

MACONDRAY & CO., INC., PLAINTIFF AND APPELLEE, VS. GO BUN PIN, DEFENDANT. THE GOVERNMENT OF THE PHILIPPINE ISLANDS, CLAIMANT AND APPELLANT.*G.R. No. 29230, December 18, 1928*

Ponente: STREET, J.

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The facts necessary to an understanding of the case are these: Go Bun Pin, a Chinese merchant, was engaged in business in the City of Manila prior to August 15, 1927, upon which date he ceased to do business. During the three months next prior to the date stated Go Bun Pin had made various purchases, from Macondray & Co., Inc., of consignments of flour from Australia, which had in usual course of business been delivered to him upon trust receipts, and for which he had given his acceptances. These obligations having remained unpaid, Macondray & Co., Inc., instituted on August 15, 1927, an action against Go Bun Pin to recover on said acceptances, at the same time asking for an attachment against his property. To the complaint in this action the attorney for the defendant, on September 14, 1927, filed an answer, admitting that the defendant was indebted to the plaintiff in the several amounts claimed in the complaint and indicating a willingness to have judgment entered for the plaintiff. Upon this answer the court, on October 18, 1927, gave judgment against Go Bun Pin in favor of Macondray & Co., Inc., for the sum of P21,562.99, with interest. In due time this judgment became final without appeal on the part of the defendant.

Meanwhile, on August 26, 1927, the court had issued an order for the attachment of the property of the defendant for the satisfaction of the claim sued on. The attachment issued pursuant to this order was levied upon sacks of flour and other effects of the defendant; and on September 10, 1927, the court, upon application of the plaintiff's attorney, made an order that the property thus seized should be sold as of a perishable nature, the proceeds to be deposited in the clerk's office to abide the final decision in the case. From this sale the sum of P2,650.67 appears to have been realized.

While this money was still in the custody of the court, that is to say, on October 25, 1927, the Attorney-General, on behalf of the Government of the Philippine Islands, filed a petition in intervention, alleging that Go Bun Pin was, on August 15, 1927, indebted to the Government of the Philippine Islands in the amount of P1,082.29 upon account of the merchant's tax on his gross sales for the half quarter from July 1 to August 15, 1927, inclusive, which amount was alleged to be a prior lien upon the proceeds of the attached property, wherefore it was prayed that the amount due upon said tax should be paid to the Government out of the proceeds of the sale of the attached property then in the hands of the clerk. This petition was denied by the trial court in the order which is the subject of this appeal, and the case is now, before us for the determination of the question whether the claim of the Government for the merchant's tax of Go Bun Pin, for the period stated, is entitled to preference over the lien acquired by Macondray & Co., Inc., by virtue of its attachment.

The tax for which the Government seeks satisfaction pertained to the third quarter of the year 1927 and fell due at

the end of that quarter, or on October 1, 1927. (Sec. 1458, Admin. Code.) In this connection we note that under an amendment to section 1435 of the Administrative Code, effected by section 1 of Act No. 2892, the Collector of Internal Revenue is authorized, when a taxpayer is found to be doing any act tending to obstruct the proceedings for the collecting of the tax, to declare the same due; and this appears to have been done in this case on October 20, 1927. But no proof was offered to show that the taxpayer was given notice of such declaration with the corresponding demand for payment, as required. The trial judge therefore held—and we think properly—that the obligation to pay the tax was not accelerated, with the result that the tax became due only upon the expiration of the quarter.

The lien asserted in behalf of the Government in this case is defined in section 1588 of the Administrative Code, wherein among other things it is stated that the internal-revenue tax on receipts constitutes a lien superior to all other charges or liens upon the property "used" in the business or occupation upon which the tax is imposed; and the contention is that, inasmuch as the attached property had been used in the business of Go Bun Pin, the proceeds of said property in the custody of the court are subject to said lien. But it will be noted that the attached property had already been seized and sold at the time the tax in question fell due. It was not, therefore, in use in Go Bun Pin's business at the time the lien in favor of the Government was asserted, and hence could not be the subject of such lien. The expression "upon the property used" contemplates that the property should actually be in use in the business at the time the tax falls due and lien accrues. The lien of the attaching creditor must therefore prevail.

It results that no error is imputable to the appealed order, and the same is therefore affirmed. So ordered, without costs.

Avanceña, C. J., Johnson, Malcolm, Villamor, Ostrand, and Villa-Real, JJ., concur.

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