

## MARIANO REAL ET AL., PLAINTIFFS AND APPELLEES, VS. CESAREO MALLARI, DEFENDANT AND APPELLANT.

*G.R. No. 11008. March 29, 1916*

Ponente: MORELAND, J.

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### MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of Manila denying a motion of the defendant to compel the sheriff to return to him P336, alleged to be the value of the use and occupation of the lands belonging to the moving party which had been sold under execution and occupied from the time of the sale to the date of redemption by an assignee of the plaintiff, the purchaser at the public sale.

We are of the opinion that the judgment must be affirmed. We do not, however, put it on the ground which the trial court made the basis of its judgment. It appears that the sale took place on the 16th of February 1912; that the defendant, the moving party, on the 14th of February 1913 paid to the sheriff who made the sale under the execution the sum of P1,026 which was composed of the balance due on the execution after such sale, the taxes on said land which had been paid prior to such redemption, together with the sum at which the property had been purchased at the public sale, together with the proper rate of interest to the date of payment. It further appears that such payment was made voluntarily to the sheriff without claim for reduction by reason of the use and occupation of the premises by the assignee of the purchaser at the execution sale, and that said sum so paid was delivered to the said purchaser or to his assignee, by the sheriff without objection on the part of the execution debtor. On the 30th day of April, 1913, about two months and a half after the voluntary payment above referred to, the execution debtor made a written demand on the sheriff for a return to him of P336 which he claimed was the reasonable value of the use and occupation of the premises sold under the execution between the sale which occurred, as we have stated, on the 16th of February 1912, and the payment to the execution creditor, which was made on the 14th of February 1913. The motion to compel the sheriff to repay the P336 was not made until nearly two years after such demand, or on the 4th day of February 1915.

We are of the opinion that the voluntary payment to the sheriff above described without claim of any kind with respect to the use and occupation of the premises sold under execution, together with the payment of said sum by the sheriff to the person entitled thereto without objection of the moving party, relieve the sheriff from further responsibility in the matter. If the execution debtor had a remedy with respect to the use and occupation, and we do not decide whether he had or not, it was certainly not against the sheriff. This is particularly true when we take into consideration the fact that between two or three months elapsed after the payment to the sheriff before any claim whatever was made for restitution, and nearly two years passed before steps were taken to make the claim of the execution debtor effective.

The judgment appealed from is affirmed, with costs against the appellant. So ordered.

Torres, Johnson, Trent, and Araullo, J., concur.

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