

7 Phil. 158

[G.R. No. 3006. December 07, 1906]

JOSE GONZALEZ, PLAINTIFF AND APPELLEE, VS. AGUSTIN BANES, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

This action was brought against the defendant, sheriff of the Province of Leyte, to recover damages for his negligence in not properly levying an execution issued in a case in which the plaintiff herein was the judgment creditor.

On the 13th of May, 1903, the plaintiff recovered a judgment against Lupo de la Cruz for about 2,200 pesos. An execution was issued thereon in June, 1903, and was returned by the defendant unsatisfied. Another execution was issued against certain sureties upon which 900 pesos was collected and paid to the plaintiff. On the 10th of September, 1903, a third execution was issued which was levied by the defendant, as sheriff, upon, among other things, the house in question in this case. That levy was made on the 14th day of September. The property was advertised for sale and on the 11th of November Hilario Asunci6n presented to the sheriff, the defendant, an affidavit, claiming to be the owner of the property. On the same day he exhibited to the sheriff documents, the first of which showed that on the 18th day of April, 1903, he bought from Lupo de la Cruz and his wife the house in question under a contract of *pacto de retro* for the sum of 500 pesos, the right to repurchase to continue for one year. It appeared from another document presented to the sheriff that on the 4th day of September, 1903, Lupo de la Cruz and his wife sold the property absolutely to said Asuncion for the sum of 1,000 pesos. Upon the exhibition of these documents the defendant released the levy of execution upon this property.

The defendant admitted that about the time the first execution was issued he had a talk with the plaintiff in which the plaintiff told him that the debtor, Lupo de la Cruz, was about to sell the house to Hilario Asunci6n, and the defendant testified thaj; he at once went to Asunci6n

to make inquiries and learned that Asunci6n had bought the house on the 18th of April, a fact which was afterwards proved to be true by the documents presented to the sheriff in November. For this reason he made no levy upon the property. When he returned the first execution unsatisfied, he did so in the presence of the lawyer for the plaintiff in the first action, who read his return thereon, expressed himself satisfied therewith, and asked for a second execution against the bondsmen. The evidence does not show that any other request was made by the plaintiff that the defendant levy upon this house, except the one as to which the defendant himself testified. The statement made in the judgment of the court below and in the brief of the appellee to the effect that the witness, Joaquin Cinco, in behalf of the plaintiff, notified the sheriff in July to levy upon this house finds no support in the evidence. That witness testified that the plaintiff did not mention any house to him. There is no evidence that the defendant was requested to levy the execution upon the amount of the purchase price unpaid nor that the defendant knew of the existence of any unpaid balance.

Hilario Asuncion, testifying as a witness for the plaintiff, stated that he bought the house on the 18th of April; that he was to pay for it in two installments, the first of 200 pesos and the second of 800 pesos, and that the last installment was paid sometime in June. There is, as will be seen, some confusion in the evidence as to the amount of the purchase price and as to the time when it was paid, and as to the nature of the transaction. If the testimony given at the trial by Asunci6n is to be taken as true, the house was bought and paid for sometime in June and the first execution was, as found by the court below, issued in June and returned in July. It does not, therefore, appear that it was issued before the last payment was made by Asuncion.

Upon these facts We do not think the defendant can be charged with negligence in the performance of his official duties. It was not proved that, at the time the first execution was issued, the house had not been sold and fully paid for. Moreover, the attorney for the judgment creditor knew that the execution had been returned unsatisfied, expressed himself at the time as satisfied with the return, and then made no demand upon the sheriff to levy the execution upon this house, and did not then notify him, nor did anyone notify him, that a part of the purchase price had not been paid, if, as a matter of fact, it had not been.

The judgment of the court below is reversed, and the defendant is acquitted of the complaint, with the costs of the first instance. No costs will be allowed to either party in this court.

After expiration of twenty days let judgment be entered in accordance herewith, and ten

days thereafter let the record be remanded to the court below for proper action. So ordered.

Arellano, C. J., Torres, Mapa, Carson, and Tracey, JJ., concur.

Johnson, J., did not sit in this case.

Date created: May 05, 2014