Notes and Comments

CAUSE OF ACTION

ESSENTIAL ELEMENTS OF A GOOD CAUSE OF ACTION

Cause of action is "an act or omission of one party in violation of the legal right or rights of the other; and its essential elements are legal right of the plaintiff, correlative obligation of the defendant, and the act or omission of the defendant in violation of said legal right." (Ma-ao Sugar Central Co., Inc. v. Hon. Conrado Barrios, Tait, Berkenkotter, et al, G.R. No. L-1539, promulgated, Dec. 3, 1947) In this case, to the complaint in another suit filed by Tait, Berkenkotter, Harris and Hick against the Ma-ao Sugar Central Co., Inc., seeking to recover certain sums of money due them from the company before the outbreak of the war, the latter moved to dismiss on the ground that the complaint did not state facts sufficient to constitute a cause of action because the plaintiffs therein had no right to demand payment until after the moratorium provided in Executive Order No. 25, as amended by Executive Order No. 32 is lifted. The presiding judge, one of the respondents herein, denied the motion. This is now a petition for certiorari and prohibition.

Although the Supreme Court denied the petition, it sustained the contention of the defendant-petitioner that the complaint filed in the court below did not state facts sufficient to constitute a cause of action. It laid down the above definition of a cause of action and reasoned out that although the plaintiffs had the legal right to be paid and the defendant had the correlative obligation to pay, there was no omission on the part of the defendant to pay in violation of the legal rights of the plaintiffs because the defendant was not yet in default by virtue of the moratorium.

To the same effect, our Supreme Court ruled when it declared: "It is our view that, upon objection by the debtor no court may now proceed to hear a complaint that seeks to compel payment of a monetary obligation coming within the purview of the moratorium. And the issuance of a writ of attachment upon such complaint may not, of course, be allowed—such levy is necessariiy one step in the enforcement of the obligation, enforcement of which, as stated in the order, is suspended temporarily, pending action by the Government." (General v. De Venecia, G. R. No. 894; Oching v. Rodas, G. R. No. L-1419)

What is a cause of action is not easily defined, and the authorities, both here in the Philippines and in

the United States, have laid down no thoroughly satisfactory and all-embracing definition. The definition of Justice Feria as laid down in this case is succint, it must be admitted; nevertheless, it is not comprehensive. Chief Justice Moran is even briefer, defining cause of action as "the delict or wrong by which the defendant violates the rights of the plaintiff." (Moran, Comments on the Rules of Court, Vol. I, p. 6.) In the United States, "cause of action" has been defined "from the standpoint of rights, as some particular right of the plaintiff against the defendant together with some definite violation thereof which occasions loss or damage; and from the standpoint of duties, as some particular legal duty of the defendant to the plaintiff together with some definite breach of that duty which occasions loss or damage." (Ellison v. Georgia RR Co., 87 Ga. 691, 699, 13 S. E. 809; City of Columbus v. Anglin, 120 Ga. 785, 791; 48 S. E. 318; 2 Words and Phrases, 1015.) The Supreme Court of Georgia said, "This may not be an exhaustive definition; nor do we mean that there may not be causes of action arising from or confered by statutes. But the expression ordinarily includes the idea of some right of the plaintiff violated or some duty to the plaintiff broken. Statutes allowing actions by informers do not include any such idea. The informer has no vested right in the forfeiture until after judgment, and a repeal of the law will abate a pending action. Laws of this character established a penalty for doing or not doing some particular thing, and permit informers generally or certain informers, to prosecute an action for such penalty." (Atlanta & West Point R. Co., v. Coleman, 142 Ga. 94, 82 S. E. 499; Woodburn v. Western Union Telegraph Co., 95 Ga. 803, 23 S. E. 116.) Other authorities define a cause of action as being "the fact or facts which establish or give rise to a right of action, the existence of which affords a party a right to judicial relief." (Baltimore & O. R. Co. v. Larwill, 93 N. E. 619; Emory v. Hazard Powder Co., 22 S. C. 476; 53 Am. Rep. 730.) Again, it has been variously said that a cause of action consists of "a right belonging to one person and some wrongful act or omission by another by which that right has been violated" (Rowe v. Richards, 151 N. W. 1001) or "those facts as to two or more persons entitling at least someone of them to a judicial remedy of some sort against the other, or others, for the redress or prevention of a wrong. It is essential to the existence of such facts that there should be a right to be violated and a violation thereof. Since these two elements constitute a cause of action to satisfy the statute (Code pleading statute as to joinder of action) they must arise out of one or more circumstances called a transaction, the latter is to be viewed as something distinct from the cause of action itself, else the latter could not arise out of the former." (Emerson v. Nash, 124 Wis. 36, 102 N. W. 921; Bouvier's Law Dictionary and Institutes, Vol. I, p. 436.)

"Every judicial action has in it certain necessary elements—a primary right belonging to the plaintiff and a corresponding primary right devolving upon the defendant; the wrong done by the defendant, which consists of a breach of such primary right and duty; a remedial right in the plaintiff and a remedial duty upon the defendant, and, finally, the remedy or relief itself. Of these the primary right and duty and the delict or wrong constitute the cause of action." (Wildman v. Wildman, 70 Conn. 700; 41 Atl. 1.) A cause of action is just the reverse of a defense, which is defined as whatever tends to diminish the plaintiff's cause of action. And it is not synonymous with the right of action, the latter being "the right to bring suit in a case and maybe taken away by the running of the Statute of Limitations, thru an estoppel, or by other circumstances which do not affect the cause of action." (Bouvier's Law Dictionary, 3rd Ed. Vol. I, p. 436, and Vol. II, p. 2962. There is also an obvious distinction between a cause of action and remedy. The cause of action and the remedy sought are entirely different matters. The one precedes and gives rise to the other, but they are separate and distinct from each other and are governed by different rules and principles. (Emory v. Hazard Powder Co., *supra.*) Finally, a cause of action is different from the relief sought, the latter being no part of the cause of action and the character of a cause of action is not determined by the prayer of the complaint but by the facts alleged. (Cabigao v. Lim, 50 Phil. 844, 857, citing 21 R. C. L. 489.)

From the array of definitions cited above, it can be gleaned that there are six essential elements of a good cause of action, to wit: the existence of a legal primary right in the plaintiff, a corresponding legal duty in the defendant, the existence of a wrong, or a violation of that right, or a breach of that duty, the concurrence of right, duty and wrong, a consequential injury or damage to the plaintiff, and the concurrence of wrong and damage.

1. *Existence of a legal primary right in the plaintiff.*—"It is axiomatic that there can be no wrong without a corresponding right and no breach of duty by one person without a corresponding right belonging to some other person." (Rowe v. Richards, *supra.*) The existence of a legal primary right is, accordingly, an essential element of the cause of action inasmuch as the "plaintiff must recover on the strength of his own case instead of on the weakness of the defendant's case, since it is his right, instead of the defendant's wrongdoing, that is the basis of recovery." (Home of Insurance Co. v. Barber, 67 Neb. 644, 93 N.W. 1024.) So "one cannot claim a legal right dependent upon ilegal conduct or a legal remedy for that which in itself is illegal, since the law will not allow one to profit from his own iniquity." (Johnson v. Boston, 83 N. H. 350, 61 A. L. R. 1178; Gibbs Johnson v. Consolidated Gas Co., 130 U. S. 396) However, "even though an act has an illegal element, if only

that part which is innocent affects the cause of action, the existence of the illegal element is immaterial unless it makes the whole transaction illegal." (Bourne v. Whitman, 209 Mass. 155, 95 N. E. 404; Bolyston Bottling Co. v. O'Neill, 231 Mass. 498, 121 N. E. 411.)

A cause of action, therefore, arises out of an antecedent primary right superior to that of the offending party. (McKee v. Dodd, 152 Cal. 637, 93 P. 854; Hyde v. Minnesota, 29 S. D. 220, 136 N. W. 92.)

2. *Corresponding legal duty in the defendant toward the plaintiff.*—This second element of a good cause of action corresponds to the primary right of the plaintiff. (Church v. New Albany Waterworks, 193 Ind. 368, 140 N. E. 540; McKee v. Dodd, *supra.*) This duty may arise from a contract, or may be imposed by positive law independent of contract, or it may arise ex *contractu* or ex *delictu.* (Frost v. Witter 132 Cal. 421, 64 P. 705.) In the Philippines, it may arise also from quasi-contract and quasi-delict.

3. *Wrong or violation of plaintiff's right, or breach of duty on the part of the defendant.*—"There is no cause of action unless there has been a breach of such duty either by means of the defendant's failure to perform some contractual obligation which he has undertaken, or by means of some tortious or illegal act which violates or infringes some right of the plaintiff with respect to which a duty or obligation is owing . . ." (Comstock v. Wilson, 257 N. Y. 231, 177 N. E. 431; Hart v. Hanson, 14 N. D. 570, 105 N. W. 942.) Thus, the wrong may be caused by an act or or omission.

In the ordinary parlance, the wrong consists in doing something which ought not to have been done or not doing something which ought to have been done.

4. *Concurrence of right, duty, and wrong.*—"The cause of the injury or wrong upon which the right of action is founded is not the cause of action itself, but merely one element of it." (Rowe v. Richards, *supra.*) "The cause of action itself cannot exist without the concurrence of a right, a duty, and a default; an obligation must rest upon one party in favor of the other, the performance of which is refused." (Bruner v. Martin, 76 Kan. 862, 93 P. 165.)

5. *Damage.*—Legal damage resulting from some injury to the right of another or from the breach of a duty owing to such other is a necessary element of a cause of action in his favor. (Rowe v. Richards, *supra;* Spencer v. Anderson, 193 Cal. 1, 222 P. 355; Church v. New Albany Waterworks, *supra;* Ottiomwa v. Nicholson, 143 N. W. 439.)

6. *Concurrence of wrong and damage.*—In order that a good cause of action may exist there must be some connection between the act or omission complained of and the damage alleged. (Supreme Lodge v. Knight, 117 Ind. 489, 20 N. E. 479.) It is a maxim of the law that wrong without damage (injuria absque damno) or damage without wrong (damnum absque injuria) will not give rise to a cause of action. (Deobold v. Op-

permann, 111 N. Y. 531, 46 N. E. 128; Louisville & N. R. Co. v. Scruggs, 161 Ala. 97 So. 399.) An act done, causing damage which the law will redress. must not only be hurtful but wrongful. There must be *damnum et injuria.* (Comstock v. Wilson, *supra.*) Hence, negligence without injury or damage gives no cause of action. A damage sustained in obeying a regulation within the scope of the police power must be considered *damnum absque injuria*—hurtful but not wrongful. (Frazer v. Chicago, 186 Ill. 480, 57 N. E. 1055.)

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