

BANK OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLANT, VS. WENCESLAO TRINIDAD, COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLEE.*G. R. No. 16014. October 04, 1921*

Ponente: JOHNSON, J.

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There is practically no dispute about the facts in this case. They are as follows:

On the 13th day of July, 1916, the defendant Collector of Internal Revenue, through his duly authorized agent at Zamboanga, seized and distrained certain personal property, consisting of machinery for sawing lumber which is particularly enumerated and described in paragraph 3 of the complaint, and advertised the same for sale, to realize the sum of P2,159.79, alleged to be due to the Government of the Philippine Islands from Pujalte & Co., as forestry charges. The defendant claimed that said personality belonged to the said company, was used in the business on which the taxes were due, and was liable to seizure to cover said taxes. On the other hand, the plaintiff claimed to be the owner of said property, and demanded its release. The demand being denied, the plaintiff paid to the defendant the said sum of P2,159.79 under protest to prevent the sale of said property, and immediately brought the present action in the Court of First Instance of Zamboanga to recover the said sum of P2,159.79 together with interest and costs. The lower court, after due trial, dismissed the plaintiff's complaint and absolved the defendant from all liability thereunder. From that judgment the plaintiff appealed to this court.

The property in question formerly belonged to the Taba Saw Mill Co., a copartnership formed by Pujalte & Co. and one Ramon Murga. In April, 1914, Ramon Murga sold all his rights, title, and interest in and to the said copartnership to Pujalte & Co., which thereby became the sole owner of the concern.

It appears from plaintiff's Exhibit AA, which was admitted in evidence without objection on the part of the defendant, that on the 26th day of September, 1912, the said Taba Saw Mill Co. conveyed to the plaintiff bank, by way of chattel mortgage, the property here in question together with other personalites, as security for the payment to said bank of two certain promissory notes for the sum of P180,000. Said chattel mortgage was duly registered in the office of the register of deeds of Zamboanga on the 26th day of December, 1912. On that date the property in question was free from all tax liens; at least, the plaintiff mortgagee had no notice thereof. On the 13th day of July, 1916, when the amount here in question was found to be due to the Government from Pujalte & Co. as forestry charges, and when the property in question was seized by the defendant, the said chattel mortgage was still subsisting. It is admitted that at the time of its seizure the said property was being used in the sawmill of Pujalte & Co.

Upon the foregoing facts the lower court absolved the defendant from all liability under the plaintiff's complaint, for the following reasons:

- That the party who was liable to pay the taxes for which the property in question was distrained was not the plaintiff but Pujalte & Co.; and that the plaintiff, having "voluntarily and spontaneously" paid the debt of the

latter, had no cause of action against the defendant collector, and could only recover the sum so paid by it from Pujalte & Co., under article 1158 of the Civil Code (p. 15, B. of E.); that the plaintiff should have proceeded under section 141 of Act No. 2339 (now sec. 1580 of Act No. 2711), and not under section 140 of the said Act (sec. 1579 of Act No. 2711).

- That "even supposing for a moment" that the plaintiff had a right of action against the defendant to recover the sum paid by it to the latter, yet this action must fail because the property in question, having been used by Pujalte & Co. in its business of cutting and sawing lumber, was liable to seizure and distraint under section 149 of Act No. 2339.

We are of the opinion that neither of the foregoing reasons is sound, and that the judgment of the lower court should be revoked.

First. There is absolutely no basis for the finding of the trial court that "the plaintiff bank had voluntarily and spontaneously paid the debt of a third party, that is, that of the firm of Pujalte & Co." (p. 15, B. of E.). Paragraph 7 of the plaintiff's complaint alleges: "That thereupon, involuntarily and under due protest in writing, the plaintiff bank made payment of the required sum of P2,159.79 in order to secure the release of its seized property." These allegations were specifically admitted by the defendant (par. 5, stipulation, Plaintiff's Exhibit G).

Section 140 of the Internal Revenue Law (Act No. 2339) provides as follows:

"SEC. 140. Recovery of tax paid under protest.—When the validity of any tax is questioned, or amount disputed, or other question raised as to liability therefor, the person against whom or against whose property the same is sought to be enforced shall pay the tax under instant protest, or upon protest within ten days, and shall thereupon request the decision of the Collector of Internal Revenue. If the decision of the Collector of Internal Revenue is adverse, or if no decision is made by him within six months from the date when his decision was requested, the taxpayer may proceed, at any time within two years after the payment of the tax, to bring an action against the Collector of Internal Revenue for the recovery of the sum alleged to have been illegally collected, the process to be served upon him, upon the provincial treasurer, or upon the officer collecting the tax."

Section 141 of the same Act provides:

"SEC. 141. Action to contest forfeiture of chattel.—In case of the seizure of personal property under claim of forfeiture the owner, desiring to contest the validity of the forfeiture, may at any time before sale or destruction of the property bring an action against the person seizing the property or having possession thereof to recover the same, and upon giving proper bond may enjoin the sale; or after the sale and within six months he may bring an action to recover the net proceeds realized at the sale."

The lower court was of the opinion that the plaintiff should have proceeded under the latter section above quoted and not under the former. It cannot be maintained that the personal property here in question was seized by the defendant "under claim of forfeiture;" nor could it have been legally seized under claim of forfeiture. It was seized to enforce an alleged tax lien, under section 149 of Act No. 2339 (sec. 1588, Act No. 2711), which was quoted by the lower court in its decision (p. 19, B. of E.) and which in no way provides for the forfeiture of the property on which such a lien attaches. Forfeiture is "the divestiture of property without compensation, in consequence of an offense. The effect of such forfeiture is to transfer the title to the specific thing from the owner to the sovereign power." (12 R. C. L., 124.) There is a great difference between a seizure under forfeiture and a seizure to enforce a tax lien. In the former all the proceeds derived from the sale of the thing forfeited are turned over to the Collector of Internal Revenue (sec. 148, Act No. 2339); in the latter, the residue of such proceeds over and above what is required to pay the tax sought to be realized, including expenses, is returned to the owner of the property (second paragraph, sec. 152, Act No. 2339). Clearly, the remedy applicable to the present case is that provided for

in section 140, above quoted, and which the plaintiff invoked. (See *Hongkong & Shanghai Banking Corporation vs. Rafferty*, 39 Phil., 145, 147.)

Second. At the time of the seizure of the property here in question, the plaintiff held a valid and subsisting chattel mortgage on the same, duly registered in the registry of deeds. "A chattel mortgage is a conditional sale of personal property as security for the payment of a debt, or the performance of some other obligation specified therein, the condition being that the sale shall be void upon the seller paying the purchaser a sum of money or doing some other act named." (Sec. 3, Act No. 1508.) "Therefore, so long as the mortgage exists, the dominion with respect to the mortgaged personal property rests with the creditor-pledgee from the time of the inscription of the mortgage in the registry, and the furniture ceases to be the property of the debtor for the reason that it has become the property of the creditor, in like manner as the dominion of a thing sold is transferred to the purchaser and ceases to belong to the vendor from the moment of the delivery thereof, as a result of the sale." (*Meyers vs. Thein*, 15 Phil., 303, 308-309; see also *Bachrach vs. Mantel*, 25 Phil., 410; *In re Du Tec Chuan*, 34 Phil., 488, 490.)

The chattel mortgage in question was registered in the registry of deeds on the 26th day of December, 1912. The forest charges sought to be collected by the defendant were found to be due from Pujalte & Co. on the 13th day of July, 1916, and on that date the property covered by said chattel mortgage was seized by the defendant to enforce the payment of said forest charges. It is clear from these facts and from the legal provisions and jurisprudence above quoted that the plaintiff-mortgagee, and not Pujalte & Co., the mortgagor, was, and had been for more than three years, the legal owner of the property in question at the time the same was seized by the defendant. And even granting, without deciding, that the forest charger are a tax on business or occupation within the meaning of section 149 of Act No. 2339 (sec. 1588, Act No. 2711), yet we are of the opinion and so decide that the mere fact that said property was used in the business of Pujalte & Co. could not and did not make such property liable for the payment of taxes due from said company, said property belonging as it did to an innocent third party. "The property used in the business or occupation," referred to in said section 149, can only mean property belonging to the owner of the business or occupation. Any other construction would be unwarranted and unjust.

For the foregoing reasons the judgment appealed from is hereby revoked, and it is hereby ordered and decreed that a judgment be entered in favor of the plaintiff and against the defendant, ordering the latter to refund to the former the sum of P2,159.79, with interest thereon at the legal rate from the 13th day of July, 1916, until paid, and without any finding as to costs. So ordered.

Araullo, Avancena, and Villamor, JJ., concur.

CONCURRING

STREET, J.,

I concur on the ground that the language used in section 1588 of the Administrative Code (1917), creating a lien upon property used in any business or occupation subject to an internal revenue tax, cannot be interpreted as fixing a lien upon a sawmill used in sawing timber on which the forest charges have not been paid. The lien created by that section was evidently intended to apply to property used in relation with a business or occupation subject to some form or other of the privilege taxes recognized in the Internal Revenue Law; and the language used is clearly expressed to this effect. The forest charges for timber taken from the public forests do not constitute a privilege tax on a business or occupation in any sense, and hence the lien does not attach to a sawmill

in which the timber is cut into lumber.

In this view of the case it is a matter of indifference whether the sawmill in question was owned by Pujalte & Company or by the bank.

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