmuch as the reasons may be many, and subordinate or in the alternative, or even contradictory, and it is not conceivable how they can all be accepted under a general form of "the motion is sustained and the previous ruling, order, or decision is revoked." An example of the foregoing is the motion for new trial authorized by section 145 of the Code of Civil Procedure, which may be based upon accident or surprise, newly discovered evidence, excessive damages, insufficient evidence, and that the decision was contrary to law, all of which grounds may be embodied in the motion, and a decision which, after considering the motion, only stated that—"Upon new trial had by virtue of the motion filed therefor, the court orders that the former judgment be, and the same is hereby, reversed,"—it could not, in such a case, in my opinion, be assumed that the order included all the aforesaid grounds.

Therefore, I consider that the court has committed the first error alleged by the appellants in declaring that the order of arrest was vacated "for the specific reasons already set forth, that the affidavit was untrue, and that the present plaintiff did not intend to leave the jurisdiction." And said error is further evidenced in the majority opinion in which it is said that: "The statement of the judge in his decision in the action upon the bond that the order of arrest had been vacated 'on the specific grounds already stated, that the affidavit (for arrest) was untrue and that the present plaintiff did not intend to leave this jurisdiction,' was a voluntary statement on the part of the judge, for the reason that there was nothing in the record to show upon what specific grounds the order to vacate the arrest was made."

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