

JOSE C. BUCOY, PLAINTIFF AND APPELLEE, VS. TORREJON, JURIKA & CO., INC., PACIANO TANGCO, AND JUAN POSADAS, JR., AS COLLECTOR OF INTERNAL REVENUE, DEFENDANTS. JUAN POSADAS, JR., ...

G. R. No. 43083. January 13, 1936

Ponente: MALCOLM, J.

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MALCOLM, J.:

This is an action brought by the provincial sheriff of Zamboanga to require the defendants to interplead and litigate their respective claims and rights to the net proceeds of the sale of personal property belonging to one Emilio Cano. As the case shapes up, the only question to be determined is as to which claim, that of the Government based on a tax lien, or that of Torrejon, Jurika & Co., Inc., based on a final money judgment, is preferred, with reference to the funds in the possession of the sheriff.`

The amended complaint in connection with the exhibits disclose the following: Torrejon, Jurika & Co., Inc., obtained a judgment against Emilio Cano for the sum of P310.11 on April 11, 1932. No appeal having been taken from that judgment, it became final. Part of it, P130.32 exclusive of interest, and costs, has not yet been satisfied. Under Civil Code article 1924, paragraph 3 (6), this is a preferred claim.

It further appears that on December 24, 1932, the merchandise of Emilio Cano was taken over by the provincial sheriff by virtue of a writ of preliminary attachment issued in a Pampanga case. On January 19, 1933, the Collector of Internal Revenue filed a third party claim, alleging that he was entitled to possession of the property under the provisions of section 1590 of the Administrative Code in view of the failure of Emilio Cano to pay certain internal revenue taxes to the Government. The property attached was sold at public auction on August 18, 1933, and there was realized therefrom a net proceeds of P172.72. This would not be sufficient to satisfy the claim of the Government which amounts to P849.65.

It should finally be explained that the tax liability of Emilio Cano referred mainly to under declared sales from March 1, 1930 to July, 1931, and for the fourth quarter of 1932, the first established by Exhibit I-A, dated January 16, 1933.

Section 1588 of the Administrative Code provides as follows:

"Nature and extent of tax lien.—Every internal-revenue tax on property or on any business or occupation and every tax on resources and receipts, and any increment to any of them incident to delinquency, shall constitute a lien superior to all other charges or liens not only on the property itself upon which such tax may be imposed but also upon the property used in any business or occupation upon which the tax is imposed and upon all property rights therein."

The lien created by the Internal Revenue Law is paramount. It attaches to property which is used in the business at the time when the tax becomes due. As against other claims or encumbrances, it is given preference. (Hongkong

& Shanghai Banking Corporation vs. Rafferty [1918], 39 Phil., 145; Macondray & Co. vs. Go Bun Pin [1928], 52 Phil., 451.)

The two cases above cited are discussed by the parties. They should be understood having regard to their facts. In the first case, it was held that the tax lien does not establish itself upon property which has been transferred to innocent purchasers prior to demand. The plaintiff was there protected because on the date the property was transferred to it no demand had been made and the plaintiff had no notice of the tax. In the second case, the plaintiff had obtained an attachment of property and had sold it, and while the money was thus in the custody of the court the Government intervened but without success. The reason was because the attached property had already been seized and sold at the time the tax in question fell due.

It is now incumbent upon us to give application of the foregoing principles to the admitted facts.

The merchant's tax became due and payable prior to January 1, 1933, and was justified shortly thereafter. At that time, Torrejon, Jurika & Co., Inc., had a final judgment, but which had been made effective as to the property of Cano not through its own efforts but through the efforts of a third party. Conceding for present purposes that the preference in favor of the internal revenue tax only accrues after the lien has attached, it is not clear that the lien had not attached to property actually in use. At least, when the tax in question fell due, the property had not been seized and sold.

The delay on the part of the Government does not constitute a waiver. The distinction attempted to be drawn between the articles of merchandise and the proceeds of the sale is more refined than tenable. We think that the facts in this case can be differentiated from those found in the Philippine cases relied upon by the parties, with the result that the claim of the Government predicated on a tax lien must be held superior to the claim of the private litigant predicated on a judgment.

Agreeable to the foregoing, the judgment will be reversed and the trial court directed to turn over to the Collector of Internal Revenue the sum of P172.72 to be applied to the partial payment of its claim against Emilio Cano. So ordered, without special pronouncement as to the costs in either instance.

Villa-Real, Imperial, Butte, and Goddard, JJ., concur.

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