

ANTONYO YINUG, Plaintiff

v.

GOOGAG, et al., Defendants

Civil Action No. 46

Trial Division of the High Court

Yap District

December 10, 1968

Action for property unlawfully taken from premises of plaintiff. The Trial Division of the High Court, Robert Clifton, Temporary Judge, held that there was an improper joinder of defendants and causes of action, and that the cause of action should have been handled in the District Court.

Complaint dismissed without prejudice.

1. Civil Procedure-Generally

Where plaintiff claims that on certain dates set forth in the complaint some of the defendants stole items listed under such dates but does not claim that each defendant participated on each date, the causes of action should not be joined in one action.

2. Torts-Damages-Generally

If goods are taken in what amounts to a burglary in a -proper case in a civil suit for damages the victim might recover damages for the

goods lost and also for the cost of repairing a broken building and other destruction during the burglary and in addition, in a proper case, if the victim has been made sick because of the violence of the burglary he might be entitled to damages for his illness.

3. Torts-Damages-Generally

In civil suits for damages as the result of a burglary the courts in a few cases have allowed additional damages to compensatory damages where the conduct of the actor has been wanton, malicious or oppressive and such damages are known as punitive damages.

<i>Assessor:</i>	JUDGE JOSEPH FANECHOR
<i>Counsel for Plaintiff:</i>	BING DE LEON
<i>Counsel for Defendant:</i>	DABUCHUREN

CLIFTON, *Temporary Judge*

OPINION

[1] The following judgment needs no long explanation. Plaintiff's counsel at the pre-trial conference claimed that he has been informed that on the dates set forth in the complaint some of the defendants broke into his place of business and stole the items listed under said date. However he does not claim that each defendant participated on each date. Under such circumstances, the causes of action should not be joined in one action. To illustrate: If three defendants joined in taking the items listed under date of 3/19/68, totaling \$91.60, but had nothing to do with the unlawful taking on other dates, said three defendants should not be sued for some two thousand dollars of goods which were taken on other dates and which plaintiff does not claim that they took.

Another point should be explained in this opinion. At the time this case was first called and the hearing was continued, the court indicated to counsel that if the action was for goods sold as it appeared from the complaint, that ordinarily the damages would be the price of the goods. Plaintiff's counsel, at the pre-trial conference stated that

he wished to strike from his complaint the claim for \$1,000.00 called "loss and Suffering" and the item of \$337.67 for trial assistant's fee. However no action was taken to strike these items because of the action of the court in dismissing the action, and also because if the action had been continued, a claim for damages in addition to the value of the goods could be made as the claim was not for goods sold but for goods unlawfully taken.

[2, 3] Some discussion of the subject of damages may be in order to guide counsel in future actions. If goods are taken in what amounts to a burglary, that is, the forcible entry of a building, in a proper case in a civil suit for damages the victim might recover damages for the goods lost and also for the cost of repairing a broken building and other destruction during the burglary. In addition, in a proper case if the victim had been made sick because of the violence of the burglary he might possibly be entitled to damages for his illness. Damages in these three categories are what is called *compensatory damages*. In addition to such damages the courts in a few cases have allowed additional damages where the conduct of the defendant has been wanton, malicious or oppressive. Such damages are allowed to punish the offender and they are known as *punitive damages*. They are also allowed as a warning to others to prevent them from committing like offenses.

Whatever damages are allowed, of course, depends on the circumstances in each case. In some cases only the damages for the goods taken would be allowed. In other cases, if the facts indicated it, the other items of damages mentioned might be allowed. For a full discussion of the subject of damages, see: 22 Am. Jur. 2d, p. 114 through 121 on the subject of *compensatory damages* for torts, and p. 322 and 323 on the subject of *punitive damages*.

JUDGMENT

The above entitled action having been duly brought on for a pre-trial conference in the Trial Division of the High Court at Colonia, Yap District, on December 9, 1968, Temporary Judge Robert Clifton presiding and Judge Joseph Fanechoor acting as Assessor, and Bing de Leon acting as counsel for the plaintiff, and Frank Falounug appearing on behalf of himself, and Dabuchuren as counsel for the defendants named in the complaint, and it appearing from the statements of counsel for the plaintiff that the claims of the plaintiff are for property unlawfully taken from the premises of the plaintiff but that each defendant did not join in the taking of all of the items listed in the plaintiff's complaint but only joined with some defendants in taking some of the said items, so that there is an improper joinder of defendants and causes of action, and that some or all of the causes of action attempted to be joined in this cause of action should be handled in the District Court, and the court being fully advised in the premises,

It is hereby ordered that the complaint herein be and the same hereby is dismissed without prejudice to the rights of the plaintiff to maintain actions against the defendants and each of them in another action or actions.