

6 Phil. 260

[G.R. No. 2698. May 05, 1906]

**J. J. PETERSON, SHERIFF OF THE CITY OF MANILA, PLAINTIFF AND APPELLEE,
VS. CHARLES P. NEWBERRY ET AL., DEFENDANTS AND APPELLANTS.**

D E C I S I O N

CARSON, J.:

This is an action under the provisions of section 120 of Act No. 190, brought by J. J. Peterson, sheriff of Manila, to compel various claimants to certain funds in his possession as sheriff to interplead and litigate their several claims among themselves. These funds, amounting to P3,632.62, Philippine currency, are the proceeds of a levy on the property of one Fulgencio Tan Tongco, and the complainant disclaims all interest therein except as to the costs of the levy.

Findlay & Co., one of the defendants in these proceedings, filed suit against the said Fulgencio Tan Tongco on October 9, 1902, and on January 31, 1903, judgment was rendered in their favor for the sum of 7,070 pesos, and execution thereon was lodged in the hands of the sheriff on April 21, 1904. Charles P. Newberry, another defendant in these proceedings, filed suit against the said Fulgencio Tan Tongco on November 4, 1902; judgment was rendered in his favor on August 8, 1903, for the sum of 7,865.05 pesos, and execution thereon placed in the hands of the sheriff on March 12, 1904; and the American Bank, which is the assignee of Theodore Rogers, is also a defendant in these proceedings, filed suit against Tan Tongco on November 19, 1902, and judgment was rendered in its favor on December 23, 1902, for the sum of 10,000 pesos, and execution thereon lodged in the hands of the sheriff on April 23, 1904. It thus appears that Findlay & Co. first filed suit, that the American Bank first obtained judgment, and that Charles P. Newberry first placed execution in the hands of the sheriff.

On April 23, 1904, the sheriff made a simultaneous levy under the above-mentioned executions, but, being in doubt as to the rights of the various parties in interest, he did not

himself undertake to distribute the funds in his possession, but filed this action, and thus imposed that duty upon the court.

Article 1924 of the Civil Code places judgment creditors in the order of age of their respective judgments in the third class of preferred creditors, and in applying this provision of the code it is clear that the judgment of the American Bank, being the eldest, is entitled to preference in the distribution of the funds in the hands of the sheriff, and those funds not being sufficient to satisfy said judgment, the entire amount must be paid over to the claimant, Theodore Rogers, assignee of the bank.

It has been said that the provisions of this article were wholly repealed by the enactment of the Code of Civil Procedure, and it would appear that "so far as this article is applicable to cases of bankruptcy and estates of deceased persons it has been rendered obsolete as to the former by section 524, which repeals bankruptcy laws, and repealed as to the latter by section 735, which sets forth the order of payment in the settlement of such estates," but we are of opinion that its provisions are not limited to such cases and that it remains in full force and effect when by intervention or otherwise a judgment creditor is a proper party to distribution proceedings of the funds or estate of his judgment debtor and duly asserts his right as a preferred creditor. (*Martinez vs. Holliday, Wise & Co.*, 1 Phil. Rep., 194; *Olivares vs. Hoskyn & Co.*, 2 Phil. Rep., 689.)

The court below erred in ordering the money paid over to Charles P. Newberry on the ground that he first lodged his execution in the hands of the sheriff.

The learned judge was of opinion that "there is no law in the Philippine Islands * * * fixing the lien of judgments or executions until the levy," but our attention has not been directed to any provision of law which provides that a levy under execution creates or fixes a lien, general or specific, in favor of a judgment creditor, nor does it appear that a creditor acquires a lien upon the property of the debtor by virtue of the filing of his complaint, the judgment, the issue of execution, or the levy thereunder, other than the mere right, as prescribed in article 1924 of the Civil Code, to a preference in the distribution of the funds of the estate of the judgment debtor in those cases wherein by intervention or otherwise the judgment creditor is a proper party to the distribution proceedings and duly asserts his right as a preferred creditor.

The American authorities relied upon by the trial court and counsel for Newberry and Findlay & Co. are not applicable under existing law in the Philippines, nor can we take into

consideration arguments of counsel based on convenience or expedience where the conclusions drawn therefrom are in conflict with the express provisions of law.

We are not unaware of the difficulties which arise under the existing condition of the law, and we can not deny that the rule laid down herein may at times work hardship upon debtor and creditor alike because of the repeal of the bankruptcy provisions of the Spanish law, but until and unless a new bankruptcy law is enacted it is our duty to apply the provisions of existing law as we find them.

The judgment of the trial court is reversed, without costs, and the said sum of P3,632.66, Philippine currency, less sheriff's fees and expenses incident to the levy and to these proceedings, will be paid over to the said Theodore Rogers, assignee of the American Bank. 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, and Willard, JJ., concur.
