

7 Phil. 708

[G.R. No. 3368. March 08, 1907]

**LA COMPAÑIA GENERAL DE TABACOS DE FILIPINAS, PLAINTIFF AND APPELLEE,
VS. MATEO TRINCHERA, DEFENDANT AND APPELLANT.**

D E C I S I O N

JOHNSON, J.:

The plaintiff herein brought action against the defendant in the Court of First Instance of the Province of Leyte to recover the sum of 4,074.46 pesos, Mexican currency, with interest at the rate of 6 per cent per annum from the 6th of May, 1901, and for costs.

After hearing the evidence adduced in the said cause, the judge of the said court rendered a decision in favor of the plaintiff and against the defendant in accordance with the prayer of the petition filed in said cause; from that decision the defendant appealed to this court.

A bill of exceptions was duly prepared by the appellant and was received in this court on the 16th of April, 1906; on the 18th of April, 1906, the plaintiff presented in this court an application accompanied by a bond, for a writ of attachment against the body of the defendant or his property, for the purpose of securing payment of the said judgment.

The question presents itself, Has the Supreme Court or a judge thereof power to issue a writ of attachment in a case, pending on appeal in this court? The remedy by attachment is purely a statutory remedy, and the provisions thereof must be strictly construed. The courts have also held that no court has authority to issue a writ of attachment without express statutory permission. The question is, Do the laws in force in the Philippine Islands permit the Supreme Court or a judge thereof to grant a writ of attachment in a case pending in the Supreme Court?

The petition of the plaintiff and appellee for the writ of attachment in this cause prays for a writ of attachment for the body of the defendant or his property. Section 412 of the Code of Procedure in Civil Actions provides for the conditions under which the *body* of a defendant

may be attached; section 413 of the same code provides who may issue such writs of attachment upon the grounds mentioned in said section 412; section 424 of the same code provides when the writ of attachment may issue against the *property* of the defendant; section 425 of the same code provides who may issue such writs of attachment. Said section 413 provides that an order for the arrest of the defendant must be obtained from the judge or justice of the peace of the court in which the action is brought or from a judge of the Supreme Court; without such order the defendant can not be arrested. Section 425 provides that an order for attachment may be granted by a judge of the Supreme Court or by a judge of the Court of First Instance for the province in which the action is pending, or by a justice of the peace in an action properly brought before his court.

It is admitted that a judge of the Supreme Court may grant a writ of attachment in a cause pending in the Court of First Instance, but it is denied that the same judge can grant the same writ in a cause pending in the Supreme Court. In other words, it is admitted that a judge of the Supreme Court can grant writs of attachment “in a cause pending” in Aparri or in Jolo, but that he can not grant the same writ in a cause pending in the Supreme Court.

The answer to the question presented here is one which calls for the construction and application of the above-quoted provisions of the Code of Procedure in Civil Actions.

By the method of appealing causes in force in these Islands, the Supreme Court may be called upon practically to try appeal causes *de novo*. In other words, this court may thus have presented to it all of the facts and circumstances presented to the lower court, and reaches its conclusions upon exactly the same facts upon which the lower court based its decision. By section 144 of the Code of Procedure in Civil Actions, the filing of a bill of exceptions itself stays execution of a judgment rendered by the lower court unless the lower court shall order that execution be not stayed. In other words, if the losing party in the lower court presents a bill of exceptions and the court refuses to order an execution upon a judgment, then the successful party in the lower court is defeated in his right granted by the lower court until after the cause is heard in the Supreme Court. After the allowance of the bill of exceptions, the lower court has lost jurisdiction of said cause and can make no further orders. Unless the appellee is accorded the right to have an attachment issue out of this court during the pendency of the appeal, the appellant may abscond or dispose of his property so as to make it physically impossible to recover under a judgment rendered on such appeal. In view of the effect, therefore, of a perfected appeal upon the rights of the successful party in the court below, and in view of the express provisions of the said sections 413 and 425, we are of opinion, and so hold, that a judge of the Supreme Court has

authority to grant writs of attachment in a cause pending in the Supreme Court. So ordered.

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

Willard and Tracey, JJ., dissent.

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