

THE UNITED STATES, PLAINTIFF AND APPELLANT, VS. EVARISTO PAINAGA, DEFENDANT AND APPELLEE.

G.R. No. 8223. March 04, 1914

Ponente: TRENT, J.

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TRENT, J.:

This is an appeal by the Government from an order of the Court of First Instance of the city of Manila, setting aside the forfeiture of a bail bond. Judgment was rendered against the principal on February 1, and the sureties were notified on February 7 to produce the body of their principal. On February 28, the court issued the following order:

"The above-named defendant having been sentenced, and his sureties having been notified to produce his body before the court, and having failed to do so after due notice.

"It is ordered, That the defendant's bond be forfeited and execution issued against the principal and the sureties for the amount thereof, and that an alias warrant be issued for the arrest of the defendant."

Execution issued on March 5, property of the bondsmen was levied upon on March 13, and the sale was first advertised to take place on April 10, 1912. By various orders of the court, the sale was postponed from time to time, and finally occurred on July 8, 1912, the Government being the purchaser. On July 10, 1912, the principal was arrested by the secret service corps. Under date of July 13, 1912, the court, on application of the sureties, set aside the order forfeiting the bond, and ordered the sheriff & annul the sale of the property. It is these orders to which exceptions have been taken by the Government.

The question which first arises is, Did the execution sale occur on the date directed by the court? Section 4 of the Code of Civil Procedure provides:

"Unless otherwise specially provided, the time within which an act is required by law to be done shall be computed by excluding the first day and including the last; and if the last be a Sunday or a legal holiday, it shall be excluded."

The last postponement of the sale dated from June 24, 1912. If the court directed that the postponement be for two weeks, it is clear that the last day of the last extension of time was July 8, from 12 midnight to 12 midnight. (Art. 7, Civil Code.) So that, in order to allow a full two weeks from June 24, the sale should not have occurred until some time during July 9, at the earliest. The sale was postponed four times. The last two postponements were made by verbal orders of the court, the only evidence of the same in the record as to their import being the return of the sheriff. The return says:

"On June 21, 1912, under a verbal order of the court, the sale announced was suspended for another three days; wherefore, the sale was again announced for the 24th of said month of June at the same hour.

"On June 24, 1912, and under another verbal order of the court, the said sale was again suspended for some two weeks more, transferring it to the 8th of July, 1912, at 9 o'clock sharp in the morning."

It is not here stated that the court allowed the sureties two weeks more of grace from June 24. Had it done so the sale, occurring as it did on July 8, occurred one day too soon. But it is distinctly said that the court appointed July 8 at 9 o'clock in the morning as the date of the sale. There is no question but that the court could grant an extension of time to the sureties of thirteen days or any other less period than two full weeks. We are of the opinion that the court in this last order, as in its first written order of postponement of the sale, dated May 24, merely fixed the new date of the sale at a future day, without attempting to compute the time thus allowed to the sureties; Section 4 of the Code of Civil Procedure is applicable where a given period of time must be added to a certain date in order to determine the date on which an act must be performed. But there is no necessity for such computation, and hence no room for the application of this section, when that date is fixed by name in the instrument directing the act to be performed. The court in the case at bar postponed the sale which was to have occurred on June 24. At the same time it directed that the sale should take place on a named future date. Section 4, has, therefore, no application to the present case, and the sale took place at the time designated by the order of the court.

"Upon a sale of real property, the purchaser shall be substituted to, and acquire all the right, interest, title, and claim of the judgment debtor thereto, subject to the right of redemption as hereinafter provided." (Section 463, Code Civ. Proc.)

In this jurisdiction no confirmation of an ordinary execution sale of a judgment debtor's property is required. Title vests in the purchaser when the sale is made, subject only to the right of redemption allowed under section 464. Thereafter, if the debtor would secure the return of his property, he must redeem it.

It is true that if there be some fatal defect in the proceedings the sale may be set aside. But unless some such defect be alleged and proven, it must stand. A judgment debtor cannot come into court and request nor can the court order without some valid reason, that the sale be set aside. In the case at bar, the court undertook to set the sale aside presumably because the principal had been arrested by the authorities on July 10, 1912. But his arrest on that date did not satisfy the conditions of the bond. If we look to the equities of the case, it will be seen that the court had already dealt

most leniently with the sureties. Four times the court had postponed the execution sale. Whereas the bond allowed them thirty days after default to produce their principal, the sureties in this case were allowed more than four times that period. Clemency to the sureties must end somewhere if a bail bond is not to lose altogether its solemnity and become an object of derision. The arrest of the principal two days subsequent to the sale was no reason for setting the sale aside.

But it is said that the court had control over all of the proceedings in reference to the confiscation of the bond and the sale of the property, on July 13, when the orders appealed from were entered. The following paragraph in the order of August 19, denying the fiscal's motion for a rehearing, is cited in support of this contention: Painaga "was eventually discovered in Manila and arrested for another offense. In the meantime the sale of property levied upon under execution had been made to the Government as a purchaser, and the suspension of the confiscation of the bond still existed, and the sureties asked that the sale be set aside as well as the confiscation of the bond."

When the principal was arrested the property had been sold and the execution satisfied. Everything had then terminated except the right of the sureties to redeem the property within one year, if they desired to do so. The court seems to intimate in the above paragraph that the "suspension of the confiscation of the bond still existed" at the time the property was sold on July 8. But we find nothing in the record to support this theory. The order of confiscation was entered, as we have said, on February 28, after due notice to the sureties, and the sureties at no time asked that this order or judgment be disturbed. They only asked from time to time that the sale of the property be postponed, so there was no order in force on July 8 suspending either the sale or the enforcement of

the judgment of February 28. Under these facts and circumstances, had the court lost control over its judgment of February 28, when it issued the orders appealed from on July 13? We think this question must be answered in the affirmative.

In the case of the United States vs. Bonoan (22 Phil. Rep., 1), it was held: "Under the provisions of section 76 of General Orders, No. 58, the following procedure in the forfeiture of bail bonds must be followed: (1) If the defendant fails or neglects to appear on any occasion when his presence is required by the court, or fails to surrender himself in execution of the judgment, an order forfeiting the bond or the deposit must be entered; (2) the court shall then notify the bondsmen and give them thirty days within which to present the body of their principal; (3) if the bondsmen do not present the defendant within the said thirty days and do not satisfactorily explain the reasons therefor, the court must then render judgment against the bondsmen for the amount represented in the bond."

In the case at bar the procedure outlined in the above quotation was not strictly followed. The court in effect forfeited the bond and rendered judgment against the sureties at the same time, but this was not done until the lapse of twenty days after the sureties had been notified to present the body of their principal. The fact that the order of confiscation and judgment against the creditors were entered at the same time, and only twenty days after the sureties had been notified to present the body of their principal, did not deprive the court of jurisdiction of either the persons or the subject matter of the action. The sureties, at no time questioned the validity of the judgment or the procedure adopted. Neither did they note an exception or take any steps looking toward an appeal. In their motion asking the court to set aside the judgment and the sale of the property the sureties neither alleged fraud nor any irregularity or any matter which could affect the validity of the proceedings. The only reason they gave was the fact that their principal had been arrested and was then in confinement serving the sentence, but his arrest did not take place until after the judgment had been satisfied by the sale of the property.

For the foregoing reasons the orders appealed from are reversed. The confiscation of the bond and the sale of the property must stand. No costs will be allowed in this instance.

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

DISSENTING

MORELAND, J.

I am compelled to dissent in this case.

The reason why I dissent is that the court holds that the issuance of an execution, and the seizure and sale thereunder of the property of a surety on a bail bond, are legal and valid acts and the execution a valid process, although the surety had no trial or hearing, although no notice of any kind or character was given him, and although no judgment was ever found, dictated or entered against him or any other person.

The appeal is from an order of the Court of First Instance of Manila setting aside the forfeiture of a bail bond and the sale of certain property belonging to the surety under an execution issued upon such forfeiture.

The undertaking which is the subject matter of this proceeding was given by Evaristo Painaga and Emeterio Suñga in a criminal action to secure the liberty pending trial of the said Evaristo Painaga, who was charged with a violation of the Opium Law in the Court of First Instance of the city of Manila.

The accused was found guilty in a judgment of the court filed on the 1st day of February, 1912. On the 7.th day of

the same month the court issued the following notice to the surety, Emeterio Suñga, which was duly served upon him on the same day, to wit:

"You are hereby directed to produce the body of Evaristo Painaga at the Court of First Instance, city of Manila, Part I, on the 8th day of February, 1912, 8 a. m.

"The sureties are hereby notified that if without sufficient cause the defendant above mentioned neglects to appear before the court on the date and hour specified above, the bail or bond, as the case may be, will be declared forfeited."

On the 28th day of the same month the court issued the following order:

"The above-named defendant having been sentenced, and his sureties having been notified to produce his body before the court, and having failed to do so after due notice,

"It is ordered. That the defendant's bond be forfeited and that execution issue against the principal and the sureties for the amount thereof, and that a bench warrant be issued for the arrest of the defendant"

On the 5th day of March execution was issued against the property of Sunga, the surety, and. a levy made upon his house and lot, which constituted all of his possessions. The sale was postponed from time to time until the 8th day of July, when it took place, the property levied upon being sold to the Insular Government. Shortly after the sale the fugitive was apprehended and produced in court, whereupon, upon application, the court discharged the forfeiture and set aside the sale in the following order, to wit:

"The sureties having prayed that the order confiscating the bond in this case be vacated and the sale of the property under an execution issued by virtue thereof be set aside, and it appearing that said sureties have made diligent efforts to fulfill the conditions of the bond and that the accused has appeared before the court to fulfill the sentence pronounced upon him.

"It is hereby ordered that the order confiscating the undertaking given by the accused and his sureties be and is hereby vacated and set aside, and it is also ordered that the sheriff vacate and annul the sale of the property of said sureties upon payment of all the costs of the proceedings."

Thereupon a motion was made by the prosecuting attorney of the city of Manila to vacate said order upon the ground that the court had no jurisdiction to make it. After due hearing the court denied the motion in an opinion, part of which is as follows:

"In this case the bond was forfeited for failure on the part of the sureties to produce the defendant in court when called for by the court, and execution was issued upon the forfeiture against the sureties upon the bond.

"The sureties appeared within a short time after forfeiture and asked for a suspension of the forfeiture in order to give them an opportunity to produce the defendant, he having been at liberty under bond after judgment entered in this court. The suspension was granted pending the effort of the sureties to obtain the defendant and produce him in court, and sale of property levied upon under execution was suspended for the same reason.

"The sureties made special endeavor to find the defendant, following him over the Island of Mindoro and the Batangas Peninsula. In the meantime an alias warrant for his arrest was issued and was not served because the defendant could not be found. He was eventually discovered in Manila and arrested for another offense.

"In the meantime the sale of property levied upon under execution had been made to the Government as a purchaser, and the suspension of the confiscation of the bond still existed, and the sureties asked that the sale be set aside as well as the confiscation of the bond.

"Believing that the sureties had honestly and in good faith attempted to comply with their obligation to deliver the defendant to the court, an order was made setting aside the confiscation and the sale made of the property

levied upon under execution to take effect upon the payment by the sureties of all the costs incurred in relation to the confiscation and sale under execution."

This appeal is from the order of denial.

This court has reversed the order of the court below, holding that it had no jurisdiction to discharge the forfeiture and set aside the sale.

The decision lays down what I regard as the remarkable doctrine to which I have referred already. May the property of an individual be forcibly seized under execution and sold, without a trial, without a hearing, without notice, and without even a judgment against him or any other person? The court by this decision holds that it may and that a sale under a seizure made under such circumstances is so jealously guarded by the law that it may not thereafter be set aside.

It is undisputed in this case that the surety on the bond, which is the subject matter of this action, was never given a hearing, had no opportunity to be heard, was not even given notice of a hearing, and that no judgment has ever been found, declared, or entered against him, or his principal, or any other person. The surety never dreamed that there was any proceeding whatever begun or pending against him until the sheriff seized his property under execution', and the fact was that there was none.

As has already been noted, on February 7 the trial court issued a notice to the surety, hereinabove set forth, which simply advised him that if he did not produce the body of the convict on or before the 8th day of February, the bond would be declared forfeited. No notice was given of any intended hearing or trial or that judgment would be taken against him or execution issued against his property. On the 28th of February, and without further notice, the court entered the order of the 28th of February, hereinabove set forth, in which he declared the bond forfeited and ordered the issuance of an execution against the surety's property. The execution was issued, not on a judgment, because there was none, but simply and solely on the declaration of forfeiture.

Under the law of the Philippine Islands no execution can be lawfully issued unless there is first a judgment upon which it may be based. There must be found a specific amount due from one person or entity to another which must be declared in a judgment. The Code of Civil Procedure provides:

"SEC. 443. When execution may issue.—The party in whose favor judgment is given, may, at any time within five years after the entry thereof, have a writ of execution issued for its enforcement, as hereinafter provided.

"SEC. 444. Issuance, form, and requisites of execution.— The execution must be issued in the name of the United States of America, Philippine Islands, sealed with the seal of the court, and subscribed by the judge, or clerk thereof, and be directed to the governor of the province, or any of his deputies, and must intelligibly refer to the judgment, stating the court, and the province where the record of the judgment is, and if it be for money, the amount thereof, and the amount actually due thereon; and if made payable in a specified kind of money or currency the execution must also state the kind of money or currency in which the judgment is payable, and must direct the governor or his deputy, substantially as follows:

"1. If the execution be against the property of the judgment debtor, it must require the governor, or his deputy, to satisfy the judgment with interest, out of the personal property of such debtor, and if sufficient personal property cannot be found, then out of his real property; * * *"

Every section of the Code shows the absolute necessity of a judgment before an execution can issue. A judgment, of course, presupposes a trial or some kind of a hearing, with the necessary formalities which accompany it. In the case before us it is undisputed, indeed appears affirmatively of record, that there was no judgment whatever rendered against the surety, there having been no trial or hearing, no pleadings, no issues, no evidence, no

findings of fact or conclusions of law, no declaration of liability, no determination of the amount. The bond was declared forfeited and execution issued instantly. The word "execution" is built upon the same root as "execute," which is transitive. As used in the law it refers to the judgment upon which it is based and which it is to "execute." The execution issued in this case had no relation to any act of the court, the surety, or the principal. It was a blue-sky execution. As such it was absolutely void and could have no force or effect. The sale thereunder was, in consequence, void. In reality there existed no necessity for setting it aside. The surety could have replevined the property precisely the same as if it had been taken by a stranger who seized it without even a pretense of right. The court acted properly and legally in setting the whole proceeding aside.

It should be noted also that the court below, in its two last orders, states specifically that the forfeiture was suspended soon after it was declared and long before the sale; and that the suspension was in full vigor at the very time the sale took place. If this is so, then there was an additional ground why the sale should have been set aside; for a sale which depends for its validity wholly upon a forfeiture can have no abiding virtue if made while the forfeiture is suspended, especially where, as in this case, it was vacated and set wholly aside before that suspension ceased.

But the execution and the sale were at least voidable for other reasons. Under the Philippine Bill no person can be deprived of his property against his will without due process of law. He is entitled to be notified and to be heard before his property shall be seized. Here not only did the surety have no hearing whatever but he received no notice of any intention to hold him responsible for anything. He not only had no hearing but he was given no opportunity to be heard. Indeed, instead of being notified to appear and defend himself, the notice that he received was to an effect altogether different. It simply informed him that the bond would be forfeited if he did not produce the convict in court on or before a day named. This was a clear intimation that the forfeiture of the bond would be the only thing done in case of failure to produce.

Moreover, section 76 of the Code of Criminal Procedure lays down the procedure which must be followed when a bond given in a criminal case is forfeited. It provides:

"If without sufficient cause the defendant neglects to appear for arraignment, trial, or judgment, or neglects to appear on any other occasion when his presence may be required in court, or fails to surrender himself in execution of the judgment, the court must direct the fact of his neglect or failure to be entered in the record of the cause, and declare the undertaking or deposit, as the case may be, to be forfeited. But if at any time within thirty days there after the defendant or his counsel appears and satisfactorily explains the neglect or failure, the court may direct the forfeiture to be discharged upon such terms as it may consider just. If the forfeiture is not so discharged, the promotor fiscal shall at once proceed by action against the bail upon their undertaking."

Under this section we notice, in the first place, that nothing can be done after the declaration of forfeiture until thirty days have elapsed, because, during that time, the defendant or his counsel may appear and explain the neglect or failure and the court may direct the forfeiture to be discharged. In spite of this the trial court declared the forfeiture twenty days after the failure of the defendant to appear for sentence. In other words, the judgment of conviction was entered on the 1st day of February, the notice given to produce the defendant on the 8th day of February, and the forfeiture declared on the 28th of the same month.

In the second place, it should be carefully noted that the section provides that if the forfeiture is not discharged the prosecuting attorney shall proceed by action. This means, of course, that the surety must be duly notified and be given an opportunity to be heard in his own defense. (U. S. vs. Carmen, 13 Phil. Rep., 455.) This means, equally of course, that there must be pleadings, issues, that a trial must be had, findings made and judgment entered. Not one of these requirements was met in this case. The surety was deprived of his property absolutely without ceremony.

So far as I can discern, the decision of the court gives no consideration to these fundamental questions. It discusses at length the number of times the sale was postponed, the law applicable to the counting of the days for which it was postponed, when the title passes under an execution sale and what is the nature of that title, whether the court has control over proceedings in cases of confiscation, and terminates with the suggestion that "the sureties at no time questioned the validity of the judgment or the procedure adopted." The difficulty with this suggestion is that it assumes that a judgment existed, while the fact is the exact contrary. No judgment was ever dictated by the court, nor was one ever entered against the surety or anybody else. There was, therefore, nothing to which the surety could except or which he could move to vacate or which he could ask to have amended or from which he could appeal. Moreover, the decision also assumes that there was a procedure adopted. The exact contrary is true. There was no procedure whatever. The surety was not proceeded against. There was no proceeding to which he could object unless it was the bare issuance of the execution; and if there was nothing¹ upon which the execution could be issued, there was no necessity for an objection to it. One is not obliged to object to a proceeding which does not exist, or to any part thereof, if a proceeding which does not exist has parts. The same foundationless assumption is again made by the court in its expression with respect to the reasons which the surety gave the trial court in the motion to set aside the sale.

The court says: "The only reason they gave was the fact that their principal had been arrested and was then in confinement serving his sentence, but his arrest did not take place until after the judgment had been satisfied by the sale of the property." (*Italics mine.*)

No judgment was satisfied, because none existed. The assumption is erroneous. No judgment was dictated or entered against anybody. The execution was not based on a judgment, but was issued out of blue sky.

Furthermore, there was no practical reason why the surety should object, as the court had suspended the confiscation of the bond, had postponed the sale, and was giving him every opportunity to capture the fugitive. It was but natural that the surety should prefer to produce the criminal if he could and thus save himself the expense and trouble of litigation on the bond. All of the acts of the court were favorable to him from this point of view and he let well enough alone. He knew that, if he produced the accused in court, that would be the end of all of his difficulties; whereas, if he had acted as the decision in this case says he should have acted, he would have been compelled to begin proceedings to set aside acts of the court which at that very moment were being suspended in his favor. Even if it be assumed that ordinarily the surety should have objected to the proceedings, he was fully justified in not doing so under all the circumstances of this case.

The order appealed from should be affirmed.

Order reversed.

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