

**GUILLERMO A. CU UNJIENG AND MARIANO CU UNJIENG,
PETITIONERS, VS. MARIANO A. ALBERT AND LEONARD S. GODDARD,
BOTH ACTING AS JUDGES OF FIRST INSTANCE OF MANILA, AND
NATIONAL CITY B...**

G.R. No. 38316. September 27, 1933

Ponente: HULL, J.

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HULL, J.:

Original petition for certiorari. Respondent National City Bank of New York brought suit in the Court of First Instance of Manila against the petitioners herein for a sum of money. In the complaint it was alleged that the defendants, as the result of a conspiracy and combination and with the intent to defraud plaintiff, prepared and fabricated by means of forgery a large number of warehouse receipts and corporate share certificates, and fraudulently obtained from the National City Bank loans and cash advances on the said forged and fraudulent warehouse receipts and corporate share certificates.

At the time of the filing of the complaint a writ of attachment against the properties of the petitioners herein was issued, and upon the denial of the motion to discharge the attachment, these proceedings were brought.

During the hearing on the motion to discharge the attachment, plaintiff, with leave of court, amended his complaint and at the same time filed an amended affidavit for attachment. There was no objection as to the sufficiency of the original affidavit, nor is there any valid objection to the action of the trial court in permitting an amendment to the original complaint.

We have held in a companion case, *Cu Unjieng and Cu Unjieng vs. Goddard and Hongkong & Shanghai Banking Corporation*, G. R. No. 38284,[1] that a defective affidavit for attachment could not be amended, but we see no objection to permitting the amendment of an affidavit of attachment that is not defective, even though a new and additional ground of attachment is alleged. (6 C. J., 158; sec. 110, Code of Civil Procedure.)

The main contention of petitioners herein is that the writ should be discharged, as the cause of action is *ex delicto* and is therefore not within the provisions of section 412 of the Code of Civil Procedure, which by section 424 of the said Code, authorizes the issuance of a writ of attachment. Sections 424 and 412 read as follows:

"SEC. 424. Attachment.—A plaintiff may, at the commencement of his action, or at any time afterwards, have the property of the defendant attached as security for the satisfaction of any judgment that may be recovered, unless the defendant gives security to pay such judgment, in the manner hereinafter provided, in the following cases;

"1. In all the cases mentioned in section four hundred and twelve, providing for the arrest of a defendant. But the plaintiff must make an election as to whether he will ask for an order of arrest or an order of attachment; he shall not be entitled to both orders;

"2. In an action against a defendant not residing in the Philippine Islands."

"Sec. 412. Arrest.—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 or fraudulently misapplied or converted to his own use by a public officer, or an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity, or for a willful violation of 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 a fraud in contracting the 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 intent to defraud his creditors."

The respondents herein contend that the writ was properly issued under the fourth paragraph of section 412, and that the limiting clause in paragraph 1 that the action must arise "upon contract, express or implied", applies only to that paragraph and not to the entire section.

Both sides have submitted voluminous briefs with a wealth of citations from other jurisdictions. As attachments are purely statutory, other decisions are of little value unless based on similar statutes.

The exact question presented is one of first impression in this jurisdiction, and our attention has not been called to any case where a statute similar to what we have here has been judicially interpreted. If the statute is read in its entirety, it will at once be seen that if an attachment can be had only from a contract, express or implied, sections [paragraphs] 2, 3, and 4 are of no value, because under all the cases therein mentioned by legal fiction an implied or quasi contract could be inferred. It is also argued that due to the mentioning of the number of actions in section [paragraph] 2 that are properly *ex delicto*, all other actions *ex delicto* are necessarily excepted from section 412. But this does not necessarily follow. If the statute is read with care, it will be seen that section [paragraph] 2 authorizes attachment in a limited field of embezzlements or *estafa*, while section [paragraph] 4 is also limited to certain specified causes of action in which fraud is the important element. Even reading sections [paragraphs] 2 and 4 as separate and distinct from the rest of the section, there is a large number of obligations *ex delicto* for which an attachment is not authorized.

We believe therefore that the statute should be read as written, and to limit paragraphs 2 and 4 to causes of action arising upon contract, express or implied, would do violence to the obvious legislative intent. As the complaint and affidavit for attachment clearly show that the action is brought on an allegation of guilt of fraud in contracting the debt or incurring the obligation for which redress is sought, the attachment is authorized under section 412.

Writ denied. Costs against petitioners. So ordered.

Avanceña, C. J., Street, Malcolm, Villa-Real, Abad Santos, Imperial, and Butte, JJ., concur.

[1]Page 482, ante.

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