

TEODORO DE LOS REYES, PLAINTIFF AND APPELLEE, VS. VICENTE LUKBAN AND ESPIRIDION BORJA, DEFENDANTS. VICENTE LUKBAN, APPELLANT.*G.R. No. 10695. December 15, 1916*

Ponente: TORRES, J.

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On December 5, 1913, Teodoro de los Reyes brought suit in the Court of First Instance of this city against Vicente Lukban and Espiridion Borja, to recover from them individually the sum of P853, the balance of a debt of P1,086.65 owing for merchandise bought on credit in October and November, 1904, by the firm Lukban & Borja, from the plaintiff's ship supply store, named La Industria.

In case No. 3759, prosecuted in the said court by the creditor Reyes against the said firm of Lukban & Borja, the latter was ordered by a final judgment of October 19, 1905, to pay the said sum of P1,086.65, together with the interest thereon, amounting to a total of P1,102.95, in addition to the costs, P46.24.

One of the partner, Espiridion Borja, paid P522.69 on account of the debt. There still remains to be paid P610.21, and this sum, together with the costs and legal interest thereon from July 14, 1905, to the date of the complaint, December 5, 1913, aggregates the total sum of P894.17. The plaintiff prayed the court to order the defendants jointly or severally to pay him, the plaintiff, this last mentioned amount, together with the legal interest thereon from the date of the complaint, and the costs.

After due summons the defendants appeared, and one of them, Espiridion Borja, in answer to the complaint entered a general and specific denial of each and all of the allegations therein contained, and, as a special defense, alleged that it was *res judicata* and that the plaintiff's action, if it existed, had already prescribed.

The other defendant, Vicente Lukban, in his amended answer set forth (1) that he denied generally and specifically each and all of the facts alleged in each and all of the paragraphs of the complaint; (2) that the issues raised by the complaint had already been decided in case No. 10908, in which the firm of Lukban & Borja was acquitted, without costs; (3) that the defendant Lukban was merely an industrial partner in the firm of Lukban & Borja, Espiridion Borja being the partner thereof who furnished the capital; (4) that the assets of the firm of Lukban & Borja had not been exhausted (by attachment), wherefore the present action is premature; and (5) that the plaintiff Reyes' action, as regards this defendant Lukban, has prescribed.

At the trial of the case the parties made the following stipulation:

"1. That on July 15, 1905, the herein plaintiff Teodoro de los Reyes brought suit against the firm of Lukban & Borja to recover the sum of P1,086.65 owing for merchandise bought on credit in the months of October and November, 1904, from the ship supply store known by the name of La Industria. The said suit was heard before the Honorable John O. Sweeney, on October 19, 1905, on which date the said judge sentenced the defendant firm to pay the sum of P1,086.65, Philippine currency, with legal Interest thereon from July 14, 1905, to the date of the judgment, amounting to P16.30, Philippine currency, and costs amounting to P46.24. It

does not appear that this obligation was set forth in writing. All the preceding has been taken from the record of that court in case No. 3759, *De los Reyes vs. Lukban & Borja*.

"2. On August 19, 1913, the same plaintiff Teodoro de los Reyes brought suit against Lukban & Borja to recover the sum of P853, alleging for this purpose that the defendant Espiridion Borja paid P522.69 on account of the sum of P1,086.65 allowed in the judgment referred to in the preceding paragraph, there remaining unpaid P610.21 of the principal debt, to which is added the legal interest thereon from January 1, 1906, to the date of the commencement of the said suit, thus forming the total sum above stated of P853. After hearing the case, the Honorable Judge Del Rosario, on November 20, 1913, rendered judgment absolving the firm of Lukban & Borja from the complaint without special finding as to costs. All the facts related in this paragraph appear in case No. 10908 of this court.

"3. That several years ago and seven months after its organization, or, more specifically, on April 13, 1909, the firm of Lukban & Borja was lawfully dissolved, as stated by Borja; and that the five years from the 13th of the same month of the year 1904, stipulated for its duration, had elapsed. (Judgment in case No. 10908.) The articles of incorporation of the firm of Lukban & Borja are found in the attached document, which, for its identification, is marked as Exhibit A of this agreement.

"4. That the assets of the firm of Lukban & Borja had not been exhausted (by attachment) for the reason that the plaintiff did not know what property belonged to it.

"5. Vicente Lukban and Espiridion Borja, notwithstanding that they alleged themselves to be copartners of the firm of Lukban & Borja, were not sued by the herein plaintiff in cases Nos. 3759 and 10908, but that plaintiff sued the firm of Lukban & Borja, represented by Borja."

After hearing the evidence, the court rendered judgment on November 25, 1914, sentencing the defendants Vicente Lukban and Espiridion Borja jointly and severally to pay to the plaintiff Teodoro de los Reyes the sum of P610.20, together with the legal interest thereon from December 17, 1913, and the costs. To this judgment Lukban excepted, announced his intention to file the proper bill of exceptions and moved for a new trial on the grounds that the evidence did not justify the decision and that the latter was contrary to law. By an order of December 10, the motion for a new trial was overruled and an exception was entered by this defendant-appellant. The other defendant, Espiridion Borja, made no exception to the said ruling so the judgment became final with respect to him.

The subject matter of this suit is an acknowledged debt held to be owing by a judicial pronouncement contained in a judgment rendered in case No. 3759, prosecuted by the creditor Teodoro de los Reyes against the general partnership of Lukban & Borja, which was sentenced to pay the said debt. The creditor was unable to collect it in its entirety but recovered only a part thereof, to wit, P522.69, which was paid by the partner Borja. In order to demonstrate the propriety of the judgment appealed from, rendered against the parties who were the partners of the said firm, we shall confine ourselves in this decision to the four errors assigned to the said judgment by the defendant Lukban, inasmuch as the other defendant Borja acquiesced in the said judgment and the same became final as to him. These errors are the following:

"1. In not holding that the action brought against this defendant is improper, inasmuch as prior to its prosecution no attachment was levied on the assets of the said partnership.

"2. In not holding that the action brought against this appellee [defendant] has not been proven.

"3. In not holding that the present is not a true case of *res judicata*.

"4. In not holding that the appellee's action has prescribed in so far as it concerns this appellant."

With respect to the first assignment of error, the contents of the writ and the return of the execution of the final

judgment rendered in the said case No. 3759 show that the dissolved partnership of Lukban & Borja had absolutely no property whatever of its own. Had any property whatever of the said partnership still remained, the defendant Lukban would have pointed it out in order to avoid being obliged to pay in solidum all the balance of the sum which the firm was sentenced to pay by the said final judgment of October 19, 1905. He did not do so because the firm of Lukban & Borja no longer had any kind of property or credits, as shown by the document setting forth the agreement made by and between several creditors of the said firm, a third party named Ramon Tinsay and the former partner of the firm, Espiridion Borja, in which document it appears that the firm Lukban & Borja owed four creditors, among them the plaintiff De los Reyes, the total sum of P10,165.01 and these creditors with some difficulty succeeded in collecting the sum of P5,000 through a transaction with the said Ramon Tinsay who paid this last amount for the account of the partner Espiridion Borja. It appears that the latter paid to the creditor De los Reyes the aforementioned sum of P522.69, on account of the firm's debt to Teodoro de los Reyes, a debt which was recognized in the said judgment of October 19, 1905. The attachment, or recourse to the property, the lack of which proceeding was complained of, is a proceeding that was resorted to when attempt was made to execute the final judgment rendered against the partnership of Lukban & Borja, which proceeding gave negative results; therefore, if the requirement of article 237 of the Code of Commerce must be complied with by the creditor it is evident that it has already been done for the defendant Lukban was unable to show that the partnership to which he belonged actually possessed any more assets.

With respect to the second assignment of error, if Teodoro de los Reyes is entitled to collect individually from the partners Lukban and Borja the amount of the debt that the dissolved partnership owed at the time of its dissolution, it is unquestionable that such a right has given rise to the corresponding right of action to demand the payment of the debt from the partners individually, or from each of them, by the insolvency of the partnership, inasmuch as they are personally and severally liable with all their property for the results of the operations of the partnership which they conducted.

Article 127 of the Code of Commerce provides:

"All the members of the general copartnership, be they or be they not managing partners of the same, are personally and severally liable with all their property for the results of the transactions made in the name and for the account of the partnership, under the signature of the latter, and by a person authorized to make use thereof."

With regard to the third assignment of error. Although the action brought in case No. 10908 by the creditor Teodoro de los Reyes against the partnership Lukban & Borja be not different from that brought in the present case No. 11296, and although it be deemed to have arisen out of the right of the plaintiff-creditor to collect his credit, yet the first time it was brought against the partnership, whereas in the present case it was brought individually against those who were the members of that partnership. The action against Vicente Lukban and Espiridion Borja individually can not be demurred to on the ground of *res judicata* by the judgment of acquittal entered in case No. 10908.

Article 1252 of the Civil Code provides:

"In order that the presumption of the *res adjudicata* may be valid in another suit, it is necessary that, between the case decided by the sentence and that in which the same is invoked, there be the most perfect identity between the things, causes, and persons of the litigants, and their capacity as such."

There may be perfect identity between the causes of action and the things demanded in case No. 10908, wherein the said partnership was absolved; from the complaint, and in the present case No. 11296; it is, however, undeniable that the parties defendant are not the same nor is their capacity as such. In the first case it was the

partnership that was sued, while in the present case it is Lukban and Borja individually, as former members of that dissolved partnership, who are sued jointly and severally. Therefore, pursuant to the above-cited article of the Civil Code, the provisions of which harmonize with those of section 307 of the Code of Civil Procedure, the former judgment can not be set up as *res judicata* in the present action.

As regards the last assignment of error, alleging prescription of action, suffice it to say that from October 19, 1905, to December 5, 1913, even without counting the interruption caused by the action brought on August 18th of this latter year, the ten year period fixed by section 43 of the Code of Civil Procedure has not elapsed. In view of the negative results of the proceeding had by the sheriff in levying execution of the final judgment rendered against the partnership of Lukban & Borja, the creditor in the exercise of his rights has brought the proper action against those who were the members of that firm for the recovery of the unpaid balance of his credit, and he filed his complaint within the period fixed by the law of procedure and the defendants cannot allege that it is now *res judicata*.

For the foregoing reasons the judgment appealed from is affirmed with the costs of this instance against the appellant. So ordered.

Johnson, Carson, Trent, and Araullo, JJ., concur.

Moreland, J., see dissenting opinion.

DISSENTING OPINION

MORELAND, J.:

This action was begun against Vicente Lukban and Espiridion Borja personally to recover the sum of P853, the balance due on a judgment obtained against the partnership known as "Lukban & Borja." The facts preceding the beginning of this action are stated in a stipulation between the parties as follows:

"1st. That on the 15th of July, 1905, the plaintiff, Teodoro de los Reyes, sued the firm of Lukban and Borja, a copartnership, for the recovery of P1,086.65, the purchase price of articles sold to the said partnership during the months of October and November, 1904. The action was tried before the Hon. John C. Sweeney who, on October 19, 1905, found in favor of the plaintiff for P1,086.65, Philippine currency, with interest from the 14th of July, 1905, to the date of the judgment, amounting to P16.30, and costs, amounting to P46.24. * * *

"2d. That on the 19th of August, 1913, the said plaintiff, Teodoro de los Reyes, began an action against the said partnership, Lukban and Borja, to recover the sum of P853, alleging that the defendant Espiridion Borja paid on the above-mentioned judgment the sum of P522.69, leaving a balance due thereon of P610.21, with interest from the 1st of January, 1906, to the date of filing the complaint, principal and interest amounting to P853, already mentioned. On the trial of the case the Hon. Judge Del Rosario in the month of November, 1913, entered a judgment dismissing the complaint on the merits against the said partnership of Lukban and Borja without costs.

"3d. That the partnership of Lukban and Borja was dissolved by operation of law about five years ago, that is to say, about the 13th of April, 1909, on which date the five years stipulated in the contract of partnership as the duration of the same expired, said partnership having been formed on the 13th of April, 1904. * * *

"4th. That the plaintiff made no attempt to collect the said judgment of P1,086.65, or any part thereof, from the partnership property for the reason that he did not know of the existence of any such property.

"5th. That Vicente Lukban and Espiridion Borja, although they were members of the firm of Lukban and Borja, were not made parties to the actions in which the judgments above referred to were obtained, but in each

of said actions the partnership of Lukban and Borja was the sole defendant."

The trial court found in favor of the plaintiff and entered judgment against the defendants Vicente Lukban and Espiridion Borja jointly and severally for the sum of P610.20, with interest from the 17th day of December, 1913. From that judgment this appeal was taken.

We have these facts-before us:

The partnership of Lukban and Borja was formed on the 13th of April, 1904, to run for a period of five years. On the 19th of October, 1905, the plaintiff obtained a judgment against the said partnership for the sum of P1,086.65. Later the partnership paid on said judgment the sum of P522.69, leaving a balance of P610.21. On the 19th of August, 1913, and after the lapse of more than five years from the date of the judgment and without execution having been issued thereon, the plaintiff began the action for the recovery of the balance due on said judgment. The complaint in that action was dismissed on the ground that, on the date on which the action was brought, the partnership had ceased to exist, the five years term having expired, and that no action could be brought against it. Later the present action was commenced against the members of the partnership personally for the recovery of the balance due on said judgment. It is admitted that no attempt has been made by the plaintiff to collect the original judgment out of the partnership property.

The first question which arises is: Can an action be maintained against the partnership, or against any or all of the members thereof, on the old judgment for the purpose of obtaining another judgment of precisely similar character? We think not. The only action on a judgment authorized either by the Civil Code or by the Code of Civil Procedure is one for the enforcement of the judgment (section 447, Code of Civil Procedure).[1] A judgment is not recognized by the Civil Code, or by the Code of Civil Procedure or any other law called to our attention, as a contract either express or implied, or as a quasi contract, or as a debt, or any other kind of obligation which can be made the basis of an action to obtain another judgment of precisely the same nature. In some cases it is regarded more in the nature of an order for the specific performance of the contract on which the action is founded; and in every case it is considered the highest form which men's relations can take under the law and no action based thereon can make it any better or higher; and an action for that purpose is useless. It would seem to be but natural that the law should not permit the courts to be moved and parties perturbed and cause loss of time and money for the sole purpose of obtaining a thing not one whit better than that which the courts have already given him and cannot be of the slightest legal value to him. When courts have given a party the very highest thing of which they are capable their powers cannot be again exercised in that particular regard. They are exhausted. Why should a party who has one judgment which is completely enforceable be permitted to have another on top of it no more enforceable?

An action on a judgment as a debt, obligation, or contract being unknown to the Civil Code or the Spanish law generally, it is a necessary result that, if any right of action on a judgment exists in this jurisdiction, it must have been conferred by a statute passed since the American occupation. The only legislation on that subject is found, as we have stated, in section 447 of the Code of Civil Procedure, which permits an action to be brought, not on the judgment as a debt or for the purpose of securing a new judgment of precisely similar character to the old one, but to enforce the old judgment after the expiration of the time during which an execution may be issued. In other words, the action authorized by section 447 is not to obtain a new judgment but to enforce the old; and the judgment secured in such an action is not for a sum of money, but is simply an order directing the execution of the old judgment. It simply takes the place of the execution which, five years having elapsed, is not issuable. In a word, it is another means of obtaining an execution.[2]

We are of the opinion, therefore, that the second action against the partnership to procure a new judgment for the

amount remaining due on the old judgment was not maintainable and was properly dismissed by the court; and, while the dismissal was based on an untenable ground, it was, nevertheless, correct. No appeal was taken from that judgment, and it is now, of course, final and was when this action was commenced.

The second question which arises is: Can an action to recover a judgment on a judgment be maintained against the members of a partnership personally if it cannot be maintained against the partnership itself? As we have already said, the present action is directed against the members of the partnership personally and is to recover a joint and several judgment against them upon the old judgment against the partnership.

It is clear that if our reasoning in connection with the first question is correct, then this action cannot be maintained. If there is no authority of law for bringing an action on a judgment to secure a new judgment, then this action cannot be maintained any more than the action against the partnership under similar circumstances. There is no law giving a right of action on a judgment in favor of or against anybody, except that conferred by section 447 above quoted; and that, as we have seen, is simply a right to enforce the old judgment.

The third question which presents itself is: Even admitting the right of the plaintiff to maintain an action on the old judgment, is the remedy of the plaintiff a new judgment against the members of the partnership personally or is it the execution of the old judgment against them? Under the law and procedure existing in this jurisdiction prior to American occupation, a new judgment against the members of the firm personally under circumstances such as appear in this case was not permitted. The first step required of a plaintiff who had a judgment against a partnership of the character described in this action was to execute the judgment as far as possible against the property of the partnership; and, after that was exhausted, to proceed, by execution, against the property of the individual members under the same judgment. It was not necessary, nor was it permitted, to bring a new action against the members of the firm personally on the old judgment and obtain a new judgment against them. That procedure has not been changed by any legislation since American occupation and that is the practice to-day.

As a necessary result the plaintiff is not entitled to a judgment in this action.

We do not stop to discuss the question presented by the appellant as to whether the exhaustion of the property of the partnership is a necessary prerequisite to the bringing of this action. That question is not involved, inasmuch as it cannot be reached until it has been determined whether such an action can be maintained. If the action cannot be maintained under any theory, then it is unnecessary to determine the validity of the defenses to that action, one of which is, appellant claims, that the plaintiff has not exhausted his remedy against the partnership property.

Nor do we find it necessary to consider at this time whether or not the judgment in the second action against the plaintiff and in favor of the partnership is *res adjudicata* in the present action. For the same reason we find it unnecessary to decide whether the action has prescribed under the provisions of the Code of Civil Procedure.

The judgment appealed from should be reversed and the cause dismissed on the merits, without costs in this instance.

[1] Section 43 of the Code of Civil Procedure provides in part:

"Civil actions other than for the recovery of real property can only be brought within the following periods after the right of action accrues: 1. Within ten years: An action upon an agreement, contract, or promise in writing, or upon the judgment or decree of a court."

I do not think that this provision confers a right of action on a judgment. Nor does it indicate that such right of action necessarily exists in cases such as the present.

[2] See my dissenting opinion in *Compania General de Tabacos de Filipinas vs. Martinez y Nolan*, (29 Phil. Rep., 515.)

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