

J. MCMICKING, SHERIFF OF MANILA, PLAINTIFF AND APPELLEE, VS. SPRUNGLI & CO. ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. 9099. March 14, 1914

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from an order of the Court of First Instance of the city of Manila requiring the immediate execution of a judgment in another action.

It appears from the record in this case that Frank E. Fillis brought to the Philippine Islands a circus consisting of several trained horses, dogs, and monkeys, together with paraphernalia. Upon entering the port of Manila he gave a bond to the Collector of Customs to export said animals and paraphernalia within six months from date of entrance, or, in case of failure so to do, to pay the duties thereon. E. J. Hawkes, William Ahern, and A. M. Timke became sureties for Fillis upon said bond. The property was there-upon released by the Collector of Customs and entered the Philippine Islands. Thereafter Fillis executed and registered a chattel mortgage on all said property to Sprungli & Co. for the sum of P2,500. Said mortgage was later foreclosed by the sheriff and the property mentioned therein sold for P1,439.12. Said sum having come into the hands of the sheriff, the Collector of Customs and other creditors of Frank E. Fillis made claim thereto. The sheriff thereupon deposited the money in court and began a proceeding to compel the various claimants to litigate their title to the fund, Sprungli & Co. answered the complaint of the sheriff, setting up its claim under the chattel mortgage and alleging that it had a preferred claim to said fund. On the 29th of July, 1912, Sprungli & Co. received from the sheriff all of said fund except P617 which was the sum claimed by the Insular Collector of Customs as being the duty on the articles which Fillis had imported into the Philippine Islands under bond.

At the time that Sprungli & Co. received from the sheriff said fund less P617, the court, by agreement of Sprungli & Co. with the other creditors, entered the following order:

"This cause coming on for hearing upon the petition of interpleader filed by the sheriff of Manila, and the answers thereto of Sprungli & Co. and the Insular Collector of Customs, both of whom appeared by their respective counsel, after hearing the evidence and by agreement of both counsel.

"It is hereby ordered, That the said petitioner, the sheriff of Manila, pay to the intervener, Sprungli & Co., the amount of funds now in his hands less all proper costs and less also the sum of P617 claimed by the other intervener, and that the disposition of said balance of P617 await the termination of cause No. 9716 now pending in this court, wherein the recovery of said P617 is being sought upon a bond executed to secure the payment of same."

The property brought into the Islands as aforesaid was not exported within the time agreed and an action was accordingly brought by the Insular Collector of Customs upon the bond to recover the sum named therein. This action was numbered 9716 and is the one referred to in the above order. This action was duly brought to trial and a judgment entered in favor of the Insular Collector of Customs as follows:

"It is accordingly considered and adjudged that plaintiff have and recover from defendants the sum of one thousand five hundred (P1,500) pesos, with interest thereon at 6 per cent from July 15th, 1912, together with his costs, but the clerk of the court is hereby directed to apply on said judgment the sum of six hundred and seventeen pesos retained in his hands by this court's order of July 29th, 1912, in cause No. 9448."

On the entry of the judgment just referred to, Sprungli & Co. objected to the payment of said sum of P617 as directed by said judgment, setting up the claim, that the money belonged to it. In view of this objection the sheriff made a motion to the court setting forth that, by virtue of the order entered in the above-entitled cause on the 29th of July, 1912, the amount of P617 was ordered to be retained in his possession to await the termination of cause No. 9716; that since the entry of said order cause No. 9716 had been decided and that the judgment therein had ordered the said sum to be applied in partial satisfaction of said judgment; that said decision had been appealed but that no supersedeas bond had been given as required by the order approving the bill of exceptions; that an execution had been issued upon said judgment at the request of the plaintiff; that an attempt on the part of the sheriff to apply said amount in the manner and form directed in the judgment in said cause No. 9716 had been met with an objection from Sprungli & Co., it claiming that said money belonged to it; and praying that the court make a final adjudication of said controversy. Thereupon the court on the 14th of May, 1913, entered the order which furnishes the basis of the present appeal, as follows:

"This cause came on for hearing upon plaintiff's motion for a disposition of the fund of P617 which by our order of July 29, 1912, was reserved pending the determination of cause No. 9716, wherein the recovery of said amount was sought on a bond executed to secure the payment of the same. The last named case was placed in judgment on December 12, 1912, and it was there directed that said sum be applied on said judgment. This clause in said judgment was inserted pursuant to our order of July 29, 1912, in cause No. 9448, which order was agreed to by the attorneys for all parties in open court, after a discussion in which it was agreed that the sum of P617 should be so applied. Such was the understanding of the attorneys present at the time, and such was the purpose of the order of July 29. The objections to such application are accordingly overruled and the sheriff is directed forthwith to execute the judgment in cause No. 9716 in accordance with its terms."

The question before us arises upon the agreement which the parties made relative to the disposition of the said sum of P617, which was reserved and held in the hands of the sheriff pending the decision of cause No. 9716. The appellant states its position as follows:

"The court may have thought that we intended, by the agreement, that Sprungli & Co., through its attorneys, would comply and conform to the decision in case No. 9716, but it is certainly mistaken, as the attorneys had no such intention. If the attorneys for Sprungli & Co. had intended to agree to a decision in another case they would certainly have come into that case and defended the rights of their clients. Neither did the attorneys for the Government understand that we were waiving our rights to a decision on the merits in this case. The intention was to await the decision in case No. 9716, and in case the Government was able to collect from the bondsmen the Government would have an interest in the case, then this case was to have been tried and the respective rights of the mortgagee under a duly registered mortgage on property released by the Government upon a bond for the payment of the duties thereon, could be submitted and decided."

The appellee and the bondsmen state their position as follows:

"Sprungli & Co. had a large sum of money tied up for a long time and on July 29, 1912, saw that unless they consented to take a chance relative to the P617 that all this money would be tied up for a still longer period, and so Mr. Arthur S. Allan then, but not now, with Messrs. O'Brien and DeWitt, attorneys for Sprungli & Co., did actually consent to leave the question as to the P617 to be determined by the court (Judge Lobingier in both cases) in cause No. 9716. It may be true that Mr. Allan did not expect cause No. 9716 to be decided as it was, but he took that chance, and lost."

The appellee and the bondsmen further say:

"Furthermore, the record does not show that 'neither did the attorneys for the Government understand that we were waiving our rights to a decision on the merits in this case.' But as a matter of fact that is exactly what the attorneys for the Government did understand, as clearly shown by their action in attempting to apply the P617 as directed."

There being no stipulation in writing by the attorneys, we are unable to say just what the wording of the agreement was. An interpretation of the agreement is given in the order of the 29th of July. That interpretation itself is not free from ambiguity and the order taken as a whole does not throw very much light upon the controversy before us. It is necessary, therefore, to take into consideration the facts and circumstances surrounding the parties at the time the stipulation was made and the order thereon entered. It is clear that, if the action upon the bond succeeded and the Government recovered, then the controversy between the Government and Sprungli & Co. was at an end, as the Government, having collected the bond, would have no further reason to dispute with Sprungli & Co. the ownership of the P617. If, on the other hand, the Government should have been defeated in that action, the duty would have remained unpaid and there would have existed, accordingly, a reason on its part for contesting with Sprungli & Co. the right to the said sum. The reason, then, for awaiting the determination of cause No. 9716, which was the action on the bond, is clear. As we have seen, if the action went one way it would terminate decisively and finally the controversy between the Government and Sprungli & Co. and the latter would be left free to receive the P617. If, on the other hand, the suit went against the Government, then the right to the P617 would remain in as much doubt and uncertainty as if cause No. 9716 had not been tried. There was not a single issue that could have been raised in that action which would in any sense determine the right of the Government to the P617. The action being one upon a bond, the issues were limited and special and could not involve anything more than the due execution and the validity of the bond, its breach, and the amount to be paid thereunder. It is clear, therefore, that the determination of the action disfavorably to the Government could, in no manner, assist in determining the controversy existing between the Government and Sprungli & Co. It would seem, therefore, that it could not have been the intention of the parties to the stipulation to be governed in their controversy by the decision in case No. 9716, for, as we have already seen, the resolution of the issues in that cause could have no possible bearing upon the issues involved between them. Their purpose evidently was to await the termination of cause No. 9716 to see whether or not the Government obtained its due from that source, which occurrence would immediately end the controversy between the Government and Sprungli & Co.

The order appealed from is reversed and the cause remanded to the court whence it came, with instructions to proceed to the determination of the issues raised by the pleadings in the action brought to determine the right to receive the said sum of P617.

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

Order reversed and cause remanded with instructions.

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