

ESTEBAN GASATAYA, PLAINTIFF AND APPELLEE, VS. CHARLES J. FALLON, DEFENDANT AND APPELLANT.

G.R. No. 8788. November 19, 1915

Ponente: JOHNSON, J.

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JOHNSON, J.:

The only question presented by the present appeal is whether or nor, in a case where an attachment was issued at the commencement of the action which was subsequently dismissed at the request of the plaintiff, the judge should assess damages, if any, resulting from the attachment, in the same proceeding, or whether he should reserve the right to the defendant to maintain an action for damages in another action.

In the present case the plaintiff commenced an action in the Court of First Instance of the Province of Occidental Negros on the 2d of November, 1912. Its purpose was to rescind a certain contract of sale of real property and for damages.

On the 26th of November, 1912, the defendant answered the complaint; he admitted some of the facts set up in the complaint, denied others, and set up a counterclaim for damages.

Upon the commencement of the action the plaintiff asked that an attachment be issued against the property of the defendant, which attachment was issued and certain property of the defendant was attached.

On the 12th of December, 1912, the plaintiff presented a motion praying, for the reasons contained in said motion, that said action be dismissed, which motion, on the 29th of January, 1913, the Honorable Higinio Benitez, judge, granted, against the protest of the defendant, reserving to the defendant the right to commence another action for damages, if any, against the plaintiff, resulting from said attachment. Against that judgment, the defendant duly excepted and appealed to this court.

The contention of the appellant is that the lower court should have permitted the defendant to have presented proof showing damages, if any, resulting from said attachment, in the same action. The appellant insists that the question of damages resulting from an attachment should be settled in the principal action; that the parties should not be required to commence another and independent action for that purpose. The appellant cites section 439 of the Code of Procedure in Civil Actions. Said section provides:

"If the defendant recovers judgment against the plaintiff, all the proceeds of sales and money collected by the officer of the court, under the order of attachment, and all the property attached remaining in said officer's hands shall be delivered to the defendant, and the order of attachment discharged, and the defendant may have judgment against the plaintiff upon the obligation provided in section four hundred and twenty-seven, for any damages he may have sustained by reason of the attachment, after summary hearing in the same action, on due notice."

It will be noted that said section provides that "the defendant may have judgment against the plaintiff * * * for any damages he may have sustained, * * * after summary hearing, in the same action, on due notice." Said section

provides that the defendant may have judgment, after a summary hearing, in the same action, for damages.

Section 427 of the Code of Procedure in Civil Actions requires the party seeking an attachment to give a bond that he will pay all the costs which may be adjudged, and all damages which may be sustained by reason of the attachment, if the same shall finally be adjudged to have been wrongful or without sufficient cause.

Said section 439 permits the court to render a judgment in favor of the defendant in the same action, in a summary hearing. In the present case the plaintiff obtained an attachment. He gave the bond required by said section 427. The attachment issued. It was levied upon the property of the defendant. The plaintiff admitted that the attachment was "wrongful or without sufficient cause" by his motion to dismiss the action. The plaintiff having admitted that the attachment was "wrongful or without sufficient cause," it was unnecessary for the court to so find. That fact having been established by the admission of the plaintiff himself, the defendant had a right to present to the court the question whether or not he had been damaged by reason of the wrongful attachment and having presented that question, in due time and before the motion of the plaintiff to dismiss was granted, it was the duty of the court to have considered that question and to have heard proof relating to the alleged damage. While we do not now decide that "the action for damages resulting from a wrongful attachment" must be decided in relation with the principal action, yet, in view of the fact that "the defendant may have a judgment in the same action" and in view of the fact that he requested it in the present case, we are of the opinion and so hold that it was the duty of the judge, when the question was raised, to have decided it.

Section 439 permits the defendant, if he so desires, to have the question of damages, in case of a wrongful attachment, settled in a summary hearing in the same action. Section 439 differs in its language from section 170 of said code. Section 170 requires the settlement of the damages resulting from the wrongful issuance of an injunction, "in the final judgment." (*Somes vs. Crossfield*, 9 Phil. Rep., 13; *Macatangay vs. Municipality of San Juan de Bocboc*, 9 Phil. Rep., 19.)

In view of all of the foregoing, we are of the opinion and so hold that the cause should be remanded to the court whence it came, to the end that the defendant may have an opportunity to present proof, relating to the damages which he suffered, if any, in this same action, and without any finding as to costs, it is so ordered.

Arellano, C. J., Torres, Carson, Trent, and Araullo, JJ., concur.

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