

ANTONIO FLOR MATA, PLAINTIFF AND APPELLEE VS. FAUSTINO LICHAUCO AND RAMON SALINAS, DEFENDANTS AND APPELLANTS.*G.R. No. 7440. August 30, 1917*

Ponente: CARSON, J.

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The above entitled cause has been standing for several years on the docket of this court, and bears the oldest filing number on our general registry of undisposed cases on appeal. The proceedings on appeal were suspended for some time, by request of counsel, pending the result of other litigation; and the result of that litigation being that neither party would seem to have any substantial monetary interest in the final adjudication of this case on appeal, counsel for both parties appear to have been willing to let this appeal lie here indefinitely, without making any serious effort to have it brought on for hearing and decision. It has finally been submitted, but only after this court, of its own motion, required the plaintiff to take the necessary steps to that end under penalty of dismissal of the appeal for failure to prosecute to effect.

This action was instituted in the court below to recover damages for the alleged unlawful intervention of the defendant in the proceedings had on a levy of execution, to recover the amount of a judgment in favor of the plaintiff against defendant's brother. At the time when this action was instituted, the judgment under which the execution was levied had not become final and unappealable; and since judgment was rendered in this case in the court below, it would appear that the amount of the judgment entered in the former case in favor of the plaintiff and against the brother of the defendant in this action was reduced from P10,300 to P2,000 on appeal.

We are of the opinion, upon a review of the whole record, that the evidence adduced at the trial of this action sustains the findings of the trial judge in so far as he held that the defendant in this action unlawfully, and without just cause, intervened in the proceedings had on plaintiff's levy of execution, with the result (as found by the trial judge) that whereas plaintiff's levy should have, and would have realized P10,050, which might have been applied to the satisfaction of his original judgment in the former action for P10,300 and costs, the levy in fact realized but P1,914; and, with the further result that plaintiff was obliged to pay out some P287.17 for extraordinary expenses, incurred as a result of the defendant's illegal intervention in the proceedings.

The trial court gave judgment for P8,423.17, the difference between the amount which he found might have been realized on the levy (P10,050), and the amount actually realized, less extraordinary expenses incurred in making the levy.

It appears, however, that the plaintiff, in addition to the amount realized on his levy of execution, had recovered from other sources some P892.12 which should have been deducted from the amount of the judgment for damages. The true measure of the damages to a judgment creditor resulting from an unlawful intervention in proceedings had on the levy of execution on a money judgment (such as was disclosed in the proceedings had in the case at bar) is not necessarily the difference between the amount which would have been realized at the execution sale but for the unlawful intervention, and the amount actually realized, but rather, so much of that

amount as is not in excess of the amount which the judgment creditor was entitled to recover under his judgment. Since the judgment creditor in the case at bar, in addition to the amount realized at the execution sale, had recovered from other sources a substantial part of the amount of his judgment, the measure of the damages suffered by him as a result of the defendant's unlawful intervention in the proceedings had on the levy of execution, is the difference between the amount which would have been realized but for this illegal intervention, and the total amount which he actually recovered on the judgment from all sources, including the amount actually realized at the execution sale, less extraordinary expenses necessarily incurred as a result of the illegal intervention of the plaintiff in the levy of the execution. It is evident, therefore, that judgment should have been entered in the court below for the sum of P7,531.05, the judgment for P8,423.17, which was entered there, having failed to take into account the amount recovered from other sources than the sale of the execution property.

In the course of these proceedings on appeal, both parties for one purpose or another, invited our attention to the record of the case in which the original judgment was entered, which was brought here on appeal. Our judgment in that case, on appeal, reduced the amount of the judgment entered in the court below from P10,300 to P2,000. As we have seen, the plaintiff has already recovered upon his judgment, first, P1,914 less P287.17, or P1,626.83 as actual, net proceeds of the levy of execution, and second, P892.12 from other sources; in all P2,518.95. Assuming, without deciding, that the costs of the litigation arising out of the incident do not exceed the sum of P518.95 which plaintiff has already recovered in excess of the amount of his final judgment, it follows, that applying the measure of damages set out above, the plaintiff, who has in fact recovered an amount in excess of the total judgment in the former case, as finally determined by this court on appeal, would not appear to have suffered any monetary damages, whatever as a result of the illegal intervention of the defendant in the levy of the execution.

What has been said sufficiently explains why neither party appears to have had any very keen interest in the outcome of this appeal since our judgment on appeal was entered in the former case; and it accounts, in some sort, for the fact that the parties permitted the record on appeal in this case to lie here so long, without taking any effective measures looking to its final disposition on the merits.

Upon the record as it now stands, we are unable, at this time, to make any direct provision looking to the preservation of the right of the defendant to restrain the levy of execution on the judgment entered herein, so as to give effect to the change in the relations of the parties wrought by our reduction of the amount of the judgment in the former action. The measures taken to that end, by bringing to our attention the proceedings had on the appeal of the former action, were so irregular and so inadequate, that we would not feel justified in making any attempt to afford the relief to which the plaintiff would seem to be entitled, in the uncertain light of the controlling facts as disclosed by the record as it now stands. We are satisfied, however, that in the due administration of justice, this case should not be permitted to lie any longer upon the record of undisposed cases on appeal to this court, and that it will make for the best interests of both parties and the speedy determination of, this already long drawn out litigation, to proceed to judgment on the appeal in this case without regard to the modification in the relations of the parties resulting from the reduction, on appeal, of the judgment in the former action. We deem it proper, nevertheless, to indicate that in so doing we are not permitting mere technical questions of procedure to have the effect of securing to the plaintiff a money judgment far in excess of that to which he appears to be entitled, without giving to the defendant an opportunity to secure relief from so much of that judgment as might be found to be excessive, on a full review of the whole course of the litigation in the course of which this judgment is entered. By the exercise of due diligence hereafter, the defendant may relieve himself from recovery by execution of so much of this judgment as may be found to be excessive as a result of the modification on appeal of the former judgment pending the proceedings in this appeal. But lest any doubt might arise hereafter as to whether the contentions of the parties in this regard have been passed upon by this court in the course of the somewhat

irregular proceedings had on this appeal, our judgment in this case will be entered without prejudice to the right of defendant to such relief therefrom as may be proper in view of the modification by this court, of the judgment on appeal in the former case. (Mata vs. Lichauco, R. G. No. 7119, Men. 17, 1913. Not published.)

Having in mind the status of the record in this case, we have not deemed it necessary to enter upon a prolonged discussion of the contentions of the parties in their briefs on appeal. We think it sufficient, without ruling upon the various questions of law and of fact raised by the briefs, to say that we have carefully examined the whole record, and that we are satisfied that the conclusions of fact and law set forth in the opinion of the trial judge are supported by the record to the extent, at least, that is necessary to sustain his ultimate conclusions that the defendant unlawfully intervened in the proceedings had on the levy of execution on the former judgment, and that as a consequence of that unlawful intervention the amount realized by the levy of execution was only P1,914, whereas, but for the defendant's unlawful intervention, it would have been P10,050.

We conclude that the judgment entered in the court below, modified by substituting P7,531.05 as the amount of the damages which should be allowed in lieu of P8,423.17, the amount allowed in the judgment, should be affirmed, but without prejudice to the right of the defendant to such relief therefrom as may be proper in view of the modification by this court of the judgment on appeal in the case of Mata vs. Lichauco, supra. So ordered.

Arellano, C. J., Araullo, Street, and Malcolm, JJ., concur. Johnson, J., did not take part.

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