

## ENRIQUE F. SOMES, PLAINTIFF AND APPELLANT, VS. RAFAEL MOLINA Y SALVADOR ET AL., DEFENDANTS AND APPELLEES.

*G.R. No. 4149. January 20, 1908*

Ponente: JOHNSON, J.

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### JOHNSON, J.:

This is an action which was commenced in the Court of First Instance of Manila by virtue of a complaint filed on April 26, 1907, by the plaintiff, Enrique F. Somes, against Rafael Molina y Salvador, Aniceto Ruiz, Antonio de la Riva, and other defendants, case No. 5448 of the Court of First Instance of Manila. The facts in this case appear to be as follows:

By virtue of a written contract, dated Manila, July 27, 1903, Antonio de la Riva became debtor in the sum of \$134,630.12, Mexican currency, the price agreed upon for the purchase of certain business in the Island of Catanduanes, belonging to Rafael Molina. This amount was to be paid in installments.

On or about the month of January, 1905, Molina filed a complaint in the Court of First Instance of the city of Manila against De la Riva for the recovery of the sum of P33,659.03, one of the installments, which action was registered under No. 3402, and later was brought to this court under No. 2721. (6 Phil. Rep., 12.)

On approval of the bill of exceptions in the said case by the lower court, in order to suspend the execution of the sentence of the said court, the defendant, Antonio de la Riva, perfected a bond, which was signed by De la Riva as principal and Enrique F. Somes and Roberto Spalding, jointly, as his sureties for the sum of P35,000.

On the 22d of March, 1906, this court rendered its decision in the said case No. 3402 of the court below (No. 2721[1] of the Supreme Court) affirming the sentence appealed from and the case was remanded to the lower court.

In the said court the plaintiff, Molina, asked that execution be issued against the said defendant, De la Riva, which execution was returned by the sheriff with the statement that no property belonging to the defendant, De la Riva, could be found within his jurisdiction. The plaintiff then asked the lower court for an alias execution against the sureties, Enrique F. Somes and Roberto Spalding, and these persons were cited to appear and show cause why such execution should not issue against them upon their obligation upon the said bond.

These sureties alleged that the debtor, De la Riva, had property to the value of more than P200,000 in the Island of Catanduanes, but it appeared that such property was in the hands of a receiver duly appointed, and the lower court therefore issued the order of execution against the said sureties. From this order they appealed to this court. The registered number of that case is 3412[1] in this court. This court decided that appeal (January 19, 1907) affirming the order of the court below and the case was returned to the said lower court, ordering the execution of the former judgment of this court in case No. 3402 (No. 2721 of this court).

At the same time this court affirmed another judgment in favor of Molina and against De la Riva (No. 3829 of the court below and No. 3097[2] of this court, 5 Off. Gaz., 102) and in this last decision of the Supreme Court the

appointment of the said receiver of the property belonging to De la Riva was declared null and void.

Those cases having been returned to the court below, Molina asked for an execution against the sureties of De la Riva and these sureties appeared before the court and asked that the execution be directed against the property of the debtor, for the reason that this court had already declared null the appointment of the receiver of the property of the said debtor.

After various orders had been issued by the court below, the court ordered execution against the sureties.

By virtue of the said order of execution, the property of the surety, Enrique F. Somes, was attached and notice of the public sale of the same was given, which sale was had on the 19th of April, 1907, said property being sold to the creditor Molina for the amount of his claim against De la Riva and in satisfaction of the judgment in the said case No. 3402 of the court below (No. 2721 of this court.)

One of the sureties, Somes, attempted to have suspended the said execution because of exemption from responsibility as a surety in accordance with article 1852 [Civil Code], which was denied by the lower court. From this order the said Somes attempted to appeal, but the lower court refused to certify the bill of exceptions presented by the said surety, wherefore the said surety then brought an action in this court praying that a mandamus issue (No. 3965[1] of this court) and in these proceedings also prayed that a preliminary injunction be issued, which last prayer was denied. Subsequently this court also held that there were no grounds for the issuance of a writ of mandamus.

Six days after the sale of the property of the said surety, Somes, to the creditor, Molina, in satisfaction of his judgment against the said De la Riva, the said surety, Somes, filed in the Court of First Instance of Manila a sworn complaint or petition (No. 5448 of the court below) in which was asked the following relief:

"1. That the court adjudge, decree, and decide that this plaintiff has the right of preference to levy upon the property of Antonio de la Riva and to be paid from the said property, or the value of the same, the sum of P33,978.70, and costs and expenses, in view of the right of subrogation derived by the judgment rendered in case No. 3402. (No. 2721 of this court.)

"2. That the court issue an injunction against all and each of the defendants, restraining them from executing or performing any act in connection with the judgments or parts thereof rendered in the cases numbered 2944, 3829, 3863, and 4766, prior to the execution of the judgment rendered in the case numbered 3402, herein referred to, and prohibiting them in conclusion from excluding, depriving, or dispossessing the plaintiff of his right of preference in accordance with the law as a preferred judgment creditor in relation to the property the subject of the execution, which they are now selling or attempting to convert into money.

"3. That for the protection and security of the rights of the plaintiff, and for the reasons herein stated, the court, pending the proceedings in this case, issue a preliminary injunction against all and each of the defendants, restraining them from performing any act, as prayed for in the preceding paragraph, and that notice of such restraining order or preliminary injunction be communicated as quickly as possible to the defendant, the sheriff of Albay, as sheriff, and his deputies.

"4. The plaintiff asks for any other just and equitable remedy, and for any speedy and adequate protection of his rights."

On the 9th day of May the court below denied the petition for an injunction in the above complaint and ordered instead—

"That the proceeds of the sale by virtue of the executions now pending in this court, and in the possession of the sheriff of the Province of Albay, be deposited in the office of the clerk of this court, subject to the order of said court, upon the execution by the plaintiff of a bond for the sum of P10,000, to be approved by that court,

as security for the payment of whatever damages may arise from failure to apply the proceeds of said sale to the payments of the above-mentioned executions."

This order of the court below gave rise to a complaint brought by E. F. Somes, against the judge asking for a writ of certiorari. In said complaint (No. 4052 of this court) the petitioner asked and obtained an injunction for the suspension of the sale of the property of the debtor, De la Riva, but later on this injunction was dissolved and the petition for a writ of certiorari was denied (No. 4052).

About the 25th of May, 1907, the attorneys for Rafael Molina, and Messrs. Rosado, Sanz & Opisso, representing the other defendant, Aniceto Ruiz, filed demurrers to the above-mentioned complaint of E. F. Somes (No. 5448 of the court below).

The grounds upon which the first of said demurrers is based are: That the complaint does not state facts sufficient to constitute a cause of action against the defendant Molina; that the complaint in this case is mostly conclusions of law, and that the allegations of fact set forth in said complaint do not justify the remedy prayed for by the plaintiff, but on the contrary show by themselves that the complaint should be dismissed (B. of E., p. 8.) And that in the second demurrer the complaint does not contain facts sufficient to constitute a cause of action (B. of E., p. 9).

The court, after hearing both parties, sustained the demurrers (B. of E., pp. 9, 10, 11, and 12), against which orders the plaintiff excepted (p. 12).

The plaintiff then filed a motion asking the court below to amend its order on the ground therein stated. This motion was denied, the plaintiff taking an exception, and the complaint not having been amended, the court afterwards made the following order:

(Heading and title.)

"The demurrers filed by the defendants in the above entitled case have been sustained, and the plaintiff in a written statement dated June 12, 1907, informed the court of his intention not to amend his complaint.

"The remedies prayed for by the plaintiff in his complaint are therefore denied, and the costs are adjudged to the defendants and against the plaintiff. After the costs have been taxed, the clerk will issue the necessary execution at the request of any of the defendants.

"So ordered.

"Manila, June 15, 1907.

"CHAS. H. SMITH."

(B. of E., pp. 13 to 23.)

And finally on June 22, 1907, the court below allowed the bill of exceptions by means of which the case was sent up to this court and registered under the number of 4149.

On the 3d day of August, 1907, the plaintiff filed in this court a sworn petition asking that the same be considered as a part of the original complaint, and that for the reasons therein set forth and those stated in the original complaint, the court issue an order for a preliminary injunction, pending the action against all and each of the defendants, restraining them from carrying out or performing any act which may tend to execute the judgments rendered in cases numbered 3944, 3829, 3963, and 4766, before the execution of that entered in the case No. 3402, which order for an injunction was issued by this court on the same day and is at present in force, this court having denied the motion of the defendants Molina and Ruiz to set aside said injunction (October 10, 1907).

The question brought before this court now by the said complaint is, whether or not the complaint filed in said case No. 5448 of the court below contains facts sufficient to constitute a cause of action against the defendants.

The following facts are set out in said complaint : "First. That the following civil causes were tried and determined in the Court of First Instance in the order given below:

"(1) Rafael Molina Salvador vs. Antonio de la Riva, No; 3402. Adjudged by the Court of First Instance, April 18, 1905. Decided by the Supreme Court, March 22, 1906.

"(2) Rafael Molina Salvador vs. Antonio de la Riva. No. 3829. Adjudged by Court of First Instance, November 23, 1905. Decided by the Supreme Court, January 5, 1907.

"(3) Gibbs, Gale & Carr vs. Antonio de la Riva. No. 3944. Adjudged by the Court of First Instance, October 27, 1905. Decided by the Supreme Court, December 19, 1906.

"(4) Aniceto Ruiz Velez vs. Antonio de la Riva. No. 3963. Adjudged by the Court of First Instance, December 10, 1906.

"(5) Rafael Molina Salvador vs. Antonio de la Riva. No. 4766. Adjudged by the Court of First Instance, February 19, 1907.

"Second. That orders of execution were issued in the above-mentioned cases, as follows:

"In case No. 3402, on April 21, 1906.

"In case No. 3944, on January 17, 1907.

"In case No. 3829, on February 19, 1907.

"In case No. 2963, on January 17, 1907, and

"In case No. 4767, on February 19, 1907.

"Said orders of execution were addressed to the sheriffs of the city of Manila and of the Province of Albay, wherein the properties of the defendant herein, and likewise defendant in the above-mentioned cases, are located; and that said orders are still pending execution and have not been returned to the Court of First Instance.

"Third. That in case No. 3402, in which the first judgment was rendered, the plaintiff herein signed an obligation whereby he became a surety for Rafael Molina Salvador, the defendant herein, and that said obligation was paid by the plaintiff herein by the full amount of the execution of the judgment rendered therein, on April 19, 1907. By said execution the real estate of the plaintiff herein was sold at sheriff's sale for the benefit of Rafael Molina and for the recovery of the amount of said execution of the value of P33,578.70, and therefore, according to the provisions of article 1839 of the Civil Code and of article 471 of the Code of Civil Procedure, the plaintiff herein has acquired all rights and interest pertaining to Rafael Molina Salvador in said execution.

"Fourth. That having due regard to the fact that the first judgment against Antonio de la Riva was issued in case No. 3402, the properties belonging to the latter and against which the above-mentioned orders of execution were issued, were, by virtue of an agreement between the parties and of the contracts relied upon by the judgments rendered in the respective cases, specially bound to the satisfaction of the amount in case No. 3402.

"Fifth. That the properties of the defendant Antonio de la Riva, the judgment debtor in all the cases above referred to, are now in the hands of the sheriff of Manila and of the sheriff of Albay, the defendants herein, or their deputies, for the execution of the judgments rendered in favor of the other defendants, with the exception

of that rendered in case No. 3402, in spite of the fact that judgment in the latter was rendered first of all. That the sheriff of Manila or the sheriff of Albay, or their deputies, is now disposing or is about to dispose at public sale of all the properties of the defendant Antonio de la Riva, bound by the judgments rendered in all the cases with the exception of case No. 3402, and that besides the properties mentioned in the orders of execution issued in the said cases there are no other properties belonging to the defendant, except those covered by case No. 3402 as stated.

"Sixth. As the sheriff's sale has already taken place or is about to take place within a few days, the plaintiff alleges that it is impossible for him to appear and lay his claim before the sheriff of Albay, nor can he obtain judgment in this case before the sale of the properties of the defendant Antonio de la Riva for the satisfaction of the amounts adjudged in said cases, with the exception of case No. 3402, in which judgment was rendered prior to others. Should this be allowed to happen, it will cause the plaintiff irreparable damages, inasmuch as he will be unable to recover, as pertains to him by right, the amount of the execution paid by him by virtue of the above-mentioned bond, and he will be furthermore prejudiced in the exercise of his right of subrogation, according to law, as well as in his right of preference to which he is entitled as the holder of an order of execution issued by virtue of a judgment rendered against the properties of the defendant, Antonio de la Riva, at a date earlier than those of the other judgments.

"Seventh. The plaintiff alleges that the acts executed before, and those being at present executed by the defendants, the sheriff of Manila or the sheriff of the Province of Albay and their deputies, and by Rafael Molina Salvador, Antonio de la Riva, Aniceto Ruiz Velez and Gibbs & Gale, jointly or separately, regarding the execution of the judgments rendered in the cases above mentioned, Nos. 3944, 3829, 3963, and 4766, purport to illegally exclude and to deprive this plaintiff of the enjoyment of his lawful rights by virtue of the preferred judgment rendered in the said case No. 3402, and that he will be in fact dispossessed of the said rights, and deprived and prejudiced in his preferential rights should these executions be carried out.

"Eighth. The plaintiff moreover alleges that against the said Antonio de la Riva there is no other judgment prior to the one rendered in the case No. 3402, which is at present in favor of this plaintiff according to law, and finally alleges that the only proper and available remedy left to this plaintiff, in order to avoid the damages alleged in the previous paragraph, and to preserve and guarantee his rights, is the issuance of a preliminary injunction prohibiting the defendants and each of them from executing or trying to execute, from receiving or trying to receive payment under the judgments or as a result thereof, or in any other way to receive and dispose of the property or any part thereof, or of the proceeds of the property of the defendant Antonio de la Riva, before the judgment rendered in the case No. 3402 of the Court of First Instance of Manila is totally paid to this plaintiff, as the person subrogated in the rights of Rafael Molina Salvador by virtue of the judgment rendered in the said case No. 3402.

"In view of all the above said, the plaintiff herein asks:

"1. That the court declare, decree, and decide that this plaintiff has the right of preference to have an execution against the property of Antonio de la Riva and to be paid by the said property or by the proceeds thereof, to the amount of P33,978.70 plus the costs and expenses, by virtue of his lawful subrogation to the rights derived from the judgment rendered in the case No. 3402.

"2. That this court issue a writ of injunction against all and each of the defendants, prohibiting them from executing or performing any act tending to execute and to make effective any of the judgments or any part of the judgments rendered in the cases Nos. 3944, 3829, 3963, and 4766, before the execution of the judgment rendered in the case No. 3402, hereinbefore mentioned, and prohibiting them in conclusion from excluding, depriving, or dispossessing the plaintiff of the right of preference conferred upon him by law, as a preferred judgment creditor to the property subject to execution, which they are selling now or attempting to convert into money.

"3. That for the protection and guaranty of this plaintiff's rights, and for the reasons herein stated, the court,

pending the proceedings in this case, issue a preliminary injunction against all and each of the defendants, as stated and asked for in the preceding paragraph, and that such prohibition or preliminary injunction be communicated to the defendant sheriff of Albay and to his deputies, as promptly as possible; and

"4. The plaintiff also asks for any other just and equitable remedy and for any other protection of his rights which may be deemed expedient and adequate to guarantee the same.

"Manila, April 25, 1907.

"CHICOTE & MIRANDA,

"By ALFREDO CHICOTE.

"Before me, the undersigned, personally appears Enrique F. Somes, certificate of registration No. A-1394993, issued at Manila on the 15th day of February, 1906, and having been duly sworn, declares: That he, is the plaintiff in the case above named; that he has read and is aware of the facts and familiar with the allegations contained in the said complaint, all of which are true according to his best knowledge of the facts of the case. In witness whereof he signs these presents.

"ENRIQUE F. SOMES.

"Signed and sworn before me this 26th day of April, 1907.

"JESUS OBIETA, Notary Public.

"Commission expires December 31, 1908.

"(20-centavo stamp.)"

From this complaint it is clear that the following facts are alleged:

First. That Antonio de la Riva was the debtor of Rafael Molina y Salvador in the sum of at least 33,659.03.

Second. That Enrique F. Somes was a surety on a bond for the payment of the said debt.

Third. That as such surety Enrique F. Somes was compelled to pay the said debt between the said Molina and De la Riva.

The claim of the plaintiff is that, by virtue of having paid the debt of De la Riva to the said Molina, he is entitled to be subrogated to the rights of the said Molina against the said De la Riva, and to support this claim the plaintiff calls our attention to the provisions of Section II of Chapter II of Title XIV of the Civil Code, and especially to article 1839 of said Section II. Article 1839 provides:

"By virtue of such payment (by the surety) the surety is subrogated in all the rights which the creditor had against the debtor."

The doctrine established by this article and the one contended for by the plaintiff is not new. It has been thoroughly established for centuries in both the civil and the common law. It has been the subject of discussion by the courts and eminent law writers for many years and so far as we have been able to find the doctrine has never been doubted or denied. In the present case the attorney for the defendant, in the argument of the cause before the court, admitted that a surety who paid the debt of his principal was entitled to be subrogated to the rights of the creditor, but denied that the facts in the present complaint were sufficient to entitle the plaintiff to be subrogated in the present action.

The law is well established that a surety is entitled to every remedy which the creditor has against the principal debtor, to enforce every security and all means of payment; to stand in the place of the creditor, not only through the medium of the contract but even by means of the securities entered into without the knowledge of the surety;

having a right to have those securities transferred to him, though there was no stipulation for it, and to avail himself of all securities against the debtor. (*Hampton vs. Levy*, 1 McCord Eq., 107.)

As regards the rights of a surety against his principal, he is plainly entitled to expect, not only that the principal shall save him from harm by exempting him from payment of the debt, or, if that is not done, by reimbursing him when he has paid it, but, moreover, that the principal shall allow him the benefit of the means of payment which he has placed in the hands or within the power of the creditor. (*Johnson vs. Young*, 20 W. Va., 014.)

The right of subrogation is not a contractual right. The right of a surety who has paid a debt to subrogation stands, not upon contract but upon the principles of natural justice. (*Craythorne vs. Sweinburn*, 14 Vesey Jr., Common Law Reports, 160; *Hayes vs. Ward*, 4 Johnson, Chancery X. Y., 123.)

In this latter case Chancellor Kent in discussing this question said, in effect, that a surety who pays the debt is entitled to be substituted in the place of the creditor as to all the security or means possessed by the creditor, to enforce payment of the principal debtor.

Lord Chief Justice Eyre, in the case of *Deering; vs. Winchelsea* (2 Bos. and P., 270) said:

"The obligation of sureties is not founded in contract but stands upon a principle of equity."

The whole doctrine of subrogation as to principal and surety is raised upon the established principles of equity and not upon contract, except as it may be represented to be made with the implied knowledge of the existence of those principles.

The doctrine of subrogation is enforced solely for the purpose of accomplishing the ends of substantial justice and independent of any contractual relation between the parties. (*Memphis, etc., Co. vs. Dow*, 120 U. S., 287.)

In the case of *Furnold vs. Bank of State* (44 Mo., 336) the supreme court of Missouri said:

"The practice of subrogation or substitution or cession of remedies is borrowed from the civil law, and, under the guidance of Chancellor Kent, has gone further in this country than in England. It is a creation of equity and is administered so as to secure real and essential justice, without regard to form."

(See also *Prairie State National Bank vs. U. S.*, 164 U. S., 227; *Moore vs. Topliff*, 107 111., 241.)

Bispham, in his excellent work on the Principles of Equity, in section 336, says :

"This equity of subrogation is one eminently calculated to do exact justice between persons who are bound for the performance of the same duty or obligation, and is one, therefore, which is much encouraged and protected. This may be seen from the rule which allows the surety to keep alive a judgment for the purpose of obtaining satisfaction out of the principal. Ordinarily the payment of a debt operates as its extinguishment and the payment of a judgment obtained for a debt would necessarily extinguish it. To apply this rule to the case of a surety paying the debt would obviously work injustice in many instances; for, coming in as a simple-contract creditor, the surety might lose his chance of reimbursement. It has, accordingly, been held, and must be considered to be the generally received doctrine, that a surety, who pays a debt which has been reduced to a judgment, is entitled to have the judgment kept alive for his benefit, and to enjoy, as against the principal debtor, exactly the same advantages which could have been claimed by the judgment creditor."

Sheldon, in his valuable work on Subrogation, at section 11 says:

"\* \* \* The doctrine of subrogation is that one who has been compelled to pay a debt which ought to have been paid by another is entitled to exercise all the remedies which the creditor possessed against that other, and to indemnify from the fund out of which should have been made the payment which he has made. \* \* \* It is a mode which equity adopts to compel the ultimate discharge of debt by him who in equity and good conscience

ought to pay it, and to relieve him whom only a creditor would ask to pay. Although, as between the debtor and creditor, the debt may be extinguished, yet, as between the person who has paid the debt and the other parties, the debt is kept alive, so far as may be necessary to preserve the securities."

See also *Arnold vs. Green* (116 N. Y., 566), where Judge Vann made the following observation (p. 571) :

"The remedy of subrogation is no longer limited to securities and quasi securities, but includes so wide a range of subjects that it has been called the 'mode which equity adopts to compel the ultimate payment of a debt by the one who in justice, equity, and good conscience ought to pay it.'"

In the case of *Smith vs. National Surety Company*, the supreme court of the State of New York held that a surety on appeal, who has been compelled to pay a judgment, against several defendants, is entitled to be subrogated to the plaintiff's rights, under a contract with one of them, made pending the appeal, without the surety's knowledge or consent, binding the said defendant to pay part of the judgment on the condition of his release therefrom. Where the surety on appeal has been obliged to pay plaintiff's judgment, the latter can not question the surety's right to be subrogated to plaintiff's right, under the judgment or any security held against said defendant. (93 N. Y. Supreme Court Reports; see also 59 N. Y. Supplement, 789.)

The surety who pays a judgment after it has been affirmed on appeal will be subrogated to the rights of the judgment creditor against the lands of the principal in the hands of one who purchased from the principal, pending the appeal, and will have priority over the assignee of a mortgage given by such purchaser to secure the purchase money. (*Hill vs. King*, 48 Ohio State, 75.)

The foregoing doctrine of subrogation is also well established under Spanish jurisprudence. In the sentence of the supreme court of Spain of the 23d of September, 1805, that court laid down the following doctrine:

"Credits may be transferred by sale, by cession in payment, or by any of the other methods recognized by the law, without the knowledge of the debtor and even against his will, inasmuch as the grantor and the grantee only intervene in the contract, and the grantee being subrogated to the former by virtue of the cession, all the rights and actions belonging to said grantor are transferred to him with respect to the credit and the bonds and pledges."

This doctrine of subrogation in no way can be prejudicial to the rights of subsequent creditors. It simply substitutes the surety of the debtor for that of the creditor and the property which the creditor might have used in the liquidation of his debt is given for the liquidation of the debt transferred by subrogation to the surety.

We are of the opinion and so hold that the facts stated in the complaint show that the plaintiff herein was the surety of the debtor, De la Riva, and had paid the said debt as such surety, and is therefore entitled to be subrogated to the rights of the defendant, the said Molina. The judgment of the lower court is therefore hereby reversed, without costs to the plaintiff.

After the expiration of ten days let a judgment be entered in accordance herewith, and after the expiration of twenty days let the record herein be returned to the lower court with permission to the defendants to file an answer to the complaint in said cause, within a period of ten days thereafter. If, however, within the period of ten days the defendants do not present an answer in said cause, it is hereby ordered that the lower court render a final judgment, reversing its former judgment and ordering that the plaintiff herein be subrogated to the rights of the said Molina in the judgment in cause No. 2721 of this court, corresponding to cause No. 3402 of the court below. So ordered.

Arellano, C. J., Torres, Mapa, and Tracey, JJ., concur.

Willard, J., concurs in the result.

Carson, J. did not sit in this case.

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[1] Molina y Salvador vs. De la Riva, 6 Phil. Rep., 12.

[1] Molina y Salvador vs. De la Riva et al., 7 Phil. Rep., 345.

[2] Molina y Salvador vs. De la Riva, 7 Phil. Rep., 302.

[1] Somes et al. vs. Crossfield and Molina, 8 Phil. Rep., 283.

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