

THE ROMAN CATHOLIC BISHOP OF JARO, PLAINTIFF AND APPELLEE, VS. GREGORIO DE LA PEÑA, ADMINISTRATOR OF THE ESTATE OF FATHER AGUSTIN DE LA PENA, DEFENDANT AND APPELLANT.

G.R. No. 6913. November 21, 1913

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal by the defendant from a judgment of the Court of First Instance of Iloilo, awarding to the plaintiff the sum of P6,641, with interest at the legal rate from the beginning of the action.

It is established in this case that the plaintiff is the trustee of a charitable bequest made for the construction of a leper hospital and that Father Agustin de la Peña was the duly authorized representative of the plaintiff to receive the legacy. The defendant is the administrator of the estate of Father De la Peña.

In the year 1898 the books of Father De la Peña, as trustee, showed that he had on hand as such trustee the sum of P6,641, collected by him for the charitable purposes aforesaid. In the same year he deposited in his personal account P19,000 in the Hongkong and Shanghai Bank at Iloilo. Shortly thereafter and during the war of the revolution, Father De la Peña was arrested by the military authorities as a political prisoner, and while thus detained made an order on said bank in favor of the United States Army officer under whose charge he then was for the sum thus deposited in said bank. The arrest of Father De la Peña and the confiscation of the funds in the bank were the result of the claim of the military authorities that he was an insurgent and that the funds thus deposited had been collected by him for revolutionary purposes. The money was taken from the bank by the military authorities by virtue of such order, was confiscated and turned over to the Government.

While there is considerable dispute in the case over the question whether the P6,641 of trust funds was included in the P19,000 deposited as aforesaid, nevertheless, a careful examination of the case leads us to the conclusion that said trust funds were a part of the funds deposited and which were removed and confiscated by the military authorities of the United States.

That branch of the law known in England and America as the law of trusts had no exact counterpart in the Roman law and has none under the Spanish law. In this jurisdiction, therefore, Father De la Peña's liability is determined by those portions of the Civil Code which relate to obligations. (Book 4, Title 1.)

Although the Civil Code states that "a person obliged to give something is also bound to preserve it with the diligence pertaining to a good father of a family" (art. 1094), it also provides, following the principle of the Roman law, *major casus est, cui humana infirmitas resistere non potest*, that "no one shall be liable for events which could not be foreseen, or which having been foreseen were inevitable, with the exception of the cases expressly mentioned in the law or those in which the obligation so declares." (Art. 1105.)

By placing the money in the bank and mixing it with his personal funds De la Peña did not thereby assume an

obligation different from that under which he would have lain if such deposit had not been made, nor did he thereby make himself liable to repay the money at all hazards. If the money had been forcibly taken from his pocket or from his house by the military forces of one of the combatants during a state of war, it is clear that under the provisions of the Civil Code he would have been exempt from responsibility. The fact that he placed the trust fund in the bank in his personal account does not add to his responsibility. Such deposit did not make him a debtor who must respond at all hazards.

We do not enter into a discussion for the purpose of determining whether he acted more or less negligently by depositing the money in the bank than he would if he had left it in his home; or whether he was more or less negligent by depositing the money in his personal account than he would have been if he had deposited it in a separate account as trustee. We regard such discussion as substantially fruitless, inasmuch as the precise question is not one of negligence. There was no law prohibiting him from depositing it as he did and there was no law which changed his responsibility by reason of the deposit. While it may be true that one who is under obligation to do or give a thing is in duty bound, when he sees events approaching the results of which will be dangerous to his trust, to take all reasonable means and measures to escape or, if unavoidable, to temper the effects of those events, we do not feel constrained to hold that, in choosing between two means equally legal, he is culpably negligent in selecting one whereas he would not have been if he had selected the other.

The court, therefore, finds and declares that the money which is the subject matter of this action was deposited by Father De la Peña in the Hongkong and Shanghai Banking Corporation of Iloilo; that said money was forcibly taken from the bank by the armed forces of the United States during the war of the insurrection; and that said Father De la Peña was not responsible for its loss. The judgment is therefore reversed, and it is decreed that the plaintiff shall take nothing by his complaint.

Arellano, C. J., Torres and Carson, JJ., concur.

DISSENTING

TRENT, J.,

I dissent. Technically speaking, whether Father De la Peña was a trustee or an agent of the plaintiff his books showed that in 1898 he had in his possession as trustee or agent the sum of P6,641 belonging to the plaintiff as the head of the church. This money was then clothed with all the immunities and protection with which the law seeks to invest trust funds. But when De la Peña mixed this trust fund with his own and deposited the whole in the bank to his personal account or credit, he by this act stamped on the said fund his own private marks and unclothed it of all the protection it had. If this money had been deposited in the name of De la Peña as trustee or agent of the plaintiff, I think that it may be presumed that the military authorities would not have confiscated it for the reason that they were looking for insurgent funds only. Again, the plaintiff had no reason to suppose that De la Peña would attempt to strip the fund of its identity, nor had he said or done anything which tended to relieve De la Peña from the legal responsibility which pertains to the care and custody of trust funds.

The Supreme Court of the United States in *United States vs. Thomas* (82 U. S., 337), at page 343, said: "Trustees are only bound to exercise the same care and solicitude with regard to the trust property which they would exercise with regard to their own. Equity will not exact more of them. They are not liable for a loss by theft without their fault. But this exemption ceases when they mix the trust-money with their own, whereby it loses its identity, and they become mere debtors."

If this proposition is sound and is applicable to cases arising in this jurisdiction, and I entertain no doubt on this

point, the liability of the estate of De la Peña cannot be doubted. But this court in the majority opinion says: "The fact that he (Agustin de la Peña) placed the trust fund in the bank in his personal account does not add to his responsibility. Such deposit did not make him a debtor who must respond at all hazards. * * * There was no law prohibiting him from depositing it as he did, and there was no law which changed his responsibility, by reason of the deposit."

I assume that the court in using the language which appears in the latter part of the above quotation meant to say that there was no statutory law regulating the question. Questions of this character are not usually governed by statutory law. The law is to be found in the very nature of the trust itself, and, as a general rule, the courts say what facts are necessary to hold the trustee as a debtor.

If De la Peña, after depositing the trust fund in his personal account, had used this money for speculative purposes, such as the buying and selling of sugar or other products of the country, thereby becoming a debtor, there would have been no doubt as to the liability of his estate. Whether he used this money for that purpose the record is silent, but it will be noted that a considerable length of time intervened from the time of the deposit until the funds were confiscated by the military authorities. In fact the record shows that De la Peña deposited on June 27, 1898, P5,259, on June 28 of that year P3,280, and on August 5 of the same year P6,000. The record also shows that these funds were withdrawn and again deposited all together on the 29th of May, 1900, this last deposit amounting to P18,970. These facts strongly indicate that De la Peña had as a matter of fact been using the money in violation of the trust imposed in him.

If the doctrine announced in the majority opinion be followed in cases hereafter arising in this jurisdiction trust funds will be placed in a precarious condition. The position of the trustee will cease to be one of trust.

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