

HONORABLE CESAR VIRATA, ET AL., PETITIONERS, VS. HONORABLE BENJAMIN H. AQUINO, PRESIDING JUDGE COURT OF FIRST INSTANCE, PASIG, RIZAL, JUANITO P. TINSAY, AND GREGORIO C. GUIDO, E...*G.R. No. L-35027. September 10, 1973*

Ponente: RUIZ CASTRO, J.

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The respondent Juanito P. Tinsay sought the enforcement in the Court of First Instance of Rizal, presided by the respondent judge, of a general power of attorney allegedly executed in his favor by a religious corporation which calls itself "Los Hijos del Dios Vivo y Omnipotente" (hereinafter simply referred to as Los Hijos). In connection with his action, the respondent Tinsay petitioned for and was granted a writ of attachment covering 2,523 cases of assorted foodstuffs in the custody of the Bureau of Customs and consigned to the said religious corporation. Disputing the authority of the respondent court to issue the said writ, the petitioners, all representing the interests of the Bureau of Customs, came to this Court on special civil action of certiorari with preliminary injunction.

The background facts are not controverted.

On July 2, 1970, the shipment in question, valued at US \$34,211.40, arrived at the Port of Manila on board the S. S. Tokuku Meru, consigned as a donation to Los Hijos. The latter then applied with the Department of Finance for a certificate of tax exemption under Republic Act 1916, but the application was denied on the ground that the shipment was in commercial quantity. Los Hijos subsequently sued the Secretary of Finance in civil case 81126 of the Court of First Instance of Manila to compel the release of the goods under a tax exemption certificate. Later, however, Los Hijos offered to pay the duties, taxes and other charges on the shipment. With the concurrence of the Secretary of Finance, the trial court on December 7, 1971 ordered the release of the goods upon payment of the corresponding duties, taxes and other charges due thereon.

On January 14, 1972, the respondent Tinsay filed a complaint in the Court of First Instance of Manila, docketed as civil case 85926, against Los Hijos and the petitioners Collector of Customs and Commissioner of Customs, seeking delivery to him of the goods in question, based on his alleged acquisition thereof by purchase sometime in August, 1970. On motion of the customs officials, the trial court dismissed the complaint on the ground of want of jurisdiction.

On February 27, 1972, the respondent Tinsay filed a second action in the Court of First Instance of Rizal against Los Hijos and all the members of its board of trustees, docketed as civil case 15818. The complaint seeks the declaration of the validity of the general power of attorney allegedly executed by Los Hijos constituting the respondent Tinsay as its attorney-in-fact with authority to take delivery of the goods in question from the Bureau of Customs. Further, the complaint alleges that the general power of attorney was arbitrarily revoked by Los Hijos, for which reason the release of the goods to the latter would work injustice to the respondent Tinsay.

On the same date that the complaint was received by the court, the respondent judge issued an order enjoining the petitioners Secretary of Finance, Commissioner of Customs and Collector of Customs of the Port of Manila, from releasing the goods in question to Los Hijos.

On March 8, 1972, the petitioners, all representing the interests of the Bureau of Customs, moved to lift the restraining order the trial court had issued, on the grounds that it lacks jurisdiction over the subject-matter of the action and over the persons of the public officials who were not party defendants therein, and because the respondent judge cannot enjoin the acts of public officials performed outside the territorial jurisdiction of the Court of First Instance of Rizal. On March 13, 1972, the respondent Tinsay amended his complaint to include the public officials mentioned. The next day, March 14, the respondent judge issued another restraining order enjoining the said officials from releasing the goods in question to Los Hijos.

On March 18, 1972, the said public officials moved to dismiss the complaint, opposed the issuance of a preliminary injunction, and asked for the lifting of the restraining order issued by the trial court. Appreciating the argument that the respondent Tinsay had no cause of action against the petitioners, the respondent judge dismissed the complaint insofar as it affected them. In the same order, however, the respondent judge granted Tinsay's ex parte petition for a writ of attachment against the goods in question, upon the filing of a bond in the sum of P100,000. The order of attachment was served on the officials of the Bureau of Customs on April 5, 1972, and on May 3, 1972, the petitioners commenced the present special civil action of certiorari with preliminary injunction.

On May 11, 1972, this Court issued a writ of preliminary injunction enjoining the respondents "from enforcing, implementing or carrying out the writ of attachment" above-mentioned, until further orders. We likewise enjoined the petitioners from disposing of the goods in question.

Subsequently, or on September 21, 1972, the petitioners, in their memorandum of arguments, informed this Court that the respondent judge, by his order of July 5, 1972, had lifted the writ of attachment subject of the present petition, upon the filing by Los Hijos of a counterbond in the sum of P100,000. Among others, the respondent judge cited the perishable state of the goods in dispute and their probable loss if held any longer in the custody of the Bureau of Customs. Thus, the petitioners would have us dismiss the present petition as having become moot and academic and dissolve our injunction against their disposition of the goods, paving the way to a delivery of the same to Los Hijos after payment of taxes, duties and other charges. Asked for his comment, the petitioner Tinsay vigorously opposed such course of action, averring, first, that the respondent judge had no authority to act on the writ before this Court resolved the premier question of the trial court's jurisdiction to issue the said writ, and, second, that the sum of P100,000 posted by Los Hijos as counterbond is inadequate.

The lifting by the court a quo of the writ of attachment sought to be annulled by the present petition, while advisedly intended to salvage the object of litigation from probable loss, does not altogether obliterate the basic question posed to us in this case. The authority of the trial court to quash the writ of attachment subject of the present petition can only proceed from the authority to issue the same in the first place. But, precisely, this case squarely raises the issue of the jurisdiction of the Court of First Instance to reach, by the process of attachment, goods in the possession of the Bureau of Customs. To agree that this case at bar has become moot and academic due to the subsequent developments cited would be to concede that the trial court had proceeded according to law. This, as will hereafter be shown, is not the case.

It is long settled in this jurisdiction that the customs authorities acquire exclusive jurisdiction over goods sought to be imported into the Philippines, for the purpose of the enforcement of Philippine customs laws, from the moment the goods come to their actual possession and control, even if no warrant for seizure or detention thereof has

previously been issued by the port collector of customs.[1] It is the duty of the port collector to cause all such articles to be appraised and classified, and assess and collect the duties, taxes and other charges thereon, and hold possession of all imported articles upon which duties, taxes and other charges have not been paid or secured to be paid, disposing of the same according to law.[2] And it has been held that this jurisdiction of the customs authorities over the goods ceases "only upon payment of the duties, taxes and other charges upon the articles, or secured to be paid, at a port of entry and the legal permit for withdrawal shall have been granted." [3]

The placing of the goods under attachment as a result of an action commenced by a third party against the consignee, while the liabilities due on the said goods to the Government have not been fully settled and while they remain in the custody of customs authorities, undermines the efficacy of our customs laws and is void.

A writ of preliminary attachment is a provisional remedy issued upon order of the court where an action is pending, to be levied upon the property or properties of the defendant therein, the same to be held thereafter by the sheriff as security for the satisfaction of whatever judgment might be secured in said action by the attaching creditor against the defendant.[4] On proper grounds, to be determined by the trial court in accordance with the Rules of Court, the writ will issue and be levied upon the property of the defendant. In the present case, however, the Government of the Philippines "having a lien on the goods for the payment of the duties accruing thereon, and being entitled to a virtual custody of them from the time of their arrival in port until the duties are paid or secured, any attachment by [the sheriff] is an interference with such lien and right of custody." [5]

Moreover, although the Collector of Customs might have been properly served a copy of the writ of attachment, he cannot act as bailee over the goods under his custody for the benefit of third-party litigants because such office is incompatible with his duty under the Tariff and Customs Code to hold possession of the goods for the Government of the Philippines in the interest of revenue collection.

By ruling that the provisional remedy resorted to by the respondent Tinsay is ineffective and void, this Court does not make any pronouncement as to the merits of the principal action exclusively between the private parties, nor does it preclude remedies which, at a proper time and on proper grounds, the trial court might consider issuing in the case for the protection of the interests of the parties pending final adjudication thereof. We merely rule that the particular writ of attachment therein issued is not binding upon the officials of the Bureau of Customs.

With the result that the writ of attachment issued by the respondent judge is void and of no effect, it will serve no useful purpose for us to discuss the other errors raised by the petitioners.

ACCORDINGLY, our order of May 11, 1972, insofar as it enjoins the respondent court and the special sheriff of Rizal from enforcing the writ of attachment of April 4, 1972, is hereby made permanent. Our injunction in the same order against the petitioners, enjoining them from disposing of the goods subject-matter of the present case, is hereby lifted. Costs against the respondent Juanito Tinsay.

Fernando, Makasiar, Antonio, and Esguerra, JJ., concur.

Makalintal, Acting C.J., concurs in the result.

Zaldivar, J., concurs in the dissenting opinion of Mr. Justice Teehankee.

Teehankee, J., dissents in a separate opinion.

Barredo, J., dissents in a separate opinion.

[1] *Señeres vs. Frias*, L-32921-40, June 10, 1971, 39 SCRA 533, 541.

[2] Section 1206, Tariff and Customs Code (Republic Act 1937).

[3] Papa vs. Mago, L-27360, February 28, 1968, 22 SCRA 857, 865-866; Sec. 1202, Tariff and Customs Code, *supra*.

[4] Rule 57, Revised Rules of Court.

[5] Harris vs. Dennie, 3 Pet. 292, 7 L. Ed. 683, 688; cited in Shinn on Attachment and Garnishment, Vol. 2, p. 62.

DISSENTING

TEEHANKEE, J.:

I dissent from the majority decision, in permanently enjoining the enforcement of the writ of attachment of April 4, 1972 issued by respondent court covering U.S. \$34,211.40 worth of goods supposedly consigned as a donation to the religious corporation denominated "Los Hijos del Dios Vivo y Omnipotente" (upon the filing of an attachment bond by private respondent Tinsay, plaintiff in the purely private case below who claims a better right to the goods as against the consignee Los Hijos whom he sued below as defendant to enforce his claim) and in lifting the injunction issued by this Court against petitioners finance and customs officials enjoining them from disposing of the goods.

I dissent from the permanent injunction against enforcement of the attachment writ on the ground that the said writ issued in a private litigation between respondent Tinsay (as plaintiff) and Los Hijos (as defendant) without interfering with the customs' bureau's exclusive customs lien over imported goods until payment of duties and charges assessed thereon, should be binding upon the customs officials in the same manner that court processes are binding on any other government official or private citizen. The attachment writ merely puts the customs officials on notice that once their exclusive customs lien over the goods has been discharged with the payment of the duties and charges, the goods should be released not to defendant Los Hijos as consignee but to the sheriff of respondent court pursuant to the attachment order, pending further orders of said court and final determination of the pending dispute between said private litigants. It clearly appears from the main opinion that Los Hijos has so discharged the customs lien since December 7, 1971,[1] and hence, there is no impediment now against petitioners-customs officials' complying with said order and to release the goods to the sheriff to await the outcome of the case.

I dissent from the release of the goods by the customs bureau to Los Hijos, since it appears that the goods were apparently imported in violation of pertinent Central Bank circulars and therefore fall under the category of prohibited importations which, under the customs code as well as under the very administrative order issued by petitioners customs officials and authorities, should be declared forfeited goods, not subject to redemption nor release to the consignee nor to any assignee or other claimant thereof.

I

It is indisputable, as the main opinion states, that customs authorities acquire exclusive jurisdiction over goods sought to be imported into the Philippines from the moment the goods come to their actual possession and control "for the purpose of enforcement of Philippine customs laws." This purpose is two-fold: "a. the assessment and collection of the lawful revenues from imported articles and all other dues, fees, charges, fines and penalties accruing under the tariff and customs law" and "b. the prevention and suppression of smuggling and other frauds upon the customs." [2]

It does not follow from this, as the main opinion would hold, that imported goods held by customs officials pending payment of the duties and all other charges thereon may not be the subject of an order of attachment and garnishment duly issued by a court of general jurisdiction such as respondent court (in a litigation filed with it

involving purely private litigants and claimants to the goods) at the instance of respondent-plaintiff who claims a better right to the goods as against the consignee thereof, defendant Los Hijos, and duly addressed by the sheriff to petitioners customs officials as the persons having such goods in their possession and under their control.

Such order of attachment and garnishment cannot logically be held to be an interference with the customs' lien for payment of duties and right of custody until the discharge of such lien nor would it constitute the collector of customs "as bailee over the goods under his custody for the benefit of third-party litigants" as the main opinion holds.[3]

On the contrary, such remedy of attachment and garnishment is a remedy precisely provided by our Rules of Court (Rule 57) for plain-tiff in the cases therein specified to have the property of the adverse party attached as security for satisfaction of any judgment that may be recovered by him in his action.

As stated by the late Chief Justice Moran, garnishment is one of the three kinds of attachment under Rule 57 and "is an attachment by means of which plaintiff seeks to subject to his claim property of the defendant in the hands of a third person or money owed by such third person to defendant. Such third person is called the 'garnishee'. The proceeding by garnishment is a species of attachment for reaching credits belonging to the judgment debtor and owing to him from a stranger to the litigation. By means of the citation the stranger becomes a forced intervenor; and the court, having acquired jurisdiction over him by means of the citation, requires him to pay his debt, not to his former creditor, but to the new creditor, who is creditor in the main litigation. It is merely a case of involuntary novation by the substitution of one creditor for another."[4]

Moran notes that garnishment is distinguished from attachment proper in that "in garnishment, usually there is no actual seizure of the property and no specific lien is acquired thereon; the property remains with the garnishee. x x x garnishment merely impounds the property in the garnishee's possession x x. Furthermore, garnishment proceedings are usually directed to personal property."[5]

Here, pending discharge of the customs lien over the goods in question by payment of the duties and charges thereon, respondent Tinsay filed the action below against defendant Los Hijos claiming that under a general power of attorney executed by the latter in his favor (presumably for valuable consideration and alleged to have been arbitrarily revoked) he had the better right as against Los Hijos "to take delivery of the goods in question from the Bureau of Customs."[6]

Upon Tinsay's filing of a P100,000.00 attachment bond, respondent court issued the questioned attachment order which was served on the customs officials by the sheriff on April 5, 1972, giving rise to the filing by petitioners of the present action.

Such attachment and garnishment order in no way interfered with petitioners' exclusive customs lien upon the goods for payment of duties and charges nor in any way made it the bailee of the private parties-litigants disputing the right of ownership and possession of the goods once freed from customs lien upon the payment of all duties and charges thereon. The situation is no different from the garnishee being one with a mechanic's lien over a car that he has repaired; until he has been paid his charges, his mechanic's lien entitles him to sole custody of the car but once paid the charges and the car thus freed from the mechanics lien, he is bound as garnishee not to return the car to defendant-owner but to the sheriff of the court issuing the attachment and garnishment order to await the determination of the suit.

Thus, Rule 57, section 7 provides for the manner of execution of the attachment order by the sheriff or other officer executing the order, distinguishing between personal property capable of manual delivery and debts and credits, and other personal property not capable of manual delivery, as follows:

"(c) Personal property capable of manual delivery, by taking and safely keeping it in his capacity, after issuing the corresponding receipt therefor;

"xxx xxx xxx

"(e) Debts and credits, and other personal property not capable of manual delivery, by leaving with the person owing such debts, or having in his possession or under his control, such credits or other personal property, or with his agent, a copy of the order, and notice that the debts owing by him to the party against whom attachment is issued, and the credits and other personal property in his possession, or under his control, belonging to said party, are attached in pursuance of such order;"

"xxx xxx xxx"

Applying said rules to the case at bar, once the goods have been ordered released by the customs officials, as they actually did in the case at bar, with the concurrence of petitioner secretary of finance, upon payment of the corresponding duties and charges[7] no customs lien barred the goods from being taken manual delivery of and hence the sheriff could then properly execute respondent court's attachment order "by taking and safely keeping (them) in his capacity after issuing the corresponding receipt therefor" under sub-section (c) of the above-quoted Rule.

Prior to such discharge of the customs lien and payment of duties and charges, the said goods were in the contemplation of sub-section (e) of the above-quoted rule "personal property not capable of manual delivery" and so the sheriff could not, as he did not, take possession and safekeeping thereof but merely left with the customs officials a copy of the attachment order and notice that the goods in their possession and under their control belonging or consigned to Los Hijos were attached in pursuance of such order. The customs officials thereby became obligated as garnishees under Rule 57, section 8, once they lost their customs lien over the goods with the payment of the duties and charges, not to release the goods to Los Hijos or any other person but to the sheriff or other proper officer of the court issuing the attachment. The cited rule provides

"SEC. 8. Effect of attachment of debts and credits. - All persons having in their possession or under their control any credits or other similar personal property belonging to the party against whom attachment is issued, or owing any debts to the same, at the time of service upon them of a copy of the order of attachment and notice as provided in the last preceding section, shall be liable to the applicant for the amount of such credits, debts or other property, until the attachment be discharged, or any judgment recovered by him be satisfied, unless such property be delivered or transferred, or such debts be paid, to the clerk, sheriff, or other proper officer of the court issuing the attachment." (Rule 57)

Thus Moran states that "(A)ccording to the above provision, the garnishee becomes liable when he, after notice of garnishment and disregarding such notice, pays the debt, or delivers the credit or personal property to a person other than the clerk, sheriff, or other proper officer of the court. But the law exempts from liability the person having in his possession or under his control any credits or other personal property belonging to the defendant, or owing any debts to the defendant, if such property be delivered or transferred, or such debts be paid, to the clerk, sheriff, or other officer of the court in which the action is pending. In other words, the rule is that, where attached properties belonging to the principal debtor are taken out of the hands of a person by legal process, after he had been notified of the order of attachment, said person cannot be made to answer for the properties in a proceeding to carry out said attachment." [8]

To hold that customs officials as petitioners may not be in law served attachment or garnishment orders for the retention and delivery in due course to the sheriff of the attached or garnished goods once freed of customs lien with the payment of the duties and charges due thereon, or in short, to hold that the questioned attachment order "is not binding upon the officials of the bureau of customs" [9] would be to make the customs officials a special class exempt from having to comply, as any other government official or private citizen, with the legal processes

of the courts. Such an exemption is not provided for in the Rules of Court, and would have no rational basis. Worse, if such an exemption for customs officials were to be provided or recognized, it would make them accomplices in the defendant's spiriting away of goods to the detriment and in fraud of the plaintiff who has sued out and obtained an attachment order from the court for the purpose of preventing the goods' disappearance and to have them serve as security for the judgment sought by him, or as in the case at bar, under claim of having a better right than defendant Los Hijos to the goods.

II

My above opinion on the validity and binding force of the questioned attachment order is premised on the postulate that the imported goods in customs custody are not goods of prohibited importation which could validly be released by the customs officials upon payment of duties and charges assessed thereon.

I find from the record, however, that the goods were apparently imported without compliance with the pertinent Central Bank circulars, since only an application for their exemption as a purported donation was made with the Department of Finance which denied the same on the ground that the shipment was in commercial quantity.

The goods therefore fell under the category of prohibited im-portations which are subject to forfeiture under our tariff and customs code and not subject to redemption nor release as stressed by the Court in *Geotina vs. Court of Tax Appeals*[10] where we held that "articles of prohibited importation under section 102 of the code are of two categories, viz, those which are absolutely prohibited or more commonly, known as contraband, such as explosives or prohibited drugs, and other articles which are considered qualifiedly prohibited referring to those which may be imported subject to certain restrictions or limitations. But as has been observed, the legal effects of an unauthorized importation of qualifiedly prohibited articles are the same as those of an importation of contraband: 'an article imported or attempted to be imported in violation of regulations of the Central Bank is considered an article of prohibited importation and is subject to forfeiture in like manner as an article the importation of which is absolutely prohibited under Section 102 of the Tariff & Customs Code.'"

The Court further pointed out therein that without removing the profit motive and allowing the importer to "still realize a substantial profit from the sale of the banned goods" if the same were to be released to him upon payment of duties notwithstanding the importation ban, smuggling could not be curbed and the Central Bank's measures to strengthen and stabilize our peso and set aright the country's economy and financial position would be nullified.

Hence, the Court noted with commendation that "(T)he Govern-ment's finance secretary and customs authorities appear to have realized the deleterious consequences of the hitherto ambivalent attitude of customs officials in permitting release under bond of banned articles contrary to the express prohibition of section 2301, when they issued Customs Administrative Order No. 19-70 dated October 20, 1970, *supra*, declaring that 'all importations seized and forfeited for violation of Central Bank circulars shall not be allowed to be released under bond, either surety or cash, nor allowed to be redeemed.' Such an outright ban on release of seized goods in accord-ance with the law's mandate further removes occasion and opportunity for corruption of customs officials in seeking the exercise of their 'discretion' in granting exceptions and authorizing release of banned articles to favored parties."

The text of the cited Customs Administrative Order No. 19-70 dated October 20, 1970 was reproduced in the decision, as follows:

"Pursuant to Section 608 of the Tariff and Customs Code in relation to Section 2307 of the same Code and in order to give force and effect to Central Bank Circular No. 289, all importations seized and forfeited for violation of Central Bank Circulars shall not be allowed to be released under BOND, either surety or cash, nor allowed to be redeemed.

"All previous orders inconsistent with or contrary to the foregoing are hereby superseded and/or revoked.

"This Order shall take effect upon approval by the Secretary of Finance.

"(Sgd.) ALFREDO PIO DE RODA, Jr.

"Acting Commissioner of Customs

"APPROVED:

"(Sgd.) CESAR VIRATA

"Secretary of Finance"

Under these completely different premises, I hold that any release order upon payment of duties and taxes would be in violation of the above-quoted administrative order governing the customs bureau; and that the goods therefore should be duly forfeited and "shall not be allowed to be released under bond, either surety or cash, nor allowed to be redeemed." The goods thus forfeited may thereafter be distributed to certain public institutions or otherwise put to good use in accordance with established rules (but withheld from and forfeited by the importer who had no right to import the goods in the first place nor to profit therefrom and from any other buyers of his or claimant thereof such as private respondent.)

ACCORDINGLY, I vote for the dismissal of the petition. If the goods are not of prohibited importation (whether absolutely or qualifiedly) then the attachment order of respondent court should be held binding on petitioners-customs authorities. In the contrary case, said petitioners should declare the goods forfeited in appropriate proceedings and not permit the release thereof to the consignee Los Hijos nor to any assignee or other claimant thereof. .

[1] Main opinion, at page 2.

[2] Section 602, Rep. Act No. 1937 (Tariff and Customs Code), cited in *Geotina vs. Court of Tax Appeals*, 40 SCRA 362 (1971).

[3] At page 5.

[4] 3 Moran's Comments on Rules of Court, p. 5 (1970 Ed), emphasis furnished. The two other classes of attachment mentioned by Moran are preliminary attachment and levy on execution.

[5] *Idem*, fn. 11.

[6] Main opinion, at page 2.

[7] Main opinion, at page 2.

[8] 3 Moran's Comments on Rules of Court, p. 34 (1970 Ed.).

[9] Main opinion, at page 5.

[10] 40 SCRA 362 (1971).

DISSENTING

BARREDO, J.:

Briefly, the situation that confronts the Court in this case is simply this: Tinsay who claims to be the purchaser from Hijos of the imported goods in the possession of petitioners asked the respondent court to protect him

against possible defraudation by ordering the withholding of said goods from Hijos, even after it has paid the corresponding customs duties and taxes, until the validity of his claim has been passed upon by the courts, or, in the alternative, to deliver the same, after said duties and taxes have been paid, to the sheriff who shall hold the same subject to the results of the action. What has complicated the matter is that the trial judge as well as the main opinion seemingly consider such an order as an outright attachment, whereas, more specifically, it is no more than a possible garnishment, the nature of which does not, to my mind, call for the application of all the legal principles regarding attachment on which the main opinion rests. Withal, when it is considered that it does not appear that, aside from serving the order of attachment upon petitioners on April 5, 1972, any actual levy was made on the subject goods, so much so that on May 11, 1972, or almost a month later, petitioners were still able to secure a restraining order from this Court enjoining further implementation of the order of attachment, the more it will be realized that the petitioners were over-apprehensive. As I see it, service of the order of attachment was done under Section 8 of Rule 57 on garnishment and not under Section 7 of the same rule. And surely, every possible cause for apprehension on the part of petitioners vanished completely when on July 5, 1972, the writ of attachment was lifted upon Hijos' filing a bond of P100,000.

The point I wish to stress is that there is no law nor principle against allowing a notice of garnishment upon customs officials holding imported goods subject to tax, for the simple reason that a garnishment does not purport to withdraw the importation from the custody of the customs authorities without regard to the importer's duty to pay and the government's right to collect the corresponding duties and taxes, since it is understood that until these are paid, the importer does not become entitled to the possession of the goods, and garnishment can only affect properties that are unquestionably due to the party against whom the order of attachment has been issued.

As I view this case, it is not only that it became moot since the lifting of the writ of attachment on July 5, 1972; it was even utterly unnecessary for petitioners to institute the present action. All that they had to do was to notify the sheriff that until the corresponding duties and taxes have been paid, they had no duty to deliver the subject importation to Hijos, and in the face of such notice, there was nothing else the sheriff could have done. Of course, on the hypothesis that Hijos had paid the amounts due the government, petitioners would have been bound to deliver the said importation to the sheriff instead of to Hijos.

Indeed, what bothers me in the main opinion is that Tinsay is being denied a reasonable and legal remedy that does no real violence nor constitutes any obstacle to the sovereign authority of the customs officials over collection of import duties and taxes, while at the same time fraud is given a chance to be successfully perpetrated against a party who has invoked the assistance of the court. I am not convinced that it is outside the jurisdiction of a court to issue an order of attachment purporting to garnish imported goods still in the hands of the customs authorities, with a view to having the same delivered to the sheriff instead of the defendant importer after the latter has paid what is due to the government in the meantime that the issue of who is entitled to the goods raised by a party with whom the importer has entered into a transaction involving the importation is not resolved by the court. Indeed, it has been held that attachment, "merely for the purpose of acquiring a lien upon property in the custody of the law" is legally possible (6 Am. Jur. 2d. Sec. 196, p. 703). And in the particular circumstances of this case, the lifting of the order of attachment had the effect of completely removing the customs authorities from any interest in the order because there is no more occasion for disturbing or interfering with its physical possession of the imported goods and its right to exact payment of the duties and taxes thereon.

Before closing, I want to make it clear that I recognize that no court can deprive the customs authorities of the possession and/or control over imported goods before duties and taxes are paid, but, on the other hand, I hold that after such payment, they are in no better position than any other party on whom a garnishment is served. Otherwise, customs laws would be instruments of fraud of importers who might want to defraud those who deal

with them regarding the importation.

As things stand now with the lifting of the order of attachment upon the bond filed by Hijos, petitioners are free to deliver the goods in question to said party, saving to Tinsay his recourse against the bond, which is a very happy solution insofar as the petitioners are concerned, for neither their physical custody of the goods nor their right to collect duties and taxes is in any way involved. Now, as to whether or not the bond of P100,000 is sufficient is another question that need not be decided here. This matter may be submitted to the trial court who is in a better position to tackle it, once the issue of its jurisdiction is deemed settled.

Accordingly, I vote to dismiss the petition, so as to give way to the settlement of the controversy between Tinsay and Hijos as to the validity and effect of the alleged transactions between them without either of them fearing that the judgment would be illusory and ineffectual and without in any manner involving the petitioners in such litigation.

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