

[G.R. No. 1372. February 20, 1904]

JOHN E. SPRINGER, PETITIONER, VS. ARTHUR F. ODLIN, JUDGE OF THE COURT OF FIRST INSTANCE OF PANGASINAN, RESPONDENT.

D E C I S I O N

COOPER, J.:

The plaintiff, John E. Springer, on the 3d day of June, 1903, filed a complaint in this court praying for a writ of *certiorari* against the Hon. Arthur F. Odlin, judge of the Court of First Instance of the Province of Pangasinan, and asking that the Supreme Court cause to be certified to this court a certain order entered on the 30th day of May, 1903, in the Court of First Instance, in the cause of the United States vs. Catalino Mortes, by which the sum of \$250, Mexican, was directed to be paid over to Co-Banco, the party injured by the commission of the offense of which Catalino Mortes had been charged and was convicted on the 13th day of May, 1903.

A stipulation has been made between the parties covering the facts essential to the determination of the controversy, from which it appears that on the 8th day of March, 1903, Cosme Ferrere presented a sworn statement to a justice of the peace of that province, in which he alleged that in 1901 he had been robbed of certain personal property and that he had reason to believe that the said personal property was concealed, in the house of Mortes and prayed that a search warrant might issue.

The warrant was issued and returned on the same day, and the return showed that the officer found in the house of Catalino (alias Esteban)

Mortes many articles of personal property other than the property described in the sworn declaration of Cosme Ferrere, all of which property the officer took possession of; and among this property were two small sacks containing \$259.50, Mexican, in silver coin, which is the money in controversy in the present action.

There was also among the property so seized certain property which had been stolen from CorBanco, and a complaint was filed with the justice of the peace charging Catalino Mortes with the robbery of the store of Co-Banco and alleging that the articles robbed consisted of a trunk containing \$475; Mexican, in silver coin, five cans of opium, and one silk cap.

As the result of the search and recovery of property, two complaints were filed against Catalma Mortes—one for the larceny of the property of Cosme Ferrere and the other for the robbery of the above-mentioned property of Co-Banco.

The justice of the peace remitted to the clerk of the Court of First Instance the silk cap and empty opium can identified by Co-Banco as his property, together with the \$259.50 in coin, which had not been identified further than that the money was found with the silk cap and empty opium can.

Upon the trial of Catalino Mortes for robbery, Co-Banco appeared as private prosecutor. He identified the silk cap and the empty opium can as his property and stated that at the time of the loss of these articles \$5480, in Mexican money, was stolen from him.

Catalino Mortes was found guilty on the 13th day of May and was sentenced by the Court of First Instance, and indemnification was adjudged in the case of Co-Banco for the property stolen from him.

On the following day the plaintiff, John E. Springer, commenced proceedings before the justice of the peace of Lingayen, Pangasinan, against Catalino Mortes for the recovery of the sum of \$250 as attorney's fees for services rendered in the two causes above mentioned and procured an attachment against the property of Catalino Mortes. The order of attachment was placed in the hands of the sheriff for

service, and in pursuance of this order the sheriff on the 15th day of May served a notice on the clerk of the Court of First Instance in accordance with the provisions of section 431 of the Code of Civil Procedure for the levy of an attachment, the clerk then having the \$259.50, Mexican, in his custody, as before stated, by virtue of his official duties.

On the 28th day of May Co-Banco presented a petition to the court in which he stated that the period for appeal in the case against Catalina Mortes had expired, that the sentence of the court had not been appealed from, and praying that the clerk of the court be required to turn over to him the \$259.50, Mexican, in silver coin, in his hands, as satisfaction in part of the indemnification made by the court in his favor in the sentence of May 13; and that an execution issue against the property of Catalino Mortes to satisfy the part of the indemnification remaining unsatisfied after the application of this amount. Springer intervened in this proceeding, claiming the money by virtue of the levy of his attachment.

The court, on the 30th of May, after hearing both parties, made an order by which it was adjudged that the claim of Co-Banco had a preference over the claim of Springer and ordered the money in the custody of the clerk to be delivered to Co-Banco, but requiring him to execute a bond for the sum of 400 pesos with sureties for the protection of Springer in case he appealed to the Supreme Court to annul the order.

The plaintiff, Springer, alleges in his application for *certiorari* that the Court of First Instance acted without jurisdiction in making this order of the 30th day of May, 1903; that not being a party in the cause of the United States vs.

Catalino Mortes, he has no right to appeal nor has he any plain, speedy, and adequate remedy from the order; and further alleging that Co-Banco had no lien upon the 259.50 pesos in dispute, either by attachment or by execution; nor did the said Co-Banco on the date of the making of the order in his favor have any right of any other character upon said money.

If the Court of First Instance had jurisdiction to render the judgment of the 13th day of May, 1903, in favor of Co-Banco in the case of the United States vs. Catalino Mortes, and in the proceeding in which Springer intervened resulting in the order of May 30, or if the plaintiff, Springer, had any plain, speedy, and adequate remedy by a bill of exceptions, appeal, or otherwise from the order of the 30th day of May, 1903, by which the money in question was directed to be paid to Co-Banco, then the proceeding in *certiorari* will not lie.

By article 17 of the Spanish Penal Code every person criminally liable for a crime or misdemeanor is also civilly liable, and by the provisions of article 119 of the same code this civil liability includes (1) restitution, (2) reparation for the damage caused, (3) and indemnification for loss. This civil liability may be enforced in the criminal case.

By General Orders, No. 58, section 107, the privileges secured by the Spanish law to persons claiming to be injured by the commission of an offense to take part in the prosecution of the offense and to recover damages for the injury sustained by reason of the same, are preserved and remain in force, and it is therein expressly provided that the court, upon conviction of the accused, may enter judgment in favor of the injured person against the defendant in the criminal case for the damage occasioned by the wrongful act.

By section 56, No. 3, of the Organic Act, the Court of First Instance has jurisdiction in criminal cases of this character and in all civil cases in which the demand, exclusive of interest or the value of the property in controversy, amounts to \$100 or more.

From these provisions it is clear that the Court of First Instance did not act without jurisdiction in rendering the judgment of the 13th day of May, 1903, in the criminal case of the United States vs. Catalino Mortes in favor of Co-Banco as the injured person for the indemnification of the latter, nor did it act in excess of jurisdiction in the order of May 30 directing the money to be turned over to him.

The Court of First Instance having the money in its possession, there was no necessity for the issuance of an execution in the case.

It is a well-established principle that property in *custodia legis* is exempt from attachment, and the principle applies to money in the possession of the clerk of a court by virtue of his office. (Drake, Attachments, sec. 509.)

This being the case, no lien was acquired by Springer by the levy of the attachment and the notice given to the clerk.

It is unnecessary to determine whether if Springer had acquired a lien on the money he could have intervened in the motion made by Co-Banco to have the money turned over to the latter, nor whether in the event Springer might have intervened that he could have appealed by bill of exceptions from the judgment in favor of Co-Banco. As before stated, there must have concurred, under the provisions of section 514, Code of Civil Procedure, both requisites—that is, (1) the excess of jurisdiction on the part of the court and (2) that there was no plain, speedy, and adequate remedy by bill of exceptions or appeal or otherwise.

Having reached the conclusion that the Court of First Instance had jurisdiction and did not act in excess of such jurisdiction in awarding the money to Co-Banco, there is a failure of the first requisite for the issuance of a writ of *certiorari*, and the petition for the same and a review of the case by this court must be denied, which is accordingly done. The costs of this proceeding are adjudged against the plaintiff.

Arellano, C. J., Torres, Willard, Mapa, McDonough, and Johnson, JJ., concur.