

JOSE MCMICKING, SHERIFF EX-OFFICIO OF MANILA, PLAINTIFF AND APPELLEE, VS. CRISANTO LICHAUCO ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 7896. March 30, 1914

Ponente: CARSON, J.

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CARSON, J.:

This is an appeal from a judgment rendered in the course of interpleader proceedings, adjudicating a controversy between several claimants to the proceeds of a judgment rendered in favor of the defendant Crisanto Lichauco against the defendant Chu Chan Chac.

After a careful review of the whole record we find nothing therein which would justify us in disturbing the findings of fact by the trial judge. But it is necessary, for the proper disposition of the contentions of counsel on this appeal, to add a further finding, to the effect that at the time when these proceedings were had in the court below, an appeal was pending from the judgment in favor of Antonio Flor Mata, though by special order of the court execution thereon was not stayed pending the appeal.

Accepting the findings of the trial judge as correct, the only real question raised on this appeal relates to the preference given by the trial judge to the claim of Antonio Flor Mata over that of Clara Lichauco.

Antonio Flor Mata claims by virtue of a judgment rendered in his favor against Crisanto Lichauco on October 6, 1910, for P8,465.42 of which there remains unsatisfied the amount of P7,243.88. From this judgment an appeal was still pending at the time when the interpleader proceedings were had in the court below, but, by special order of the court, execution on the judgment was not stayed pending the appeal.

Clara Lichauco, who is the aunt of Crisanto Lichauco, claims by virtue of a judgment for P17,666.60, rendered in favor of herself and her husband against Crisanto Lichauco on February 2, 1911.

Under the doctrine laid down in the case of Peterson vs. Newberry (6 Phil. Rep., 260), there can be no question that Mata, whose judgment bears date of October 6, 1910, having duly asserted his claim thereto, has a preference in the distribution of his judgment debtor's funds over Clara Lichauco whose judgment bears date of February 6, 1911, unless it be held that the right of preference does not exist in favor of Mata because of the appeal from his judgment.

We are of opinion that, both on reason and authority, Mata's right of preference should be secured to him notwithstanding the appeal; though of course the decree for the distribution of the funds should be so formulated that the amount to which he is entitled under his judgment will not be definitely turned over to him until and unless his judgment is affirmed on appeal; and the decree should further provide for the disposition of the amount thus retained, in the event that his judgment should be reversed in whole or in part.

Two substantial objections have been advanced to our ruling in this regard.

In the first place it is contended that the statutory authority for the preference in favor of Mata's judgment must be found in the provisions of article 1924 of the code, and that this article secures the preference to *sentencias firmes* only—that is to say, to judgments which are final in the sense that no appeal lies therefrom. It must not be forgotten however that both the classification and the incidents of judgments, orders and decrees have been largely modified under the new Code of Civil Procedure, which is drawn in large part from American and English precedents, so that it is necessary to look rather to the spirit than the letter of the technical legal terminology used in the Spanish code, when rules of law couched in the legal phrasing of that code are made applicable to the judgments, orders or decrees mentioned in the other.

Section 144 of Act No. 190 provides that in certain cases the perfecting of a bill of exceptions does not have the effect of staying execution upon the judgment from which the appeal is perfected. No recourse lies from the order of the court which secures this result, and it follows that when such an order is issued, the judgment creditor has the right to the immediate execution of his judgment, or in other words to have immediate recourse to the property of the judgment debtor for the recovery of the amount of the judgment. Until and unless the time allowed for the perfecting of a bill of exceptions has expired without an appeal being taken, such a judgment is not a *sentencia firme* in the strictly technical sense of the word as used in Spanish legal terminology. The limitation of preferences by the Spanish legislator to *sentencias firmes*, as distinguished from *sentencias* generally, would appear to be founded on the fact that the right to share in the distribution of the funds of the debtor could not logically accrue to the judgment creditor until and unless he has secured the right of immediate recourse to the funds in course of distribution, and speaking broadly, it was by virtue of a *sentencia firme* that the judgment creditor secured this right to have immediate recourse to the judgment debtor's property.

The peculiar quality of *sentencias firmes* on which this preference rests having been impressed upon judgments under the new Code of Civil Procedure upon which execution is not stayed, the preference given to the former class of judgments must be held to be impressed in like manner on the latter class of judgments. We conclude therefore, without much hesitation, that where the new code of procedure provides for judgments which give to the judgment creditor the right of immediate recourse to the judgment debtor's property, such judgments come within the purview of the provisions of article 1924 of the Civil Code securing preference to *sentencias firmes*. In other words, a judgment upon which execution has not been stayed, under the provisions of section 144 of Act No. 190, is entitled to the preference provided for in article 1924 of the Civil Code.

The second objection to our ruling in this case seems to be based on the theory sometimes advanced in the United States that upon an appeal, the judgment of the lower court is merged in that of the superior court, and that as a result any preference incident to the former judgment is necessarily lost and destroyed thereby. We think, however, that the better doctrine, supported by the great weight of authority in the United States is that the lien of a judgment is not necessarily destroyed by the perfecting of an appeal therefrom.

Thus Black on Judgments (vol. I, par. 473) lays down the doctrine as follows, and supports the text with numerous citations of authority: "It is generally held that the lien of a judgment is not discharged by an appeal being taken, but merely suspended; nor is the judgment on appeal a discharge of the lien of the judgment below. 'Even if there be a new judgment (e. g., of affirmance on appeal), this does not necessarily destroy the lien which the law has given, for it is competent for the law to keep the lien in existence, although a new judgment be predicated on the first.' And where a decree is reversed in part and affirmed as to the residue, the reversal in part does not destroy the lien of so much of the decree as is unreversed."

In the case of *Thompson's Administrator vs. Chapman's Administrator* (83 Va., 215) the court said: "It is familiar doctrine, that where a decree is reversed in part, and affirmed in part, the reversal does not destroy the lien of so much of the decree as is unreversed or affirmed."

In the case of *Curtis vs. Root* (28 111., 367), it was held that "an appeal does not vacate the lien of the judgment, it only suspends its execution. A judgment during appeal not only holds its lien, but will extend it over property acquired pending the appeal."

In the case of *Planters Bank vs. Calvit* (3 Smedes and Marshall, Miss., 143), it was held, quoting the syllabus, that "judgment is but a security for a debt, and the payment of the debt is the object of the lien. Lien of judgment arises by mere implication of law; and although a new judgment is predicated on the first, this does not necessarily destroy the lien which the law has given, for it is competent for the law to keep the lien in existence."

In discussing this case, Chief Justice Starkey said: "To me it seems a contradiction that the judgment of affirmance, the act which declares the judgment was regular, and constituted a perfect lien from the time it was rendered in the circuit court, should be considered as the act which destroys the validity of the lien. Affirmed means to ratify or confirm, and not to destroy. Still it is said, this must be the effect, because the original judgment is satisfied, or merged or extinguished by the new judgment. Now I maintain that the first judgment is neither satisfied, merged, nor extinguished, by the new judgment of affirmance."

See also *Hardee vs. Stovall* (1 Ga., 92); *Dewey vs. Latson* (6 Cal., 130); *Moore vs. Rittenhouse* (15 Ohio St., 310).

It is true that in a few states it has been held that where a judgment has been superseded on error, the judgment of the inferior court is merged in that of the superior court, and the lien of the former is destroyed by the suing out of the writ of error and the giving of bond with surety (*Campbell vs. Spence*, 4 Ala., 943); but we think that in this jurisdiction the general doctrine as above set forth correctly sets forth the rule which should prevail under our Code of Civil Procedure.

The judgment of the trial court correctly declares a preference in favor of Mata's judgment, but the trial judge seems to have overlooked the fact that this judgment was at that time pending on appeal and subject to modification or reversal. Provision should have been made either for the retention of a sufficient part of the funds in the hands of the clerk, pending the determination of the appeal on Mata's judgment, or the filing of a satisfactory refunding bond in the event of modification or reversal of that judgment on appeal.

The judgment appealed from is therefore affirmed, with costs against the appellant; but upon the return of the record to the court below, the proper orders will be entered as above indicated, with a view to securing the rights of the parties in the event of the reversal or modification of Mata's judgment.

Arellano, C. J., Trent and Araullo, JJ., concur.

Moreland, J., concurs in the result.

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