

43 Phil. 364

[G. R. No. 17789. May 08, 1922]

**BENEDICTA GARCIA, PLAINTIFF AND APPELLEE, VS. JUAN CASTILLO,
DEFENDANT AND APPELLANT.**

D E C I S I O N

MALCOLM, J.:

The parties agree that the issue in this case concerns the legal right of the plaintiff, who holds a judgment against the defendant in the amount of P716.84, to levy on the monthly salary of P65 which the defendant is receiving from the Manila Railroad Company, in order to satisfy the judgment. The justice of the peace of Batangas, Batangas, sitting as Judge of First Instance by authorization of the judge of that district, allowed the motion of the plaintiff for the issuance of a writ of execution on P50 of the total of P65 received monthly by the defendant from the Manila Railroad Company, until the judgment was extinguished.

The parties have gone on the assumption that this is an incident to an action for the levy of an execution, although, properly speaking, it is more in the nature of a proceeding in garnishment to subject the money in the hands of a debtor of the defendant to the satisfaction of plaintiff's judgment in his first suit.

Section 450 of the Code of Civil Procedure provides, in part, that "All goods, chattels, moneys, and other property, both real and, personal, or any interest therein of the judgment debtor, not exempt by law, and all property and rights of property seized and held under attachment in the action, shall be liable to execution." Section 452 of the Code, in naming the property which shall be exempt from attachment and execution, does not enumerate salaries and wages. Section 482, as amended, of the Code, qualifies the idea, and in so doing reenforces it, when it provides that "The judge or justice of the peace may order any property of the judgment debtor, *or money due him*, not exempt by law, in the hands of either himself or other person, or of a corporation or other legal entity, to be applied towards the satisfaction of the judgment, subject to any prior rights of the holders of such

property; but the earnings of the debtor for his personal services at any time within one month preceding the order can not be applied when it is made to appear by the affidavit of the debtor, or otherwise, that such earnings are necessary for the support of his family * * *." In this connection, it is to be noted that the record is deficient in that no affidavit has been presented on behalf of the debtor that his earnings from the Manila Railroad Company are needed for the support of his family. But the point is, that the money received by the defendant from the Manila Railroad Company is not "due him" until it is earned.

The true rule is, that only the salary "due" the judgment debtor is subject to attachment and execution, and then only if it is not made to appear by the affidavit of the debtor or otherwise, that such earnings are necessary for the support of his family. Where the hiring is by the month for a salary to be paid at the end of the month, such salary is not subject to be attached on execution before the end of the month in which it is to be earned, as it is not then money "due" within the meaning of the statutes. The creditor is denied the right to attach the unearned salary of his debtor. (Foster vs. Singer [1887], 69 Wis., 392; 2 A. S. R., 745; Humphrey vs. Midkiff [1909], 122 La., 939; 20 L. R. A. [N. S.], 912.)

In the light of the foregoing, judgment must be reversed, without prejudice to the right of the plaintiff to institute further proceedings to enforce his judgment against the defendant, without special finding as to costs. So ordered.

Araullo, C, J., Avanceña, Villamor, Ostrand, and Romualdez, JJ., concur.