

## **SALIH ADAD, PLAINTIFF AND APPELLEE, RS. JAMES CRAIG TOW, GEO. E. WOLF, AND UN PAK LEUNG, DEFENDANTS AND APPELLANTS.**

*G.R. No. 4444. September 03, 1908*

Ponente: WILLARD, J.

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### **WILLARD, J.:**

On the 20th of February, 1905, the plaintiff commenced an action against the defendant Tow in the court of a justice of the peace to recover possession of certain premises in the city of Manila, and damages for their detention. Judgment having been rendered in favor of the plaintiff in that action, and it having been appealed to the Court of First Instance, judgment was rendered in the latter court on the 11th day of April, 1905, in favor of the plaintiff and against the defendant, Tow, for the possession of the premises, and for P108.89, damages for their detention. From that judgment Tow appealed to this court, and he and the defendants Wolf and Un Pak Leung signed a bond of which the following is a copy:

"Know all men by these presents, that we, James Craig Tow, as principal, and George E. Wolf and Un Pak Leung, as sureties, 'are hereby and by these presents firmly bound unto Salih Adad for all rents, damages, and costs, which are now due or may hereafter become due the said Adad by reason of the said James Craig Tow withholding possession of the premises known as Nos. 67 and 69 Calle San Jacinto and 88, 90 and 92 Calle Dasmarinas, in the city of Manila, being the upper floors of said buildings, until the final decision of the Supreme Court of the Philippine Islands in this case; should said Supreme Court decide as against the defendant herein, James Craig Tow, this bond shall include the payment of the judgment of one hundred and eight pesos and eighty-nine centavos (P108.89) found due and owing the plaintiff and included in the judgment appealed from.

"The conditions of the said obligations are such that whereas judgment has been rendered in the Court of First Instance of the city of Manila against the defendant, James Craig Tow, for the possession of the above-described premises and for money judgment of one hundred and eight pesos and eighty-nine centavos (P108.89) together with costs of said suit, and the defendant having this day appealed from said judgment to the Supreme Court of the Philippine Islands, and should the defendant prosecute his appeal with effect and reverse the judgment herein rendered against him by the Court of First Instance, or in case of its confirmation or modification, pay any money judgment, costs, rents, and damages assessed against him in said cause, then and in that case, this obligation to be null and void, otherwise to remain in full force and effect.

"Signed by our hand this 24th day of April, at the city of Manila, P."

Tow remained in possession of the premises until the 30th day of September, 1905.

The judgment appealed from was affirmed in this court on the 30th day of April, 1906,[1] the case remanded, another judgment apparently entered in the Court of First Instance for the sum of 108.89 and costs, and an execution issued thereon. The defendant Tow paid to the sheriff the full amount of that execution on the 10th day of June, 1906.

This action was brought by the plaintiff on the 22d day of August, 1906, against Tow, Wolf, and Un Pak Leung.

Final judgment herein was rendered in the Court of First Instance in favor of the plaintiff and against the defendants Tow and Wolf for P1,500 with interest, and the costs. Un Pak Leung was never served with process. From that judgment the defendants have appealed.

The liability of the defendant Waif rests entirely upon the bond above quoted. It is expressly provided therein that, if the judgment of the Court of First Instance should be affirmed and the defendant Tow pay any money judgment, costs, rents, or damages assessed against him in said cause, then the obligation should be void. Tow had paid the money judgment and all costs, rents and damages which were assessed against him in that action before this action was commenced. No action can therefore be maintained on the bond.

It is said by the plaintiff that, while by the terms of the latter part of the bond the defendants have been relieved from liability, yet they remain liable under the first part of the bond, which says that they are held and bound for all rents, damages and costs which are now due or may hereafter become due by reason of the withholding of the possession of the premises by Tow.

The judgment of P108.89 included the rent and damages only to the first day of December, 1904. Nothing was included in the judgment entered by the Court of First Instance for the rent accruing after the first day of December, 1904, and it was to recover that rent that this action is brought. The claim of the plaintiff is that that rent is fully covered by the clause above quoted from the first part of the bond. That part, however, is not the part which determines the liability of the persons signing it. It is usual to state therein a definite sum of money, as for example, that the signers are held and bound for the sum of P1,000. Instead of inserting in this bond such a definite sum, the penalty of the bond was expressed in the way in which it appears therein, but the choice of that method of expression can not change the liability of the sureties. They are not liable for the penalty of the bond if they have fulfilled the conditions stated therein. In this case such conditions have been fulfilled and, as has been said, there can be no liability thereon. This disposes of the case upon its merits so far as the defendant Wolf is concerned without considering the exception taken by him to the order overruling his demurrer to the amended complaint.

As to the defendant Tow, there are other allegations in the complaint, which it is claimed, make him liable for the occupation of the premises from December, 1904, to September, 1905, without considering his liability upon the bond.

Tow demurred to the amended complaint and excepted to the order overruling his demurrer, so that we are bound to consider that exception first, without considering whether, upon the evidence in the case, his liability was made out. The complaint itself shows that the judgment was paid, therefore it stated no cause of action against Tow upon the bond. Neither do we think that it stated any cause of action against him for the occupation of the premises. There is no allegation, except by inference, that Tow was in possession of the premises from December, 1904, to September 30, 1905, and there is no allegation at all of the value of the use of that part of the building occupied by Tow during that time, nor is there any allegation of any agreement on the part of Tow to pay any specific sum therefor. The demurrer to the amended complaint should therefore have been sustained.

The judgment of the court below is reversed, and the defendant Wolf is acquitted of the complaint, with the costs of the first instance against the plaintiff. As to the defendant Tow, the case is remanded to the court below with instructions to that court to sustain his demurrer to the amended complaint and to allow the plaintiff to amend his complaint in accordance with the rules of the court.

No costs will be allowed to either party in this court. So ordered.

Arellano, C. J., Torres, Mapa, Carson and Tracey, JJ.,

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[1] Not reported.

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