

THE CITY OF MANILA, PLAINTIFF AND APPELLEE, VS. EVARISTO BATLLE ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. L-8429. October 16, 1913

Ponente: MORELAND, J.

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MORELAND, J.:

This is a motion to dismiss an appeal taken by a landowner from a judgment of the Court of First Instance of the city of Manila in condemnation proceedings modifying the award of the commission. The commission awarded to Evaristo Batlle y Hernandez and his wife the sum of P119,173.40. When the report came before the court for action the city of Manila and the appellants entered into the following agreement:

"It is hereby agreed between the city of Manila, plaintiff, and Evaristo Batlle y Hernandez and wife, Luisa Estrada, defendants, that when the above entitled cause was called for hearing upon the report of the commissioners, the City Attorney Hon. I. Adams, in representation of the city of Manila, and W. A. Kincaid in representation of the defendants, Batlle and wife, submitted the said report to the court without objection and with a verbal request for its approval."

Notwithstanding this stipulation the court upon its own motion reduced the award to P105,144.50. The appeal is from that part of the judgment reducing the award. The notice of the appeal was filed on the 18th day of September, 1912. On the 21st day of September of the same year the city of Manila moved the court to execute the judgment in accordance with the provisions of sections 247 and 248 of the Code of Civil Procedure. At that time there were present in court Mr. Adams and Mr. Lacalle representing the city of Manila and Mr. Kincaid representing the defendants Evaristo Batlle y Hernandez and his wife. The city of Manila offered to the attorney for the appellants the sum awarded by the judgment of the Court of First Instance. Mr. Kincaid accepted that offer with the statement that he received it as a part payment of the sum to which his client had a right in law and under the award of the commission and he expressly reserved his right to appeal. The money was paid by the city of Manila not in cash but by warrant such as it habitually uses in paying claims against it. That warrant reads as follows:

"No. 369699-B.—The Government of the Philippine Islands.—To the Treasurer of the Philippine Islands.—Manila, P. Lt Sept. 19th, 1912.—Pay to Evaristo' Batlle y Hernandez, and Luisa Alvarez y Arrieta or order the sum of one hundred and five thousand one hundred seventy-two pesos and 50/100 (P105,172.50), in full satisfaction of the within account, which I certify to be correct, just, and payable in accordance with law and appropriation duly made.—(Sgd.) R. J. Fitzsimmons, Disbursing Officer, City of Manila.—Countersigned: (Sgd.) C. H. French, Assistant Auditor.

"The Government of the Philippine Islands.—To Evaristo Batlle y Hernandez, and Luisa Alvarez y Arrieta, No. 265 Real, Ermita—1912—Sept. 17th—Article or service—Payment of compensation and damages awarded to Evaristo Batlle and Luisa Alvarez, by the Court of First Instance, Manila, decision of Sept. 3, 1912, rendered in Cause No. 7915, entitled City of Manila vs. E. Batlle et al defendants, together with all buildings and improvements thereon P105,144.50—For legal costs in favor of said defendants (sec. 249, Act No. 190).—P28.00—Total—P105,172.50—Appropriation for 'Calle Dasmariñas,' City of Manila, Public Works Loan

Fund, Proj. No. 2.—Distribution—Account—Permanent Improvements—B-3 P105,172.50—I certify that the expenses above enumerated have been lawfully incurred; that each and all of the expenditures were necessary for, and have been, or will be, applied to the public service; and that the prices stated are just and reasonable and not in excess of current rates in this locality—(Sgd.) R. J. Fitzsimmons—Disbursing and Supply Officer, City of Manila.—Received the property included in the above items.

"By indorsement hereon the undersigned admits full satisfaction of the within described claim.

(Sgd.) "Evaristo Batlle y Hernandez.

(Sgd.) "Luisa Alvarez y Arrieta.

(Sgd.) "Evaristo Batlle y Hernandez, Al Hongkong Banking Cor."

The position of the moving party, stated by its counsel, is as follows:

"These facts present for the first time in this jurisdiction the question whether the acceptance by a defendant of the money awarded him as damages for the appropriation of his property for public purposes, waives all questions as to the validity of the proceedings and any regularities or errors so as to stop him from prosecuting an appeal from the judgment of the Court of First Instance. In determining this question, as applied to the case at bar, plaintiff's argument that the appeal should be dismissed is based on the following three propositions:

"1. The acceptance of the award waives all errors in the proceedings and bars defendants from an appeal.

"2. The statement of counsel in open court that he accepted the money as a pro tanto payment has no effect.

"3. The defendants in writing acknowledged that the payment of the money was full satisfaction of their claim."

Condemnation proceedings in this jurisdiction are peculiar in this respect, that the plaintiff may execute his judgment as soon as it is obtained. This is unusual if not extraordinary in proceedings in court. Standing alone, this right places the defendant at a serious disadvantage. The legislature, of course, saw this and, while granting that privilege to the plaintiff, took steps to protect the defendant, as far as possible, from the results of the concession. It said, in effect, to the plaintiff that, if it chose to execute judgment and take possession of the property, it must do something for the defendant as a consideration therefor. That consideration was the payment of the value of the property as assessed by the court. In the purview of the law, therefore, the acceptance by the landowner of the money awarded by the judgment of the court is merely the consideration accorded for the privilege which the plaintiff has and actually exercises of taking property from the owner before the final determination of the action in which it is involved.

By the payment of the money in the case at bar, therefore, the city did nothing which, of itself, would give it a legal right to take anything more from the defendant. In accepting the money the defendant did nothing which, of itself, gave the plaintiff a legal right to take from him anything more. The plaintiff took possession of defendant's property. The defendant merely took the consideration which the law gave him for such loss. The defendant did nothing more than the plaintiff by its own voluntary act compelled him to do. Can the city now successfully claim that the defendant has lost anything by doing the very thing that it forced him to do? The taking of the money tendered by the plaintiff being the exact legal equivalent of the deprivation of his property, what consideration is there for claiming that the defendant lost also his right to appeal? While that right may not be a vested right, it is a valuable right. While it may be waived or given away, it cannot be taken without consent and without consideration. Can the plaintiff by doing an act which the law requires it to do, namely, pay the value of the property taken, secure a greater benefit than that which the same law attaches to the act? Shall the defendant by performing an act which the law requires or, at least, permits him to perform, be visited with further consequences than those which the same law attaches to the act?

It is apparent, then, that there was no consideration for the alleged release by the defendant of his right to appeal. No valuable thing passed to him from the plaintiff or from any other source. The relationship, if any, created between the parties by the offer and acceptance of the sum found due defendant by the Court of First Instance was not one springing from contract; it was not the result of an accord and satisfaction—an agreement where one of the parties undertook to give or perform and the other party to accept, in satisfaction of a claim, liquidated or in dispute, and arising either from contract or from tort, something other than or different from what he was, or considered himself, entitled to. It was but a step in a statutory proceeding in which the defendant received no more than he was entitled to under that proceeding.

Counsel for the moving party cites, in support of his contentions, the decisions of several States. A careful examination of the first case cited under each State discloses that, with one or two exceptions, Idaho and perhaps Texas, they are not in point. Considerable reliance is placed upon the case of *Pyle vs. Wood* (18 Idaho, 674), and the argument used by the court therein. In that case the court, in depriving defendant of his right of appeal, laid stress upon and drew some important deductions from the fact that the statute provided for the payment of the money to the clerk of the court in case it was refused by the defendant. In our opinion, the court in that case falls into the error which counsel for the moving party in this case commits—a confusion of the owner's constitutional with what we may call, as distinguished therefrom, his statutory rights. The payment of the money to the clerk has no particular significance under the statutes, except when the owner's constitutional rights are being considered. It is conceded that the plaintiff cannot execute the judgment in its favor by taking possession of the land without paying the money to the defendant, securing to him its payment, or paying it to some person for his benefit. The protection of his constitutional rights, as viewed by the statute makers, requires this; and it was to meet what the lawmakers deemed was, or might possibly be, the requirement of the constitution that the legislature provided that the money representing the value of the land condemned, if the defendant refuse to accept it, be paid to the clerk of the court for him. The payment of the money to the clerk has, from the viewpoint of the legislator, nothing to do with the rights which are conferred upon the defendant by statute. It has to do simply with the constitutional provision requiring compensation before he be deprived of his land. His right to appeal is not a constitutional but a statutory right. That is the right which the defendant is asserting in this motion. He makes no claim that his constitutional rights have been infringed; he says simply that the moving party is seeking to deprive him of a right granted by statute. If we have properly conceived the purpose of paying the money to the clerk, namely, the fulfillment of the constitutional requirement, then such payment in no way touches the defendant's other rights. It cannot be conceived that it was the purpose of the legislature, in protecting the constitutional rights of defendant, to take away from him, at the same time, a right granted by statute.

Counsel for moving party quotes with marked approval the following from the Idaho court for the purpose of demonstrating that the owner ought to be penalized for taking the payment tendered: "Certainly a defendant would never refuse to accept the award if the acceptance is no waiver of his right of defense."

We conceive that this statement misses the point involved in the discussion. The purpose of the court there, as well as of counsel here, seems to be to produce an argument which will prevent the defendant from accepting the tender without losing something. Our position is that he has already lost its equivalent when he accepts it. Why should he not take the money? The plaintiff has taken the property. What should the defendant have in compensation for the deprivation? Where in the statute is it provided that the defendant shall not take the money, and where in the statute does it appear that if he does take it he shall be punished for doing so by being deprived of his right to appeal? If it is not in the statute, what principle of justice supports that contention? Defendant had an undisputed right, under the ordinary principles of the law, to the possession and use of his property until the judgment of the last court of the land to which he had a right to appeal deprived him of it. By special and exceptional provision plaintiff in eminent domain is permitted to take it away from him. That being the case,

justice, would declare that he receive just compensation for such deprivation. The statute, attempting to do justice as nearly as possible, provides that the payment of the value set by the court shall be sufficient to meet that requirement. The simple fact is that the plaintiff has taken something which belongs to the defendant. All that the defendant has done is to take that which compensates him. Now, to deprive him of anything more is unfair and unjust. The object of the statute in requiring payment was beneficial, not punitive. Its purpose was the protection not the deprivation of his rights. We are of the opinion that the court has no authority to attach to this intended protection a punishment or to construe the beneficial purpose of the statute, even partly, into a penalty.

The instrument signed by the defendant on receipt of the payment is, under the facts and circumstances of the case, not controlling. The proceeding was not for the payment of a claim against the city. The payment was not the result of an agreement between the parties where one of them undertook to give or perform, and the other to accept in satisfaction of a claim, liquidated or in dispute, and arising either from contract or tort, something other than or different from what he considered himself entitled to. There seems to have been no dispute between the parties about the value of the property. The moving party conceded in the court below, in effect, that the value was that set by the commission, Witness the stipulation recommending that the court assess the damages in favor of the defendant in the amount assessed by the commission. There was no dispute or difference between the parties as to what the defendant was entitled to. The plaintiff's sole purpose was to put itself in a position where it could legally take possession of the property and prosecute its improvements thereon at once. That is conceded in the bill of exceptions, signed or approved by both parties. Under such circumstances it cannot be held that the mere signing of the voucher in question would deprive the defendant of any of his rights. The intention of the parties is determined to a large extent by the nature of the proceeding in which the voucher was signed. The instrument having been presented and signed in the proceeding which had for its object the possession of the property can be held under the circumstances of this case to have no more effect than the payment of the money would have had. The statement of Judge Kincaid on receiving the money that it was accepted in part payment of the sum which he believed was justly due his client, and also without prejudice to his right to appeal, is a fair statement of the law which governed the proceedings in which the money was paid.

As we have already said, there was no consideration for giving the paper any other significance than that already stated. The use of the voucher could have been objected to by the defendant, as he had a right to ask that he be paid in legal tender. The acceptance of the voucher was merely an accommodation, a favor extended to the city by the defendant. No one has lost anything by the use of the voucher; no one has changed position to his injury. The city lost nothing; the owner gained nothing. The motion is denied.

Arellano, C. J., Torres, Carson, and Trent, JJ., concur.

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