

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, PLAINTIFF AND APPELLEE, VS. JOSE FELIX MARTINEZ, SHERIFF OF OCCIDENTAL NEGROS, AND RICARDO NOLAN, DEFENDANTS AND APPELLANTS.*G.R. No. 9840. February 12, 1915*

Ponente: TRENT, J.

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An appeal from a judgment of the Court of First Instance of the Province of Occidental Negros.

On March 13, 1885, one Marcelo Corteza commenced an action in the Court of First Instance of Occidental Negros against Tomas de Leon to recover the sum of P2,175, and interest. In this action an attachment was levied in accordance with the existing procedure upon the 100 hectares of land now in question, and then belonging to De Leon. On May 7, 1889, De Leon sold the Hacienda Velez-Malaga, including the 100 hectares, to Jose Domingo Frias, expressly subjecting the sale to the attachment above mentioned. On June 28, 1889, judgment was entered against De Leon for the amount prayed for and directing the sale at public auction of the 100 hectares to satisfy that judgment. On June 12, 1900, Frias sold the land to Manuel Giner. On May 5, 1908, Giner sold the 100 hectares to the plaintiff company. The foregoing deeds of purchases and sales were duly registered. The deed evidencing the sale from De Leon to Frias contained the following clause:

"It is expressly agreed that the 100 cavanes of land attached at the instance of Don Marcelo Corteza shall follow the status of the said attachment and of the summary action on which it is based, and if finally they should be disencumbered by a removal of the lien for any reason whatsoever, the said 100 cavanes of land shall be considered as comprised in this deditio in solidum and belonging to Don Jose Domingo Frias; but if the said 100 cavanes of land should be sold at public auction or adjudicated in default of a bidder, by virtue of the said summary action, they shall belong to the purchaser or adjudicatee, and Don Jose Domingo Frias shall claim no indemnity for the loss of the land so transferred."

In July, 1908, the Court of First Instance of Occidental Negros, upon motion of the interested party, issued a writ of execution based upon the judgment of 1885 against De Leon, and thereunder the sheriff levied upon the land here in question and sold the same over the protest of the plaintiff company, at public auction. An action to annul this execution sale was commenced forthwith by the plaintiff company. Judgment was entered denying the relief sought, but, upon appeal, this court reversed that judgment and annulled the sale and all the proceedings taken by virtue of that execution, upon the ground that the old judgment could not be enforced at that time in that manner (17 Phil. Rep., 160).

On November 23, 1910, Jose F. Martinez, who had acquired for valuable consideration the judgment of 1889 against De Leon, commenced an action in the Court of First Instance upon that unsatisfied judgment, praying that the said judgment be revived and that the attachment levied in the former action be executed by the sale of the 100 hectares. On August 19, 1911, the defendant De Leon, having defaulted in the defense of this new action, a judgment was entered against him for the sum of P5,663.38, and the costs of the cause. From this judgment no appeal was taken. Martinez, as judgment creditor of De Leon, again caused a levy, by virtue of an execution

issued upon this judgment, to be made upon the 100 hectares and, in spite of the plaintiff's renewed claims and protests, caused the land thus levied upon to be sold by the sheriff to satisfy the judgment of August 19, 1911. The present action was thereupon commenced to quiet the plaintiff's title by annulling this second sale.

In the complaint of November 23, 1910, Martinez set forth in full the judgment rendered on January 28, 1889, and concluded with the following prayer:

"Therefore the plaintiff prays the honorable court to render judgment by reviving in all its parts that pronounced on January 28, 1889, in the case brought by Marcelo Corteza vs. Tomas R. de Leon on March 13, 1885, with the exception of the finding relative to the P731.50 already collected, and that, consequently, the sheriff be directed to proceed with the sale of the attached land, in conformity with the order contained in the said judgment, so that, as stated in this latter, by the proceeds of such sale the plaintiff (as the assignee of Marcelo Corteza) may be paid the amount therein determined and still unpaid; and, furthermore, to grant this plaintiff such other remedy as your honor may deem just and suitable to the merits of this action."

The dispositive part of the judgment rendered on the 19th of August, 1911, is as follows:

"The court is of opinion that, although the plaintiff has a right to revive the judgment itself, according to the provisions of section 447 of the Code of Civil Procedure, what the judge says therein with regard to the attached property is not in fact a part of the judgment that can be revived.

"The judgment of the Court of First Instance of this province, rendered on January 28, 1889, in the case brought by Marcelo Corteza vs. Tomas R. de Leon on March 13, 1885, is hereby declared to be revived in all its force and effect, but for the sum of P5,673.38 instead of the sum of P2,175 specified in the original judgment, and by substituting as creditor the therein plaintiff Jose Felix Martinez for the herein plaintiff Marcelo Corteza.

"It is further ordered that the defendant, Tomas R. de Leon, shall pay the costs of the present action."

The appellants urge that the judgment of August 19, 1911, revived the former judgment and reinvested it with all its force and effects, including the attachment which was levied upon the land in question, and in support of this proposition cites the rule laid down in 23 Cyc, 1462. This rule reads:

"The revival of a judgment by regular proceedings reinvests it with all the effect and conditions which originally belonged to it, and which have been wholly or partly suspended by lapse of time, change of parties, or other cause, and in particular it continues the lien of the judgment on real property beyond the period when, by statute, without such revival, it would expire. But the revival adds nothing whatever to the validity or effect of the judgment, and cannot be invoked as curing any fault or defect which is of such a nature as to render it void, although it cuts off defenses which might have been made to the original judgment before the revival. The judgment of the scire facias to revive being of this character, it is no bar to an action of debt on the original judgment, and a judgment for defendant on an insufficient and defective scire facias is no bar to another for the same cause."

The cases cited in support of that part of the above quoted rule, which states that the revival of a judgment by regular proceedings reinvests it with all the effect and conditions which originally belonged to it, show that the "regular proceedings" are either by writ of scire facias or motion. Both these remedies are statutory. The first had its origin in the statute of Westminster II (13 Edw. I, c. 45), and the second by legislative enactment in the particular States of the Union. In both, the proceedings are not original actions, but mere continuances of the former suit and supplementary remedies to aid in the recovery of the debt evidenced by the original judgment. Their purpose is not to raise the issue of the validity of the original judgment, but to afford the debtor an opportunity to show, if he can, that the former judgment has been paid, satisfied or released, and, if he cannot, to plead the statute of limitations against the judgment and its lien, if it have one, and to give the creditor a new right

of enforcement from the date of the judgment of revival. Such proceedings are not substitutes for an action for debt upon the judgment, but are in some states independent and concurrent remedies of which the creditor may avail himself regardless of such an action. Until payment of the debt has been enforced by execution, the creditor may prosecute his action for debt and his proceedings by scire facias or by motion at the same time, and the pendency of the one is no defense to the other. Whether the proceedings be by scire facias or by motion, a new judgment must, if the law and the facts warrant, necessarily be entered to enforce the old judgment, or so much thereof as remains unsatisfied, together with such valid and enforceable Hens as the old judgment may evidence. But in no instance can the creditor take more than the new judgment gives him.

In the case at bar the creditor, having failed to enforce the judgment of 1889 by execution issued upon his motion in the old case, instituted an ordinary action for the same purpose. The difference between these two methods of procedure is apparent by an examination of sections 443 and 447 of the Code of Civil Procedure. These sections read:

"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. 447. Enforcement of judgment after lapse of five years.—In all cases, a judgment may be enforced after the lapse of five years from the date of its entry, and before the same shall have been barred by any statute of limitation, by an action instituted in regular form, by complaint, as other actions are instituted."

An "action" is defined as follows: "An action means an ordinary suit in a court of justice, by which one party prosecutes another for the enforcement or protection of a right, or the redress or prevention of a wrong; every other remedy furnished by law is a special proceeding; * * *" (Sec. 1, Code of Civil Procedure.)

At any time within five years execution may issue upon a judgment at the mere request of the judgment creditor. An entire chapter of the code is devoted to an elaborate outline of what this calls for. It may be summed up in the statement that the execution shall be responsive to the decree of the court in every respect.

After the lapse of five years, however, the judgment creditor can no longer enforce the judgment by process issuing at his request from the court which rendered it. It is then beyond the power of that court to issue execution upon its judgment. The judgment is, after that period of time, reduced to a mere right of action in favor of the person whom it favors which must be enforced, as are all other ordinary actions, by the institution of a complaint in the regular form. Being a final judgment of a court, it is, of course, conclusive as to the controversy between the parties up to the time of its rendition. By the mere pleading of the judgment and its introduction in evidence, the plaintiff effectually blocks all investigation into the merits of the original controversy. But, being a mere right of action, it is subject to defenses and counterclaims which may have arisen subsequent to the date it became effective, as, for instance, prescription, which bars an action upon a judgment after ten years (sec. 43, par. 1, Code Civ. Proc.) or payment; or counterclaims arising out of transactions not connected with the former controversy. In other words, the judgment creditor finds himself in the position of any other litigant and is under an equal necessity of proving his case, although his trouble in doing so may be less due to the conclusiveness of the evidence which he has to offer, that is, his judgment. But whatever value that former judgment may have and whatever relief he is entitled to by virtue thereof after the lapse of five years depends upon the judgment handed down in the action seeking its enforcement. True it is that in the second action no inquiry can be made as to the merits of the first or the justness of the judgment relied upon (sec. 306, Code Civ. Proc.), other than by evidence of a want of jurisdiction of collusion between the parties, or of fraud in the party offering the record in respect to the proceedings. (Sec. 312, Code Civ. Proc.) But the rights of the judgment creditor depend upon the second judgment. If that judgment denies him any relief granted by the first, his only remedy is by appeal, and if the appellate court denies him such relief, he must take what is offered him by the second judgment or nothing. There

is by no means any presumption in his favor that he is entitled to no less than the exact relief set forth in the first judgment. During a period of five years or more, many events or transactions may have transpired to change the relations of the parties or the right of the judgment creditor to demand the enforcement of his judgment. It is the duty of the court before which the second action is tried to examine any such defenses presented by the defendant and allow them their just effect.

The Court of First Instance which tried the action, seeking to enforce the judgment of 1889, held that the judgment or attachment lien against the land in question could no longer be enforced. We are not advised of the reasons of the court for so deciding. Whether it was because the lien had been released, or the lapse of so many years, or due to the fact that the land was at the time held by a remote grantee of De Leon, we cannot say. However this may be, the question of a creditor's right to enforce the lien was, as will be seen from the prayer of the complaint and the dispositive part of the judgment, *supra*, put directly in issue and specifically and definitely decided against him in the new judgment. The only effect of this new judgment was simply to create a personal liability against De Leon. If this were error, it was not jurisdictional and cannot now be attacked. The only remedy open to the creditor was by an appeal. No appeal was taken, consequently, whatever relief the judgment creditor was entitled to is to be found in the new judgment. Under that judgment the plaintiff could have attacked and sold any property then belonging to De Leon; but the land in question no longer belonged to him. He had parted with all his right, title and interest therein. The land was no more susceptible to execution under the new judgment than any other property belonging to the plaintiff company. Hence, the sale of that particular parcel of land by virtue of an execution issued to enforce the new judgment was unauthorized by that judgment and was consequently void.

For the reason that the sale of the land in question was unauthorized by the second or new judgment, which allowed only a personal liability against De Leon, the judgment appealed from must be affirmed and the plaintiff company, as owner, must be restored to the possession of the land in question. With costs against the appellant. So ordered.

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

Johnson and Carson, JJ., concur in the result.

CONCURRING

MORELAND, J.,

While I agree to the judgment in this case, there are some statements in the opinion on which the judgment is based to which I cannot fully agree.

I think the opinion has failed to make a distinction between an action to revive a judgment and an action to enforce a judgment. These are quite different actions. Although the action at bar is called by the court an action of revivor, the same conclusions are reached as in an action to enforce a judgment; but that might not always be the case. The action is simply and solely to enforce a judgment. The judgment which must be rendered is one for execution and not one of revivor or for a sum of money. In the case of *Haupt vs. Burton* (21 Mont., 572), it was held that, even in an action of revivor the only judgment that could be entered was for execution. There the court said:

"Either proceeding—that by motion, or that by filing of a complaint where revivor is the remedy sought—has for its object a means to secure to the judgment creditor the fruition of his judgment. In either case the court's power and jurisdiction are complete. Neither is an independent new action; and although where, as in the case before us, a complaint is filed setting up the original judgment obtained, the form is necessarily by a separate

action, still, no matter what the form may be and what the practice, after all it is but the continuation of the old action, and but a means to revive an antecedent judgment, that might otherwise have become valueless or inoperative so far as the right to issue execution goes. The defenses to the action are limited. The jurisdiction may be assailed, or the existence of the record attacked, or payment or accord or discharge and satisfaction may be set up; but in no case can matters be determined which were settled in the original suit. (Smith vs. Stevens, 133 Ill., 183; 24 N. E., 511; Freeman on Judgments, sec. 443.)

"The life of a judgment under section 41 of the Code of Civil Procedure (Compiled Statutes of 1887) was six years. It was accordingly necessary for plaintiffs to bring their suit within that time after date of the judgment sought to be revived. This they did, and, by so doing, have acquired a standing in court. The original complaint was not wholly defective. It set up the judgment, and, while perhaps it was defectively stated, there was a cause of action pleaded. The amended complaint is perfectly good.

"The fact that plaintiffs seek to revive a judgment in a real action cannot affect the principle of the right of revivor. Why should not the same rule prevail in real as does in personal actions? The original judgment was for possession of land and the judgment here should be that plaintiffs have execution, and be given possession, as against defendants and their successors. (Freeman on Judgments, sec. .443; 21 Am. and Eng. Ency. Law, p. 855; Kennebec Purchase vs. Davis, 1 Me., 309.)"

Section 447 of the Code of Civil Procedure, under which this action is brought, is entitled: "Enforcement of judgment after lapse of five years." The section itself reads as follows:

"In all cases, a judgment may be enforced after the lapse of five years from the date of its entry, and before the same shall have been barred by any statute of limitation, by an action instituted in regular form, by complaint, as other actions are instituted."

The mere reading of this section demonstrates clearly its purpose. It is for the enforcement of a judgment pure and simple. Section 443 provides that a party may have an execution at any time within five years after the entry of his judgment; and we have held that, if an execution is not taken out within that time, it cannot be executed except by order of the court, even though the judgment is neither dead nor dormant. This provision is for the protection of the judgment debtor; for the law presumes that, if the judgment creditor has permitted five years to elapse without attempting to obtain an execution, the judgment debtor has paid the judgment; and it is for this reason that it will not be permitted that an execution issue after that time unless the judgment creditor first shows to the satisfaction of the court that the judgment has not been paid. When that has been done and the presumption of payment is removed, the court issues an order for the execution of the judgment in an amount named therein.

In an action to enforce a judgment under section 447 it may be determined whether the judgment has been paid in whole or in part and the judgment of the court in that action will be that execution issue for the amount stated in the judgment.

I particularly object to that part of the decision which says: "Until payment of the debt has been enforced by execution, the creditor may prosecute his action for debt * * *." I do not believe that that is the doctrine which should be laid down in this jurisdiction nor do I believe it to be the doctrine in the United States. At common law a judgment obtained one day could be sued on the next, and that judgment sued on the third day, and the last judgment on the fourth day, and so on ad infinitum until costs and interest were piled up so high that it was impossible for the judgment debtor to pay. The reason for the rule that a judgment creditor could sue on his judgment was that, at common law, the judgment creditor could not collect, by execution, interest on his judgment, and that, therefore, when he was about to collect a judgment, he took the precaution to bring action thereon and obtain a new judgment which would include the old judgment and interest. The necessity for such a proceeding has been done away with in modern times, so that now it is almost universal law, that, on execution,

the judgment creditor may collect the interest due up to the time of levy and sale.

Actions upon judgment are not now favored. A party is not entitled to maintain an action which, if successful, would result in a personal judgment against the defendant of no more binding force than the one which he already has. (Shepherd vs. Bridenstine, 80 Iowa, 225; Solen vs. Virginia, etc., R. Co., 15 Nev., 313; Harrison vs. Union Trust Co., 144 N. Y., 326.) In the case of Merritt vs. Fowler (76 Hun, 424; 27 N. Y. S., 1047), the court said:

"It is a matter of history that, prior to the inhibition of the statute requiring leave to sue upon a judgment in this State, immediately upon the recovery of a judgment an action might be maintained thereon, and another judgment recovered, and so on ad infinitum, and thus costs be heaped up to an extortionate extent; and, to prevent this abuse, legislation was had by which, in respect to a domestic judgment, a suit could not be brought thereon, except by leave of the court."

In the case of Solen vs. Virginia, etc., R. Co. (15 Nev., 313), above cited, Judge Leonard said in a concurring opinion:

"But I insist that, if, under the common law, there was always a necessity for the action, which was the reason why the rule was adopted, it then follows that the common-law rule in fact was and is that this action may be maintained when a necessity, not caused by the fault of the creditor, exists therefor, and in that case only; and adopting the language of the court in Pitzer vs. Russel (4 Oregon, 124), that 'the common-law reason for the practice is inapplicable in a State where every judgment bears interest collectible by execution, and where interest can be obtained equally well without such an action. It is a part of the common law that where the reason of the rule fails, the rule falls with it.'"

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