

34 Phil. 354

[G.R. No. 8642. March 24, 1916]

**THE STANDARD OIL COMPANY OF NEW YORK, PLAINTIFF AND APPELLEE, VS.
ANTONIO BABASA ET AL., DEFENDANTS AND APPELLANTS.**

D E C I S I O N

ARELLANO, C.J.:

The Court of First Instance of Manila issued to the sheriff of the Province of Batangas a writ of execution against the judgment debtor Vicente Villanueva for the sum of ₱1,521.25, besides ₱110.55 as costs. The said sheriff, Antonio Babasa, by virtue thereof, on March 2, 1910, levied attachment upon the following property of Vicente Villanueva:

One parcel of land situated in the barrio of Santa Rita of the municipality of Batangas, containing 16 hectares, 10 ares and 79 centares, with the boundaries that are set forth in the writ, its assessed value being ₱1,770.

One building lot situated in the town of Batangas, 13 ares and 19 centares in extent, with the boundaries set forth in the writ, its assessed value being ₱120.

On the following day, the 3d, the sheriff advertised the sale of both properties by public auction to take place on March 26, 1910.

On the same day, March 3, Elisa Torres de Villanueva, the wife of the judgment debtor, appeared before the sheriff and claimed as her own the property levied upon, alleging that her husband, Vicente Villanueva, had no right whatever therein. In support of this claim she presented a public document executed in the year 1875. The sheriff, in pursuance of the provisions of section 451 of Act No. 190, released the said property, without prejudice to reattaching it if the plaintiff within six days insured said officer against liability for the attachment by executing a bond for ₱4,000 with sureties good and sufficient for the satisfaction of said sheriff. Such was the action taken by the sheriff on the 7th of that month.

The attorneys for The Standard Oil Co. of New York, the plaintiff interested in the execution, advised the sheriff on the 10th of March that their client refused to give bond, and on the 14th of March of the same year the sheriff again attached said property. Elisa Torres de Villanueva, however, insisted on her claim, and, on March 21, 1910, the sheriff definitely released the attachment as the required bond had not been given within the said six days, which ended on the 12th of that month.

In view of the foregoing facts, on December 28, 1911, the judgment creditor, The Standard Oil Co. of New York, brought suit against the sheriff, Antonio Babasa, and his bondsmen, Pablo Borbon, Marcelo Liana, Florencio R. Caedo, and Demetrio de Castro, to recover damages in the sum of ₱1,521.25, with interest thereon at the rate of 1 per cent per month from December 23, 1909, in addition to the sum of ₱110.55, the cost of the levy of execution, together with interest thereon and the costs of the case.

After the complaint had been answered the Court of First Instance of Manila, which tried the case, decided the same in entire conformity with the petition of the complaint. The defendants therefore appealed.

It appears that the sheriff acted in accordance with the law.

Section 451 of the Code of Civil Procedure provides:

“The officer in such case is not bound to keep the property, unless the plaintiff, or the person in whose favor the writ of execution runs, on demand, indemnify the officer against such claim by an obligation, signed by the plaintiff, with good and sufficient surety.”

The plaintiff, twice required to give bond, did not give it, he did not want to give it. The sheriff, on the claim of the third person, released the attachment.

It is contended that a bond cannot be required on levy of attachment and sale of real property, that it can only be exacted when the attachment runs against personal property. It may be so; such an opinion may be held, but in the present case the sheriff was justified in acting as he did, and numerous decisions of this court, especially those of *Osorio and Del Rosario vs. Cortez and Manalo* (24 Phil. Rep., 653), and *Muyco vs. Montilla* (7 Phil. Rep., 498), in which the question at issue involved real property, sustain the provisions of section 451 without making any distinction between personal and real properties.

It is contended that the sheriff should have examined the title deed presented to him by the third person, in order to determine whether it was sufficient proof of the ownership of said person to warrant the release of the attachment; but the law makes no such requirement, and the sheriff could see that this Supreme Court is of that opinion, as it has laid down the rules that “The powers of the sheriff involve both discretionary power and personal responsibility if he fails to give due attention to a proper claim made in accordance with the law, thereby causing injury to a third party whose property is not subject to the liability of a debtor, nor bound in favor of the creditor who applied for the attachment;” and that, “A third party who protests against the seizure of his property and files his claim in accordance with the law is entitled to *protection* and to be restored to possession thereof, and should not be deprived of his property except by due process of law; in such action the validity and efficiency of the title of the third party claiming should be determined by a court of competent jurisdiction.” (Uy Piaoco vs. Osmena, 9 Phil. Rep., 299.)

The judgment appealed from is reversed, without special finding as to the costs in this instance. So ordered.

Torres, Moreland, and Trent, JJ., concur.

Johnson, J., reserves his vote.