

**PRATS & COMPANY, A REGISTERED PARTNERSHIP, PLAINTIFF,
VS. PHCENIX INSURANCE COMPANY, HARTFORD, CONNECTICUT, A
CORPORATION, DEFENDANT. MENZI & CO., INC., AND ANTONIO
BRIMO, INTER...**

G. R. No. 31984. February 25, 1930

Ponente: JOHNS, J.

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JOHNS, J.:

In the final analysis, the real question presented is whether or not the bill of intervention states facts sufficient to give the intervenors the relief for which they pray. Many and different legal questions have been ably presented by opposing counsel. As we analyze the record, the dates are important and decisive. The intervenors alleged that their respective actions were commenced against Prats & Company on December 10, 1924, and that the writs of attachment were issued on December 11, 1924, when the process of garnishment was served on the respective insurance companies. It is also alleged that final judgment was rendered in case No. 27315 on September 10, 1925, and in case No. 27316 on August 19, 1925. There are no allegations anywhere in the petition as to what was done after the service of the garnishee process. Neither is there any allegation that the insurance companies made default in the service, or that any interrogatories or cross- interrogatories were ever filed or that any hearing was ever had before any court on the garnishment proceedings, or that any judgment was ever rendered against the garnishee. In truth and in fact it does not appear that anything whatever was done by the intervenors after the service of the garnishee process or that the intervenors at any time ever claimed or asserted any right, title or interest in the money in question until they filed their motion to intervene on May 6, 1929. That is to say, it does not appear from the bill of intervention that, beyond serving of the garnishee notices on the insurance companies, the intervenors ever did anything to prosecute or perfect their garnishee proceedings or that they ever claimed or asserted any right, title or interest in the money in dispute until the 6th day of May, 1929.

In that situation, the law laid down in *Corpus Juris*, vol 28, p. 359, is square in point.

"(2) Abandonment or Delay in Prosecution.—It is good ground for dismissal of the garnishment proceedings or discharge of the garnishee that plaintiff does not at all undertake to maintain the garnishment, or fails to prosecute his remedy with due diligence, thus in effect abandoning the proceeding, for the garnishment statutes contemplate speedy proceedings and the cause cannot be kept open for a considerable period of time without either a continuance in form or consent or acquiescence by the garnishee. However, laches of or delay by plaintiff may be waived, and it has been held that the right to have the summons set aside or dismissed for delay in prosecution is in the court's discretion. There is also some authority that plaintiff's laches in prosecuting the garnishment is not ground for dissolution, particularly where the garnishee is not prejudiced; But under the rules of some lower courts in the same jurisdiction, it is held otherwise, unless a sufficient cause for the delay is shown. Among acts or omissions on the part of plaintiff which have been held an abandonment or discontinuance of the proceedings are; Extraordinary delay in bringing in defendant, failure to exhibit interrogatories or to take the deposition, answer, or examination of the garnishees as required by statute, failure or refusal to proceed as required by statute Where the garnishee disputes his liability, failure to appear on the

return day of a summons to the garnishee to show cause why judgment should not be entered against him, failure to set the case for trial at the term to which it was continued, failure for two years to prosecute the proceeding or to bring it to hearing, taking out an alias or pluries execution against defendant, and suffering several terms to elapse, without taking proper steps to bring into court to contest the validity of the transfer, the transferee disclosed by the garnishee's answer. It has, however, been held that the garnishee is not entitled to dismissal because neither party moves for trial at the next term after judgment against defendant, as permitted by statute. Among matters which have been held not an abandonment or discontinuance of the proceedings are: Return by the sheriff of the fieri facias without retaining copy thereof after service on the garnishees but before they had answered, the mere pendency of the cause for fifteen months, defendant not having raised the question of laches, and the rendition of judgment against defendant before examining the garnishee. However, under the statutes and practice of some jurisdictions the taking of judgment against defendant without having had the trustee or garnishee charged operates as an abandonment and discontinuance of the proceedings against the trustee or garnishee. In these jurisdictions vacation of the judgment pursuant to statute eliminates the discontinuance as to the garnishee. Of course the garnishee cannot complain of a delay caused by his own act, as where he procured a continuance, nor can he urge that such delay constitutes an abandonment by plaintiff."

That rule of law is well sustained by the authorities cited in the notes and, in particular, the case of *Wooding vs. Puget Sound Nat. Bank* (11 Wash., 527, 535; 40 Pac, 223), in which that court says:

"Waiting for two years after the service before citing the garnishees to appear and answer should be held equivalent to an abandonment of said proceedings, regardless of the fact as to whether such final action was barred by the statute of limitations. A creditor should diligently prosecute his proceedings against garnishees. The service of the writs upon the garnishees was not the commencement of an action against, them. No issue was formed which they could force to trial, and they were not put in a position where they could take any action in the premises to have the question of their liability put at rest. Such action rested with the plaintiff creditor, the moving party, and he should be required to prosecute the same with reasonable diligence."

In the instant case, after service of the garnishee notices on the insurance companies on December 11, 1924, it is not claimed or alleged that the intervenors ever did anything to enforce or protect their legal rights under the garnishment until they filed the motion to intervene on May 6, 1929, covering a period of four years, four months, and twenty-five days. In this situation, we are clearly of the opinion that the intervenors lost any legal rights which they may have had under the garnishee notices of December 11, 1924. Hence, it is unnecessary to discuss or decide the numerous other legal questions presented by opposing counsel in their respective briefs.

The judgment of the lower court is affirmed, with costs. So ordered.

Johnson, Malcolm, Villamor, Ostrand, Romualdez and Villa-Real, JJ., concur.

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