2 Phil. 676

[G.R. No. 1084. November 13, 1903]

FRED SPARREVOHN, PLAINTIFF AND APPELLEE, VS. JOHN FISHER, DEFENDANT AND APPELLANT.

D E C I S I O N

MCDONOUGH, J.:

This action was brought to recover possession of certain premises situated in the city of Manila, which are fully described in the complaint, and for damages for the retention by the defendant.

The Court of First Instance of Manila, on the 15th of July, 1902, handed down a decision holding that the lease under which the defendant claimed had been annulled, and awarding possession to the plaintiff and assessing his damages at the sum of 5,250 pesos, Mexican currency, and judgment was accordingly entered against the defendant.

The defendant moved for a new trial July 23, 1902, on the ground of newly discovered evidence, and because the damages awarded were excessive.

On July 28 the defendant presented his bill of exceptions, the motion for a new trial having been denied, in which exceptions it was alleged that the findings of fact by the court were not sufficient to sustain a money judgment against the defendant; that there was no evidence as to the amount of damages; that there was no evidence to sustain the judgment, other than for the possession of the premises in question; and that the damages were not computed according to law.

The judge of the Court of First Instance having refused to sign the bill of exceptions, certain proceedings were taken in the Supreme Court for the purpose of requiring him to sign the same, but the parties to the suit finally agreed upon the bill of exceptions which is before us.

The defendant now objects to it on the ground that the exceptions were not taken in time

and also for the reason that the writing filed by the defendant July 28, 1903, does not disclose what particular ruling, order, or judgment is intended to be excepted to.

We are of opinion that these objections on the part of the defendant are not well taken. Inasmuch as the defendant moved for a new trial within ten days after the rendition of the judgment and his motion was denied, and within three days after making this motion (the record does not disclose when the motion was decided) the defendant presented his exceptions, we hold that they were made in due time, and that they raise the question as to whether or not the facts found by the court below warrant the money judgment of 5,250 pesos.

As there seems to be no assignment of error in the bill of exceptions applicable to that part of the judgment awarding possession of the premises to the plaintiff, we are not called upon to pass upon that part of the judgment and to apply the doctrine laid down by this court in the case of Donaldson, Sims & Co. *vs*. Smith, Bell & Co.,[1] decided April 23, 1902, in which case we held that the plaintiffs "not having entered into possession under their lease1, they had acquired no rights in the leased property in the nature of a right *in rem*, and which third persons warn therefore hound not to infringe," and therefore, on that account, the plaintiffs in that action "could not recover damages for the wrongful occupancy of the premises in question.

The only question, therefore, to be considered is whether or not the proper rule of damages has been applied in this case and whether or not the evidence warranted that part of the judgment rendered for damages.

The learned judge who heard the case below stated in his decision that the testimony upon the question of damages sustained by the plaintiff by reason of the unlawful possession of the defendant "is very meager and unsatisfactory," and this is certainly true, for it is vague, speculative, and not confined to the property in question.

It seems that the plaintiff occupied as a saloon a part of the building, that part thereof being known as Nos. 62 and 64 Calle San Fernando; and that the defendant occupied Nos. 56, 58, and 60 of the same building and all the upper story of the same, and carried on a saloon business, restaurant, and lodging house.

Much of the testimony as to damages or profits claimed by the plaintiff went to show, not what the actual profits were, but rather what the plaintiff might expect them to be had lie possession of the whole property. Thus Ramon Pazos, the lessor, testified that the plaintiff

might expect, if he had been in entire possession of the property, 800 or 900 pesos, Mexican, per month, and that he based this opinion on the fact that it brought in that profit in 1898 and 1899, long before this suit was begun. The plaintiff himself testified that he might reasonably have expected to realize from the possession of the *entire* building $500, gold, per month "taking into consideration the injury to his business caused by the opening of another establishment next door to his." Another witness testified that he knew where the building Nos. 56, 58, 60, 62, and 64 Calle San Fernando was situated, and that the profit which might reasonably be expected from the possession of "that building" ought to be "not less than 1,000 pesos per month." The last witness who testified on the question of profit stated that he occupied, under the defendant, the restaurant; that for the first four months he made about $200, gold, above expenses; that for the last two months he was hardly able to clear expenses, and that latterly he had been obliged to draw on some money he had in order to defray expenses.

If the plaintiff sought to make such proof as would riiiitle him to a money judgment for damages, under the provisions of article 455 of the Civil Code providing that a possessor in bad faith shall pay for fruits collected and for those which the possessor could have received, he should have confined his proof to that part of the building occupied by the defendant and to the legal measure of damages, not to what profits he "might expect" or what they "ought to be." Such proof as this is too indefinite and uncertain to enable a proper conclusion to be reached regarding the amount of damages.

In the case of McMahon (114 Mass., 140) the plaintiff sought to show the rental value of a strip of land if used in connection with adjacent property, and with that purpose in view asked a witness: "What would be a fair annual rental of this passageway to be used in connection with the estate to which it belongs, situate as this estate is?" The question was objected to and excluded, on the ground that the question to be determined was the value of the strip of land, without reference to any particular or specific use to which it may or may not be put, and, in excluding it, the court stated that "the annual value is not what it is worth either to the tenant or the plaintiff. It has no tendency to prove the market value, nor is it material that it may be especially valuable to either by reason of any special or particular use to which it has been or may be applied. The annual value is what it is fairly and reasonably worth under all the surrounding circumstances, in the market for any purpose, considering all its present and future capabilities for use."

The provisions of the Louisiana Civil Code are somewhat similar to those of our Code relative to damages for wrongfully retaining possession of land, viz: "He who knowingly

keeps possession of another's estate is compelled to account for all profits, together with the land."

Under these requirements, the Supreme Court of the United States held, in the case of New Orleans *vs.* Gaines (15 Wallace, 624), that the damages for withholding possession from the rightful owner was the rental value, and cited with approval the case of Vandevoort *vs.* Gould (36 N. Y., 639), in which case it was decided that "mesne profits are what the premises are worth annually, with interest to the time of the trial."

This, too, seems to he the view of the learned counsel for the appellee, for on page 24 of his brief we find the following:

> "In the case of Wallace, Executor, *vs.* Berdell et al., the Court of Appeals of New York (3 N. E. Rep., 770), discussing the terms "mesne profits" and "rental value," says:
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> " 'It would be manifestly unjust to confine the owner of the property withheld from him to the rents actually received by the party required to make restitution. The owner should have either those rents, or the rental value, as may be just under the circumstances. * * * The mesne profits consist of the net rents after deducting all necessary repairs and taxes, or the net rental value, or the value of the use and occupation. That is all of which the party from whom possession has been withheld has been deprived.'"

It is stated in volume 10 of the Encyclopedia of Law, page 540, that the universal rule is that the measure of damages is the fair rental value of the property withheld, and numerous cases are cited to sustain this proposition.

The general principle on which damages are allowed is, that the plaintiff is entitled to recover damages fairly resulting from his having been wrongfully kept out of possession. Compensation is the measure of damages. Hence, on principle, the amount of recovery for mesne profits is the annual value of the premises wrongfully withheld from the time plaintiff's title accrued. (Nash *vs.* Sullivan, 32 Minn., 189; Cutter *vs.* Waddingham, 33 Mo., 269.)

Section 84 of the Code of Civil Procedure requires judgment to be rendered for the plaintiff, if the court finds the complaint to be true, ^f or restitution of the premises and costs of suit

and for all arrears of rent or a reasonable compensation for the use and occupation of the premises." This compensation is the rental value of the premises, and such value could doubtless have been easily ascertained; but, instead of adopting this rule of ascertaining the damages suffered by the plaintiff, the court permitted witnesses to guess at the profits which were "expected" or which "ought to be" received, and ordered a money judgment upon such testimony, reaching the amount named "without any testimony," as was said "to guide the court." In arriving at this conclusion the judge below stated:

> "I have come to the conclusion that the witnesses intended to convey the idea that the use of the property, together with the time, skill, and capital of a man competent to operate the same for the purposes for which it has been operated, and the reasonable profits derived therefrom, would aggregate $1,000, Mexican, per month, and, without any testimony to guide me, I have determined that the time, skill, and capital would be worth the half of this sum, thus leaving 500 pesos per month of profit," and judgment was rendered accordingly.

In view of the decisions of the courts cited above, and of the language of section 84 of the Code of Civil Procedure, providing that the damages, in a case of this kind, shall be a reasonable compensation for the use and occupation of the premises, we are of opinion that the court below adopted an erroneous rule in ascertaining the amount of damages in this case, and that the proof was not sufficient to justify the conclusion of the court or the judgment entered for damages. Tlie judgment is therefore reversed and a new trial ordered, with the costs to the appellee. The clerk will enter judgment accordingly an& remand the cast for further proceedings, in conformity with this opinion, twenty days from this date.

Arellano, C. J., Torres, Cooper, Willard, Mapa, and *Johnson, JJ.,* concur.

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[1] Published at the end of this volume.

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