

KO BENGCO, PLAINTIFF AND APPELLEE, VS. THE SHERIFF OF THE PROVINCE OF ILOILO ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 4194. January 26, 1909

Ponente: JOHNSON, J.

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JOHNSON, J.:

On the 3d day of December, 1906, the plaintiff commenced an action against the said sheriff and the said deputy sheriff, to recover the sum of P300. On the 17th day of January, 1907, the said defendants, to wit, the sheriff and the deputy sheriff, filed their answer to the said complaint. Later, on petition, the said Marquez Lim and Hang Wo were made defendants in said cause and on the 19th day of February, 1907, filed their answer.

After hearing the evidence adduced during the trial of the cause, the Honorable Henry C. Bates, judge, found from said evidence that the plaintiff was entitled to recover of the defendants, the said sheriff of the Province of Iloilo and his deputy, Lorenzo Guevara, the sum of P300, without rendering a judgment for costs against any of said parties. From this judgment the defendants appealed.

From an examination of the record brought to this court the following facts appear:

First. That on or about the 9th day of July, 1907 (Chinese calendar), one Uy Cebio executed and delivered to one Jose Melliza Te Juat, a contract promising to pay to the latter the sum of P300.

Second. That some time after the execution and delivery of said contract, the said Te Juat indorsed the same to one Pe Naco.

Third. That later Pe Naco indorsed and delivered the said contract to the plaintiff herein. The plaintiff claims that the indorsement by Pe Naco to him was made upon the 31st day of August. The defendants dispute not only the fact that the contract was indorsed on that date, but also the fact that it was indorsed at all to the plaintiff.

Fourth. That on the 4th day of September, 1906, the said Marquez Lim commenced an action in the court of the justice of the peace of the city of Iloilo, against the said Pe Naco for the recovery of a certain sum of money. On the same day the said justice of the peace issued an attachment in said cause in favor of the plaintiff and an attempt was made to attach said contract and to prevent the payment of the same by Uy Cebio to the said Pe Naco.

Fifth. That on the 6th day of September, 1906, the said Hang Wo commenced an action in the court of the justice of the peace of the city of Iloilo against the said Pe Naco for the purpose of recovering a certain sum of money. On the same day the justice of the peace issued an attachment in said cause in favor of the plaintiff and an attempt was made to attach the said contract and to prevent the payment of the same to the said Pe Naco.

Sixth. That on the 29th day of September, 1906, Ko Bengco commenced an action in the court of the justice of the peace of the city of Iloilo against the said Uy Cebio, which action was based upon the said contract executed and delivered by the said Uy Cebio to the said Jose Melliza Te Juat.

Seventh. That on the 1st day of October, 1906, the defendants, Marquez Lim and Hang Wo, presented a petition

in the said court of the justice of the peace, asking that they be made parties to the said action between Ko Bengco and Uy Cebio, alleging that they were the true owners of the said contract in question.

Eighth. That on the 4th day of October, 1906, the said justice of the peace rendered a judgment in said action by Ko Bengco vs. Uy Cebio upon said contract, for the sum of P300 and costs and denied the petition of the said Marquez Lim and Hang Wo.

Ninth. Various executions were issued by the justice of the peace in favor of Marquez Lim and Hang Wo upon their respective judgments against Pe Naco, as well as the judgment which Ko Bengco held against the said Uy Cebio.

Tenth. That on the 8th day of October, 1906, the said Uy Cebio went to the office of the justice of the peace for the purpose of paying him the ^300 which he owed on said contract. The justice of the peace not being able to take care of the money in his office, advised the said Uy Cebio to pay the same to the sheriff, which he on the same day did.

Eleventh. That on the same day (the 8th of October, 1906) the said sheriff paid out of the said sum of P300 to Marquez Lim and Hang Wo, the sums of P124.10 and P175.90, respectively.

During the trial of the cause in the Court of First Instance, the plaintiff attempted to show that at the time (September 4 and 6) the said attachments were issued in favor of Marquez Lim and Hang Wo against Pe Naco, to prevent the payment of the said contract by Uy Oebio, said contract had before that date (the 31st of August) been indorsed or transferred by the said Pe Naco to the plaintiff herein. The defendants attempted to prove that at the time of said attachments, Pe Naco was still the holder and owner of said contract. Upon this question we make no finding of fact, for the reason that the question who was the owner of said contract was submitted to the justice of the peace in the action of Ko Bengco vs. Uy Cebio, in which action the said Marquez Lim and Hang Wo were present and took part, and the said justice of the peace there decided that Ko Bengco was the owner of said contract and was entitled to a judgment thereon, and did on the 4th day of October, 1906, render a judgment on said contract in favor of Ko Bengco. None of the parties appealed from this judgment; the judgment, therefore, became final as to ail of the parties to it.

It is clear that the defendant Uy Cebio, when he paid to the sheriff the said sum of WOO, intended to have it applied upon the contract which he had theretofore executed and delivered in favor of Jose Melliza Te Juat. He indicated that fact to the justice of the peace when he offered him the money and also took a receipt from the sheriff, stating that the payment was for the purpose of paying the amount due on said contract.

Our conclusion is, therefore, that the judgment of the justice of the peace with reference to the ownership of said contract is conclusive and the P00 which the said Uy Cebio paid to the sheriff having been paid for the purpose of liquidating the amount due on the said contract, the sheriff had no right or authority to apply the said money to the payment of the judgments of Marquez Lim and Hang Wo, respectively, vs. Pe Naco. The sheriff and his deputy having therefore wrongfully applied the said sum of P300 to the payment of the judgments of Marquez Lim and Hang Wo, money which they had received for the benefit of Ko Bengco, they are responsible to the said Ko Bengco for the same. Uy Cebio had a right to indicate upon which of the various claims against him the said payment should be applied.

The judgment of the lower court is therefore hereby affirmed, with costs.

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

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