

DOMINGO DIAZ, PLAINTIFF AND APPELLEE, VS.. PANTALEON AZCUNE, DEFENDANT AND APPELLANT.*G. R. No. 9629. August 04, 1915*

Ponente: ARAULLO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-9629/>**ARAULLO, J.:**

Execution having been issued against the property of Ramon Morales in an action instituted by Mariano P. Villanueva in the Court of First Instance of Albay, to collect the sum of P110 plus the costs and expenses of execution, the defendant Pantaleon Azcune as deputy sheriff of the municipality of Tiwi of the same Province of Albay levied upon certain realty of said Ramon Morales and advertised that the sale thereof would take place on December 28, 1911, from 6 a. m. to 5 p. m., at which hour it would be knocked down to the highest bidder as stated in the advertisement, Exhibit A. Said sheriff entered in his return of the auction, drawn up by him on the day mentioned, December 28, 1911, that the herein plaintiff, Domingo Diaz, the only bidder who appeared, had offered specific amounts for each of the seven parcels levied from the said Ramon Morales, amounts that in all reached the sum of P188.89, but that he had been unable to adjudicate said parcel of land to the said Domingo Diaz because the latter had failed to file the bond of P8,200 which the deputy sheriff had required to cover any damages that might be caused to the person to whom said realty was mortgaged. But under date of January 4 of the next year, 1912, the defendant himself delivered to said Domingo Diaz an instrument which reads thus:

"I, Pantaleon Azcune, deputy sheriff of the municipality of Tiwi, Albay, P. I., acknowledge that I have received from. Domingo C. Diaz, a bidder at the public auction of the property of the judgment debtor, Ramon Morales, in case No. 1473, held on December 28, 1911, the sum of fifty-two pesos and eighty-nine centavos (P52.89) in cash, and a receipt for P136, issued by the judgment creditor, Mariano P. Villanueva, to Domingo C. Diaz for said sum.

"This sum is the total amount of the judgment and costs in the Court of First Instance of Albay, sheriff's fees for the execution, court costs, and payment of the advertisement in Vox Populi, Domingo C. Diaz having been the only bidder for the property of the judgment debtor at the said auction for the sum of P188.89.

"In witness whereof, I to-day affix my signature in Tiwi, January 4, 1912.

(Sgd.) "PANTALEON AZCUNE,
"Deputy Sheriff, Tiwi, Albay, P. I."

On May 2, 1913, said Domingo Diaz filed the complaint on which the present case is based, praying the court to issue a writ of mandamus to the defendant as deputy sheriff of the municipality of Tiwi to compel him to issue to the plaintiff the bill of sale and adjudication of said property and to record therein the payment made by the same plaintiff of the price he offered for it at the auction and, furthermore, to make out the final instrument of sale of said property because the period for redemption fixed by the law had expired; and he likewise prayed that the defendant be sentenced to pay the costs plus the sum of P300 as expenses incurred by him for attorney's fees.

On August 4, 1913, defendant filed his answer, denying all and each of the allegations of the complaint, except

such as might be clearly and specifically admitted. He denied the due execution of the instrument Exhibit A, quoted above, and admitted that on or about January 4, 1912, he was deputy sheriff of the municipality of Tiwi, Albay. He alleged in special defense that the sale of the property of Ramon Morales, advertised for December 28, 1911, was postponed and the said property was not adjudicated to anybody, to which effect he had sent notice to the attorneys both for the judgment debtor as well as the judgment creditor, the herein plaintiff; that he signed the instrument Exhibit A, which the plaintiff presented to him already drawn up, without paying any attention to the contents thereof, after Diaz had asked him if he wished to collect his fees, a question that he answered affirmatively; that the contents of said instrument, as it appeared to be drawn up, were not true, for he paid to the defendant only the sum necessary to cover the costs of execution and his fees as sheriff; and finally, that there was a defect of interested parties, who were Mariano P. Villanueva and Ramon Morales.

After trial and presentation of evidence by both parties the court rendered its judgment on September 9, 1913, granting the prayer of the complaint by ordering the defendant to issue a bill of sale to the plaintiff Domingo Diaz as of the date of said sale and a title to said property to said plaintiff under date of that judgment, and furthermore sentenced the defendant to pay the costs actually incurred by the plaintiff.

Defendant's counsel excepted to this judgment, his motion for a new trial was denied, to which ruling he also excepted, and the case has been submitted on appeal to this Supreme Court by means of the corresponding bill of exceptions.

From the evidence it appears that the defendant, as deputy sheriff of the municipality of Tiwi, Albay Province, proceeded to sell at public auction on December 28, 1911, the property of Ramon Morales levied on in the action prosecuted against him by Mariano P. Villanueva, for so it appears from the instrument Exhibit B, presented by the plaintiff, who was the only bidder present and who by the offers he made for each parcel of the land levied upon assured the total amount of the said judgment.

It is true that the defendant sheriff at that time certified that he could not adjudicate the said parcels to said bidder, the plaintiff, because the latter had not filed the bond of P8,200 required of him to cover the damages which might be caused to the person to whom said property was mortgaged, to wit, one Salustiano Zubeldia, as appears in Exhibit C; but it is also proven that the same sheriff, on January 4, 1912—that is, six days after the auction had been held—whether he realized that it was improper to require such a bond or whether he thought that he ought to make the postponed adjudication, the plaintiff Domingo Diaz having been the only bidder, accepted from the latter not only the sum necessary to cover the costs of execution and sheriff's fees, as said defendant has averred in his answer, but also a receipt for P136, issued by the execution creditor in that suit, Villanueva, to the plaintiff for said sum, which constituted, as the defendant himself stated in his receipt of the same date, January 4, 1912, Exhibit E, the total amount of the judgment and costs in the Court of First Instance, sheriff's fees, court costs, and payment for the corresponding advertisement. From that moment the defendant sheriff was under obligation to adjudicate the property to the plaintiff as the only bidder, as he has himself stated in his receipt, at that auction. Postponement by the defendant of said adjudication which he failed to make that same day, December 28, for it does not appear that the plaintiff, the purchaser of said property, was not then ready to pay the amount of his bid, can not be set up as a ground of defense for the defendant, for nobody can use as an excuse his own delinquency in the performance of his duty; and notwithstanding the mortgage claim of Salustiano Zubeldia the defendant should have adjudicated the property to the plaintiff, the purchaser thereof, for as such purchaser he must, according to section 463 of the Code of Civil Procedure, be placed after the sale thereof in possession of the property sold, and he acquired every right, interest, title, and claim which the judgment debtor had had thereto, except the right of redemption conferred by section 464 of the same Code, and was entitled to have issued to him the corresponding bill of sale, just as also at the expiration of the period for redemption the proper instrument of

transfer should have been executed in his favor. (Sec. 466, Code Civ. Proc.)

On the other hand, there is no evidence in the case that the receipt or document Exhibit E, issued by the defendant to the plaintiff, was obtained by the latter by fraudulent methods and by taking advantage of the defendant's ignorance.

The lower court has not, therefore, incurred any of the errors assigned by the appellant in his brief, but the plaintiff is not entitled, as is pointed out in the judgment appealed from, to recover from the defendant the expenses incurred as attorney's fees to the extent of P300 mentioned in the complaint.

Therefore, we affirm the judgment appealed from, with the understanding that the costs which the defendant must pay are solely the court costs in both instances. So ordered.

Arellano, C. J., Torres, Johnson, Carson, and Trent, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.