

FULTON IRON WORKS CO., PLAINTIFF AND APPELLEE, VS. SIDNEY C. SCHWARZKOPF, DEFENDANT AND APPELLANT.*G.R. No. 45365. April 12, 1939*

Ponente: MORAN, J.

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Under section 447 of Act No. 190, plaintiff herein, Fulton Iron Works Co., instituted an action against defendant, Sidney C. Schwarzkopf, to enforce the judgments entered against him, more than five but less than ten years ago, in criminal cases Nos. 29605 and 29606 of the Court of First Instance of Manila, relative to the indemnities of P93,563.70 and P41,237.80 awarded said plaintiff as the offended party therein. There is no question that the defendant has not yet indemnified the plaintiff in the said amounts. He alleges, however, that his civil liability cannot be enforced, for he has served the corresponding subsidiary imprisonment, and there is no showing that since then his financial circumstances have improved. There is no dispute that the defendant has served subsidiary imprisonment for failure to pay the indemnities. And there is no allegation or proof as to his present financial condition. The lower court rendered judgment for the plaintiff, and defendant appealed.

A judgment rendered in a criminal case, in so far as it awards indemnity to the offended party, is a civil judgment that may be executed under the provisions of the Code of Civil Procedure. At any time within five years from its entry, execution may issue thereon at the mere request of the judgment creditor (sec. 443, Act No. 190). After the lapse of five years, the judgment may be enforced by an action instituted in regular form, by complaint, as other actions are instituted (sec. 447, Act No. 190).

An action to enforce a judgment is subject to defenses and counterclaims which may have arisen subsequent to the date the judgment became effective, as, for instance, prescription which bars an action upon a judgment after ten years (sec. 443, par. 1, Act No. 190), payment, or counterclaims arising out of transactions not connected with the former controversy (*Compania General de Tabacos vs. Martinez and Nolan*, 29 Phil, 515, 521). But insolvency is no defense.

Appellant, however, relies on paragraph 5 of article 39 of the Revised Penal Code, which provides:

"The subsidiary personal liability which the convict may have suffered by reason of his insolvency shall not relieve him from reparation of the damage caused, nor from indemnification for the consequential damages in case his financial circumstances should improve; but he shall be relieved from pecuniary liability as to the fine."

And it is contended that, under this provision, the defendant-appellant who has served the subsidiary imprisonment, cannot be sued for indemnity unless his solvency be alleged and proved.

This contention is erroneous. The obligation of the accused to indemnify exists whether or not he is solvent or insolvent, for the source thereof is not his financial condition but the crime by him committed. It is not the existence but the effectiveness of his obligation that depends upon his solvency. The above provision does not make the debtor's solvency a condition precedent to plaintiff's cause of action, nor does it make his insolvency a

good defense. There is nothing in it furnishing a new mode of extinguishing civil obligations aside from those provided in article 112 of the Revised Penal Code. It merely states what is practically true in all kinds of civil obligation, namely, that a debtor may be made to pay whenever he has the means of payment. And whether or not the defendant herein has the means to satisfy his obligation is a question for the sheriff to find out in the proceedings for the execution of the new judgment.

Judgment is affirmed, with costs against appellant.

Avanceña, C. J., Villa-Real, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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