

**THE GOVERNMENT OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ENRIQUE ECHAUS AND MAXIMO P. GONZALES, DEFENDANTS.
MAXIMO P. GONZALES, DEFENDANT-APPELLANT.**

G.R. No. 47870, March 13, 1941

Ponente: LAUREL, J.

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LAUREL, J.:

On November 15, 1932, defendant Enrique Echaus, and his surety, Maximo P. Gonzales, defendant-appellant in this case, were sentenced jointly and severally by the Court of First Instance of Occidental Negros to pay the plaintiff the sum of P3,857.24, with legal interest, from August 12, 1929, until date of complete payment. A writ of execution was issued on May 12, 1934. An alias writ of execution was issued on October 8, 1934, upon receipt of which the provincial sheriff levied on and attached certain properties of the appellant. On July 22, 1939, the provincial sheriff announced that in connection with the writ of execution issued October 8, 1934, he would sell at public auction certain properties of the appellant. Appellant filed a motion before the lower court on August 21, 1939, to order the provincial sheriff to desist from further proceeding with the execution of the judgment, and to cancel and lift the attachment he had made on the properties of the appellant. This motion having been denied, public auction sale was held on September 14, 1939. On October 12, 1939, appellant filed a motion to annul the public auction sale of September 14, 1939. This motion was denied on October 14, 1939. On October 17, 1939, appellant presented a motion for reconsideration and new trial. This motion was denied, and on November 11, 1939, defendant-appellant duly filed his exceptions together with notice of his intention to appeal. The lower court approved the bill of exceptions on November 25, 1939, and this action is now before us for review.

It is admitted that the writ of execution here was issued and the levy made within five years after entry of judgment (section 443, Code of Civil Procedure), and the question presented is, whether the consequent auction sale may be validly effected after the lapse of said five years?

Appellant cites sections 443 and 447 of the Code of Civil Procedure in support of the negative proposition. These provisions read as follows:

"Sec. 443. When Execution may Issue.—The party in whose favor judgment is given, may, at any time within five years after the entry thereof, have a writ of execution issued for its enforcement, as hereinafter provided."

"Sec. 447. Enforcement of Judgment after Lapse of Five Years.—In all cases, a judgment may be enforced after the lapse of five years from the date of its entry, and before the same shall have been barred by any statute of limitation, by an action instituted in regular form, by complaint, as other actions are instituted."

Section 443 of the Code of Civil Procedure limits the time within which a writ of execution may be issued to enforce a judgment, but it does not state the limit of the period when the sale at public auction by the sheriff shall take place after the issuance of the writ of execution and a valid levy made pursuant thereto. Section 447 of the Code of Civil Procedure treats of the enforcement of the judgment after the lapse of five years. Neither of these sections supports the contention of the appellant.

We are of the opinion that a valid execution issued and levy made within the period provided by law may be enforced by a sale thereafter. (Cf. *Alagar vs. Roda and Manalo*, 29 Phil. 129; 23 C. J. 625; vide particularly *Mosher v. Borden*, 166 N. W. 972; also *Brown v. Hopkins*, 101 Wis. 498, 77 N. W. 499; *Ludeman v. Nirth*, 96 Mich. 17, 55 N. W. 449.) The sale of the property by the sheriff and the application of the proceeds are simply the carrying out of the writ of execution and levy which when issued were valid. "This rests upon the principle that the levy is the essential act by which the property is set apart for the satisfaction of the judgment and taken into custody of the law, and that after it has been taken from the defendant, his interest is limited to its application to the judgment, irrespective of the time when it may be sold." (*Southern Cal. L. Co. v. Hotel Co.*, 94 Cal. 217, 222) In the case at bar, a writ of execution was issued and levy made within five years from the entry of judgment on November 15, 1932, in compliance with the provision of section 443 of the Code of Civil Procedure.

It is alleged, however, that the alias writ of execution issued on October 8, 1934, cannot be the basis of a valid sale, it appearing that other alias writs were issued after the writ of execution of October 8, 1934. We find no merit in this contention. As long as judgment is not satisfied, a plaintiff may resort to other writs of execution. His remedies are cumulative and he may successively sue out and levy writ until the debt is satisfied. Moreover, the issuance of a void execution or subsequent writs of execution does not operate as an abandonment or waiver of a prior writ of execution, since this procedure may have been followed only as a matter of precaution.

In the case before us, the explanation of the provincial sheriff is satisfactory. According to him, since the defendants in this case paid certain sums of money on account of their obligation direct to the Collector of Internal Revenue, they had to ask the issuance of alias writs of execution in order to collect the exact amounts from the defendants after the payments made by them direct to the Collector of Internal Revenue have been deducted, (pp. 46-47, bill of exceptions.)

Another issue raised concerns the variance between the amount due and payable and that stated in the notice of sale. We do not think this objection is of moment. The plaintiff admits that the real amount due him was less than that stated in the notice of sale. The fact that the notice of sale contains a larger amount than was actually due does not render the execution void. (*Finley v. Pew*, 205 P. 310, 18 Wyo. 343.) The proper procedure for the appellant in these circumstances, is to apply to the court for relief as to such excess. (*Otis Bros. & Co. v. Nash*, 66 P. 37, 26 Wash. 37.)

The judgment of the lower court is hereby affirmed with costs against the appellant. So ordered.

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

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