

FRANCISCO GONZALEZ QUIROS, JUDGMENT-CREDITOR AND APPELLANT, VS. CARLOS PALANCA TAN-GUINLAY, JUDGMENT-DEBTOR AND APPELLEE.

G.R. No. 5637. November 23, 1910

Ponente: TORRES, J.

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TORRES, J.:

Case No. 1376 having been prosecuted in the Court of First Instance of this city by Francisco Gonzalez Quiros against Carlos Palanca Tan-Guinlay, for the collection of a certain sum of money, and judgment adverse to the plaintiff having been rendered therein and an appeal taken, this court, in its decision handed down on March 3, 1906,[1] found that the plaintiff was entitled to judgment for the sum of P7,981.80, with interest at the rate of 6 per cent per annum from the 1st day of January, 1894, until the amount should be paid, and the coats of the suit. The judgment of the court below was reversed, and the case remanded with instructions to enter judgment for the plaintiff for the amount and interest mentioned. No costs were allowed to either party in this court. (Pp. 449 to 456, second part of the record.)

The instructions given in that decision were complied with by the judge of First Instance and carried out in the following terms:

"This matter is today before this court, having been remanded by the Supreme Court of the Philippine Islands, before which an appeal was taken from a judgment rendered in this lower court by the Hon. William J. Rohde, on December 17, 1903. The judgment appealed from was reversed and the Supreme Court ordered this court to render another judgment for the plaintiff for an amount different from that contained in the said judgment appealed from, to wit, the sum of 7,981.80 pesos, with interest at the rate of 6 per cent per annum from the 1st day of January, 1894, and for the costs of this Court of First Instance. It does not clearly appear whether the sum specified in the said decision is in Philippine currency, [or in another currency, but, taking into consideration the date on] which the transactions, the subject of this action, were carried on, this court finds that the sums mentioned are in Mexican currency, and further that the value of 1 peso Mexican currency is the equivalent of 1 peso Philippine currency.

"Let judgment be entered for the plaintiff arid against the defendant for the sum of 7,981.80 pesos Mexican currency, equivalent to P7,981.80 Philippine currency, with interest thereon at the rate of 6 per cent per annum, from the 1st day of January, 1894, and for the costs of this instance. - Manila, P. I., April 18, 1906. - (Signed) A. S. Crossfield, judge."

Since then, at the instance of the plaintiff, supplementary proceedings were instituted for the fulfillment and execution of the said judgment, though without results, as no property was found belonging to the debtor upon which to levy an attachment. As an outcome of these proceedings another suit was brought against the said judgment-debtor, Tan-Guinlay, and the firm of German & Co., Ltd., since the plaintiff Quiros alleged that this firm owed the said Tan- Guinlay the sum of P7,741.17 with interest, and he prayed that this amount be applied to the payment of the said executory judgment against Tan-Guinlay. The matter having been brought before this

court on appeal, it was found in a decision handed down on January 27, 1909, that as the plaintiff Quiros had not proved that German & Co. owed any sum whatever to Tan-Guinlay, it was proper to affirm as it did affirm the judgment appealed from, with the costs of this instance against the appellant. (Trial record, pp. 776 to 782.)

At this stage of the case the judgment-creditor, Gonzalez Quiros, stated to the court in writing that he had learned that the judgment-debtor, Tan-Guinlay, was the owner of a part of the capital belonging to the partnership of Song Fo & Co. and also had a 40 per cent interest in its profits from July, 1903, and that the other partners, Yap Chuy Pun, Lorenzo Yap Caong, Song Fo, and Jose Cembrano To Lo, were concealing the said interest of the judgment-debtor in connivance with him; wherefore, in order to ascertain what share and interest Tan-Guinlay might have in the said partnership, he prayed that the proper investigation be made, and the court issued the following order:

"It is ordered that each one and all of the partners, Yap Chuy Pun, Lorenzo Yap Caong, Song Fo, Jose Cembrano To Lo, and Carlos Palanca Tan-Guinlay, above mentioned, shall appear before Mr. Thomas Aitken, a practicing attorney and notary public of this city, at the latter's office in the upper story of No. 6 Escolta, who has been appointed as a referee to take all the evidence authorized by this order, on November 16, 1908, at 8 o'clock in the morning, in order that they may, respectively, then and there testify under oath with respect to any property belonging to the said defendant Tan-Guinlay which any of them may have in his possession or under his control, and they shall bring with them all the account books of the said Song Fo & Co. and the inventories and balance sheets of the same for the years from 1903 to 1908, both inclusive, and shall submit each one and all of these records to an examination by the plaintiff and his attorney in so far as the said books, inventories, and balance sheets are subject to examination under the law.

"It is further ordered that Jose Delgado, the Reverend Father Jorge Municha, and the bookkeeper of the said company shall appear at the time and place mentioned and testify in the case as witnesses, and meanwhile all the property of whatever nature belonging to the said defendant, Tan-Guinlay, which may be in the possession or under the control of the said partners or any of them shall be affected by this order, and none of the latter, nor the said defendant himself, shall have any right to sell, assign, or transfer his interest or share in the said property, wholly or in part, until the issuance of a new order in this matter.

"A copy of this order shall be delivered with the least possible delay to the partners before-mentioned and to the defendant himself, together with a copy of the affidavit and petition by reason of which this order is issued, and the said Jose Delgado, the Reverend Father Jorge Municha, and the bookkeeper of the partnership of Song Fo & Co. shall be summoned to appear and testify at the time and place aforesaid. So ordered. Manila, November 13, 1908. By the court. (Signed) Charles S. Lobingier, judge."

By a motion of January 19, 1909, the judgment-creditor Gonzalez Quiros, after having stated to the court that all the facts set forth in his affidavit were fully proven before the referee, Thomas D. Aitken, and that the said partnership of Song Fo & Co. had in its possession a sufficient sum to cover the amount of the judgment and costs to the payment of which the judgment-debtor Tan-Guinlay was sentenced, prayed that the said firm be ordered to pay, in cash, the approximate sum of P16,000, with interest thereon up to the 30th of January, and that, should it fail to make such payment, its property be attached, sufficient to cover the said sum and the costs.

The proceedings of investigation solicited by Gonzalez Quiros having been had before the referee Aitken, the latter rendered the following report thereupon:

"In conformity with the order issued by the said court on November 13, 1908, the undersigned began the work of hearing and taking the testimony of the witnesses mentioned in the said order and continued so to do from day to day until he had heard all the witnesses summoned. The plaintiff at the beginning was represented by attorney C. W. Ney who, during the proceedings, withdrew from his representation of the said plaintiff, after which withdrawal the latter proceeded in his own behalf. The defendant was represented by the attorney

Alfredo Chicote.

"The first witness, Jose Delgado, testified that the defendant lived in the house of Song Fo & Co., but that he had no direct knowledge of the defendant's connections with the said company. The witness Uy Se Chiong testified that he was Song Fo & Co.'s bookkeeper and that the said Carlos Palanca Tan-Guinlay was an employee of the said company, at a salary of P40 per month, and that during the years 1904, 1905, 1907 and 1908, the said defendant collected from and owed to the aforementioned company the following sums, respectively: P4,675, P6,773.24, P509.33, and P551.48; but that, to his best knowledge and belief, the defendant had no interest as a partner in the business of Song Fo & Co.

"The witnesses Lorenzo Yap Caong and Song Fo testified that the defendant was a manager of the company, under salary, and that he had no interest in the said company as a partner.

"Julio Rafael, Patricio Ubeda Gallego and Felipe Bunttoy testified that they were interested in the Zorrilla Theater and that Song Fo was one of the capitalist partners, the owners of the said theater; but their testimony in no manner showed that the defendant, Carlos Palanca Tan-Guinlay, had any interest whatever in the said theater.

"It is unnecessary to discuss whether the testimony of the various witnesses is or is not satisfactory, for the reason that any contradictions or falsehoods or other reasons which may exist for not believing any of the said witnesses, can be no grounds for concluding that the defendant has any partnership rights in the business of Song Fo & Co., or in the Zorrilla Theater.

"On this account, after a careful examination of all the testimony taken in this proceeding, it is impossible to arrive at any other conclusion than that the plaintiff has utterly failed to prove that the defendant, Carlos Palanca Tan-Guinlay, has any interest whatever in the concern of Song Fo & Co., the Zorrilla Theater, or any other business. Manila, Philippine Islands, March 8, 1909. (Signed) Thos. D. Aitken, referee.

"I received a copy of the foregoing. (Signed) Alfredo Chicote, for Chicote and Miranda.

"I received a copy of the foregoing. (Signed) Quiros."

By a written petition of March 10, 1909, the judgment creditor Quiros stated to the court that he had received a copy of the report rendered in the matter by the referee, Thomas Aitken; that this report was contrary in all its parts to the evidence produced before the same party, and that, in view of the allegations therein set forth, he relied upon his previous petition presented on the 20th of January (p. 795 of the trial record), and asked for what he had therein requested; wherefore the judge, by an order of March 12, 1909, stated that he was of the opinion that the referee's report, finding that the evidence was insufficient to show that the defendant had such interest as was claimed by the plaintiff, was justified by the evidence and he therefore confirmed the said report, since it was not shown that the said defendant had any interest in the partnership of Song Fo & Co., as alleged in the plaintiff's affidavit and petition.

The judgment-creditor, Gonzalez Quiros, being notified of this ruling of March 12, excepted thereto by a written motion presented on March 15, 1909, and prayed for a review of all the proceedings had and of the documents filed during the trial, in consideration of the reason set forth in his motion, notice of which was given to the judgment-debtor, Palanca Tan-Guinlay; but the judge, after considering the said motion and having heard the plaintiff in his own behalf, declared by an order of the 22d of the same month of March, that he did not find sufficient reason for changing the previous order, and that he therefore denied the review solicited. (Trial record, fifth part, p. 986.)

In view of this denial the judgment creditor, Gonzalez Quiros, by a motion of the 24th of the said month of March, prayed that the manager and administrator of the partnership of Song Fo & Co. be ordered to file with the

court, within two days, an abstract of the credit and debit accounts credited to and charged against Carlos Palanca Tan- Guinlay, the general manager of the said firm, on its books, from July, 1903, together with its commercial books, for the purpose of ascertaining what balances the judgment debtor had, and that such books be examined by the translator, the friar Jorge Municha. He also prayed that Patricio Ubeda, the manager of the firm of Patricio Ubeda & Co., should file an exact copy of the balance sheet drawn up by the latter, so that it might be positively known what profits pertained to the firm of Song Fo & Co. and to its general manager, Carlos Palanca Tan-Guinlay, the judgment debtor.

By another written motion of the following day, March 25, he prayed that the said judgment debtor should exhibit in court the books of the said company showing the entries of the sums delivered to its partner, Lorenzo Yap Caong, during the months of November and December, 1908, and January and February, 1909; and that the parties named in the motion be summoned and required to testify under oath in answer to such questions as should be asked them by the petitioner. A copy of these documents was delivered to the judgment-debtor for the purpose of a hearing upon the motion on a day set.

At this stage of the proceedings Thomas D. Aitken, by a motion presented April 7, petitioned the court that it fix, in an order, his fees as referee in the sum of P450, in accordance with section 788 of the Code of Civil Procedure, and that this amount be considered as costs against the plaintiff Gonzalez Quiros, stating that an execution might issue against the same for the collection of said sum as costs. (Trial record, fifth part, p. 997.)

The judgment-creditor, being notified of this motion of the referee Aitken, asked, by a written counter-petition of April 13, 1909, and for the reasons therein set forth, that the aforementioned referee's petition be disallowed, since, in case he had any right to such fees, their payment was incumbent upon the judgment-debtor, the Chinaman Tan-Guinlay; and that instead of allowing the referee's petition, consideration be given to the plaintiff's counter-petition for the sum of P325, as an indemnity for the conduct observed by the defendant and for the latter's five months' delay, leaving it to the discretion of the judge to take such action as the law demanded with respect to the alteration of the stenographic notes and the important concealments which he made in the report presented on the 4th of March, 1909.

The referee Aitken being notified of the preceding petition, in a writing found on page 1005 of the record absolutely denied the plaintiff's allegation that the stenographic notes had been changed except in so far as they were corrected by the witnesses themselves, and that, furthermore, such corrections were made in them in the presence of the judgment creditor. And, in view of the fact that, as he alleged, the documents exhibited contained malicious falsehoods and were of an insulting" nature toward the referee, he asked that the judgment creditor Quiros be reprimanded and punished for contempt.

In view of the preceding motions the judge, by an order of April 29, 1909, and for the reasons therein expressed, warned the plaintiff that he must refrain from filing papers containing false and incongruous statements, else they would be stricken out pursuant to section 107 of the Code of Civil Procedure; and he overruled the petitions presented by the judgment-creditor in the latter's two previous motions, stating that the plaintiff must not expect that he would be permitted to incur further costs in such proceedings until he had paid the fees of the referee, which fees the clerk of the court was directed to tax in accordance with section 792 of the Code of Civil Procedure, in connection with section 791 of the same. (Trial record, sixth part, pp. 1018, 1019.)

The judgment-creditor, Gonzalez Quiros, being notified of this order took exception thereto, by a writing of May 4, 1909, and asked, for the reasons therein stated, that the report of the referee Aitken be set aside, that his counter-petition of April 13 be considered, and that, in case the fees of the said referee were allowable they be left until the conclusion of the case in accordance with the law. He also asked for a review of all the proceedings had,

for the purpose of executing the judgment rendered in this case. After the costs had been fixed (p. 1024 of the record), Without opposition on the part of the judgment-creditor, they were approved by the clerk of the court (back of p. 1024 of the record), and the judge, by an order of May 8, 1909, overruled the motion presented by the judgment creditor Quiros. (Trial record, sixth part, p. 1025.)

By a writing of June 26, 1909, the judgment-creditor, Gonzalez Quiros, petitioned that the referee Aitken should rectify his report presented on the 4th of March of the same year and render a new and correct one, and also that the said referee's petition, with regard to the fixing of the costs, be denied and that he be compelled to comply with his duty without allowance of any other action or rights than those stipulated between him and Ney.

The judge, by an order of July 26, 1909, denied the plaintiff's petition relative to the correction by Aitken of his previous report, as well as all the other petitions contained in his motion of June 26. (Trial record, sixth part, p. 1045.)

The judgment-creditor, Gonzalez Quiros, being notified of this order, excepted thereto on the 28th of July, and asked the court to order a review of all the proceedings had and the execution of the judgment rendered in this case. This motion, which was notified to the contrary party, was overruled by an order of the 31st of the same month of July, (Trial record, sixth part, p. 152.)

The judgment-creditor being notified of this, last ruling, took exception, by a writing of August 6th, to each and all of the rulings made on the motions which he had presented since the presentation of the referee's report on March 4, last, and prayed the court to allow him a delay for the filing of the necessary bill of exceptions, which motion was granted by order of August 14, 1909, and on the bill of exceptions being presented, it was certified and forwarded to this court.

For the purpose of the fulfillment and execution of the judgment rendered in this case in favor of the creditor Gonzalez Quiros, and in order to ascertain and prove whether the judgment-debtor, Palanca Tan-Guinlay, really had any interest or share in the partnership denominated Song Fo & Co. the court ordered, at the instance of the said judgment-creditor, the institution of various supplementary proceedings, involving the examination of several witnesses, and appointed for this purpose Attorney Thomas Aitken as referee. In view of the report of the investigation submitted by this referee, and the statements made by the judgment-creditor, the judge, by an order of March 12, 1909, and for the reasons therein set forth, approved or confirmed the said report.

This order brought the aforementioned investigations to an end, by accepting the finding of the referee in his said report that, from the proceedings had, it was not proved that the judgment-debtor Palanca Tan-Guinlay had a share or interest in the partnership of Song Fo & Co. or in any business carried on by the same; and notwithstanding that the judgment-creditor, Gonzalez Quiros, by a motion of March 15th, excepted to the said order and at the same time asked for a review of all the proceedings had and of the documents presented, he did not file the required bill of exceptions for the proper action to be taken thereon, nor did he take exception to the order of the 22d of the same month of March. The review requested was disallowed on account of there not being a sufficient reason for changing the previous order.

"Exception may be taken," recites section 141 of the Code of Civil Procedure, "to any other ruling order, or judgment of the court made during the pendency of the action in the Court of First Instance."

Section 143 of the same code, among other provisions, prescribes as follows:

"The party desiring to prosecute the bill of exceptions shall so inform the court at the time of the rendition of final judgment, or as soon thereafter as may be practicable and before the ending of the term of court at which final judgment is rendered, and the judge shall enter a memorandum to that effect upon his minutes and order a

like memorandum to be made by the clerk upon the docket of the court among the other entries relating to the action. Within ten days after the entry of the memorandum aforesaid, the excepting party shall cause to be presented to the judge a brief statement of the facts of the case sufficient to show the bearing of the rulings, orders, or judgments excepted to, and a specific statement of each ruling, order, or judgment that has been excepted to, for allowance by the judge."

The record does not show that the judgment creditor, who excepted to the said final order of March 1?, 1909, presented the necessary bill of exceptions within the ten days specified by law for its admission and prosecution, and furthermore the said order having been confirmed by another of the 22d of the same month, the judgment-creditor Quiros made no objection whatever to this second order, which was ostensibly assented to, inasmuch as in subsequent motions of the 24th and 25th he asked that other proceedings be instituted conducive to the same purpose sought by the commission intrusted to attorney Aitken.

The judgment-creditor himself, by a motion of August 6, 1909, took exception to and appealed from each and all of the judicial orders issued on the subject of his written motions presented since the submission of the referee's report on the 4th of the month of March aforementioned. May it be understood that exception to and appeal from the two said orders of March 12 and 22, approving the impugned report of the referee, was taken, at the end of four months and twenty-four days - contrary to the provision of the law providing that exceptions must be taken as soon as possible? The impropriety of the untimely appeal made from the two said orders of the month of March is evident.

The order of April 29, 1909, disallowing the prosecution of other new supplementary proceedings for the same purpose, that of ascertaining the share of the judgment-debtor in the aforesaid Chinese partnership of Song Fo, was likewise excepted to, by a writing of the 4th of May following, wherein at the same time the judgment-creditor asked that the said referee's report be set aside and his counter-petition be considered; but he did not file the required bill of exceptions within the period fixed by law for its approval and prosecution.

Can the said order of April 29, 1909, be considered as excepted to and appealed from by the appeal taken in the writing before mentioned under date of August 6, 1909 - after the lapse of three months and six days? The impropriety of the said appeal is also unquestionable, on account of its not having been entered in due time.

With respect to the order of May 8, 1909, disallowing the judgment-creditor's petition to set aside the referee's report before mentioned, that of the 26th of July following, denying the prayer made by the said judgment-creditor that the said referee rectify his previous report and render another new and correct one, and that of the 31st of the same month of July, denying the judgment-creditor's petition that the court order a review of all the proceedings had, are all judicial orders from which no appeal whatever lies, as they are in denegation of petitions tending to weaken or destroy the final orders of the 12th and 22d of March, 1909, which would be the subject of discussion and opposition, notwithstanding the irrevocable character with which they are vested, were the appeals entered against them admitted.

If the appeals taken by the judgment-creditor were allowed, it would give rise to the question whether the judge ought or ought not to have granted the petition to set aside or to rectify the referee's report, already approved by final orders, the petition that the said referee render another more exact report, and that made asking for a review of the proceedings had by the latter, already denied by another previous order which was also final, none of which could under any consideration be permitted, as it would be contrary to the law, which upholds the sanctity of all rulings that have become *res adjudicata*.

It was not proved that the aforementioned orders of the 12th and 22d of March, and the 29th of April, were null and void or that they had not acquired a final character, and therefore the subsequent orders of the 8th of May and

the 26th and 31st of July, issued in consequence of the preceding orders, which were already of themselves irrevocable, can not be appealed.

For the foregoing reasons, the appeals entered by the judgment-creditor Francisco Gonzalez Quiros from the said orders are declared to be improper, and therefore the bill of exceptions forwarded to this court should not have been prosecuted. The costs are taxed against the appellant. So ordered.

Arellano, C.J., Johnson, Moreland, and Trent, JJ., concur.

[1] 5 Phil. Rep., 675.

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