

PHILIPPINE NATIONAL BANK, PLAINTIFF AND APPELLANT, VS. ESTEBAN I. VAZQUEZ, DEFENDANT AND APPELLEE.

G. R. No. 47578. April 08, 1941

Ponente: LAUREL, J.

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LAUREL, J.:

Plaintiff appeals to this court from a decision of the Court of First Instance of Occidental Negros, promulgated January 18, 1938, the dispositive part reading:

"Wherefore, the court hereby renders judgment in favour of the plaintiff and against the defendant, reviving the judgment in the aforesaid civil case No. 4031 of this same court, but deducting from the amount thereof the sum of P5,250.13, the deduction to be computed as of the date the judgment in said civil case had become final and executory."

It appears that on or about the 27th day of May, 1925, Esteban I. Vazquez succeeded in negotiating with the Philippine National Bank a loan for P24,000, on the 1925-26 sugar-cane harvest of his hacienda "Mandalagan"; that the money advanced him by the plaintiff bank totalled P19,521.09, at an agreed 9 per cent interest per annum and a mortgage executed on his sugar-cane harvest; that additional guaranty was put up by one Cristeta Ibañez; and, that after liquidation of the debt as of March 31, 1927, the following was the result:

Total advances against 1925-26 crop loan.....

P19,621.09

Total proceeds of sugar sales

7,636.59

Deficit (principal)

11,884.50

Interest at 9 per cent to March 31, 1927.....

7,984.97

Total deficit to March 31, 1937

19,869.47

Daily interest on P11,884.50 at 9 per cent
(Bill of Exceptions, pp. 9-10.)

2.97

Subsequently, in an action filed by the bank for the recovery of the total amount due and owing, defendant Vazquez was ordered by the court to settle his obligation in full. (Civil Case No. 4031, Court of First Instance of Occidental Negros.) No appeal was interposed by any of the parties to the decision of October 31, 1931, and the same became final and executory. But the said judgment not having been enforced by writ of execution and the period of five years having elapsed, the plaintiff bank, on July 22, 1937, filed a complaint (Bill of Exceptions, pp. 2-6) for the revival of the judgment. To this complaint, defendant on August 12, 1937, filed his answer and set up the following counterclaim:

"Que, como se puede ver en el expediente de la causa civil No. 4031 mencionada en el párrafo II de la demanda, a petición del demandante, previa fianza prestada por el mismo actor y en virtud de ordenes judiciales, fueron embargados preventivamente del demandado 500 picos de azúcar de la propiedad de este, y vendidos por el Shériff Provincial de Negros Occidental a razon de P10.75 cada uno, habiendose tambien ordenado por el mismo Hon. Juzgado, a petición igualmente del demandante, el deposito en el Banco Nacional Filipino del producto neto de dicha venta montante a P5,250.13, cantidad que debe ser descontada de la suma de P19,869.47 expresada en el párrafo IV de la demanda, con la consiguiente reduccion de los intereses referidos en dicho mismo párrafo IV, por no haberse levantado ni anulado nunca dicho embargo y por haberse dictado contra el demandado sentencia condenatoria, que ha sido firme, en dicho asunto civil No. 4031."

The plaintiff's appeal is limited to the portion of the decision which orders the deduction of the sum mentioned therein from the amount adjudicated to the plaintiff. In the aforementioned civil case No. 4031, the plaintiff bank prayed for and obtained an order of preliminary attachment, by virtue of which 500 piculs of sugar belonging to the defendant Vazquez was levied upon by the sheriff and sold at public auction at the rate of P10.75 per picul, the proceeds therefrom amounting to P5,250.13. This amount was deposited with the plaintiff bank, upon its own petition, in the name of one Andres Covacha personally, then a deputy of the Provincial Sheriff of Occidental Negros. On August 14, 1928, a deposit of P5,250.13, was made in the name of the Provincial Sheriff of Occidental Negros with the bank, by virtue of another petition of the plaintiff approved by the court to transfer the deposit in the name of the provincial sheriff proper. It appears, however, that the Provincial Sheriff made other deposits on this current account, and that he has been making withdrawals therefrom until it was closed on January 6, 1932.

The plaintiff Bank contends that the amount of P5,250.13 should not have been deducted from the judgment awarded to it, for the reason that the defendant, despite the attachment, is still the owner of the 500 piculs of sugar and of its proceeds after the public auction sale, and loss or misappropriation thereof should be for his account. The reason invoked is not applicable here. As correctly observed by the trial judge, "once the decision in the aforesaid civil case had become final, the proceed of the sugar attached in connection therewith should be considered as partial satisfaction of the amount of the judgment." "Personal property may have been levied upon under attachment and left in the possession of the sheriff or other officer levying the writ to secure the payment of such judgment as may be recovered in the action. Where execution issues, it is the duty of such officer to apply towards its satisfaction the property so attached and left in his hands; but he may have embezzled or otherwise misappropriated it, or allowed it to be lost by his negligence. When such is the case, we think the better opinion is, that it must, as between the plaintiff and defendant, and persons claiming under defendant, be treated as though it had been levied upon under execution as well as under attachment, and therefore as satisfying the judgment to the extent of its value." (Freeman on Judgments, pp. 2366-2367, citing *Yourt v. Hopkins*, 24 111. 326 and *Kenrick v.*

Ruff, 71 Mo. 570.)

And whether or not the Provincial Sheriff was negligent in the performance of his official duties by not turning the money over to the plaintiff, is a question which could only be determined in a separate case and hence, immaterial in the present controversy.

It should be observed that affirmative acts of the plaintiff Bank have resulted in the attachment and subsequent sale of the property of the defendant. It seems fair that plaintiff having put defendant's property into the hands of the sheriff, the loss should fall on him and not on defendant. When a sheriff takes property or goods in execution or by attachment, he becomes the bailee for the benefit of all parties interested, and certainly for the party who set him in motion. After obtaining the judgment, plaintiff at once was entitled to have the proceeds of the sale applied to the satisfaction of his judgment and it was the duty of the sheriff to pay the proceeds over. The money collected or paid the sheriff on the sale of the goods or property may be regarded just like money in the hands of a sheriff collected on execution. If the sheriff collects money from a judgment debtor, and then fails to pay it over, the debtor cannot be compelled to pay it again.

We find defendant Esteban I. Vazquez liable to the plaintiff Philippine National Bank for the principal sum of P19,869.47, with interest on the sum of P11,884.50 at 9 per cent per annum from April 1, 1927, but deducting the sum of P5,250.13, the deduction to be computed as of the date the judgment in civil case No. 4031 had become final and executory. The appealed decision is therefore affirmed, with costs against the appellant. So ordered.

Imperial, Diaz, Moran, and Horrilleno, JJ., concur.

Judgment affirmed.

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