

THE CHINESE CHAMBER OF COMMERCE, PLAINTIFF AND APPELLEE, VS. PUA TE CHING ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 5827. August 04, 1910

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

In the Court of First Instance of Manila, the plaintiff had prosecuted three suits against Pua Te Ching, registered under Nos. 6347, 6348, and 6349, all for the recovery of a sum of money. The court decided them by adjudging that Pua Te Ching should pay the amounts claimed. Pua Te Ching, for the purpose of staying the execution of the judgments rendered, during the pendency of his appeal, presented as sureties in the three aforesaid cases, Pua Ti, of Calle Rosario No. 150, and Jose Temprado Yap Chatco, of Calle Sagasta, San Fernando, Pampanga. All three of them, the appellant and his sureties, executed the proper bonds: In case No. 6347, for P3,784; in No. 6348, for P4,000; and in No. 6349, for M.,000, "for which payment well and truly to be made," the bond reads, "we, the appellant and the sureties, jointly and severally bind ourselves," it being expressly stipulated "that the appellant and the sureties are held and firmly bound to the appellee, jointly and severally, in the sum expressed in each bond, to secure the fulfillment and payment of the judgment so appealed, together with the costs, in case the same should be affirmed, in whole or in part, or in case the judgment should become effective on account of the appellant's having abandoned or withdrawn the appeal, or in case it should be dismissed or declared to be improperly allowed."

The appeal having been heard by this court, which rendered a decision affirming the judgment of the lower court and, while the latter was about to proceed with the execution of the said judgment, the sureties Jose Temprado Yap Chatco and Pua Ti set forth: That Pua Te Ching died intestate on September 2, 1909, and the decision of this court was rendered after his death; that the estate of the late Pua Te Ching was in the course of administration; and that, therefore, the decision of the Supreme Court was null and of no value, it having been pronounced against a person already dead, and that an execution thereof could not be issued against the said Pua Te Ching.

The lower court decided that, notwithstanding the death of the principal surety, the sureties who subscribed the bond were liable for the amount of the judgment entered against their principal, and in virtue thereof ordered "that the judgment entered in these cases against the defendant Pua Te Ching and in favor of the plaintiff shall be extensive against the sureties who subscribed the bond, named Pua Ti and Jose Temprado Yap Chatco, jointly and severally, and execution shall issue on the said judgments."

These sureties filed notice of appeal and, having forwarded their bill of exceptions, alleged error against the judgment appealed from in that therein the execution of a judgment was ordered notwithstanding the death of the appellant which occurred before the affirmation of the decision of the lower court. In support of their allegation they invoke sections 119 and 448 of the Code of Civil Procedure, the provisions of which, especially those of section 448, may be invoked by the sureties in their favor by virtue of the provisions of articles 1148 and 1853, in

relation to article 1822, of the Civil Code.

Article 1822, invoked by the appellant, provides that "if the surety binds himself jointly with the principal debtor, the provisions of section fourth, chapter third, title first, of this book shall be observed," that is, of book fourth of the Civil Code. Section fourth of the chapter, title, and book mentioned provides that "a creditor may sue any of the joint debtors or all of them simultaneously." (Art. 1144.) In conformity with this provision, the sureties Pua Ti and Yap Chatco having bound themselves in solidum (jointly and severally) with the principal debtor Pua Te Ching, the creditor, that is, the Chinese Chamber of Commerce, may sue any of them or all of them simultaneously: which is what the Chinese Chamber of Commerce did in filing suit against the joint and several debtors.

But the basis of appellant's argument in alleging error because of the application of this provision of the law, is the benefit granted by articles 1148 and 1853.

Article 1853, which is one of the provisions made in the matter of bonds and is a reproduction of article 1148 on joint and several obligations in general, reads as follows:

"A surety may set up against the creditor all the exceptions which pertain to the principal debtor and which may be inherent to the debt; but not those which may be purely personal to the debtor."

The whole question which this court has to decide is whether the sureties Pua Ti and Yap Chatco have set up against the creditor any exception which pertains to the principal debtor, Pua Te Ching, and which may be inherent to the debt. If the exception which pertains to the principal debtor, Pua Te Ching, is purely personal to him, it is evident that the sureties of Pua Te Ching can not set it up against the creditor.

Exceptions of the principal debtor which the surety may utilize and which may be inherent to the debt, are all those connected with the obligation secured by the bond, all those which may contribute to weaken or destroy the vinculum juris existing between the creditor and the principal debtor, all means of defense which may invalidate the original contract from which the right or the action of the creditor arises against the surety, such as the exceptions of fraud or of violence, which annul consent, that of sine aetione agis founded on a payment already made, that of res adjudicate, that of prescription, that of nullity of the loan made to a minor child, and others of the same class. (12 Manresa, Civil Code, 363.)

The exception which, according to the appellants, pertains to the principal debtor Pua Te Ching, inasmuch as he died, is that provided by sections 119 and 448 of the Code of Civil Procedure. Section 119 relates to the continuance of the action by or against the executor, administrator or other legal representative of the deceased, and, if the action is for the recovery of money, the payment of a debt or of damages, to its discontinuance and prosecution in the proceedings instituted for the settlement of the estate of the deceased; and section 448 provides that, notwithstanding the death of a party after the judgment, "execution thereon may be issued, or one already issued may be enforced as follows: (1) In case of the death of the judgment creditor, upon the application of his executor or administrator or successor in interest; (2), in case of the death of the judgment debtor, if the judgment be for the recovery of real or personal property, or the enforcement of a lien thereon." All these provisions concern the manner of execution relative to the obligation against the estate of Pua Te Ching, but in no wise affect the validity and force of the obligation contracted by Pua Te Ching toward the Chinese Chamber of Commerce in such a way as to serve the joint and several sureties of Pua Te Ching as a defense inherent to the latter's debt to be set up against the execution, now that they are the judgment debtors made liable for payment. They are all defenses to oppose an execution against the estate of Pua Te Ching, as the appellants say, and all of them are against the execution of the obligation, but not against the obligation itself. They are not even personal defenses of the principal debtor against the obligation; still less are they defenses inherent to the debt itself, which are the only

ones that, as pertaining to the principal debtor, may be utilized by the sureties.

It is useless to allege the impropriety of an execution of a judgment against the estate of a person deceased when it is not a question of such an execution against the estate of a deceased person.

It is useless to allege how the payment of money should be sued for against the estate of a deceased person, when it is not a question of a suit of this kind, nor of any other, but of the execution of a judgment against certain sureties who bound themselves jointly and severally to pay the amount of the obligation concerned in the case at bar "in case the judgment should be affirmed in whole or in part." The judgment sentencing the principal debtor Pua Te Ching to pay the amounts claimed, having been wholly affirmed, the case now stands for execution to issue against the sureties for securing payment of the said amounts by them in place of Pua Te Ching or with Pua Te Ching, as they had bound themselves to do. The creditor having chosen to have the execution issue against them alone without Pua Te Ching, they alone, without Pua Te Ching and without reference whatever to the estate of Pua Te Ching, must be compelled to pay by means of judicial compulsion through execution.

The provisions contained in articles 1148 and 1853 of the Civil Code do not apply to the sureties, the appellants; and the judgment of the trial court, which finds the sureties liable for the payment of the debt, put into execution by virtue of final decision, is entirely in accord with the law.

The record does not show that it is a question of the execution of a judgment entered after the death of the principal debtor. No proof whatever exists of this fact, nor even of the fact of the death of the principal debtor.

The lower court, on the truth of this hypothesis, decided that, notwithstanding the death of the principal obligor, the sureties are compelled to pay the amount set forth in the judgment rendered.

That this court should not render a decision affirmatory of that of the lower court on account of the death of the defendant, is a point that absolutely does not concern this incident of the execution of judgment, nor was evidence adduced to show anything specific against the rendering of such an affirmatory decision.

The judgment appealed from is affirmed, with the costs of this instance against the appellants. So ordered.

Torres, Johnson, Moreland, and Trent, JJ., concur.

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