

THE GOVERNMENT OF THE UNITED STATES IN THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. PEDRO CARMEN ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 5012. April 02, 1909

Ponente: JOHNSON, J.

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JOHNSON, J.:

From the record the following facts appear:

First. That upon the 27th day of February, 1906, the fiscal of the Province of Nueva Ecija presented in the Court of First Instance of said province a complaint against Victor Pangilinan, charging him with the crime of robo en cuadrilla.

Second. That, after the defendant was arrested on the 23d day of March, 1906, a bond was given for his release, signed by Pedro Carmen and Antonio Elvina. Said bond was in the words following:

"Witness: Personal bond.-In the Court of First Instance of San Isidro, Province of Nueva Ecija, Philippine Islands.-The United States vs. Victor Pangilinan.

A complaint having been filed in the Court of First Instance of San Isidro of the Province of Nueva Ecija on the 27th day of February, 1908, charging Victor Pangilinan with the crime of robo en cuadrilla, and he having been admitted to bail in the sum of P1,000, therefore, we, Don Pedro Carmen Legaspi, of San Isidro, Nueva Ecija, and Don Antonio Elvina, of the same place, jointly and severally, hereby bind ourselves to guarantee the appearance of the accused Victor Pangilinan before the court which will try him to answer the said charge, and that he shall be at all times amenable to the orders and resolutions of said court, and, if convicted, he shall appear for judgment and present himself for the execution thereof; and, if he fails to perform any of these conditions, that we will pay to the United States the sum of P1,000.-Pedro Carmen.-Antonio Elvina.-Pueblo of San Isidro, Province of Nueva Ecija.-We, Don Pedro Carmen Legaspi, of San Isidro, Nueva Ecija, and Don Antonio Elvina, of the same place, having been duly sworn, solemnly declare, each for himself,

that we are residents and property holders in the Philippine Islands, and that we are each worth the sum of the above bond of P1,000, over and above all debts and obligations which we may have and property which can not be attached by reason of said bond. Therefore, we, Don Pedro Carmen Legaspi, and Don Antonio Elvina, residents of San Isidro, Nueva Ecija, jointly and severally, hereby guarantee that the accused Victor Pangilinan shall appear before the court which will try him to answer the aforesaid charge, that he shall be at all times amenable to the orders and resolutions of the court, and, if convicted, he shall appear for judgment and present himself to the execution thereof; and, if he fails to perform any of these conditions, that we will pay to the United States the sum of P1,000.-Pedro Carmen.-Antonio Elvina.-Subscribed and sworn to before me this 23d day of March, 1906, in San Isidro, Philippine Islands.-Rufino Villaruz, auxiliary justice of the peace."

Third. That later the defendant was duly tried before the said court upon the said complaint, and on the 12th day of November, 1906, was duly sentenced by the judge of the said court to be imprisoned for the period of nine

years of presidio mayor, and to suffer the accessory penalties provided for in article 57 of the Penal Code, and to return the property stolen to one Fulgencio Manansala, or to indemnify the said Manansala in the sum of P11.75, and to pay the costs.

Fourth. That on the 18th day of November, 1906, the sheriff being unable to find the defendant in his province, notified the said bondsmen Pedro Carmen and Antonio Elvina, to present the body of the said defendant before the court immediately. On the 21st day of December, 1906, the bondsman Pedro Carmen, for himself and as attorney for Antonio Elvina, presented a petition in the Court of

First Instance of said province, asking that they be given thirty days more within which to present the body of the defendant Victor Pangilinan in said court.

Fifth. On the 21st day of December, 1906, the judge, the Hon. Julio Llorente, granted to the said bondsmen an additional thirty days' time within which to present the body of the defendant before the court.

Later it appears that the governor of the province, as well as the Constabulary of said province, made diligent search in said province to find the body of the defendant, but his whereabouts could not be ascertained.

Sixth. On the 7th day .of August, 1907, the fiscal of said province commenced an action in the Court of First Instance upon said bond against the said bondsmen for the purpose of recovering of them the amount of their liability as fixed by said bond. A copy of the said complaint was served upon each of the defendants upon the 14th day of August, 1907.

Later, each of the defendants duly appeared in said cause and after having; presented a demurrer, which was denied, filed an answer to said complaint, which answer was a general and a special denial. The special denial simply states that the facts set out in the complaint were not sufficient to constitute a cause of action. This special denial was nothing more nor less than a demurrer to the complaint, and should have been so considered.

The cause was brought to trial upon the 30th day of April, 1908. After hearing the evidence adduced during the trial of the cause, the judge of the lower court rendered a judgment in favor of the plaintiff and against the defendants, jointly and severally in the sum of P1,000 and costs. Against this sentence the defendants appealed and made the following assignments of error:

"1. The court erred in holding that the simple fact that the appearance of the accused was ordered for the rendering of the judgment, and that the fact that the said accused failed to appear and the bondsmen failed to present the body of the same, were sufficient grounds to enforce the bond.

"2. The court, finally, erred in overruling the demurrer to the complaint, and in sentencing the defendants to pay jointly and severally the sum of P1,000 to the Government of the United States in the Philippines."

With reference to the first above assignment of error: By reference to the obligation or bond which the defendants gave, it will be seen that they imposed upon themselves the following obligation:

"A complaint having been filed in the Court of First Instance of San Isidro in the Province of Nueva Ecija on the 27th day of February, 1906, charging Victor Pangilinan with the crime of robo en cuadrilla, and he having been admitted to bail in the sum of P1,000, therefore, we, Don Pedro Carmen Legaspi, of San Isidro, Nueva Ecija, and Don Antonio Elvina, of the same place, jointly and severally, hereby guarantee that the accused Victor Pangilinan shall appear before the court which will try him to answer said charge, and that he shall be at all times amenable to the orders and resolutions of the court, and, if convicted, he shall appear for judgment and present himself for the execution thereof; and, if he fails to perform any of these conditions, that we will pay to the United States the sum of P1,000."

The plaintiff proved, and the defendants did not attempt to deny, that no part of this obligation had been complied with. By reason of their failure to comply with the conditions of the bond they were liable to pay the amount of the obligation assumed by said bond, and the lower court committed no error in rendering a judgment against them for the amount of said bond.

With reference to the second assignment of error: Upon an examination of the complaint filed in said cause, we are convinced, and so hold, that the complaint was sufficient in law to show a cause of action existing against the said defendants. Therefore the judgment of the lower court is hereby affirmed, with costs.

While there is no objection raised in the record to the practice adopted by the plaintiff in this cause in the court below, yet we are of the opinion that the practice in commencing an ordinary action upon a recognizance or a bond such as constitutes the basis of the action in the present cause, was not intended by section 76 of General Orders, No. 58. This method of recovering the amount due upon a bond given in a criminal cause, in our opinion, is entirely too cumbersome, and is subject to too many delays. Section 76 above cited, provides as follows:

"If without sufficient cause the defendant neglects to appear for arraignment, trial, or judgment, or neglects to appear on any other occasion when his presence may be required in court, or fails to surrender himself in execution of the judgment, the court must direct the fact of his neglect or failure to be entered in the records of the cause, and declare the undertaking or deposit, as the case may be, to be forfeited. But if at any time within thirty days thereafter the defendant or his counsel appears and satisfactorily explains the neglect or failure, the court may direct the forfeiture to be discharged upon such terms as it may consider just. If the forfeiture is not so discharged, the promotor fiscal shall at once proceed by action against the bail upon their undertaking."

The last sentence of said section provides that "if the forfeiture is not so discharged, the promotor fiscal shall at once proceed by action against the bail upon their undertaking." We believe that the word "action" as used here does not necessarily mean the ordinary action for the purpose of recovering a sum of money, but rather that the promotor fiscal shall at once take such steps as may be necessary against the bail for the purpose of recovering the amount due under such bond. The practice which has been adopted, as we believe, by the Courts of First Instance generally, is substantially as follows:

- (1) If the defendant does not appear after final sentence for the purpose of receiving the penalty imposed by the court, the court shall make a record of this fact;
- (2) The court shall declare the bond forfeited;
- (3) The court shall then notify the said bondsmen and give them thirty days within which to present the body of the defendant;
- (4) If the bondsmen do not present the body of the defendant within thirty days, at the expiration of that time the court shall give them notice to show cause why a judgment should not be rendered against them for the amount of the bond; and
- (5) If no sufficient reason appears or is given by the bondsmen for not presenting the body of the defendant within the time specified above, the court may then render a judgment against the said bondsmen for the amount represented by said bond, upon which judgment an execution should be issued at once without further delay against said bondsmen. In other words, in order to enforce the bond, the prosecuting attorney should not bring a new action, nor institute an ordinary action; he should only take the necessary steps for the execution of the prior judgment of forfeiture and require the bondsmen to pay the amount of the bond or attach a portion of their property the proceeds of which on sale should be enough to satisfy the liability of the bondsmen.

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

DISSENTING

WILLARD, J.,

Section 76 of General Orders, No. 58, is as follows:

"If without sufficient cause the defendant neglects to appear for arraignment, trial, or judgment, or neglects to appear on any other occasion when his presence may be required in court, or fails to surrender himself in execution of the judgment, the court must direct the fact of his neglect or failure to be entered in the records of the cause, and declare the undertaking or deposit, as the case may be, to be forfeited. But if at any time within thirty days thereafter the defendant or his counsel appears and satisfactorily explains the neglect or failure, the court may direct the forfeiture to be discharged upon such terms as it may consider just. If the forfeiture is not so discharged, the promotor fiscal shall at once proceed by action against the bail upon their undertaking."

This action was evidently commenced by virtue of the last provision contained in this section, and in my opinion was prematurely brought. Such an action can only be brought "if the forfeiture is not so discharged." The forfeiture can not be discharged until it has been declared, the sureties have thirty days after such declaration in which to act and during that time no action can be commenced against them. No forfeiture has ever been declared in the criminal case. That the facts showing such a forfeiture might be proven in this action can not be the equivalent of the declaration required in the criminal case, for the period of thirty days would thereby be eliminated. Section 76 of General Orders, No. 58, is similar in this respect to Act No. 1778, which provides that an action for forcible entry by reason of nonpayment of rent shall not be brought until three days have elapsed after a demand for payment has been made. The Court, in the criminal case, can still declare the forfeiture and, if it is not discharged within thirty days thereafter, another action can be brought.

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