5 Phil. 536

[G.R. No. 2235. January 13, 1906]

THOMAS PEPPERELL, PLAINTIFF AND APPELLEE, VS. B. F. TAYLOR, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

This is an ordinary action on a promissory note to recover the sum of $1,150, United States currency, with interest thereon at the rate of 25 per cent per annum from September 14,1903, the date of the note, until its payment. The action was commenced on the 21st of April, 1904, and on the 25th of April the plaintiff procured an attachment of the property of the defendant under the provisions of section 424 and following sections of the Code of Civil Procedure.

The affidavit for attachment stated that the defendant had disposed of his property or is about to dispose of his property with intent to defraud his creditors. By virtue of the writ of attachment the sheriff levied upon the launch Ncotia, the property of the defendant. The defendant moved in the court below to dissolve the attachment, which motion was denied, and to the order denying it he took an exception. The case was tried in the court below, and judgment entered for the plaintiff for the face of the note with interest at the rate of 25 per cent per annum from the 14th day of September, 1903, until the debt was paid. The defendant has brought the case here by bill of exceptions, and makes two assignments of errors.

The first relates to the sufficiency of the affidavit upon which the attachment was granted. The claim of the defendant is that the affidavit was insufficient because the allegation as to the transfer of property was in the alternative.

An affidavit which stated in the alternative two reasons for the attachment, one of which was by the statute a ground therefor and the other was not, would be bad, because, while it

stated that one or the other ground existed, it did not state which one, and the one that did in fact exist might be the one which was not sufficient to authorize the issuance of the writ. In such a case it could be truthfully said that the affidavit did not state the existence of any ground for attachment. That, however, can not be said where the affidavit states in the alternative, as it does in this case, two grounds, either one of which would justify the attachment. If one does not exist the other must. It therefore states positively the existence of a ground for attachment. The objection that could be made to such an affidavit is not that it does not state a ground for attachment, but that it is indefinite in not stating positively which one of several grounds alleged exists. This ought not to be sufficient to render the attachment void. In some cases, as in this, it might be impossible to state truthfully which one of the two grounds did in fact exist. The plaintiff might have information that the defendant was attempting to dispose of his property with intent to defraud his creditors. At the time when he swears to the affidavit, which must necessarily be some time after he acquires the information, he can not know just how far the defendant has proceeded in his attempt. At that precise time the fraudulent sale comtemplated may have been actually consummated, without the plaintiff knowing it. In such a case he would be justified in making the affidavit in the alternative. In some, perhaps in a majority, of the States of the United States such an affidavit as the one in this case would be held bad. There are other courts of the United States, however, in which it would be held good.

With the motion to dissolve the attachment the defendant presented his affidavit to the effect that he had not disposed of and did not intend to dispose of his property for the purpose of defrauding his creditors. Upon this question of fact we do not think that the preponderance of the evidence is against the decision of the trial court. At the hearing of this motion plaintiff, in addition to the affidavit on which the attachment was granted, presented a supporting affidavit in which he gave the source of his information as to the proposed sale.

Section 426 of the Code of Civil Procedure provides, among other things, that the judge shall grant an order of attachment when it appears “that the case is one of those mentioned in section four hundred and twenty-four, and that there is no other sufficient security for the claim sought to be enforced by the action.”

It appears that the plaintiff at the time that the launch *Scotia* was attached in this proceeding had what is known in the United States as a chattel mortgage on the said launch to secure the note sued on in this case, and other notes. The claim of the appellant is that this so-called chattel mortgage constituted other security within the meaning of section 426,

and that the attachment was therefore void. The plaintiff's answer to this claim is that hie so-called chattel mortgage was void under the laws in force in these Islands, and therefore there was no security at all.

We do not find it necessary to pass upon the validity of this instrument. The object of the statute was to prevent the creditor, who already had security on certain goods, from attaching other goods to secure the same debt. It was not, in our opinion, intended to apply to a case where the plaintiff caused his attachment to be levied upon the very article upon which the security existed, and in an action to recover the debt which was so secured. In fact, under the Spanish law of civil procedure, in an action to recover a debt thus secured the property first to be attached is that upon which the security rested. What the effect of this attachment upon the security is we do not decide. We simply hold that section 426 does not prevent an attachment of the article upon which the security rests for the debt thus secured.

The question raised by the assignment of error in regard to the interest has been decided adversely to the appellant in the case of the Banco Español Filipino *vs*. Donaldson Sim & Co., No. 2422.[1] On motion for a rehearing in that case it was held that a judgment of a Court of First Instance which directed the payment of interest from the date of default until the final payment of the judgment was authorized by the law, and that section 510 of the Code of Civil Procedure did not apply to such a case.

The judgment of the court below is affirmed, with the costs of this instance against the appellant, and after the expiration of twenty days judgment should be entered in accordance herewith and the case remanded to the court below for execution of said judgment. So ordered.

Arellano, C. J., Mapa, Johnson, and *Carson, JJ.,* concur.

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[1] Page 418, *supra*.

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