

**YAP UNKI, PLAINTIFF AND APPELLEE, VS. CHUA JAMCO,
DEFENDANT AND APPELLANT.***G.R. No. 5202. December 16, 1909*

Ponente: CARSON, J.

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On November 10, 1906, plaintiff and defendant executed a written agreement whereby the business partnership then existing between them was dissolved, and plaintiff sold and defendant bought plaintiff's interest in the partnership for the sum of P1,728.94, payable in three installments, as set out in the agreement. The amended complaint alleged that the total indebtedness thus contracted by the defendant had become due and payable and had not been paid in whole or in part at the time when that complaint was filed. Judgment was rendered in the court below in favor of the plaintiff and against the defendant for P1,728.94 together with interest upon the various installments from the date when they fell due. From this judgment defendant appealed, and the case is now before us on his bill of exceptions.

Some question arose in the court below as to whether all of the deferred payments had become due and payable when the original complaint was filed in this action, but appellant having made no assignment of error on this ground we are not called upon to review the action of the court in this regard.

Appellant admits the execution of the contract, but denies plaintiff's right to a recovery thereunder, on the ground that plaintiff failed to comply with his obligation to deliver the property sold to the purchaser and to secure to him the peaceable possession thereof (*entregar y sanear*), as prescribed in article 1461 of the Civil Code. But it affirmatively appears, both from the admissions of the defendant on the witness stand, and from the fact that the sale was made by means of a notarial instrument (art. 1462, Civil Code), that the property sold was in fact delivered to the defendant. And while it appears that plaintiff, after the sale had been consummated, improperly instituted an action for the dissolution of the partnership and the distribution of the partnership assets, and procured the appointment of a receiver for the partnership property, it also affirmatively appears that defendant vigorously opposed the appointment of the receiver, and secured his discharge and the dismissal of the complaint praying for the dissolution of the partnership, by asserting his right to the whole property under the very contract the enforcement of which he now resists. Article 1124 of the Civil Code, which recognizes and defines the right of either party to a conditional contract (*obligation condicional*) to rescind (*resolver*) the contract upon the failure of the other to perform the obligations assumed thereunder, gives to the injured party the right to elect whether he will enforce or rescind (*resolver*) but it need hardly be said that he can not do both. Appellant, after the receiver was appointed, insisted upon the enforcement of his contract, secured the discharge of the receiver, and the return of the property to his possession and control. Clearly he is not entitled now to claim that the commission of the property to the hands of a receiver entitles him to rescind the very contract which he elected to enforce for the purpose of taking the property out of the hands of the receiver; and the trial court properly held that he is bound by its terms.

The defendant set up several counterclaims alleging various causes of action against the plaintiff, only two of

which need to be considered upon this appeal, no assignment of error having been made as to the disposition of the others by the trial court.

The basis of the first counterclaim to be considered is the alleged damage occasioned by the deterioration of defendant's goods as a result of their detention, after the dissolution of the partnership, in the hands of the receiver appointed in the action above mentioned. The trial court properly, as we hold, excluded the evidence submitted by the defendant in support of this cause of action on the ground that the damages claimed were *res adjudicata*. It appears that in the course of the action out of which the appointment of the receiver arose, defendant in this action, who was also defendant in that action, prayed for the discharge of the receiver and damages occasioned by the action of the plaintiff in procuring his appointment. Judgment was rendered in favor of the defendant in that action and the receiver discharged, but nothing was said therein as to defendant's claim for damages, and the claim of the defendant for damages must, therefore, be taken to have been disallowed.

Section 97 of the Code of Civil Procedure provides that —

"If the right out of which the counterclaim arises exists at the time of the commencement of the action and arises out of the transaction set forth in the complaint as the foundation of the plaintiff's claim, or is necessarily connected with the subject of the action, neither the defendant nor his assignee can afterwards maintain an action against the plaintiff therefor, if the defendant omits to set up a counterclaim for the same."

Section 177 provides that the damages resulting from the unlawful procurement of the appointment of a receiver "shall be ascertained by the court and, in its final judgment in the action, shall be decreed against the plaintiff and the sureties on the obligation."

Section 307 of the Code of Civil Procedure provides that —

"That only is deemed to have been adjudged in a former judgment which appears upon its face to have been so adjudged or which was actually and necessarily included therein or necessary thereto."

Manifestly, under these provisions, the question of damages resulting from the improper procurement of the appointment of a receiver by the plaintiff in the former action was properly held by the trial court in this action to be *res adjudicata*, and, therefore, not a proper subject of inquiry in this action.

Counsel urges that in so far as the decision in the former case was silent on the question of damages it was manifestly erroneous, because the court having declared that the receiver had been improvidently and unnecessarily appointed, and that the defendant had been unlawfully deprived of his property at the instance of the plaintiff, defendant was clearly entitled to damages. But an examination of the record discloses that defendant accepted the judgment in that case, made no objection thereto on the ground he now urges as a reason why he should not be bound thereby, and took no appeal therefrom. In explanation he says that he was so anxious to secure the dismissal of the receiver and the return of the property to his possession, because it was rapidly deteriorating and losing its value as time went by, that he could not afford to appeal, and thus continue the possession of the property in the hands of the receiver pending the course of the appeal on the question of damages. But the reasons which it is alleged induced defendant to accept without appeal the decision of the court in the former case in no wise affect the legal consequences flowing from his conduct in that regard; and we may add that the record discloses that defendant did not even move the trial judge to modify or to amplify his decision so as to settle expressly the question of damages, a motion which would not necessarily have involved any considerable delay, and that even had defendant been compelled to appeal, the bond given when the receiver was appointed must be taken to have been sufficient to protect the defendant for all losses and damages arising from the improper detention of the goods in the hands of the receiver.

The second cause of action set up by the defendant by way of counterclaim is his alleged unlawful detention at the instance of the plaintiff on the 21st day of November, 1906, eleven days after the contract of sale had been entered into. It is alleged that upon that occasion plaintiff, seeing the defendant at the dock at Legaspi en route with various boxes of merchandise to Manila, called a policeman, charged the defendant with robbery, and procured his arrest without a warrant and his detention at the police station for a few hours, after which defendant was released without further proceedings; and that as a result of this unlawful detention defendant missed his boat and suffered heavy damages because of his failure to reach the Christmas and New Year's market in Manila, for which he was bound with his goods, and because of the deterioration of these goods as a result of his failure to find an immediate sale therefor. The trial court appears to have been of opinion that the alleged unlawful acts of the plaintiff from which the alleged damages to the defendant arose would constitute, if proven, the crime of *acusacion ó denuncia falsa*, as defined and penalized in article 326 of the Penal Code, and excluded all evidence as to this cause of action relying upon the decision of this court in the case of *Quiros vs. Tan-Guinlay* (5 Phil. Rep., 675), wherein we held that —

"Neither a civil nor a criminal action for damages arising from the commission of the crime of *acusacion ó denuncia falsa* can be instituted unless the court which investigated the crime falsely charged or accused directed the institution of criminal proceedings against the false accuser."

The allegations of defendant's counterclaim not disclosing that any court had directed the institution of criminal proceedings based on the alleged unlawful acts of the plaintiff, and affirmatively disclosing that no investigation of the crime falsely charged had ever been made, the trial court was of opinion that a civil action for damages could not be instituted in the absence of such directions.

But in the decision of this court in the case of the *United States vs. Quiroga* (7 Phil. Rep., 388), we held that —

"One who makes a complaint to a policeman, charging a third person with the commission of an offense can not be tried and convicted under article 326 of the Penal Code for the crime of *acusacion ó denuncia falsa*. A policeman is not an administrative or judicial officer in the sense in which those words are used in the said article 326."

It is evident, therefore, that the provisions of that article are in no wise applicable to the case under review, and we are of opinion that the defendant was entitled to a hearing upon his counterclaim, to an opportunity to prove the damages alleged therein, and to have such damages, if proven, recognized and provided for in the judgment in this action.

In the discussion of the case by the members of this court after submission on appeal, it was suggested that the provisions of articles 1195 and 1196 of the Civil Code deny to the defendant the right to set up a counterclaim for unliquidated damages against plaintiff's claim based on the contractual obligation set out in the complaint.

These articles are as follows:

"ART. 1195. Compensation shall take place when two persons, in their own right, are mutually creditors and debtors of each other.

"ART. 1196. In order that compensation may be proper, it is required:

"1. That each of the persons bound should be so principally, and that he be at the same time the principal creditor of the other.

"2. That both debts consist of a sum of money or, when the things due are perishable, that they be of the same kind and also of the same quality, if the latter should have been stipulated.

"3. That both debts be due.

"4. That they be determined and demandable.

"5. That none of them is subject to any retention or suit instituted by a third person, and of which due notice has been given the debtor."

It will be seen, however, that the compensation here provided for while it resembles in many respects the common law set-off, and certain counterclaims provided for in the Code of Civil Procedure, differs therefrom in that a set-off or a counterclaim must be pleaded to be effectual; whereas compensation takes place by mere operation of law, and extinguishes reciprocally the two debts as soon as they exist simultaneously, to the amount of their respective sums. (11 La. Ann., 520; 16 La. Ann., 181.)

We think that the provisions of chapter 5 of the new Code of Civil Procedure, and especially section 95 thereof, which is as follows:

"SEC. 95. The defendant may set forth by answer as many defenses and counterclaims as he may have, whatever their nature. They must be separately stated, and the several defenses must refer to the cause of action which they are intended to answer in a manner by which they may be intelligibly distinguished. The defendant may also answer one or more of the several causes of action stated in the complaint, and demur to the residue ____"

give to the defendant, in any action instituted against him, the right, if he so desires, to secure in that action the final disposition of all claims which he may have against the plaintiff, whatever may be their nature or origin and the judgment appealed from should, therefore, be reversed, and the record returned to the trial court, where the parties will be given an opportunity to submit evidence upon the last above-mentioned cause of action set up in defendant's counterclaim, and the judgment already rendered will be modified or not in accordance with defendant's success or failure in establishing the damages alleged in this counterclaim.

Arellano, C.J., Torres, Johnson, and Moreland, JJ., concur.

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