

THE CITY OF MANILA, PLAINTIFF AND APPELLANT, VS. FRANCISCO GAMBE ET AL., DEFENDANTS AND APPELLEES.

G.R. No. 3666. August 17, 1909

Ponente: JOHNSON, J.

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JOHNSON, J.:

From the record the following facts appear: First. That upon the 31st day of August, 1903, the plaintiff commenced an action in the Court of First instance of the city of Manila against the defendants, Francisco Gambe, Manuel Perez, Anronio Herranz, alid Florencio Garriz, who constitute the commercial firm of Herranz & Garriz, for the purpose of recovering the sum of five thousand dollars (\$5,000), United States currency, for certain damages occasioned by the steamship Alfred to the "Spanish Bridge" in the city of Manila.

Second. After a consideration of the facts adduced during the trial, the Honorable Judge Rohde, then one of the judges of the Court of First Instance of the city of Manila, rendered a judgment against the said Francisco Gambe, for the sum of \$1,300, United States currency, and for the costs.

Third. Francisco Gambe was a pilot and a member of the Pilots' Association of Manila and was at the time of the alleged accident and injury in charge of the said steamship Alfred. Judge Rohde dismissed the cause as to the other defendants.

Fourth. From this judgment of the lower court the defendant Gambe appealed to the Supreme Court.

Fifth. After a consideration of the facts, the Supreme Court on the 31st day of March, 1906, affirmed with costs the judgment of the lower court. (See *City of Manila vs. Gambe*, 6 Phil. Rep., 49.)

Sixth. The judgment thus affirmed was returned to the lower court for an execution of the same.

Seventh. On the 26th day of May, 1906, an execution was issued upon the said judgment against the said defendant, Francisco Gambe, and was returned upon the 23d day of June, 1906, unsatisfied.

Eighth. Later, upon the 11th day of July, 1906, another execution was issued out of the Court of First Instance against the defendant, Francisco Gambe, which was returned upon the 17th day of August, 1906, unsatisfied.

Ninth. On the same day, or the 11th day of July, 1906, in accordance with the provisions of section 431' of the Code of Procedure in Civil Actions, the plaintiff attempted to attach whatever money or effects which the defendant had in the said Pilots' Association of Manila. These attachments were directed to the Hongkong and Shanghai Banking Corporation, the Hon. W. Morgan Shuster, Collector of Customs, as well as Francisco Aguado, who was the chief of the said Pilots' Association.

Tenth. On the 22d day of August, 1906, the attorney for the plaintiff presented in the lower court the following affidavit:

"Edmond Block, being duly sworn, says;

"That he is the attorney for the plaintiff in the above-entitled action.

"That a judgment was duly entered and docketed in the said action in the said court on the 20th day of April, 1906, for the sum of thirteen hundred dollars (\$1,300), United States currency, and costs, against the above-named defendant, in favor of the plaintiff.

"That an execution upon said judgment was duly issued against the property of said judgment debtor.

"That the said judgment debtor now resides in the said city of Manila.

"That the sheriff of the city of Manila has returned said execution wholly unsatisfied, and that the said judgment still remains wholly unpaid.

"That affiant is informed and believes that an organization or association known as the 'Manila Pilots' Association of which Francisco Aguado is the chief pilot, Manuel Goitia is the treasurer and custodian of its funds, and of which W. Morgan Shuster, Francisco Gambe, and other pilots of the port of Manila are members, has property in its possession dedicated to and for the purpose of payment of damages caused through negligence of the pilots of said association, or any of them, to third persons.

"That the said association has in its possession and under its control, property of the said judgment debtor, exceeding eight hundred pesos (P800), Philippine currency, and is indebted to the said judgment debtor in an amount exceeding eight hundred pesos (P800), Philippine currency.

"That the said indebtedness to said judgment debtor arose through this, that the said judgment debtor has deposited with the said association the said amount exceeding eight hundred pesos (P800), Philippine currency, and that the said association now holds the said amount subject to the order of said judgment debtor, and that the said amount should be applied, affiant believes, to the payment or satisfaction of the judgment debtor.

"That on the 23d day of June and 11th of July, 1906, the said Pilots' Association, through the chief pilot, the treasurer of said association, W. Morgan Shuster, and Francisco Gambe, was duly notified and each of the above-mentioned persons were so duly notified by the sheriff of the city Manila, that attachment was levied against all the goods, effects, interests, credits or money belonging to the defendant, in the possession of said association and persons, to cover the amount of two thousand six hundred and seventy pesos (P2,670), Philippine currency, and to make immediate payment of said goods, effects, interests, credits, or money and forward same to the sheriff.

"That all of the above-mentioned persons denied having in their possession, and refused to deliver any such said goods, effects, interests, creditor money belonging to said defendant.

"Wherefore deponent prays an order of this court that the said Francisco Aguado, Francisco Gambe, Manuel Goitia, and W. Morgan Shuster, be and appear and answer as to the indebtedness of the said Pilots' Association to said judgment debtor, at a time and place by said court to be specified."

(Signed) "EDMOND BLOCK.

"Subscribed and sworn to before me this 22d day of August, 1906, exhibiting in the act cedula No. 175565, dated Manila, June 6, 1906.

(Signed) "MODESTO REYES,
"Notary Public.

"Commission expires December 31, 1906."

Upon this affidavit, the Hon. A. S. Crossfield, one of the judges of the Court of First Instance of the city of Manila, made the following order:

"On reading the foregoing affidavit, it satisfactorily appearing to me therefrom that the Manila Pilots' Association has property of Francisco Gambe, the defendant in the above-entitled action, which property ought to be applied toward the satisfaction of the judgment in said action, and that Francisco Aguado is the chief pilot, Manuel Goitia the treasurer, and Francisco Gambe and W. Morgan Shuster are members of said association, and that it is proper cause for this order, I, the undersigned, judge of the Court of First Instance of the city of Manila, Philippine Islands, do hereby order the said Francisco Aguado, Francisco Gambe, Manuel Goitia, and W. Morgan Shuster personally to appear before me in the said city of Manila, on the 10th day of September, at 10 o'clock in the morning of that day, to answer concerning the said property."

Eleventh. In accordance with the above order, the said parties appeared before the said court and testified relating to the money property, credits or effects which the said Pilots' Association had in its possession belonging to the said defendants.

After hearing the evidenced these parties, the said Hon. A. S. Crossfield rendered the following judgment:

"This case is now before the court for hearing the order directing Francisco Aguado as chief pilot, Manuel Goitia as treasurer, and Francisco Gambe and W. Morgan Shuster as members of the Pilots' Association to answer as to any property they may have in their possession or under their control, belonging to the defendant, Francisco Gambe. Execution having been issued in the above-entitled action and the above-named respondents having been attached, as in garnishee proceedings, all of the above-named respondents appeared and the two first-named made declarations as to the property in their hands.

"From the declaration made it appears:

"That each member of the Pilots' Association before becoming such, must deposit with the association the sum of P800, to be retained by the association for the purpose of satisfying damages which may be incurred by others by reason of negligence or fault on the part of the association in the transaction of its business.

"It further appears from the declarations that persons thus depositing the money could not withdraw it; that it is property of the association and may not be withdrawn, even in case of the death of a member, and that said Francisco Gambe is a member.

"I therefore find that the above-named respondents, either as officers of the association or members thereof, have not in their control, nor do they possess any property, money, or effects which would be the subject of a levy under execution against said Gambe, and the order to appear is discharged."

From this decision of the lower court the plaintiff appealed and made the following assignments of error in this court:

"1. The court below erred in deciding that the sum of P800, Philippine currency, deposited by the defendant, Gambe, with the Pilots' Association could not be withdrawn by him: 'that it has become the property of the association, and that the game can not be withdrawn even in the event of the death of a member', and that the said Francisco Gambe is such a member.

"2. The court below erred in deciding that the respondents called upon to appear in this incident 'either as officers of the association or as members thereof, have not under their control nor in their possession any property, money, or goods subject to attachment by reason of an execution against the said Gambe.'

"3. The court below erred in not ordering the respondents, as officers or members of the Pilots' Association, to deliver to the plaintiff, the city of Manila, the P800, Philippine currency, which the said defendant Gambe, against whom the plaintiff has an execution pending for the sum of P2,670, Philippine currency, has in the treasury of the association."

The only question presented in this court is whether or not the said Pilots' Association had debts, credits, or

personal property, not capable of manual delivery, in its possession or under its control, belonging to the defendant. In other words, did said Pilots Association owe to the defendant a debt or have in its possession and under its control credits and other personal property, belonging to the defendant, subject to be attached in accordance with the provisions of said section 431? Section 431 of the Code of Procedure in Civil Actions provides:

"Debts and credits, and other personal property not capable of manual delivery, shall be attached by leaving with the person owing such debts or having in his possession or under his control such credits and other personal property, a copy of the order of attachment, and a notice that the debts owing by him to the defendant, or the credits and other personal property in his possession or under his control, belonging to the defendant, are attached in pursuance of such order."

The test whether or not the interests of the defendant, if he has any, in said association may be attached by virtue of said section is whether said Gambe could maintain an action against the said association for the recovery of the specific debt, credit, or personal property. It would seem clear and conclusive that if Gambe himself could not maintain an action against the said association for the recovery of the specific debt, credit, or personal property which the plaintiff here is attempting to get possession of by virtue of the action, that said plaintiff could not recover the same under the form of action adopted by it. If Gambe could successfully maintain an action against the said Pilots' Association for the recovery of a specific sum of money or specific personal property, then, in our opinion, his judgment creditors, or the plaintiff in this case, might also by the procedure provided for under said section 431 maintain the present action, but not otherwise. (*Hassie vs. God Is With Us Cong.*, 35 Cal., 378, 386.)

We do not believe that a mere equitable or contingent debt, credit, or personal property can be reached by the procedure provided for in said section (431). (*Redondo Beach Co. vs. Brewer*, 101 Cal., 322.)

A "debt," as used in said section, means some definite amount of money, ascertained or capable of being ascertained, which may be paid over to the sheriff or the court under an order, while "credits" and "personal property" are something belonging to the defendant, but in possession and under the control of the person attached. (*Gow vs. Marshall*, 90 Cal., 565; *Dunsmoor vs. Furstenfeldt*, 88 Cal., 522.)

In our opinion it is also essential that the debt, credit, or the personal property which is attempted to be subjected to the payment of the obligation of the defendant, and which is alleged to be in the possession of the person attached, must exist in some definite and ascertainable form at the time of the attachment. (*Norris vs. Burgoyne*, 4 Cal., 409.)

The said Pilots' Association is purely a voluntary association of the pilots of the city of Manila. The association is expressly recognized and authorized under the law. No one can become a member of said association who has not shown special qualifications as a pilot, and no one can act as a pilot who has not been, expressly recommended and approved by the collector of the port of Manila, and no one can become a member of said association who has not been so recommended. Neither can pilot become a member of said association without having paid a certain sum of money into the treasury of said association. This fund becomes the property of the association for the purpose of protecting its members against losses occasioned by its members to ships while said ships are under the control of a member or members of said association. The money paid in by one member of said association becomes a part of a general fund of said association, subject to be paid out for damages done to ships by any member of the association. The fund created by the contributions of the members no longer belongs to the members of the association; it belongs to the association. The association has a distinct and separate entity from the individual members who make it up. The fund is created for a specific purpose. (See articles 35, 36, 38, and 39 of the regulations of said association.) Under the regulations of said association it has assumed a certain responsibility for its members. Whether the damage caused by the defendant in this case is of such a character for

which the said association assumed the responsibility is a question which the person injured has a right to test in a special action against said association.

From the evidence that was adduced before the lower court we are of the opinion, and so hold, that the said association had no debts, credits, or personal property, not capable of manual delivery, in its possession, belonging to the defendant (Gambe), which are subject to be attached in accordance with the provisions of section 431. It is, therefore, hereby ordered that the plaintiff take nothing in this action and that the plaintiff be charged with the costs of both instances.

Arellano, C. J., Torres and Morelland, JJ., concur.

Carson, J., concurs in the result.

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