

RAFAEL VERCHES, PLAINTIFF AND APPELLANT, VS. ELENA RIOS, DEFENDANT AND APPELLANT.*G.R. No. 23839. September 24, 1925*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-23839/>**STATEMENT**

Plaintiff, claiming that he had been defrauded by the defendant of the sum of P2,400 growing out of a real estate deal, commenced an action against the defendant to recover that amount, with legal interest and costs.

For answer the defendant makes a general and specific denial, and as a special defense alleges that the plaintiff agreed with Mr. Gibbs to purchase the land described in the complaint at the rate of P2 per square meter amounting to P40,000, and that the plaintiff, believing that he could obtain a reduction in the price, agreed with Mr. Angel Bernal, the agent of the defendant, that the agent should negotiate with Mr. Gibbs for a reduction of the price, and that the amount of any reduction should belong, half and half to the plaintiff and defendant, after deducting expenses and attorney's fees. That the defendant, through her agent, obtained a reduction of P2,400, of which P400 was to be paid to the agent, and the remaining P2,000 to be divided equally between the plaintiff and the defendant, and as a counterclaim, it is alleged that the plaintiff is indebted to the defendant in the sum of P1,000, plus P400 paid to her attorney. Defendant denies that she has ever made any attempt to defraud her creditors, and claims that she has been damaged, by reason of the wrongful writ of attachment issued in this action, in the sum of P10,000, and she prays for judgment against the plaintiff, requiring him to pay her the sum of P1,400, and the further sum of P10,000 as damages for the wrongful attachment.

The lower court rendered judgment in favor of the plaintiff for the sum of P1,000, and dismissed defendant's counterclaim and cross-complaint, from which both parties sought to appeal to this court. The appeal of the plaintiff was perfected, and that of the defendant was dismissed on April 3, 1925. After the defendant's appeal was dismissed, and on April 28, 1925, the plaintiff filed a motion in this court for leave to issue an execution upon his judgment against the defendant for the sum of P1,000. May 23, 1925, the motion for an order of execution was granted by the vacation Judge "in so far as it sentenced the defendant to pay the plaintiff the sum of P1,000 with legal interest from December 3, 1923, together with costs." The defendant filed a motion to reconsider the order of the vacation Justice of May 23, 1925, and on June 3, 1925, that motion was denied "without prejudice to the defendant's right to appeal from this order to the court in banc." An appeal from that order to the court in banc was taken and allowed by the vacation Justice on June 18, 1925. On July 21, 1925, this court in banc made the following resolution:

"Considering the motion of the attorney for the defendant-appellant in case No. 23839, Rafael Verches vs. Elena Rios, praying that the order of the vacation Justice of May 23, 1925, be reconsidered and set aside, motion denied, and the said order of the vacation Justice affirmed."

Execution on the judgment in favor of the plaintiff and against the defendant for P1,000 was issued out of the Court of First Instance in which the original judgment was rendered and placed in the hands of the sheriff to satisfy that judgment, and on June 22, 1925, Angel Bernal gave a check to the plaintiff for P1,000, and concurrent with the delivery of that check and on the same day, the plaintiff issued and signed the following receipt:

"Received from Mrs. Elena Rios, the sum of one thousand pesos (P1,000), check No. 334732 D drawn by Angel Bernal on the China Banking Corporation, as the total balance of the execution of the judgment in civil case No. 25374 of the Court of First Instance of Manila, entitled 'Rafael Verches, plaintiff, vs. Elena Rios, defendant.'

"Manila, 22nd of June, 1925.

(Sgd.) "R. VERCHES"

When presented the check was dishonored, and the plaintiff threatened Angel Bernal with a prosecution for estafa, and on July 16, 1925, the actual money evidenced by the check was then paid to the plaintiff, who accepted it, and the check was returned to Angel Bernal.

Based upon such facts, the defendant now moves to dismiss plaintiff's appeal.

JOHNS, J.:

There is no dispute about any material fact. Plaintiff's complaint is founded upon an indivisible cause of action to recover the sum of P2,400 arising out of a fraudulent breach of a contract, upon which the lower court rendered judgment in favor of the plaintiff for the sum of P1,000, from which the plaintiff appealed assigning the following errors:

"The lower court erred in sentencing the defendant to pay the plaintiff only the sum of P1,000 instead of sentencing her to the payment of the sum of P2,400 with legal interest thereon."

After his appeal was taken and perfected, the plaintiff filed a motion in this court for leave to have an execution issued out of the court below on the judgment in his favor against the defendant for P1,000. That motion was granted by the vacation Justice on the 23d of May, 1925, and this order of the vacation Justice was approved by the court in banc on July 21, 1925. Based upon the order of the vacation Justice of May 23, 1925, the plaintiff applied to the lower court and obtained leave to issue an execution on his judgment for P1,000, and that execution was issued out of the lower court, and eventually the defendant was forced to, and did, pay the P1,000 to plaintiff, who signed the receipt above quoted.

The proof is conclusive that, through an execution issued on his motion, the plaintiff has obtained satisfaction in full of his judgment for P1,000. It may be that the vacation Justice, as such, had no legal right to issue the order of May 23, 1925. Be that as it may, that order was confirmed by the court in banc on July 21, 1925.

Although the amount involved is small, the question presented is one of first impression in this court, and is important to the legal profession.

The case of *Paine vs. Woolley* (80 Ky., 568), is a leading, well written case on the question presented, the syllabus of which is as follows:

"1. A party who has recovered a judgment upon a claim which is indivisible, and has, after its rendition, coerced by execution full satisfaction, cannot maintain an appeal in this court, against the objections of the judgment debtor, upon the ground that he has not recovered enough.

"2. This rule applies to judgments in equity as well as at law.

"3. Having elected to collect his judgment, appellant ratified it, and should be estopped from prosecuting the appeal as inconsistent with his collection of the amount adjudged to him."

And on page 573, the opinion says:

"We may, therefore, conclude with perfect confidence that the general principle is that a party who has

recovered judgment on a claim which cannot be split up and made the basis of several causes of action, and afterwards coerced full satisfaction by writ of execution or authority of the court, cannot maintain an appeal from the judgment against the objections of the judgment debtor.

"Counsel for appellants have cited a number of authorities which, it is contended, establish a different rule; but after a patient and thorough examination of each case, we are unable to find that any of them go further than to hold that neither a voluntary payment by the defendant of the judgment, nor a partial satisfaction thereof under coercion, will constitute a waiver of the appeal or a release of errors. But the weight of authority is to the effect that an acceptance of full satisfaction of the judgment annihilates the right to further prosecute the appeal, while there are cases holding the contrary view."

The following authorities are also square in point:

"One who complains of a judgment must be consistent in his conduct with reference to it. If he recognizes its validity, he will not be heard to say that it is erroneous." (Babbit vs. Corby, 13 Kan., 612; Merchant's Nat Bank vs. Quinton, 9 Kan. App., 882; 57 Pac, 261.)

"A party who is dissatisfied with a decree in his favor has the option to have it reviewed by proper proceedings, or to enforce it and receive its benefits; but he cannot pursue both courses, since one is inconsistent with the other." (Harte vs. Castetter, 38 Neb., 571; 57 N. W., 381.)

"If one desires to appeal from an order made in a litigation in which he is a party, he should accept no benefit under it, for he cannot do both." (Cogswell vs. Colley, 22 Wis., 381.)

"The right to accept the fruits of a judgment, and the right of appeal therefrom are not concurrent. On the contrary, they are totally inconsistent. An election to take one of these courses is, therefore, a renunciation of the other." (Estate of Shaver, 131 Cal., 219.)

"When an appellee has paid, and the appellant has accepted payment of a judgment from which an appeal has been taken, there is nothing more in controversy, and the court will not entertain or permit the prosecution of the appeal." (State ex rel. Neal vs. Kamp, 111 Ind., 56.)

"The right to proceed upon a judgment or decree, and invoke the process of the court, and thus acquire or otherwise secure and enjoy the fruits of such judgment or decree, is wholly inconsistent with the right to appeal from it." (Merriam vs. Victory Mining Co., 37 Or., 321.)

"It is manifestly unjust to permit a partly successful litigant to take all the money the decree gives him, and then speculate upon the possibilities of getting more by means of a writ of error." (Holt vs. Rees, 46 111., 181.)

"The receipt of money due upon a decree, and the allowance of its satisfaction in consequence of the payment in full before an appeal, is a waiver of all errors, unless the money thus received is returned or tendered to the appellee before the proceeding to assign errors in the appellate court." (Murphy's Heirs vs. Murphy's Adm'r., 45 Ala., 123.)

The rule is also sustained by the supreme court of Louisiana, where it is held:

"An appellant from a judgment in his favor for a less amount than he claimed, who, after taking his appeal, causes a fi, fa. to be issued upon the judgment, will be considered voluntarily to have executed such judgment, and to have abandoned his appeal." (Campbell vs. Orillion, 3 La. Ann., 115.)

"A party in whose favor a judgment appealed from was rendered, who partially executes the same by compulsory legal process, must be considered as having acquiesced in such judgment, and cannot afterwards, by appeal or answer to his adversary's appeal, or otherwise, ask that the judgment be amended." (Wiemann's Succession, 112 La., 293; 36 So., 354.)

"It cannot be controverted, declared the court in *De Egana's Succession*, supra, that under the laws and jurisprudence of this state, the party who voluntarily executes, either partially or in toto, a judgment rendered for or against him, or who voluntarily acquiesces in or ratifies, either partially or in toto, the execution of that judgment, is not permitted to appeal from it." *De Egana's Succession*, 18 La. Ann., 59.)

"To receive the amount of a judgment, in whole or in part, is, in its natural significance, as well as under the Louisiana jurisprudence, an acquiescence in the judgment. And to receive a part of a judgment is as significant of an acquiescence of the judgment as would be the reception of the whole." (*Flowers vs. Hughes*, 46 La. Ann., 436; 15 So., 14.)

Owing to the similarity of the jurisprudence of that State with the law in the Philippine Islands, the Louisiana decisions are important and should have great weight in this court.

Plaintiff's cause of action is indivisible.

The plaintiff, having applied to this court for leave to issue an execution out of the lower court on his judgment for P1,000, and, through coercion, having collected that judgment and receipted for it in full, ought not to be heard in this Court to say that the judgment of the lower court was erroneous. It may be, as plaintiff claims, that in the collection of a judgment for P1,000 on an execution, it never was his purpose or intent to waive or abandon his appeal from that judgment.

His cause of action being indivisible, and the judgment from which plaintiff's appeal was taken having been satisfied by an execution issued on his own motion, there is nothing left from which to appeal. Upon an indivisible cause of action, plaintiff, through an execution, cannot collect a judgment in his favor and at the same time prosecute an appeal from that judgment upon the ground that it was erroneous and should have been for more money.

The petition to dismiss the appeal is sustained, without costs. So ordered.

Johnson, Street, Ostrand, and Villa-Real, JJ., concur.

DISSENTING

MALCOLM, J., with whom concur Avanceña, C. J., Villamor and Romualdez, JJ.:

The principal decision makes a very fair statement of the facts. With this statement, we have no quarrel. We shall only emphasize certain points, in order to make clear our particular point of view.

It is well to recall that both parties, the plaintiff and the defendant, attempted to appeal. However, the appeal of the defendant-appellant was ordered dismissed by this court on March 24, 1925, in these words " * * * after ten days let final judgment be entered accordingly, without prejudice to the appeal of the plaintiff-appellant." Thereafter, on April 14, 1925, the deputy clerk forwarded to the clerk of the Court of First Instance of Manila certified copies of the resolution and final judgment rendered in the case for proper proceedings. Thereafter, and still by judicial action, the vacation Justice ordered, on May 23, 1925, that copy of the final judgment be forwarded to the lower court for the execution of the judgment rendered against the defendant.

From all of these facts, it is readily gathered (1) that the dismissal of defendant's appeal was primarily due to her own neglect, and (2) that the action of the court itself put the questions advanced by the defendant beyond the possibility of review, and settled that much of the case. The motion of the defendant, also, comes most tardily,

after dismissal of her appeal, after submission of the bill of exceptions by the plaintiff, after filing by the plaintiff of his brief, and within the third extension of time allowed the defendant to file her brief.

The main decision also contains an impartial resume of the law. The general rule announced to the effect that after a party receives payment of the judgment, he cannot appeal therefrom or prosecute an appeal theretofore taken, is reinforced by many authorities and is a most excellent principle. To our minds, however, it is not here applicable and should not here be enforced.

In addition to what was said when we discussed the facts, as a legal deduction, it is undeniable that the plaintiff could not recover less, if his appeal goes forward. He might recover more. It would be possible for the plaintiff to obtain a more favorable judgment. It would be impossible for him to run the risk of a less favorable judgment. The judgment rendered, principally through the fault of the defendant, is for only the uncontroverted part of the claim. Acceptance of payment of that part should not preclude the plaintiff from prosecuting his appeal, to determine whether he should not have been allowed more. The active participation of the defendant in the appeal estops her from alleging a waiver of the right of appeal on the part of the plaintiff. (2 R. C. L., 61-63.)

On the facts above emphasized, and on the exceptions to the general rule above indicated, it is our opinion that the motion to dismiss should be denied; that the defendant should be afforded an opportunity to file her brief; and that the case should then be placed on the next court calendar.

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