

43 Phil. 430

[G. R. No. 17585. June 05, 1922]

GREGORIO DE LA PEÑA, PLAINTIFF AND APPELLANT, VS. THE GOVERNMENT OF THE PHILIPPINE ISLANDS, DEFENDANT AND APPELLEE.

D E C I S I O N

MALCOLM, J.:

The purpose of this action is to determine the right, if any, of Gregorio de la Peña, the sole heir of the late Father Agustin de la Peña, to \$18,945.35, Mexican currency, deposited in the Insular Treasury in 1901 by the military authorities of the United States as funds seized from the insurgent forces. The case was tried before the Honorable Manuel Camus, sitting in the Court of First Instance of Iloilo, who rendered judgment dismissing the complaint, with costs. Plaintiff appeals.

In June, 1898, Father Agustin de la Peña deposited \$18,945.31, Mexican currency, in the Iloilo branch of the Hongkong and Shanghai Banking Corporation. The money was withdrawn on May 29, 1900, but was redeposited on the same day. On December 10, 1900, this money was seized by the military authorities of the United States. It was deposited in the Insular Treasury, first as a special fund, but later was covered into the general funds of the government.

In 1907, the Roman Catholic Bishop of Jaro brought action against Gregorio de la Peña as administrator of the property of the deceased Father Agustin de la Peña to recover the sum of \$6,641, Mexican currency, deposited with Father De la Peña as the trustee of a charitable bequest. But the Supreme Court held that the money was forcibly taken from the Hongkong and Shanghai bank by the armed forces of the United States during the war of the insurrection, and that, consequently, Father De la Peña was not responsible for its loss. (Roman Catholic Bishop of Jaro vs. De la Peña [1913], 26 Phil., 144.) In 1919, the Philippine Legislature passed Act No. 2802, authorizing the heirs or representatives of the late Agustin de la Peña to bring suit against the Government of the Philippine Islands, to determine the

rights of the heirs of Father De la Peña to the money which had been confiscated by the military forces.

There is some dispute as to whether or not the funds in question constituted church funds or personal funds of Father De la Peña.

It is admitted that Father De la Peña occupied, during the years 1898 to 1901, the position of ecclesiastical governor of the Diocese of Jaro. It is also established that \$6,641, Mexican currency, had been placed in the hands of Father De la Peña, as trustee of a charitable bequest made by Antonio Rodriguez for the construction of a leper hospital. (Roman Catholic Bishop of Jaro vs. De la Peña, *supra*.) It is further established by the testimony of Father Gregorio Rosales, clerk and acting secretary of Father De la Peña, that money to the amount of about \$13,000, Mexican currency, was collected for the Bishop of the Diocese of Iloilo, by Father De la Peña from three priests, and deposited in the bank. Father Rosales admitted, however, that a part of the money so deposited might have constituted personal funds) of Father De la Peña. The reason why Father De la Peña deposited the money in the bank in his own name and not in the name of the Church, according to this witness, was this: "Should the Bishop quarrel with him, he would appropriate the money and would not give it to the Bishop; so that when later he was removed from the position of Vicar-General and the delivery of the money was demanded, he refused to do so, and still later he was captured; moreover, it was not proper that that money be deposited in the name of the Church or of the Bishop because at that time there was war."

The issue is also sharply drawn between the claimant and the Government as to whether or not the funds in question were insurgent funds.

As stated, the money was seized by the military authorities on December 10, 1900. On December 26 following, Captain Wotherspoon, Collector of Customs, requested authority from the Assistant Adjutant General, Department of the Visayas, to turn into the Treasury of the Islands three sums of money, including the \$18,945.31, Mex., deposited in the Hongkong¹ and Shanghai Banking Corporation to the credit of Father Agustin de la Peña. On December 28 following, Assistant Adjutant General Noble, by command of Brigadier General Hughes, returned answer that the moneys mentioned in the communication could be deposited as a special deposit and transferred to the treasury of the Islands "it being clearly shown that they were funds pertaining to the insurgent forces." During this time, Father De la Peña was under arrest by the military authorities as a political prisoner, and had been made to execute an assignment of the money standing to his credit in the bank. On

January 4, 1901, Captain Glenn, who was instrumental in seizing the money, replying to a letter of Collector of Customs Wotherspoon, said that the money deposited with the Hongkong and Shanghai Banking Corporation in the name and to the credit of Agustin de la Peña, "according to the documentary evidence, on file in this office, belongs to those in insurrection against the United States Government. This fact is acknowledged by the said Agustin de la Peña over his own signature and in his own handwriting." The money was in fact paid into the Treasury of the Philippine Islands on January 24, 1901, on account of "Insurgent Seized Funds, Miscellaneous."

To make out his case, appellant relies on six propositions of law and fact. Appellant's first proposition is that plaintiff is the legal successor to the rights of the late Agustin de la Peña. This is not denied. Appellant's second proposition is that the fund in question was taken by duress from the deceased and is now in the Insular Treasury. This, likewise, is not denied. Appellant's third proposition is that the evidence shows that the funds in question were not insurgent funds. All of the evidence before us shows that the money was either church funds, as shown by the testimony of Father Rosales, or insurgent funds, as shown by the documentary evidence, and the admissions to the military authorities by Father De la Peña. Appellant's fourth proposition is that the officers of the United States military forces were without authority to confiscate private property. There is in the record no evidence on this point, and even if there were, we do not think that it would be conclusive of the case. Appellant's fifth proposition is that the trial court was not warranted in admitting evidence on behalf of the Catholic Bishop of Jaro. This is a point which need not be resolved, for, in the first place, the witness, Father Rosales, was used both by the plaintiff and the defense, and no objection to his testimony relative to the source of the fund seems to have been made in the Court of First Instance. Appellant's sixth proposition is that the evidence does not warrant the conclusion that the funds deposited by the deceased were not his property. This, of course, is the decisive issue of the case, which counsel argues ingeniously although not convincingly. The question here is not one of illusive presumptions but one of cold facts. Facts essential to the existence of a right, although negative in nature, have not been proved by the party claiming the right.

The conclusions we reach after a close study of the record are that it has not been proved by a preponderance of the evidence (1) that Father Agustin de la Peña was in reality the owner of the funds in question; and (2) that this sum of money was not actually insurgent funds.

These two conclusions might offhand be considered as inconsistent. They are not if it be remembered that the money was collected and deposited by Father Agustin de la Peña in his

own name, to be true, but yet for the benefit of the Church, and that, thereafter, Father De la Peña may have conceived the idea of making use of the money in order to advance the revolutionary cause. Under either assumption, plaintiff has not proved his right to any portion of the funds deposited in the Insular Treasury in 1901, by the military authorities of the United States, as funds seized from the insurgent forces, within the meaning of these phrases as used in Enabling Act No. 2802.

Judgment must be affirmed, with costs against the appellant. So ordered.

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