43 Phil. 384

[G. R. No. 19031. May 22, 1922]

THE DIRECTOR OF THE BUREAU OF COMMERCE AND INDUSTRY, PETITIONER, VS. HONORABLE PEDRO CONCEPCION, JUDGE OF THE COURT OF FIRST INSTANCE OF THE CITY OF MANILA, ET AL., RESPONDENTS.

D E C I S I O N

MALCOLM, J.:

In this case the question is distinctly presented, whether or not the salary due from the Government of the Philippine Islands to a public officer or employee can, by garnishment, be seized before being paid to him and appropriated to the payment of his judgment debts.

Alfredo S. Galvez, an officer in the coastguard service in the employ of the Bureau of Commerce and Industry, had, on November 21, 1921, to his credit, accrued leave salary of P1,359.92, which had not been paid to him because of the loss of equipment for which he was accountable. Shortly after the above-mentioned date, Benito Gimenez Zoboli instituted an action in the Court of First Instance of Manila against Galvez for the recovery of the sum of P1,230. Judge of First Instance Concepcion, at the instance of plaintiff Gimenez, issued a writ of attachment which authorized the sheriff of Manila to attach all the rights of defendant Galvez to his accrued leave salary in a sum not in excess of P1,300. The said writ of attachment was served on the Director of the Bureau of Commerce and Industry, on January 6, 1922. The Attorney-General, on behalf of the Director of this Bureau, presented a motion in the Court of First Instance to dissolve the attachment on the ground that it was improperly issued, because officers of the Government are not subject to such process. This motion was denied by Judge Concepcion.

The Director of the Bureau of Commerce and Industry has now instituted an action in certiorari in this court, in which it is contended that the order of attachment of the accrued leave salary of Galvez is improper, unauthorized, and illegal, because (a) it is an indirect suit against the Government of the Philippine Islands without its consent; (b) the money garnished does not belong to Galvez until paid over to him; (c) it is embarrassing and

sometimes fatal to public service; and (d) it is contrary to public policy. It is then prayed that the order of attachment which has been issued be revoked and discharged.

The respondents have interposed a demurrer. The first ground of the demurrer is based on the premise that a plain, speedy, and adequate remedy, which is by appeal to this court, exists. No time need, however, be taken up with a discussion of this point, in view of the decision in the case of Leung Ben vs. O'Brien ([1918], 38 Phil., 182) On the authority of this decision, the petitioner may, by means of certiorari, ask the dissolution of an attachment which, it is contended, is unauthorized by law. The second ground of the demurrer, going to the merits of the case, is based on the principal premise that the Code of Civil Procedure, in enumerating the property which is exempt from execution, fails to name the salary of a government employee.

The case is not at all difficult of resolution if fundamental principles are kept to the forefront.

The proceeding known in American civil procedure as the process of garnishment, while not mentioned by that name in the Philippine Code of Civil Procedure, is, nevertheless, covered by the provisions of the Code. By the process of garnishment, the plaintiff virtually sues the garnishee for a debt due to defendant. The debtor stranger becomes a forced intervenor. The Director of the Bureau of Commerce and Industry, an officer of the Government of the Philippine Islands, when served with the writ of attachment, thus became a party to the action. (Tayabas Land Co. vs. Sharruf [1921], 41 Phil., 382.)

A rule, which has never been seriously questioned, is that money in the hands of public officers, although it may be due government employees, is not liable to the creditors of these employees in the process of garnishment. One reason is, that the State, by virtue of its sovereignty, may not be sued in its own courts except by express authorization by the Legislature, and to subject its officers to garnishment would be to permit indirectly what is prohibited directly. Another reason is that moneys sought to be garnished, as long as they remain in the hands of the disbursing officer of the Government, belong to the latter, although the defendant in garnishment may be entitled to a specific portion thereof. And still another reason which covers both of the foregoing is that every consideration of public policy forbids it.

The United States Supreme Court, in the leading case of Buchanan vs. Alexander ([1846], 4 How., 19), in speaking of the right of creditors of seamen, by process of attachment, to

divert the public money from its legitimate and appropriate object, said:

> "To state such a principle is to refute it. No government can sanction it. At all times it would be found embarrassing, and under some circumstances it might be fatal to the public service. * * * So long as money remains in the hands of a disbursing officer, it is as much the money of the United States, as if it had not been drawn from the treasury. Until paid over by the agent of the government to the person entitled to it, the fund cannot, in any legal sense, be considered a part of his effects." (*See, further*, 12 R. C. L., p. 841; Keene vs. Smith [1904], 44 Ore., 525; Wild vs. Ferguson [1871], 23 La. Ann., 752; Bank of Tennessee vs. Dibrell [1855], 3 Sneed [Tenn.], 379.)

The first mistake made by the trial judge in his analysis of the citations invoked in favor of the motion of the Attorney-General for the dissolution of the order of garnishment, was in considering it essential that the official be a party defendant. As explained, the order of garnishment had the effect of drawing the officer into the case. The second mistake of the trial judge was in considering it essential that the Code of Civil Procedure exclude salaries of government officials from execution, whereas the principle governing the case is one lying at the foundation of orderly government, and requiring no express statement in legislation.

It results, therefore, that the order of attachment was improperly and illegally issued. Accordingly, the demurrer must be overruled and unless the respondents shall, within five days, file an answer, the writ prayed for shall issue, with costs against the respondents. So ordered.

Araullo, C. J., Avanceña, Villamor, Ostrand, and *Romualdez, JJ.*, concur.

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