

MARIA ESGUERRA, PLAINTIFF AND APPELLEE, VS. MARIANO TECSON ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 7132. February 20, 1912*

Ponente: ARELLANO, C.J.

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Potenciano Roxas took over a debt of P1,612, which Mariano Tecson owed to Maria Esguerra, with a mortgage, for securing the payment thereof, on a steam rice mill and the frame building in which it was installed, with a bamboo fence and galvanized-iron roof. The debt was to be paid three months after it had been assumed by the new debtor, Potenciano Roxas, which was on June 4, 1907.

The Manila commercial firm of Hidalgo, Cuyugan & Co. was the creditor of Potenciano Roxas and by entering suit in the Court of First Instance of Manila obtained judgment for the payment of its bill amounting to P724.98, with interest at 6 per cent per annum from January 10, 1908, and the costs. This judgment was rendered on February 20 and execution ordered May 21, 1908.

Manuel E. Cuyugan also secured judgments against Potenciano Roxas in the justice of the peace court of Manila in four suits, three for P500 and one for P340 with interest at 6 per cent per annum from January 9, 1908, and the costs. These judgments were rendered January 17 and execution ordered May 21, 1908.

On May 27, 1908, the sheriff of the Province of Bulacan levied upon (a) a steam engine and rice mill, and (b) a house of mixed materials and an iron-roofed warehouse beside it, and other equipment for cleaning rice.

The Manila firm of Castle Bros-Wolf & Sons laid claim to all the machinery specified under (a) and the creditors Hidalgo, Cuyugan & Co., and Manuel E. Cuyugan admitted this claim.

On June 26, 1908, the said property was sold at public auction by the sheriff of Bulacan and adjudicated in payment: The machinery under (a) to Castle Bros-Wolf & Sons, and the house, warehouse and other equipment under (b) to the judgment creditors Hidalgo, Cuyugan & Co., and Manuel E. Cuyugan, for the amounts of their respective judgments.

On June 27, 1908, the day after the auction, the sheriff issued to the respective bidders, who had bought the property, the corresponding bills of sale.

The first time that Maria Esguerra appears is on June 25, 1908, when she claims preference in payment over the bills of Hidalgo, Cuyugan & Co., and Manuel E. Cuyugan, no mention being made of Castle Bros-Wolf & Sons, asking the sheriff to keep in his possession the proceeds of the sale of said property and then to pay her bill of P1,612, with legal interest and costs, in preference to Hidalgo, Cuyugan & Co., and Manuel E. Cuyugan.

The sheriff was not notified or enjoined until June 29, 1908, when the sale had already been consummated and the corresponding bills of sale issued to the vendees.

The Court of First Instance of Bulacan rendered judgment absolving Mariano Tecson Roxas and the sheriff of the

Province of Bulacan from the complaint and sentencing Potenciano Roxas to pay to Maria Esguerra P1,612 with legal interest from the date of the filing of the complaint and declaring the plaintiff's bill to have preference over the bills of the defendants Hidalgo, Cuyugan & Co., and Manuel E. Cuyugan, against the defendant Potenciano Roxas.

As not only the warehouse in question but also a house of mixed materials and other property, described under the letter (b), was adjudicated to Messrs. Hidalgo, Cuyugan & Co. and Manuel E. Cuyugan, only for the sum of P1,564.98, less than the plaintiff's bill of P1,612, they were sentenced to turn over to the plaintiff enough from the price of the warehouse to satisfy the bill ordered paid to her, or otherwise the warehouse itself, with the costs of the case, in equal parts, against Potenciano Roxas, Hidalgo, Cuyugan & Co., and Manuel E. Cuyugan. (B. of E.)

This judgment was appealed from by the plaintiff as well as by the defendants Hidalgo, Cuyugan & Co., and Manuel E. Cuyugan, both parties filing bills of exceptions. The plaintiff asked that the defendants mentioned be compelled to deliver to her P1,612, which was in their possession as part of the price of said property, without the option of turning over to her the warehouse dealt with in the judgment. The defendants asked that the judgment be annulled in so far as it granted to the plaintiff preference in payment of her bill against the property already adjudicated through public auction, or against the price secured at the auction or a portion thereof.

In deciding both appeals, it is necessary to observe:

First, When on June 29, 1908, the sheriff was notified and enjoined to retain in his possession the price he might secure from the auction, it was then impossible to do so, for it had been collected and paid to the judgment creditors on the 27th preceding. Accordingly, the complaint was wholly inoperative and the court could not definitely order the sheriff to hold in his possession what had already in a just and legal manner, by payment of an execution, passed into the hands of the judgment creditors.

Second. After the proceeds of the execution are in their possession by virtue of final judgment, execution, auction, and payment, there is no valid reason why they should not keep what they have justly collected or be obliged to return what they have received in payment of their bill.

Third. Still less can they be obliged to turn over to any one the piece of real property which they bought at a legal and valid public auction, after they have received the bill of sale, through which they have acquired all the right, interest, title, and rights of action which the judgment debtor had over the same (Code of Civil Procedure, sec. 463), and which have not been overthrown in any suit for nullifying or rescinding the sale at public auction by which they acquired them.

Fourth. Even admitting that the plaintiff's bill should really have preference over that of the defendants, such preference can not afford legal ground for annulling judgments and executions already terminated, as though the petition of a less preferred creditor in his own right signified nothing in the eyes of the law, when it is a well-known maxim that *vigilanti prospiciunt jura*; that is, that the law protects him who is watchful of his rights.

Fifth. It is wholly improper, in such a state of affairs and accomplished facts, to permit discussion of the preference of claims, which would have been in order before judgment and payment.

Therefore, the findings of the judgment appealed from by the defendants, which declare the plaintiff's claim to have preference in payment and which order them to turn over to the plaintiff either enough of the price of the warehouse to pay the bill adjudicated to her, or the warehouse itself, are hereby reversed, without special findings as to costs in this second instance.

Mapa, Johnson, Carson, Moreland, and Trent, JJ., concur.

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