

MACONDRAY & CO., INC., PLAINTIFF AND APPELLANT, VS. JOSE BERNABE, JUDGE OF MUNICIPAL COURT OF MANILA, AND ANTONIO FERRER, DEFENDANTS AND APPELLEES.*G.R. No. 45410. April 29, 1939*

Ponente: CONCEPCION, J.

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Two questions are raised in this appeal, namely: first, whether or not an order issued by the municipal court of Manila after its decision has become final, regarding the payment of the fees of the custodian of attached properties, is appealable, and, second, whether or not the fees paid to the said custodian form a part of the costs which the defendant was sentenced to pay.

Macondray & Co., Inc., had obtained from the municipal court of Manila a judgment against Antonio Ferrer for the sum of P142, with interest at 12 per cent and the costs. The decision became final and a writ of execution issued for the sheriff to sell at public auction the properties of the defendant which had been attached at the commencement of the action for the satisfaction of the judgment. On October 23, 1935, the defendant filed a motion asking for the suspension of the execution and that the court make a pronouncement that the judgment has been satisfied because he had deposited P161.83 with the clerk of court. The plaintiff opposed the motion on the ground that the amount deposited is insufficient to cover the total claim including the fees of the sheriff for the custody of the attached properties, and that unless the defendant pay the entire amount, the sheriff should be ordered to go ahead with the sale of the attached properties. Ruling upon the motion, the court held that the fees of the custodian of the attached properties should be paid by the plaintiff. From this order the plaintiff took an appeal, but in view of the defendant's opposition that the court lacked jurisdiction to allow an appeal from any order or resolution entered after a final and executory judgment, the court turned down the appeal. The plaintiff thereupon filed a petition for mandamus with the Court of First Instance to order the municipal court to admit the plaintiff's appeal. To this complaint a demurrer was interposed, which was sustained by the Court of First Instance on April 15, 1936, on the ground that due to the finality of the decision of the municipal court, its subsequent order holding that the sheriff's fees for the custody of the attached properties could not be considered as costs, is not appealable. With respect to the fees of the custodian of the attached properties, it decided that they do not form a part of the costs.

Upon notice to the plaintiff of the order sustaining the demurrer, it excepted thereto and at the same time elected to stand upon its complaint which, as a consequence, was dismissed by the appealed order of November 7, 1936.

The appellant assigns as errors committed by the court the two pronouncements made by it in sustaining the demurrer interposed by the defendant.

We believe that the exception taken by the appellant is sound with respect to the two points covered by it. As to the first, the court relying upon *Hontiveros vs. Altavas* (39 Phil., 226), said that an appeal with respect to the payment of costs, in order to prosper, should be joined in the appeal from the decision and not taken separately

after the decision has become final.

We are of the opinion that the foregoing ruling is erroneous, at least in the instant case. The judgment was rendered by the court in favor of the plaintiff, the herein appellant, to recover from the defendant the amount of a credit with interest and the costs. The entire judgment being in favor of the plaintiff, from what will it appeal? On the other hand, the costs were neither taxed nor taxable because there might be other costs subsequent to the decision.

The appellee argues that before the judgment becomes final, that is, within the fifteen days after notice thereof, the plaintiff-appellant was entitled to file a bill of costs.

This is, however, not the practice generally followed, inasmuch as the taxation of costs is made by the clerk of court after and not before the judgment becomes final, and this practice finds full explanation in the fact that after a judgment is rendered and before it becomes definitive, costs might yet arise in the interval, and if costs are to be taxed before the decision becomes final and executory, other costs may not be included.

But supposing that the plaintiff-appellant had filed a bill of costs and the defendant-appellee had objected thereto, and in the meantime the fifteen days following notice of judgment had elapsed and the latter had become final, how could the appellant or the appellee appeal from the order allowing or disallowing costs jointly with the appeal from the decision?

Let us take another case: that the appellee had appealed from the decision to the Court of First Instance and thereafter, by any of the parties, to the Court of Appeals, or to this court—how could an appeal then be taken from the taxation of costs jointly with the appeal from the decision?

We, therefore, believe that the order issued by the municipal court regarding the payment of the fees of the custodian of the attached properties, is appealable independently of the decision in the principal case, and the municipal court had jurisdiction to admit the appeal.

The second pronouncement of the court in sustaining the demurrer to the complaint is, that the fees of the custodian of the attached properties do not form a part of the costs.

We believe that this pronouncement, far from being supported by law, runs counter to the provisions of section 491 of the Code of Civil Procedure reading:

"In an action pending before a justice of the peace, the plaintiff may recover the following costs, and no others:

* * * * *

"The lawful fees paid by him for service of the summons and other process in the action.

"The lawful fees paid by him for service of any process in the action."

The word "process" is twice used in the aforequoted provisions.

"A. Process Generally.—Definition.—As a legal term, process is a generic word of very comprehensive signification and many meanings. In its broadest sense, it is equivalent to, or synonymous with, 'proceedings' or procedure and embraces all the steps and proceedings in a cause from its commencement to its conclusion. Sometimes the term is also broadly defined as the means whereby a court compels a compliance with its demands." (50 C. J., 441.) (Italics ours.)

Within the aforesaid definition fall, in our opinion, all the proceedings for the execution of the order of attachment, with respect to personal property, from the time the sheriff attaches and takes possession of the

attached properties by virtue of the order of the court and conserves and places the same under his custody until the attachment is lifted or the property is sold at public auction upon a judgment or order of the same court which issued the attachment. The sheriff's or custodian's fees for his services from and during the attachment are consequently a part of the costs, and the plaintiff is entitled to recover the same. In *Hunter, Kerr & Co. vs. Murray* (48 Phil, 499), it was said:

"A creditor of the insolvent who obtains an attachment against the property of the latter has a preferential right to recover the fees he may have paid for the filing of the complaint in the case where the attachment was levied, the fees of the sheriff, the premium of the bond, the charges for the custody of the attached property and its removal, and the costs for the appearance of his attorney." (Italics ours.)

We are of the opinion therefore that, under the law, the plaintiff-appellant is entitled to recover the fees of the custodian of the attached properties of the defendant. What and how much are these fees? These are questions which the court should answer after hearing the evidence.

In view of the foregoing, the appealed orders are reversed and it is ordered that this case be remanded to the court of origin for further proceedings, with the costs to the appellee Antonio Ferrer. So ordered.

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

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